

14495


No. _____

Supreme Court of Illinois

Mapps

vs.

Sharpe et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 105.

Mapp
vs.
Thompson

1425

Supreme Court—Third Division.

THOMAS A. MAPPS, Comp't,

VS.

BERNHARD U. SHARPE, GEORGE N. SHARPE } IN CHANCERY.
and GEORGE ALLEN, partners under the name }
and firm of SHARPE & COMPANY, defendants. }

Bill

1 . The bill shows that one John G. Royal being the owner in fee of S E $\frac{1}{4}$, Sec 4, T 34 N R 9, E 3d P M, Will Co., Ill's, on the 24th day of April 1857, executed a Sale Mortgage thereon to Egbert H. White to secure the sum of 1000 Dollars.

That on the 22d day of April 1857 said Royal and wife conveyed by warranty deed the N $\frac{1}{2}$ of said S E $\frac{1}{4}$, Sec 4 to Comp't for the consideration of 900 Dollars.

2 That on the 10th day of June 1857 the Comp't hired of def'ts 800 Dollars for thirty days at 36 per cent. per annum and gave his note to said B. U. Sharpe for 824 Dollars—the 24 dollars being for the interest. And to secure said note at the same time executed to said B. U. Sharpe, but for the benefit of said firm, a sale mortgage on said N $\frac{1}{2}$ of said S E $\frac{1}{4}$ Sec 4 and the W $\frac{1}{2}$, S W $\frac{1}{4}$, N E $\frac{1}{4}$ Sec 6
4 T 34, R 10 E; and W $\frac{1}{2}$, N $\frac{1}{2}$ E $\frac{1}{2}$ S E $\frac{1}{4}$, Sec 2, T 34, R 9 E 3d P M, said Mortgage containing a power of sale by advertising ten days after default, a copy whereof is attached to and made part of bill marked exhibit "A."

5 At the end of 30 days Comp't paid the 24 dollars back interest and procured a re-loan of the 800 dollars by agreeing to pay def'ts

monthly in advance interest thereon at the rate of 60 per cent. per annum—and the time was thus extended from month to month till about the 6th of Oct. 1858, Comp't paying interest as last aforesaid.

That between July tenth 1857 and Oct. tenth 1858 Comp't paid
 6 Defend'ts on said note at different times and in different amounts about 660 dollars, that the interest was marked paid monthly on back of said note, and Def'ts refused to apply any of the said 660 dollars as principle. That Def'ts then refused to give any further extension, and on the 13th day of November, 1858 said B. U. Sharpe after publishing notice ten days a copy whereof marked exhibit "B" is attached to and made part of bill, offered the said property for
 7 bid in by said def't George N. Sharp by R. R. Allen his agent, for the sum of 460 dollars, and a deed executed to him for the same by said B. U. Sharpe.

That on the 1st day of Feb'y 1858 the said White sold and deeded under the power in his mortgage from said Royal the S $\frac{1}{2}$ of said S E $\frac{1}{4}$ Sec 4, to def't George N. Sharpe for 1000 dollars. And on the 1st day of Feb'y 1859 said White sold and conveyed the said N $\frac{1}{2}$ of said S E $\frac{1}{4}$ Sec 4, under his said mortgage to def't George N. Sharp for 150 dollars. These sales were both at auction and the
 8 purchases were made by R. R. Allen as agent of said George N. Sharpe.

That the said sale on the 13th of Nov. 1858, the said N $\frac{1}{2}$, S E $\frac{1}{4}$, Sec 4, was struck off to said George N. Sharpe at 200 dollars and the W $\frac{1}{2}$ S W $\frac{1}{4}$, N E $\frac{1}{4}$, Sec 6 T 34 R 10 E, being twenty acres valuable timber, at 150 dollars;—and the W $\frac{1}{2}$, N $\frac{1}{2}$, E $\frac{1}{2}$, S E qr,
 9 Sec 2, same T and R, also valuable timber at 110 dollars, making with the 150 dollars bid at the sale under the White mortgage 610 dollars for the whole of said real estate, which was worth at the least 2000 dollars. Said 80 acre tract being well improved and under high state of cultivation.

Comp't alleges and charges that the sale by White of the said N
 1/2 of said S E qr Sec 4, to said George N. Sharpe was made through
 an arrangement between B. U. Sharpe, R. R. Allen agent of Geo.
 N. Sharpe and White for the purpose of strengthening said George
 10 N's title under the previous sale under said mortgage from Comp't
 and to prevent Comp't from setting up the question of usury in a
 direct proceeding between Comp't and def't, and to cut off any equi-
 ties there might be in favor of Comp't. That said sale was a mere
 matter of form made at the instance of def'ts. That it had been
 previously arranged by them that said R. R. Allen should bid off
 the property for 150 dollars in the name of said George N. Sharpe
 and that no other person should bid. That def'ts had proposed to
 11 take an assignment of White's mortgage, but for the purpose of
 preventing Comp't from questioning the legality of their proceed-
 ings they induced said White to make said sale, with the intent of
 covering up and avoiding the effect of the fraud which they had
 practiced on the Comp't and by which they had sacrificed his whole
 property for the payment of a debt much less than half its value.

That the rate of interest so agreed to be paid and in fact paid by
 Comp't was usurious, oppressive and illegal—and that there then
 was in fact only a balance of about 240 dollars legally due def'ts
 12 on said note and mortgage at the time of said sale on the 13th of
 Oct 1858, including interest thereon at 10 per cent, which same
 Comp't offered to pay but def'ts refused to receive.

That Comp't has been at all times and still is ready and willing to
 pay said def'ts whatever sum may be due them on said note and
 did offer to pay them the amount justly due—that def'ts have not
 13 only caused said premises to be sold as aforesaid, but refuse to de-
 liver up or cancel the said mortgage and note. Alleges combination
 and fraud on the part of def'ts to oppress comp't and deprive him
 of his property. That there was not justly due them over 240
 14 dollars at the time of the sale, allowing interest at 10 per cent.—
 That said premises were very valuable, and that comp't had been
 offered 45 dollars an acre for the same not long before the sale by
 def'ts which he refused to take.

That since said sale, def'ts have refused to render any account
 15 of said matters to comp't, or to allow him to redeem said premises
 by paying the balance justly due them, which comp't has always
 been willing and is still willing to pay. Calls for answer without
 oath—prays that an account be taken of and concerning said mat-
 ters under direction of court, and that comp't may be allowed to re-
 deem said mortgaged premises on payment of whatever amount
 shall be found justly due def'ts and the costs and expenses of said
 sale, which Comp't hereby offers to pay as soon as ascertained and
 that a reconveyance of said premises be decreed to Comp't, and force
 surrender of said note, and for general relief.

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ANSWERS.

30 Def'ts admit the execution of the sale mortgage by Royal to
 White as alleged in bill, and allege that said mortgage was record-
 ed the 24th day of April 1857. Admit that Royal and wife deed-
 31 ed the N $\frac{1}{2}$, of said S E $\frac{1}{4}$, Sec. 4, to Comp't on the 22nd day of
 April 1857, and allege that it was agreed between Royal and Comp't
 that Royal should mortgage the whole 160 acres for 1000 dollars
 and that such mortgage should be put on record first, and that
 Comp't should assume and pay one half of such 1000 dollar mort-
 gage. That said mortgage to White was made in conformity with
 such arrangement. and that said deed to Comp't was not therefore
 put upon record till the 19th day of may 1857.

32 Admit that on 10th day of June 1857 def't B. U. Sharpe, said
 Geo. N. not then being a partner and not having any concern therein,
 loaned to Comp't 800 dollars for 30 days, and that Comp't agreed to
 33 pay him \$24 as interest therefor, and gave his note for 824 dol-
 lars, and to secure the same executed the mortgage mentioned in,
 and a copy whereof is filed with bill as exhibit "A". That in Oct,
 1857, def'ts entered into copartnership with each other in the buis-
 ness of banking, and said loan to Comp't was transferred to said firm
 by def't B. U. Sharpe, he receiving credit therefor on the book of
 34 the firm. That about Aug. 10th (not at expiration of 30 days as
 alleged) Comp't paid def't B. U. Sharpe the interest for one month

and solicited and procured a continuance of the loan for another month, and for such forbearance agreed to pay interest at the same rate as at first, and so the loan was extended from month to month at Comp'ts solicitation till Nov. '57. Comp't still importuning def't B. U. Sharpe to continue the loan from month to month, and which said B. U. Sharpe finally agreed to do on the payment of interest thereon at 5 per cent. per month, and the interest paid was endorsed on said note for each month as payment was made.

35 That Comp't did between the commencement of said loan and the foreclosure of said mortgage pay to said def't B. U. Sharpe about \$315,40 as interest on said loan, that each payment was endorsed on the note and the interest thereby settled and discharged, that these payments were not credited as principle because Comp't made them expressly in satisfaction of interest in accordance with his agreement, and that comp't never made such request.

36 That as to the allegation in the bill that def'ts refused to continue said loan after the 10th of Oct 1858, def'ts say that def't B. U. Sharpe was willing and so expressed himself to continue the loan from month to month as originally made, and it was not till after Comp't showed a disposition to get rid of his voluntary engagements that said mortgage was enforced. And admits that def't B. U. Sharpe did sell under the power contained in said mortgage the several parcels of land therein described as alleged in the Bill and for the several sums therein stated for the purpose of satisfying the balance due on said mortgage.

37 That although the interest on said note was endorsed as paid up to Oct. 23, 1858, yet it was not all paid in money, but that Comp't gave a new note for several of the monthly instalments in which were embraced divers other loans, securing the same by Chattel Mortgage on personal property, upon which there is still unpaid about 100 dollars.

That said sale was made in strict conformity with the power contained in the mortgage and in perfect fairness and good faith, Compt having after publication of notice ample opportunity to save his premises by paying the money or by making new arrangements with def'ts for an extension, and that sale was attended with the ordinary chances of competition.

- 38 That after making said loan, def't B. U. Sharpe learned that the title of Comp't to said 80 acre tract was imperfect by an apparently fatal defect in his chain of title, and that an action of ejectment against Comp't had been commenced in the U. S. Circuit Court for the Northern Dist. of Ill's by one Brown who professed to hold and by deduction of title or the records, did hold an adverse and paramount title—and that def't B. U. Sharpe at great trouble and expense employed Attornies to attend said suit and has been obliged to exercise constant supervision of said suit and make frequent
39 journies to Chicago, Comp't having devolved nearly the whole burden of the litigation on him. That said suit is still undetermined and the event doubtful, although the attorney's in charge of the defence express strong assurances of ultimate success.

Admit that said White sold the S $\frac{1}{2}$ of said S E $\frac{1}{4}$ sec. 4, under his said mortgage to def't Geo. N. Sharpe for 1000 dollars at the time and in manner alledged in bill.

- 40 That as White's mortgage covered the whole of said S E $\frac{1}{4}$ sec 4. and said B. U. Sharpe's only covered the N $\frac{1}{2}$. Def'ts applied to White to sell the S $\frac{1}{2}$ first, but refusing to do so, def't Geo. N. caused White to be enjoined by writ from the Will County Circuit Court from selling said S $\frac{1}{2}$ until after the N $\frac{1}{2}$ had been sold and there should still prove to be a deficit, and thereupon sale took place as stated in bill and def'ts believe in a legal and proper manner.

Def'ts admit there was still a balance due White of 200 dollars, and that he, in accordance with the terms of his mortgage and of said injunction sold the N $\frac{1}{2}$, and that def't Geo. N. Sharpe purchased it at 150 dollars, and aver that Geo. N. thus procured a perfect title thereto discharged of all equities.

That as the amendment to the Homestead Law of Fed'y 17th 1857 by the reason of the limited publication thereof, was not generally known among conveyancers, and said mortgage to def't B. U. Sharpe was executed without any knowledge or reference to said law, and was not therefore required to be signed by the wife of Comp't, and Comp't afterwards claiming said land as his homestead, Def't Geo. N. Sharpe was compelled to resort to these to fortify his title, and def'ts admit their principle object of purchase of the N $\frac{1}{2}$ at Whites sale, was to avoid Comp'ts fraudulent design of holding it as Homestead; but any collision with White for the mere purpose of making a sale for the benefit of def'ts, or in any way to injure the interest of Comp't, on the contrary, tried to induce White not to sell said N $\frac{1}{2}$, and made every opposition in their power against such sale. Aver that the sale was public, on due notice, openly and fairly conducted, without fraud on the part of White, with full opportunity to bidders, and although the property was sold for less than its value, remind the Court of the condition of Comp'ts title, submit whether a mortgage fairly and regularly made can ever be impeached for mere inadequacy of price however gross.

Admit that if said sales should be set aside and the agreements and settlements between def'ts and comp't should be also set aside, and monies that were paid and applied on for one purpose and apply them on another, is likely the debt of def'ts might be reduced considerably. And deny that comp't at any time previous to said sale ever made any tender for any amount, to discharge said mortgage.

Admit they have not delivered up said mortgage because the sale operated as a discharge thereof, and the only person interested in

46 title is def't Geo. N. Sharpe the purchaser. They have not delivered up the note because the same is not fully paid unless def'ts as a matter of favor to Comp't, choose to consider it so, and until the ejectment suit before stated in relation to the title is determined, def'ts can't say how much equitably ought to be endorsed thereon on account of said sald, and that Comp't has never demanded it.

That estimate in the bill of the value of the mortgaged premises is extravagant and doubt whether it would sell for 25 dollars per acre
47 with clear title, and while said suit in the Federal Court in Chicago is undetermined, it could not be sold for near its real value.

That after the sale com'pt requested def't B. U. Sharpe as agent for Geo. N. Sharpe, should sell the same, and that said B. U. Sharpe accordingly made strenuous efforts to do so and offered the same in vain for 20 dollars per acre, the intention of def'ts being to give comp't the surplus above the indebtedness and expenses.

That as to the two tracts of timber land allege that Comp't cut
48 off nearly or quite all the timber after executing said mortgage and sold the wood in market, and that he had previously sold one of said tracts, viz; W $\frac{1}{2}$, S W $\frac{1}{4}$, N E $\frac{1}{4}$, Sec. 6. 34. 10, to one Rob't Maps, of which def'ts had no knowledge.

Def'ts claim that comp't is not entitled to the relief sought, because there was no fraud in the purchase at either of said sales, because if there was such an agreement for illegal interest the same
49 has been paid, and the transaction between the parties fully settled, all which they aver and pray to be hence discharged.

REPLICATIONS.

General Replication by Comp't.

Deposition of Egbert H. White,—on direct examination
 55 states that he held a mortgage on the S E $\frac{1}{4}$, Section 4, T 34,
 R 10 E, and executed by John G. Royal to secure 1000 dollars.
 That he sold the S $\frac{1}{2}$, of said S E $\frac{1}{4}$, under said mortgage to Geo. N.
 56 Sharpe for 1000 dollars on 27th Nov. 1858, and the N $\frac{1}{2}$ to said
 Geo. N. about the 1st day of Feb'y 1859 for 150 dollars. That
 Rufus R. Allen acted as agent for said Geo. N. and made the bids
 57 at the sales. That he had a conversation with Allen a few days
 before the last sale, and Allen agreed to bid 150 dollars for said N $\frac{1}{2}$.
 He proposed to sell the mortgage to def'ts but they could not agree
 on the amount. Allen insisted on the N. $\frac{1}{2}$, being sold because he
 wanted to perfect his title, as comp'ts wife had not signed their
 58 mortgage. It was the understanding between us that no one else
 should bid at said sale except Allen as the agent of said Sharpe.

CROSS EXAMINATION.

Witness states, that the paper attached marked "A" is a copy of
 59 the notice published in the "Joliet Signal" for ten days next prior
 thereto under which his said sales were made. The sales were
 at north door of Court House at the times appointed therefor.—
 60 Mr Allen, Mr McRoberts, Mr Tonner, and Witness were present at
 the first sale; Witness proclaimed the sale in the ordinary way,—
 Allen made the highest bid, no artifice was used by me or Allen to
 61 prevent bidding. There were 202 dollars still my due on the mort-
 gage after the first sale. There was no arrangement between me
 and either of the Sharpe's or Allen when I first commenced the fore-
 62 closure, by which they were to benefit by it. The reason the first
 sale was postponed as shown by the notice was in consequence of an
 Injunction sued out by Geo. N. Sharpe against me preventing me
 from selling said N $\frac{1}{2}$. The injunction was got up without any col-
 lision between me and Sharpe.

The second sale was attended by Allen, McRoberts, and myself and others whose names are not recollected. It was conducted in the ordinary way. No means were used to keep it secret or to prevent bidding. There was one bid by Allen of 150 dollars. There was no arrangement between me and Allen previous to the sale, that I should decline receiving any bid that might be made. The chancery suit was pending at the time, I wanted 202 dollars, but he agreed to bid 150 dollars and we settled it in that way. If a higher bid had been offered there was no arrangement between us by which I would have been prevented from taking such higher bid. I claimed 202 dollars, and he refused to give more than \$150. The first postponement was made at the advice of my attorney's, and the notice was kept in the newspaper in consequence of the injunction. I was prevented selling the N $\frac{1}{2}$ by the injunction, and not by any arrangement with Sharpe or Allen. Allen and I had a conversation before the second sale, he wanted I should sell under the mortgage and he would buy it, I wanted to sell him the mortgage, he would not buy it, I judge from the conversation, his object was to fortify his own title. When Allen came into McRoberts and Goodspeeds office and got the deed and paid the money Allen asked McRoberts if that didn't wipe out Mapps homestead exemption, McRoberts said he thought it did. Allen said, White, I have got a sure thing now, and said also that I might have the land if I would pay all their claims. I think Allen disclosed to me before the sale his object in purchasing under my mortgage after the injunction was sued out. My reason for thinking it was before the sale was that I wanted to sell the mortgage to him and he would not buy it. I will not swear positively that Allen told me before the sale that Sharpe's title was defective, but the whole matter was talked over and it was understood between us that there was a homestead claim on it. Allen was saying that his title was good enough, but I was telling him how it was about the homestead. My mortgage was first and I considered good for the amount. The Mapps 80 was worth, say \$2000. My reasons for taking \$150 when I claimed 202 dollars were, first, there was a suit pending in Chicago in relation to the land, which would cost 500 or 600 dollars as I understood. Secondly, I knew Sharpe would run it up so there would be no use, and thirdly and lastly, extra interest and

the dismissal of the injunction suit. From what Mapps and Royal said I concluded they would beat in the suit in Chicago. The title was somewhat mixed I thought, and I was glad to get rid of it.—

- 71 The loan from me was for the benefit of both Royal and Mapps to make the last payment on the land.

DIRECT EXAMINATION RESUMED.

- 72 At the conversation previous to the last sale, the agreement between Allen and me was that he should dismiss the Chancery suit and bid 150 dollars and that it should be struck off to him for Geo. N. Sharpe at that price. I was not to bid nor any one for me.

CROSS EXAMINATION RESUMED.

- 73 Witness says he did not say that Allen agreed to *buy* the property at \$150. He agreed to *bid* 150 dollars, and it was not expected that any one else would bid above it. I don't think I was inclined to bid over 150 dollars, I did not want to buy any law suits.

- 74 *Interrogatory*.—On your 1st cross examination you stated in substance that the sale was openly and fairly conducted in accordance with the notice, as to time and place and that no artifices were used by yourself or your attorney or Mr Allen to prevent any person from bidding who desired to do so. Do you still adhere to that statement?—Ans. I do.

- 76 *Deposition of H. N. Stoddard.*

Witness states that he is acquainted with the value of S E $\frac{1}{4}$, Sec. 4, T 34, R 10 E 3d P M, and would call it worth, on the 1st day of Feb'y 1859, 4500 dollars. The Mapps farm is the N $\frac{1}{2}$, and was worth at that time 2400 dollars. The W $\frac{1}{2}$, N $\frac{1}{2}$, E $\frac{1}{2}$, of S E Sec. 2, T 34, R 9 E, &c, and the W $\frac{1}{2}$, S W $\frac{1}{4}$, N E $\frac{1}{4}$, Sec. 6, T 34, R 10 E, &c., are timber land, but does not know the value.

CROSS EXAMINATION.

- 77 The estimate of the Maps 80 is based upon the supposition of a good title. Witness knows nothing of the condition of the title, heard Mapps say before the sale under White's mortgage that there was a suit pending.

78 Cross Interrogatory.—Will your recollection serve you to state what was the general talk and rumor in regard to Mapps title at or about the time of said sale? (Objected to.)

Answer.—The talk was by some, that the title was a poor one, and by others that it was good; which way the balance of opinion was I could not state.

DIRECT EXAMINATION RESUMED.

79 Interrogatory.—State if you know the value of timber land in the neighborhood of the two tracts mentioned, in sections 6 and 2? (Objected to.)

Answer.—It is worth from \$10 to \$75 per acre.

80 Deposition of David Nichols.

Witness states that he is acquainted with N $\frac{1}{2}$, S E $\frac{1}{4}$, Sec. 4, T 34, R 10 E, &c., and in his opinion was worth 30 dollars per acre, 81 on the 1st of Feb, 1859. Thinks the two tracts of timber land mentioned in the Mortgage worth about ten dollars per acre; and thinks there was some difference in the value of said tracts between the 27th of Nov., 1858 and Feb. 1st, 1859.

CROSS EXAMINATION.

82 Witness never had occasion to ascertain the lines of the two 20 acre tracts above referred to. My means of identity is in having passed over the two tracts that were said to be the timber land of Mapps formerly. H. B. Nichols caused 3 or 4 acres of the timbe to be cut and removed from the Lot on Sec 2, a year ago last Winter, [viz: winter of '57-8] 83 Nine acres of the timber was sold by Mapps to Nichols.

Deposition of C. H. Macumber, witness for defence.

84 Witness states that he is Dep't Circuit Clerk and Recorder of Will Co., and prepared the paper marked exhibit "B" attached to his deposition. It is a true abstract of the original record of the tracts of land therein indicated to Nov. 30th, 1859.

Deposition of R. R. Allen, a witness for defence.

85 Witness says he was in the employ of Sharpe & Co., the def'ts,
 86 as book-keeper and agent doing their buisness generally, in 1858,
 and in that capacity during that fall, had some negotiations with
 E. H. White, concerning a mortgage from John G. Royal to him,
 on S E $\frac{1}{4}$, Sec. 4, T 34, R 10 E, &c. Their negotiations were con-
 87 ducted by me exclusively. Def't B. U. Sharpe had a mortgage on
 Mapps 80, and White had one on whole S E $\frac{1}{4}$, ahead of Sharpe's.
 I tried to buy Whites mortgage in Oct. '58. He refused to sell,
 saying that he intended to sell Mapps 80 first on the mortgage, be-
 cause he had had a larger part of the money; I offered him his
 principle and interest, but he would not sell it. After he adver-
 tised to sell, I went to him again and proposed that he sell Royal's
 88 80 first. He refused, but should sell Mapps 80 first. I said we
 would enjoin him, he said we could not. I then counseled Judge
 Parks, and got out an injunction, the day before the sale. I bid off
 the Royal 80 for Geo. N. Sharpe for \$1000. Sale as to Mapps 80
 adjourned to Jan'y 1859. White claimed in all \$1,202, sale was
 again adjourned to Feb'y 1st 1859. The injunction was pending
 during the period up to the said first of Feb'y. I then made an ar-
 rangement with White to dismiss the injunction suit at plff'ts cost
 and bid \$150 on the Mapps 80, he agreeing to go on and sell on
 these terms. He then went to the Court House and offered the 80
 89 for sale, and I bid it off for Geo. N. Sharpe for 150 dollars, and re-
 ceived a deed from White the same day. There was no agreement
 that White, or any one for him should not bid, nor that any artifice
 should be used to keep the sale from the public, or to prevent com-
 90 petition. Nor was there any such artifice to my knowledge. Mc-
 Roberts, White and myself were present at the sale and several
 whose names do not recollect. White read the description and
 offered the land for sale to the highest bidder for cash. There was
 no bid but mine. Mapps title was in dispute. One Brown had
 commenced an ejection suit against Mapps in Chicago which is
 91 still pending. Hoyne, Miller, and Lewis were attorneys for def't.
 I paid fees to them for Sharpe. I dont know of Mapps doing any-
 thing to defend it; and since that time the burden of the defence
 rested on Sharpe.

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After the sale in Feb'y I was at an interview between B. U. Sharpe and Mapps. Mapps told Sharpe to rent the place if he could find a man to take it; and came in frequently to see if it had been rented. He said he knew a man and would send him to Sharpe.

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White and Sharpe were at all times before the sale disputing about the Royal mortgage. Neither the original notice of the sale, nor either of the postponements were made by my advice as the agent of Sharpe. There was no talk between me and White previous to the sale that it should be conducted other than in the ordinary way. I never talked of our object in procuring a title under said sale out of Sharpes office, but had frequently told White that we wanted to get a title under his mortgage, to perfect Sharpe's original title. He always argued that we ought to buy his mortgage as it would cut off Mapps homestead exemption. I told him it was good enough, that he could not hold a homestead where he did not live. I think I told White at the time I received the first deed that I would pay him all that legally belonged to him, but would not pay the 202 dollars he claimed.

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CROSS EXAMINATION.

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I did not as the agent of Geo. N. Sharpe make an arrangement with White by which White, nor any one for him was to bid on the Mapps 80 at second sale. It was not to cut off Mapps homestead that I purchased at the second sale, but because Whites' mortgage was ahead of Sharpe's, on the whole 160. White proposed to sell Mapps 80 for his debt, which would make 2000 dollars on that 80. I agreed to bid the 150 dollars thinking it would be better to have White go on and sell than to take an assignment of the mortgage. It was before the first sale that I tried to purchase White's mortgage. I did not know anything about the Mapps loan of Sharpe till Oct. 1st 1857; I then went to work for Sharpe & Co. Mapps agreed to pay 3 per cent for the month of October, and he agreed to pay and did pay 5 per cent per month for a part of the time.— Some of the time he gave notes for the interest. It was not to avoid the defence of usury that I purchased at the second sale. I

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told White after the first sale, that I would not buy the mortgage and he might go on and sell, as I thought it better for him to go on
 100 and sell and save cost. I did not understand that Mapps intended to set up usury, never heard anything said by Sharpe & Co. about the defence of usury before the sale. Sharpe & Co offered Mapps that if he would pay all they had payed out and all he owed them,
 101 they would re-convey the property to him. Mapps wanted Sharpe to give him a bond to re-convey within a year if Mapps redeemed, but he refused as he had the suit in Chicago to fight. But urged
 102 Mapps to get some of his friends to go security for the money, and he would then convey; Mapps said they would not do so till the Chicago suit was out of the way.

Deposition of Francis Goodspeed.

103 Witness says, that on the day of the last sale under the White mortgage, R. R. Allen and White came into our office together — White said they had arranged the matter, and that he was to let the Sharpe's have the mortgage for 150 dollars, being about 50 dollars less than he claimed to be due as I understood; think I then asked Allen if he would take an assignment of the mortgage. He said he
 95 preferred to have the sale go on, and that he would bid the amount agreed on in order to save any question in relation to their own title, and under this arrangement they left the office to make the sale.

R. R. Allen recalled.

104 Witness says, that there was no other note given by Mapps for the principle except the original 824 dollar note. I made a portion of the endorsements thereon, and saw some of the others made. One or two of the first endorsements after I came there were made without the payment of the money. The notes given by Mapps for interest included other considerations of money loaned which has not
 106 all been paid; some 75 dollars still due. Mapps had never previous to the last sale informed me that he intended to institute proceedings to set aside the first sale or to take advantage of the usury, or his homestead exemption right. On the day of the last sale I

107 had some talk with White on the way to the Court House. I told him I would withdraw the injunction suit at Sharpe's cost and bid 150 dollars, and White finally after some talk with McRoberts said he would go on and sell—and the matter was not finally closed until he had talked with McRoberts.

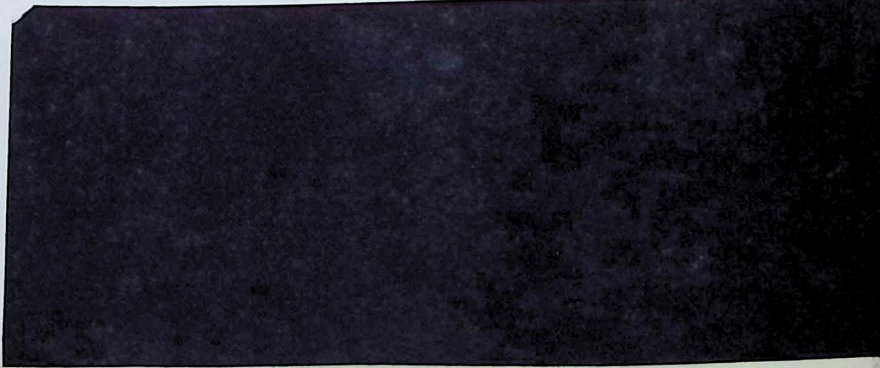
SECOND CROSS EXAMINATION.

108 The note given by Mapps including some instalments of interest above referred to, also included a loan of money—the amount I think was 100 dollars.

Upon the hearing the Court rendered the following decree:—

The Court being now fully advised in the premises it is ordered, adjudged and decreed, that the bill of Complaint be and the same is hereby dismissed at the cost of the Comp't, and that said Def'ts have execution for their costs and charges in this behalf.

The following are the errors assigned by Thomas A. Mapps :



McROBERTS & GOODSPEED,
Attorneys for Pl'ff in Error.

105
The. A. Mapp's

vs

B. N. Sharpe
Et al

abstract

Y. N. Mear,
7. 1863

E. Seland
AM

Supreme Court. Third grand Division

Thomas A. Mapps
Plaintiff in Error
vs.

Bernhard W. Sharpe, George St.
Sharpe & George Allen, partners
under the name & firm of Sharpe & Company.

And thereupon afterwards to wit at the April term 1863 of the Supreme Court of the State of Illinois for the third grand Division ~~Thomas A. Mapps~~ Bernhard W. Sharpe, George St. Sharpe and George Allen ~~Sharpe~~, defendants in Error come into Court and say that there is no Error either in the record of the proceedings aforesaid or in the rendition of the decree aforesaid: and therefore pray the Justices of the said Supreme Court now here may proceed to examine as well the Record and proceedings aforesaid as the matters aforesaid assigned for Error, and that the said judgment may in all things be affirmed, and that their costs in this behalf may be adjudged to them.

G. D. A. Parks
attorney for
Defendants in Error.

27 105
Supreme Court. 39. div

B. N. Sharpe et al
Defts in Error
att,

Thomas A. Mapps
Plff in Error.

Verdict in Error.

Filed April 21st 1883
L. L. Lund
Clerk

SUPREME COURT.

APRIL TERM, A. D. 1863.

THOMAS A. MAPPS,
Pl'ff in Error,

vs.

BERNHARD U. SHARPE, GEORGE N. SHARPE,
and GEORGE ALLEN, partners under the
name and firm of SHARPE & COMPANY,
Def'ts in Error.

1st. Because the contract for the loan of \$800 by complainant from Bernhard U. Sharpe on the 10th day of June, 1857, at three per cent. per month, and the subsequent agreement to pay five per cent. per month ^{wise} ~~was~~ usurious.

See Answers, pages 32-33-34 and 35.

The sale should be set aside on the ground of fraud; because the whole case shows that the defendants took advantage of complainant, when his necessities were so great, that they overcame his better judgment.

Courts of Equity will interfere on account of fraud to set aside acts done.

1st Story Equity, Sec. 187.

So also in cases of unconscionable bargains; such as Lord Hardwick said in *Chesterfield vs. Janssen*, 2nd Vesey, 155, "no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other."

1st Story Equity, Sec. 188.

Courts of Chancery in order to prevent a surreptitious advantage being taken in consequence of the weakness or necessities of another, *will presume* fraud.

1st Story Equity, Sec. 188.

In usurious contracts the borrower is called "the Slave" of the lender he is *in vinculis*—in chains, and subject to the will of his oppressor.

The answers admit the usury as charged in the Bill, and all the payments made by complainant.

The answers admit that the arrangement was made with White to purchase under his mortgage to cut off the complainant's homestead, or that of his wife—she not having joined in the Mortgage made by Complainant to Bernhard U. Sharpe.

7th. George N. Sharpe was at the time the said Bernhard U. Sharpe sold the said premises by virtue of complainant's mortgage to him, one of the Mortgagees in fact; because in October, 1857, (at least a month before the sale) Bernhard U. Sharpe had formed a Co-partnership with George N. Sharpe and George Allen; and the loan to complainant was transferred to the new firm.

The sale therefore was made for the benefit of the new firm; and George N. Sharpe *one of the firm*, became the purchaser, he being *both seller and purchaser*.

Sales by Mortgages under a power of sale, are jealously watched by Courts of Equity, and upon the slightest proof of unfairness will instantly set such sales aside.

White testifies that by the arrangement, no one but Allen was to bid. 14th Int. Ans. of White's direct examination.

It is shown by White's evidence, that Sharpe had sued out a Writ of Injunction to stay the sale under White's mortgage; and that the dismissal of the Chancery proceedings and the bid of \$150 were the consideration for the sale.

See Int. and Ans. 3 and 4, resumption of White's direct examination.

White says it was the understanding between Allen and himself that Allen should bid off the N. $\frac{1}{2}$ of Sec. 4, for \$150, and that White, nor anyone for him should bid.

Int. and Ans. No. 3, White's resumed direct examination.

The deposition of F. Goodspeed, shows that such an arrangement was made between White and Allen.

The N $\frac{1}{2}$, Sec. 4, is shown by the depositions of Stoddard and Nichols to have been worth at the time of the sale \$2400 and the timber land (about 40 acres) to have been worth from \$10 to \$75.

The land embraced in Sharpe's mortgage, is shown by the evidence to be worth at the least \$2800, which was sold to satisfy a balance of a usurious claim of not to exceed \$200.

The contract being usurious, we contend that the defendants forfeited all interest, both legal and illegal; and are entitled to nothing but the principle.

Lucas vs. Spencer, et al. 27th Ill. 15.

A *bona fide* purchaser without notice under a sale made by virtue of a power of sale contained in a mortgage, is not affected by usury in the original debt; to secure which the mortgage was given. It would be equivalent to a foreclosure in chancery.

Jackson, Bartlett and others vs. Henry, 10 John. R. 185.

In this case George N. Sharpe was not a *bona fide* purchaser without notice, because he was really one of the mortgagees.

The rule as laid down by the Court in Bartlett et al. vs. Henry, applies as well to cases arising under the usury law of Illinois, which forfeit only the interest, as to cases arising under laws, which make the usurious contract absolutely void. There can be no difference whether the whole debt, or the interest only is forfeited. The rule is the same.

Suppose that instead of foreclosing the mortgage, by notice and sale, the defendants in Error, had entered for conditions broken, it will not be contended, that the complainant, after tender of the amount due, could not maintain a bill to redeem.

Parsons vs. Wells, 17th Mass, 419.

Hill vs. Payson, 3rd Mass. 559.

Perkins vs. Pitts, 11th Mass. 125.

Pomeroy vs. Winship, 12th Mass. 514.

By purchasing at the sales under the power contained in the two mortgages the defendants in Error, could acquire no better title, than if they had entered for conditions broken. Not so good; for by the entry, they would have actual possession, but as purchasers, they would acquire nothing (even where there is no usury or fraud) but the right of possession.

We think that under the proof, the Plaintiff in Error should be permitted to redeem all the property included in the mortgage from him to Bernhard U. Sharpe, by paying the balance legally due upon the original loan of eight hundred dollars.

McROBERTS & GOODSPEED,

Att'ys for Plaintiff in Error.

In conclusion we would remark that it seems to be virtually admitted on the part of the defendants in Error, that the first Sale under the B. W. Sharpe mortgage, did not cut off the equity of redemption of Mapps, the plaintiff in Error in as much as Geo A Sharpe the purchaser was part owner of the mortgage. But they do insist that it cut off the defense of usury.

Now the only case cited to support their position is John R 196, Shows that such could not be ⁱⁿ effect, unless the purchaser was an innocent purchaser and certainly George A Sharpe was not such,

But the defendants in Error seem to rely mainly on the Subsequent Sale of "White" to George A. Sharpe for 150 dollars as curing all defects in the first Sale. This Subsequent Sale is attacked by the bill for unfairness and fraud; and it is insisted that it could not bar the right of redemption.

In support of these allegations it is proved by White (See his dep. Morgand, page 58 Abst. of Record) that "it was the understanding between us that no one else should bid at the Sale except Allen as the agent of Sharpe"

(See also Morgand p 72.) "Allen agreed to dismiss the Injunction Suit and bid 150 dollars, and that it should be struck off to George A Sharpe at that price. I was not to bid nor any one for me."

Again, the Sale was while there was an Injunction pending to Stop it. (See Allen's dep Margt p 88 of abstract) Allen says - "the Injunction was pending during the period up to the first day of Feb 1839, which was the day of the last sale."

In answer to these facts it is insisted that there was nothing unfair in this arrangement; for say the defendants in Error, White being mortgagor had no right to bid nor any one for him - that there could have been nothing unfair, ^{in agreeing} not to do what White had no right to do. Yet the defendants in Error do not deny but that G. C. Sharpe, standing in the position of mortgagee had already bid off this property in his own name at the former Sale. Of course then Mapps had a right to redeem from ^{that} Sale And G. C. Sharpe stood in the position of a Trustee up to the time of the last Sale; and such being the case, if he could purchase at all. So as to defeat Mapps Equity of redemption, it must be with the utmost fairness, on his part, and with the assent of Mapps. Hill on Trustees 3 Edition Side page 158 & note same - Side page 538 & note 4 Selden 216 - Dobson v Racey. 11 Bl & S 684 Water v Groom referred to in Hill on Trustees. 158.

This Sale was made while there was an Injunction pending injoining it. This would certainly have the effects to deter bidders.

George St Sharpe by Allen his agent previously to this Sale, made an arrangement with White to Striker off the property for 52 dollars less than his debt. White agreeing not to bid or have any one for him bid, so as to cover the full amount of his claim. This was certainly unfair as to Mapps; for it left him personally liable for the remaining 52 dollars, if it did not prevent completion.

McRoberts & Goodspeed
Atty's for Plaintiff in Error

Mapps
vs
Sharpe

Comp of P. L. H.

Filed May 6, 1863.
J. Silsbee
clerk

SUPREME COURT.

THOMAS A. MAPPS,
Pl'ff in Error,
vs.
BERNHARD U. SHARPE, GEORGE N. SHARPE,
and GEORGE ALLEN, partners under the
name and firm of SHARPE & COMPANY,
Def'ts in Error.

POINTS OF DEF'TS IN ERROR.

- 1 The entire question, in reference to the sale under the WHITE mortgage is this—was there a fraudulent collusion, between White the mortgagee, and R. R. Allen, agent of George N. Sharpe, such as should avoid the sale?

The fraud supposed consists in the fact, that previous to and on occasion of the sale, there was an understanding between White and Allen that A. should bid \$150 for the property, that White *the mortgagee* would not indirectly compete himself for *his* own benefit,—that probably there would be no competition, and that Allen would be able to buy it at that price;—and that the chief motive of Allen was to fortify a prior title to the same land.

It is not pretended, but that the White mortgage was in all respects a valid instrument;—that there was a balance due, authorizing the sale; that the proceedings for the sale were commenced and

carried on by White, not only *without concert* with the defendants *but in direct and persistent hostility to their interests*; and that the sale was conducted in perfect compliance with the requirements of the power of sale contained in the mortgage. The simple point, then, is,—considering the position and duties of White as trustee, and the policy of auction sales, was the arrangement or understanding between White and Allen, as shown by the proof *fraudulent*?

1st. It will not be pretended that White himself *could* directly or indirectly buy at the sale. An agreement or an assurance not to do what he had no legal or equitable right to do can hardly be considered a wrong in any sense or for any purpose.

2d. The only consideration of any possible force would be, that the maxim of equity forbidding a trustee to buy either directly or indirectly the trust property is to secure the interests of the *cestui que trust*, and counteract the temptation to sacrifice them for his own advantage;—and that it would not be repugnant to but entirely consistent with the spirit of this rule, that he should stimulate competition by bidding indirectly or threatening to bid himself. If it were apparent that this was the sole object, and that the advantage was intended for the *cestui que trust*, it certainly would not be considered as a breach of his fiduciary obligation. As between trustee and *cestui qui trust* it would be not only unobjectionable but perhaps laudable. The purchaser, however, even in such a case might complain, and have relief as from a fraud.

1 Sug. Vend. p 13, 2 Kents Com. p 538, 8 How. 134, Veazie vs. Williams.

Be this as it may, it cannot be pretended that the practice of such a venial artifice is to be treated and rated as a duty, the breach of which would invalidate a sale otherwise in all respects regular. White had no right to bid for himself. He had no right to bid for

the benefit of Mapps, any further,—taking the rule as given by the most liberal authorities,—than to guard against a sacrifice.

See Supra.

3d. If the sum which Allen agreed to bid is to be considered simply as a minimum at which White the vendor agreed to start the sale, and if the evidence, the relations of the parties, and all the circumstances show no combination whatever between White & Allen to prevent competition,—in short shows nothing more than a belief founded on ordinary experience in mortgagees sales, and on the dubious and unattractive character of the title to be sold—that it was likely Allen would be able to purchase at the price named—then surely this bill is groundless.

11 Ill 268
20 Ill 549.

There can be no dispute about the doctrine of auction sales. It is summed up in perfect fair play between seller and buyer. The seller submits his property to the risks and chances of a fair competition. The bidder enters the lists for a hurried and excited contest with his neighbors. The first expects that the competition will be free, unrestrained by any combination: the other expects that the competition will be carried on by *bona fide* bidders like himself. Hence the well settled rules—that if the auctioneer employs by-bidders, to inflame and excite the by-standers, it is a fraud which vitiates the sale; that if the buyer entered into any combination with others to discourage, deter or prevent the natural competition in the market, that also is a fraud, invalidating his purchase. Can it be gravely contended, that this case comes within the description of a fraudulent collusion between trustee and buyer, to cheat the *cestui que trust*? All the authorities agree that the auctioneer

understanding here, is positively sworn to by both White & Allen.

See Abstract p 11, referring to Rec. p 73, as to White. See abs. p 13, Rec. p 10, referring to Rec. p 60, 61, also to Abs. p 14, Rec. p 95, as to Allen.

They both, no doubt, reckoned with the utmost certainty that there would be no competition and that eventually it would be struck off at \$150. Common observation in this country teaches, that there is but very rarely competition at sales of this character. Distrust of such sales, fear of litigation, the necessity of paying the purchase money down, the usual want of sufficient opportunity to examine the title and perhaps other causes contribute to produce this result. In this case, moreover, as the Court cannot doubt from the testimony, Mapps title was absolutely worthless for a market sale.

White, indeed, in the course of his examination, uses the expression that Allen *agreed* to buy the land at \$150. By this he means—*can* mean nothing more, taking the other parts of his testimony into view—than that Allen was to bid that sum, and that it was treated and spoken of between them as certain that that would be the only bid.

See Record pages 73, 74.

It is not charged by the Complainant, it is not hinted at in the proof, it will not be pretended in the argument, that there was any other person in attendance intending to bid; that there would probably have been another bidder, if the sale had been postponed or prolonged; that the sale was unreasonably hurried or too precipitately closed. If such was the case, why did not the gentleman, who, as the proof shows, was in attendance at the sale as White's attorney, and who is now attorney in this case, take the stand and inform us of a fact, which he, if anybody, must have known?

It is not enough to say that such an arrangement *might* have covered a fraudulent collusion. The complainant has charged fraud, and it is for him to prove it. Courts will always eye proceedings under these "cut-throat" mortgages with keen scrutiny, but they will not carry their aversion to them so far as to supply the place of *legal evidence* with mere suspicion and imagination.

4th. Inadequacy of price, however gross or even shocking, will not suffice in any case to set aside a consummated sale by auction, which was fair and regular.

- 13 Ill's 248, McArtee vs Engart,
- 11 John's R. 566, Livingston vs Byrne,
- 2 John's Ch. p 23, Osgood vs Franklin,
- 14 John's R. p 559, S. C.
- 6 John's Ch. 230, Seymour vs Delancy.

But here there was in fact no inadequacy. The *land* is shown to be valuable. But it was not the *land* but Mapps *title* in the land that was sold. And that title was sold under a depressing general belief that it was of doubtful validity—a belief caused by a state of facts which the defendants had no culpable agency in producing.

First. If he succeeds in this suit, he is incidentally helped to a most inequitable advantage over Royal. According to White's testimony Mapps had the most of the money for his own use. Yet Royal's Eighty was sacrificed to pay nearly the whole debt, the greater part of which Mapps ought to have paid.

Second. The proof shows, that after the sale of the Royal eighty Mapps had a notice of several months,—an unusually long period in mortgage sales—during which by the payment of the comparatively small balance due to White, the mortgage could have been discharged. This prolonged opportunity was neglected, either from doubt of the validity of his own title, then in litigation, or because he could not obtain even this small amount of money on such security.

Third. The Court will not fail to observe also, that at the time the bill was filed and when the depositions were being taken, an action of ejectment was pending in the Federal Court at Chicago to test the title of Mapps, the entire expense, care and responsibility of which he had left upon the defendants, and as it would now appear, with the purpose of taking advantage of the successful termination of that suit, if terminating successfully or leaving the burthen upon them, if otherwise.

In taking leave of this branch of the case, I will also remind the Court, that upon the point whether White *agreed* with Allen not to bid, there are but two witnesses on record, White and Allen. Allen positively denies the fact. See his Dep'n 8 and 9 direct, Ex. Record page 89. White, who meant to tell the truth, but was loose and confused in his statement of particulars, on his cross examination was not positive, but used the word "think." See White's Cross Ex'n Resumed 3 Ans, Record page 74 Such undoubtedly was the understanding or rather the inference from the understanding between them. And it was to this inference or impression and not any definite agreement, that he was testifying. But this

equipoise of evidence will not secure the purposes of the complainant. He has averred a fact, and if important to his case, it is for him to prove it by a preponderance of evidence.

II THE SALE UNDER THE MORTGAGE TO B. U. SHARPE.

The complainants of course can only obtain relief *secundum allegata et probata*.

5 Gil. 489,
6 John's 563, James vs McKernon,
7 Wheat 527, Crocket vs Lee,
11 Peter's 248.
21 Ell 19,

By this rule, they are confined to such aspects of their case as they choose to present. By this rule also, they cannot supply the defects in their bill, either by the proofs, or the answer. An amendment of the bill is the only remedy.

The bill does not allege that the premises composed the homestead of Mapps, nor set up in any form a claim to the benefit of the homestead law.

Nor does it attack or question in any form the regularity of the proceedings preparatory to or on occasion of the sale. It simply sets up that the debt which the mortgage was given to secure was *usurious*, and that because the debt was usurious, *therefore*, on that ground alone the mortgager *after* a sale has a right to redeem upon the payment of the principal and lawful interest. The bill does not rest the complainant's case upon the supposed equitable principle that a mortgagee in a sale mortgage is a trustee, and cannot directly or indirectly sell to himself.



< | | |

3d Gil. 32, Longwith vs Butler,
15 Ill's 503, Bloom vs VanRenssalaer,

By recognizing them, a foreclosure in such forms as are prescribed in the power of sale, is made precisely equivalent to a judicial foreclosure. A notice by advertisement is made equivalent to the service of process.

10 John's R. 196.

Or, if in consequence of the want of personal notice, Chancery would be inclined to show any favor to the mortgagee in an attempt to set aside the sale, he must at least allege to the Court that he did *not* have personal notice in fact. The complainant says no such thing in this bill; and the tenor of the statements in the bill on the contrary leaves the inference that he *did* know well of the contemplated sale. Upon the point of usury it is deemed unnecessary to add anything farther.

Was the sale voidable upon the ground that B. U. Sharpe was trustee, that G. N. Sharpe at the time of the sale was one of his partners, and that the purchase was made partly for his benefit?

1. The bill does not set up this aspect of the case, and called for no answer rebutting that equity, which might have been made.—The attention of the pleader was concentrated on the point of usury alone. It is not enough that the *facts* should be stated, but the bill should indicate the use to be made of those facts.

1 Clark's 361, Cole vs Savage, *et al*,
1 Daniels Ch. Pr. p 435, 438 old paging,

2d. If it should be adjudged that G. N. Sharpe holds the character of trustee by reason of his partnership with B. U. Sharpe subsequently formed, then the bill does not truly present the case on

which that trust arises. The bill charges that G. N. Sharpe was one of the original parties to the loan. The proof shows that B. U. Sharpe made the loan, that the partnership was created afterwards, and that G. N. Sharpe was but an equitable assignee of the note. It may be said that either state of facts presents a case of trust. But we answer you must recover according to your bill; and the trust *charged* is not the trust *proved*.

3d. The bill does not charge, except inferentially, that George N. Sharpe bought for the use of his partners. If he did not buy for the use of his partners, he did not hold the title in trust.— There was no fiduciary relation between Mapps and him; and his interest to buy cheap was hostile to the interest of the mortgagee to sell for the highest attainable price. The mere fact of having an interest in the debt does not involve him in the trust, and it is impossible in a case like this, where the trustee and purchaser are different persons, holding to each other not only independent but antagonistic relations at the sale, to predicate as to the latter the position and disabilities of a trustee. The defect in the bill no doubt, can be easily supplied by inference and conjecture.

4th. But even if well charged in the bill, would this state of facts suffice to charge G. N. Sharpe as a trustee in any sense? As one of several assignees of a note constituting a partnership of which the payee was one, would he be precluded from buying at the sale, and acquiring a title free from the complainants equity, except as to such proportionate interest as belonged to the mortga-

unreasonable length. Experience teaches us that at sales under sale mortgages in this State, the mortgagee always has to buy in the property indirectly. It also teaches us, however difficult it may be by technical rules to divest the mortgagee of the character of a trustee, yet the idea of a trust in such a case is purely artificial. The debtor and creditor are really in hostile relations; and the debtor trusts to the limitations and conditions of the power; to the provisions for public notice; to his personal attendance at and observation of the sale, and to the remedy which Chancery will give him for the least actual fraud or unfair conduct.

In conclusion, it may not be improper to remind the Court, on summing up the equitable considerations in the case, that Mapps mortgaged with the 80 two timber tracts; that one of these he had previously sold, and from the other he stripped the timber regardless of the rights of the mortgagee; that after the sale, so far from complaining of it he expressed his acquiescence in it by proposing to procure for Sharpe a tenant on the place; that after both sales, Sharpe proposed to relinquish his title upon payment of his claim; and that the negotiation failed because Mapps professed himself unable to use the title either to obtain a loan or to secure Sharpe.

G. D. A. PARKS,

for Def'ts in Error.

27 No 105

B. U. Sharpe et al
Defts in Error
ad.

Thomas A. Mapps,
Plff in Error.

Defts points and
printed argument.

Plff in Error.

Filed April 21-1863
G. Ireland
Clark

The People of the State of Illinois
By the Grace of God, Free and Independent

To all to whom these presents may
come, Greeting

Know Ye that we having caused
to be inspected, the Records and proceedings
now remaining in the Office of Our
Clerk of Our Circuit Court, in and for
our County of Will do find there certain
papers and records in words and
figures following To Wit:

Be it remembered that on the 27th day
of May our thousand Eight Hundred
and Fifty nine came Mc Roberts &
Goodspeed and filed a prepared words
and figures following

" Thomas A Maps }
" 1933 } Bill
" no }
" Shape & Company }
" } The Clerk will
" please issue a Subpoena in Chancery
" for the defendants Bernhard W Shape
" } Mc Roberts & Goodspeed
" } Sol^{or} for Complaint

Whence the Clerk of the said Court issued
a Summons to

And afterwards on the same day last
before mentioned, the said Solicitors
McRoberts & Garsden filed a certain
paper called a "Bill of Sale" which
is in words and figures following to wit

"Bill"

" To the Honorable Jesse C. Newton
" Judge of the Eleventh Judicial Circuit in the
" State of Illinois, and presiding Judge of the
" Circuit Court of Will County,

" Humbly com-
" plaining sheweth unto your Honor, your orator
" Thomas A. Mappes of said County and State
" that on or about the twenty fourth day of
" April A.D. 1857, one John G. Royal of said
" County and State, being the owner in fee of
" the South East quarter of Section four (4) in
" Township thirty four North of Range three
" (3) East of the third principal meridian, in
" said County and State aforesaid, acknowledged
" and delivered to one Egbert ^{H.} White of the County
" and State aforesaid, an Indenture of mortgage
" commonly called a Sale mortgage, to secure
" the payment of ten hundred dollars, which
" he said John G. Royal had before that time
" borrowed of the said Egbert & White

" And your
" orator further represents that on or about the
" twenty second day of April A.D. 1857, the
" said John G. Royal and Nancy Ann
" Royal his wife, for the consideration of
" five hundred dollars, & cents, acknowledged
" and delivered to your orator a Warranty Deed

" twenty four dollars - the said sum of twenty
 " four dollars, being the amount of the interest
 " for thirty days, at the rate of thirty six per
 " cent per annum, upon the said sum of eight
 " hundred dollars, borrowed of them said
 " Sharpe & Company, - that for the purpose
 " of securing the repayment of the said
 " sum of eight hundred and twenty four dollars
 " your orator did on the said tenth day
 " of June A.D. 1857, execute, acknowledge and
 " deliver to the said Bernhard W Sharpe one
 " of said firm, and for the benefit of said
 " firm, an Indenture of mortgage, commonly
 " called a Sale or Snap mortgage, bearing
 " date last aforesaid, whereby your orator
 " in consideration of the said sum of eight
 " hundred and twenty four dollars to him
 " paid by the said Bernhard W Sharpe did
 " grant, bargain, sell, remise, alien, and
 " convey to the said Bernhard W Sharpe, his
 " heirs and assigns, the premises above
 " mentioned, together with other pieces and
 " parcels of land, all of which we described
 " in said Indenture of mortgage as follows:
 " The north half of the South East quarter
 " of Section Four (4) containing eighty
 " acres, and the west half of the South
 " west quarter of the North East quarter

" of section Six (6) containing twenty acres, both
 " in Township thirty four (34) North of Range
 " Ten (10) East of the third principal meridian
 " and also, the West half of the South half
 " of the East half of the South East quarter
 " of section Two (2) in Township thirty four (34)
 " North of Range nine (9) East of the third
 " principal meridian, containing twenty acres
 " To have and to hold the said premises unto
 " the said Bernhard W Sharpe, his heirs, executors
 " administrators and assigns

" Your orator further
 " represents, that said last mentioned indenture
 " of mortgage contained a power of sale,
 " authorising and empowering the said
 " Bernhard W Sharpe, in case your orator
 " should make default in the payment
 " of said promissory note, or any part
 " thereof, according to the time and effect
 " thereof, after having advertised said premises
 " ten days, in a newspaper published in the
 " City of Joliet, or by posting written or printed
 " notices of the time and place of sale, to sell
 " the said premises for cash, and execute
 " and deliver deeds of conveyance therefor
 " a copy of which said indenture of mortgage
 " is hereto attached marked exhibit "A" and
 " prayed to be taken as a part of this bill

" Your orator further represents, that at
 " the expiration of the said thirty days, for
 " which said sum of eight hundred dollars
 " was loaned to your orator, he paid the
 " said Bernhard W. Sharpe, the said sum
 " of twenty four dollars, the amount of in-
 " -terest due for the said thirty days, and
 " which had been included in said note,
 " that your orator then applied to the said
 " Sharpe & Company for the release of said
 " eight hundred dollars, which they
 " finally agreed to do, upon condition that
 " your orator would pay their interest thereon
 " at the rate of Sixty per centum per annum
 " monthly in advance, which your orator then
 " agreed to do, - that by the terms of the
 " agreement, the time of payment, was extended
 " from month to month upon your orator
 " paying interest as aforesaid, which your
 " orator alleges he continued to do from about
 " the tenth day of July A.D. 1857, to about
 " the tenth day of October A.D. 1858,

" And your orator further represents
 " that about the tenth day of July A.D. 1857
 " to about the tenth day of October A.D. 1858
 " your orator paid to said Sharpe & Company
 " on the note aforesaid at different times
 " and in different ~~times~~ and in different
 " amounts, the sum of about Six Hundred

6
" and Sixty dollars - That the interest which
" he paid - that your orator is informed
" and believes, that the interest which he
" paid, was at the rate of thirty six per
" cent per annum, and subsequently
" at the rate of Sixty per cent per annum
" was marked paid upon said note, from
" month to month, until about the tenth
" day of October A.D. 1858. but that said Sharpe
" & Company refused to apply any of the
" amounts so paid, or any part thereof
" upon the principal of said note.

" And your orator further shows that
" after having paid said Sharpe & Company
" the said sum of about Six hundred and
" Sixty dollars, the said Sharpe & Company
" refused to give your orator any further
" extension - that your orator became
" greatly embarrassed in his pecuniary
" matters, and not having the means to
" make any further payments, the said
" Sharpe & Company on the 13th day of November
" A.D. 1858, pursuant to a notice previously
" published, a copy of which is herewith
" attached, and made an execution marked
" "13" sold the said premises, which were
" then bid off in the name of the said
" George W. Sharpe one of the firm of

1
" Said Sharpe & Campauy, for the sum of
" Four Hundred and Fifty dollars (\$450.
" and a conveyance was then executed
" acknowledged, and delivered to him said
" George W Sharpe, by the said Pemberton
" W Sharpe

" And your orator further represents
" that the said John G Royal, having
" made default in the payment to the
" said Egbert & White of the said sum
" of two hundred dollars, and interest
" thereon as provided in the said mortgage
" first in this Bill described, amounting
" in all to about the sum of Eleven
" Hundred and Fifty dollars, he said
" Egbert & White, by virtue of a power
" of sale contained in said Indenture
" of mortgage, sold on the first day of
" February A.D. 1858, the South Half of said
" South East quarter of section four (4) of
" the said George W Sharpe, which was bid
" off for him by his agent Rufus B Allen
" for the sum of One thousand dollars, that
" said White afterwards by virtue of said Indenture
" of mortgage sold the South half of said South
" East quarter of said section four (4) being
" the premises which the said John G Royal
" had conveyed to your orator by deed of

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" of Bramanting on or about the twenty second
" day of April A.D. 1858, - that at said sale
" the said George W. Sharpe, became the
" purchaser through his agent the said Rufus
" B. Allen for the sum of One hundred and
" fifty dollars, and the said White at the
" same time, executed a acknowledged and
" delivered to said George W. Sharpe a
" conveyance thereof.

" Your orator further
" represents, that at the sale made of the said
" estate of your orator on the 13th day of November
" A.D. 1858, the said George W. Sharpe through his
" agent the said Rufus B. Allen, bid for and
" became the purchaser of the North Half of
" the South East quarter of Section four (4) for
" the sum of two hundred dollars - for the West
" Half of the South West quarter of the North
" East quarter of Section Six (6) Township
" thirty four North Range Ten East containing
" twenty acres of valuable timbered land the
" said George W. Sharpe bid the sum of one
" hundred and fifty dollars, and for the
" West Half of the North Half of the East
" Half of the South East quarter of Section
" two (2) in the said Township and Range
" being also valuable timbered land, the said
" George W. Sharpe in the sum of One hundred

1
" and ten dollars, making with the sum of
" One Thousand and fifty dollars, which he
" paid George R Sharpe through his said
" agent, bid for said North Half of said
" fourth East quarter of Section Four (4) the
" sum of Six thousand and ten dollars for
" the whole of said real estate

" Your orator further ~~states~~
" represents that the real estate so bid off by
" the said George R Sharpe, was worth at
" the lowest estimate, the sum of two thousand and
" dollars - that a part of said real estate, to wit,
" the north half of said section four (4) was well
" improved, and in a high state of cultivation,
" and the remainder was valuable timbered
" land

" Your orator further represents and ex-
" pressly charges that the purchase by the said
" George R Sharpe of the North Half of Section
" four (4) aforesaid at the sale made by the
" said Egbert & White under and by virtue
" of the mortgage executed to him by the said
" John G Royal, was through an understanding
" previously had between the said White and
" the said Benjamin W Sharpe and the
" said Rufus R Allen who bid off the said
" premises for the said George R Sharpe for
" the purpose of strengthening the title acquired

" to the said premises the said North Half
" of SE $\frac{1}{4}$ of section four (4) under the sale
" made by the said Berubant W Sharpe to
" the said George W Sharpe on the 13th day
" of November A.D. 1858, - that said arrangement
" was made with the said White, for the purpose
" of preventing your orator from raising the
" question of usury, in a direct proceeding between
" the said Sharpe & Company and your orator,
" and for the purpose of cutting off any equities
" which might exist in favor of your orator,
" your orator further charges that the
" last mentioned sale to the said George W
" Sharpe, was merely a matter of form, and
" was made by the said White at the instance
" of the said Sharpe & Company - that it was
" expressly understood, at the time of said sale
" and before said sale, that said North half
" should be bid off, by the said Rufus R Allen
" in the name of the said George W Sharpe
" for the sum of one hundred and fifty
" dollars, and that no other person should
" bid off said North Half - that said
" Sharpe & Company proposed in the
" first place to take an assignment of
" the said mortgage from the said
" White but for the purpose as your orator
" charges of preventing him from questioning

" the legality of the said mortgage which he
" had subsequently given upon said north
" half of said South East quarter of section
" four (4) to said Benjamin W. Sharpe, the
" said Sharpe & Company induced the said
" White to advertise and offer said north
" half of the S E 1/4 of section four for sale, with
" the express and distinct understanding that
" the said Sharpe & Company, or the said George
" W. Sharpe should become the purchaser thereof
" at the price that said purchase was to
" made by the said Sharpe & Company for
" the purpose of covering up, and if possible
" to avoid the effect of the fraud, which said
" Sharpe & Company had practiced upon you
" orator in charging him enormous and
" illegal rates of interest, by which they finally
" sacrificed the whole estate of you orator
" for the payment of a debt much less
" in amount, than half the value of said
" real estate

" You orator further represents,
" that the interest which he agreed to pay, and
" which he did pay from time to time to the
" said Sharpe & Company was usurious and
" illegal, and in violation of the laws of
" the State of Illinois, regulating interest for
" money actually loaned. - That by reserving

9 legal intent at the rate of two per cent per
 9 annum as allowed by law out of the amount
 4 paid by You orator, and applying the balance
 4 upon the principal as should have been
 4 done by the said Sharpe & Company. There
 4 was at the time said North Half of the
 4 S E 1/4 of Section Four (4) was sold by said
 4 Bernhard W Sharpe a balance due upon
 4 said note of principal, about the sum
 4 of two hundred and forty dollars which
 4 which sum You orator offered to pay to said
 4 Sharpe & Company, but which they refused
 4 to receive. Said Sharpe & Co having sold
 4 twenty acres of the timber,

4
 4 You orator further
 4 represents, that he has been at all times
 4 ready, and is still ready to pay to the said
 4 Sharpe & Company, what may be due them
 4 upon said note, and did before said sale
 4 offer to pay them the amount then due

4 And You orator further repre-
 4 sents, that the said Sharpe & Company
 4 have not only sold the real estate of
 4 You orator to satisfy a mere nominal
 4 claim after first receiving an amount
 4 almost sufficient to satisfy the original
 4 amount, loaned by them to You orator,
 4 but since said sale, have utterly refused

3
" to satisfy and discharge said mortgage
" which your orator executed to them, and
" also refuse to deliver up to your orator the
" said note

" And your orator well hoped
" that the said Sharpe & Company would have
" received the said sum of money so tendered
" and offered to them by your orator as
" aforesaid, and that they would have delivered
" up to your orator the said note and mortgage
" to be cancelled and also have released said
" mortgage, as by the laws of the State of
" Illinois they were required to do

" But now so it is may it please
" your Honor, the said Sharpe & Company
" combining and confederating with divers
" other persons at present unknown to your
" orator, but whose names when discovered
" your orator prays may be inserted herein
" with proper and apt words to charge
" them, they the said Sharpe & Company
" in order to deprive and defeat your orator
" of the benefits of redeeming ^{the} said mortgage
" premises do pretend and give out that your
" orator had not paid the legal interest upon
" said note, and at the time said premises
" were sold on the 13th day of November
" A.D. 1858, the whole debt, including principal

and interest was then due and wholly
unpaid. ^{at other times they give out and pretend} that the said mortgaged premises
were not worth more than the sum of
Eight hundred dollars, the amount originally
loaned by them to your orator, and at other
times they give out and pretend that said
premises were not worth more than the
amount which the said George W Sharpe
bid for said premises at the sale of the
same, whereas your orator charges the
truth to be, that no more than the sum of
two thousand and forty dollars or thereabouts
was due, allowing said Sharpe & Company
interest at the rate of ten per cent per annum
out of the amount paid by your orator, and
applying the balance upon principal

Your orator further charges that
the said mortgaged premises at the time they
were sold by said Benjamin W Sharpe were
worth a much larger sum than the mort-
gage debt, that sometime prior to said
sale your orator had been offered the
sum of forty five dollars per acre for
said premises, but which he refused
to take

Your Orator further represents
that the said Sharpe & Company acting under
the said pretences, refuse to account in any

" manner with your orator or to recover the
" said premises to him as according to equity
" they should do upon receiving the balance due
" there at the time of the sale of said premises
" which balance your orator has been at all
" times ready and willing to pay, and is now
" ready and willing to pay, in such manner
" and at such times as the Honorable Court
" may order and direct.

" All of which actings and doings
" of the said Sharpe & Company and their
" confederates are contrary to equity and
" good conscience, and tends to the manifest
" wrong and injury and oppression of
" your orator. In tender consideration
" whereof, and in as much as your orator
" is remediless by the strict rules of the
" common law, and can only obtain
" relief in a Court of equity where matters
" of this nature are properly cognizable and
" relivable, - to the end therefore, that the
" said Sharpe & Company and their confederates
" may respectively, full, true, direct and
" perfect answer make your orator ^{truly} ~~truly~~ ^{willing}
" pursuant to the statute, ~~the~~ necessity ~~to~~ the
" necessity of the answer of such defendants
" being put in under oath or either of them,
" according to the best of their knowledge

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9 belief and understanding, to all and singular
" the matters and things in said Bill contained
" And more especially that the said Sharpe
" and Company may set forth, whether
" your orator did not apply to them
" to borrow the said sum of Eight Hundred
" dollars, and whether your orator did
" not pay for the use thereof, from the tenth
" day of June to the tenth day of July 1857
" at the rate of thirty six per cent per annum
" and whether your orator did not from
" said tenth day of July 1857 till the tenth
" day of October 1858 pay them the said
" Sharpe & Company interest at the rate of six
" per cent per annum, amounting to about
" the sum of Six Hundred and Sixty dollars
" and whether they did not induce the
" payments made by your Orator from month
" to month as interest at the rate of Sixty
" per cent per annum, and whether they did
" not sell the said mortgaged premises for
" the sum of four Hundred and Sixty dollars
" and whether they did not arrange with
" the said Egbert & White, to bid off ~~xxx~~ the
" said north Half of said South East quarter
" of Section four (4) for the sum of One
" Hundred and Sixty dollars

" Your orator prays that a Subpoena

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" in Chancery may issue out of, and under
" the Seal of this Court, directed to the said
" Bernhard W Sharpe and George W Sharpe
" doing business under the name style and firm
" of "Sharpe & Company" commanding them and
" each of them, to be and appear before this
" Honorable Court, at the next term thereof,
" to be holden in the city of Paris on the third
" day of October next then and then true
" and perfect answers make to all and
" singular the matters and things in this
" Bill contained, and further they be
" required to file with the Clerk of said
" Court, at such time as this Honorable
" Court shall direct, the notes and Mortgage
" herenbefore described for the purpose of
" abiding such order of this Honorable
" Court, as may be made touching their
" cancellation, and delivery to your Orator

Your Orator also prays your
" Honor to grant a writ or writs of Injunction
" issuing out of and under the Seal of this
" Honorable Court, to be directed to the said
" Bernhard W Sharpe, and George W Sharpe
" their agents servants employees and attorney
" enjoining and restraining them and each
" and every of them from selling or
" offering to sell, conveying or offering to

" convey, encumbering or offering to encumber
 " in any way or manner, the said North
 " Half of the South East quarter of Section
 " four (4) containing Eighty acres, and
 " the west half of the South West quarter
 " of the North East quarter of Section Six
 " (6) containing twenty acres, both in
 " Township Thirty Four (34) North Range
 " Ten (10) East of the third principal Meridian
 " And also the west Half of the north half
 " of the East half of the South East quarter
 " of Section two (2) Township thirty four (34)
 " North of Range nine (9) East of the third
 " principal Meridian, containing twenty acres
 " and your Commencing or prosecuting any
 " action of Ejectment, or any action of foreclosure
 " or unlawful detainer, against your orator
 " for the recovery of said premises, until
 " the final hearing of this Cause
 " your orator prays that an
 " account may be taken between the said
 " Sharp & Company and your orator, by
 " and under the decree and direction
 " of this Honorable Court, of what may
 " be now due and owing to the said
 " Sharp & Company for principal and
 " interest upon said note and mortgage
 " together with the costs; and that your

" orator may be at liberty to redeem the said
 " mortgaged premises upon payment of
 " what, if anything shall be found due to
 " them the said Sharpe & Company, which
 " your orator hereby offers to pay, as soon
 " as the same can be ascertained, as this
 " Court shall order and direct, and that
 " upon such payment being made by your
 " orator, that the said Sharpe & Company
 " may be deemed to recover said mortgaged
 " premises to your orator, by such deed or
 " deeds of conveyance as this Honorable Court
 " shall order and direct them to execute
 " free from all incumbrances done or
 " suffered by them, or by any person claiming
 " by or from them, and that they may be
 " ordered to acknowledge satisfaction of
 " the said mortgage, and discharge the
 " same of record, and also surrender
 " to your orator the said Note. And your
 " orator prays for such other and further
 " relief in the premises, as the nature of
 " the case may require, and which
 " by the rules of equity may to your
 " Honor appear meet and just

" Bowen & Brown

" McRoberts & Crossfield
Sols

" Thomas H Mapps

"Exhibit 'A'"

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" This indenture made the tenth day of June
" in the year of Our Lord one thousand eight
" hundred and fifty seven Between Thomas
" A Mapps of the County of Will and State
" of Illinois party of the first part and --
" Bernard W Sharpe of the same County
" party of the second part

" Whereas: The said party of the first
" part, is justly indebted to the said party of
" the second part, in the sum of Eight hundred
" and twenty four Dollars, secured due paid
" by a certain promissory note bearing even
" date herewith payable, in thirty days
" after date

" Now therefore this Indenture witnessed
" 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
" Note above mentioned, And also in consid-
" eration of the further sum of one dollar
" which is hand paid by the said party of
" the second part, the receipt whereof is hereby
" acknowledged, have granted, bargained, sold
" renewed, aliened and conveyed, and by
" these presents do grant bargain sell renew

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alien and convey unto the said party of the
" second part, his heirs and assigns, forever
" all the following described lot, piece or
" parcel of land situate in the County of Will
" State of Illinois to wit:

" The North half of the South East
" quarter of Section Four (4) containing eighty
" acres, and the West Half of the South West
" quarter of the North East quarter of Section
" Six (6) containing twenty acres, both in
" Township Thirty four (34) North of Range
" Ten (10) East of the Third principal meridian
" And also the west half of the North half of
" of the East half of the South East quarter
" of Section two (2) in Township Thirty four
" (34) North of Range nine (9) East of the Third
" principal meridian containing twenty acres

" Together with all and singular
" the tenements, hereditaments, privileges
" and appurtenances thereto belonging, or in
" any wise appertaining, with the rents issues
" and profits thereof, and all the estate interest
" and claim whatsoever of the said party
" of the first part, in Law as well as in Equity
" in and to the premises hereby conveyed
" To Have and to Hold the same with the
" appurtenances, unto the said party of the
" second part, his heirs & executors, administrators

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" and assigns, ^{and} to them only, proper use, benefit
 " and behoof. Provided Always, and then
 " presents are upon this express condition,
 " That if the said party of the First part
 " his heirs executors administrators or assigns
 " shall well and truly pay or cause to be paid
 " to the said party of the Second part his heirs
 " executors, administrators or assigns the
 " aforesaid sum of money, with such
 " interest thereon at the time and in the
 " manner specified in the above mentioned
 " promissory note, according to the true intent
 " and meaning thereof then these presents and
 " every thing herein expressed, shall be absolutely
 " null and void. But in case of default
 " in the payment of the said note, above
 " mentioned, or any part thereof, according
 " to the tenor and effect thereof, the said
 " party of the Second part or his legal
 " representatives, or attorney, after having
 " advertised such sale ten days in a news-
 " paper published in Solid Illinois or
 " by posting up ^{or printed,} written notices in four places
 " in the County where said premises are situate
 " may sell the said premises, or any part
 " thereof and all rights and equity of redemption
 " of the said party of the first part his heirs
 " executors administrators or assigns therein

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" at public Vendue; to the highest Bidder
" for cash at the Court House in Solist as
" the time appointed in such advertisement; or
" may adjourn the sale from time to time at
" discretion; and upon the making of such
" sale or sales, as the attorney of the said party
" of the first part for such purpose hereby
" constituted, irrevocable, or in the name of
" the said party of the second part or his legal
" Representatives, shall execute and deliver to
" the purchaser, deeds for the conveyance in fee
" of the premises sold; and shall apply the
" proceeds of sale to the payment of (1) expenses
" for advertising, selling and conveying as aforesaid
" including Attorney Fees and (2) the amount
" due on said note, (3) rendering the overplus
" if any to the said party of the first part or his
" assigns, as the officer of the said party of
" the second part in Solist Illino

" And the said Thomas A Mapps
" party of the first part covenants with the
" said party of the second part and his
" heirs, executors, administrators and assigns
" that he is seized in fee of the said premises
" and he has good right to convey the same
" as aforesaid; that they are free from all
" incumbrances, and that he will ^{execute} warrant
" and defend the same against all lawful
" claims

" In witness whereof. The said party of the first
 " part hereunto set his hand and Seal this
 " day & Year above written
 " Signed Sealed and } Thomas A Mapps }
 " Delivered in presence }
 " of W L Elwood }

" State of Illinois }
 " Will County } of " J Br J Deatts a Justice
 " of the Peace in and for said
 " County and State aforesaid. Do hereby certify
 " that Thomas Mapps who is personally known
 " to me as the real person whose name is
 " subscribed to the above Mortgage, appeared
 " before me this day in person and acknowledged
 " that he executed and delivered the said
 " Mortgage as his free and voluntary act
 " for the uses and purposes therein set forth
 " Given under my hand and seal
 " this 10th day of June, in the year of Our
 " Lord One Thousand Eight Hundred and
 " Fifty Seven
 " J Br J Deatts J P } Seal }

" No 27294

" State of Illinois } The above instrument was filed
 " Will County } & Yr Record the tenth day of June
 " A D 1857 at the hour of 5 1/2 o'clock M
 " H M Linton Recorder

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"Exhibit B"

n 5

"Mortgage Sale

" Whereas Thomas A Mapps did by Indenture
" of Mortgage, bearing date June tenth A.D. 1854
" convey to Benjamin W. Shape of the County
" of Mill in the State of Illinois, all the following
" described pieces or parcels of land, situated
" in the County of Mill and State aforesaid
" and known and described as follows
" to wit: The North half of the South East quarter
" of Section four (4) containing eighty acres, and
" the west half of the South West quarter of the
" North East quarter of Section (6) containing
" twenty acres, both in Township thirty four
" (34) north of Range two (2) East of the third
" principal Meridian and also the west
" half of the North half of the East half of the
" South East quarter of Section two (2) in town-
" ship thirty four (34) north of range two
" (2) East of the third principal Meridian
" containing twenty acres, which said
" mortgage is duly recorded in the office of
" the recorder of said Mill Co, in said State
" in Book 50. and on page 103. of the records
" of said County. for the securing of the payments
" of the note in said mortgage mentioned
" and whereas it is provided by the terms

of said mortgage that if default be made
 in the payment of the indebtedness therein
 mentioned either of principal or interest, on
 the day whenon the same became due and
 payable according to the tenor of a certain
 promissory note in said mortgage particularly
 set forth, that said Benjamin W Sharpe
 or his legal representatives or attorneys
 may proceed to sell said property above
 described and all the right and equity of
 redemption of said Thomas A Mapps in and
 to the same upon giving ten days notice
 of the day of such sale, in a newspaper
 published in the County where such premises
 are situated, at the Court House in Soliv
 or the highest bidder for cash

Now therefore default having been
 made in the payment of the said note
 public notice is hereby given, that I shall
 on the 13th day of November A.D. 1858 sell
 the said premises at the North door of the
 Court House, in the City of Soliv, County
 and State aforesaid and all the right
 and equity of redemption of the said Thomas
 A Mapps, therein, to the highest and best
 bidder for cash, Sale to commence at
 10 o'clock A.M. of that day

Benjamin W Sharpe Mortgage
 Parks & Clewley attys for mortgage
 Soliv Oct 30, 1858

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And afterwards to wit on the said last
aforesaid mentioned day, the Clerk of our
said Court issued a Chancery Summons,
in words and figures following To wit

" State of Illinois,

" County of Will

" The People of the State of
" Illinois. To the Sheriff of said County
" Greeting:

" We Command you that you Summon
" Benjamin W. Sharpe and George W. Sharpe
" if they shall be found in your County pe-
" sonally to be and appear before the
" Circuit Court of Will County, on the first
" day of the next term thereof, to be holden
" at the Court House in the city of Joliet
" in said County, on the first Monday
" of October next, to answer unto Thomas
" A. Mapps, fully, truly and directly, all
" and singular, the matters and things, alle-
" gations and charges contained in his
" certain Bill of Complaint lately filed
" in our said Court, on the Chancery side
" thereof, and to stand to, abide by, and perform
" whatever order and decree our said Court
" shall make in the premises. Hereof fail
" not, or a decree will be entered against

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" you by said Court, And have you seen
" and there this writ &c

" Attest Alexander M. Dutro Clerk
" of said Court and the Seal thereof
" hereto affixed as Officer in the City
" of Solon aforesaid, this 27th
" day of May A.D. 1859
" A. M. Dutro Clerk

" And on the back of the same are indorsed
" the words & figures following to wit,

" No 1933 - Circuit Court of Miss County,
" October Term A.D. 1859

" Thomas A. Mapps vs. Beruhard W. Sharpe
" vs. Chaucy Sammons - Filed

" May 27th A.D. 1859, A. M. Dutro Clerk,

" I return this writ served by delivering
" a true copy thereof, and by reading the same
" to the within named Beruhard W. Sharpe
" the 27th day of May 1859

" A. Leach Sheriff
" I return George A. Sharpe not found
" in my County. 27th day of May 1859
" A. Leach Sheriff

" McRoberts & Goodspeed
" Account Collectors

And afterwards to wit, on the 29th day
of June 1859, there was filed in the office
of the Clerk of said Court, a certain paper
called an "Answer" which is in words and
figures following to wit,

" Bill Lucius Court In Chancery

Answer

" The joint and several answers of Benjamin
" W. Sharpe and George W. Sharpe and George Allen
" the defendants to the bill of Complaint of Thomas
" A. Mapps Complainant

" These defendants now and at all times
" hereafter saving and reserving unto themselves
" all and all manner of benefits of exceptions
" to the manifold errors imperfections and
" insufficiencies in the said Complainants
" bill of Complaint contained for answer
" therunto or unto so much and such
" parts thereof, as these defendants are
" advised by counsel it is material and
" necessary to make answer unto, answers
" and say

" That they admit as in said Bill
" alleged, that one John F. Royal made to
" one Egbert D. White a mortgage with
" a power of sale to the mortgagee of and
" upon the South East quarter of Section four
" (4) in Township thirty four (34) North of

" Range Twp 101 East of the third Principal
 " Meridian in said County of Will to secure
 " the payment of a loan of One thousand
 " dollars which said mortgage, these
 " defendants have by inquiry ascertained
 " was recorded in the office of the Recorder
 " of Will County on the 24th day of April
 " A.D. 1857 in Book No 50 of records of conveyance
 " on page 49

" And they further admit as in
 " said Bill of Complaint alleged, that said
 " Royal and wife made and delivered a
 " deed to said Complaint of the North Half
 " of the aforesaid quarter Section of land, dated
 " the 22nd day of April 1857, but these defendants
 " say, upon information received as well from
 " said Mapps, as the other parties to the transaction
 " that at the time of the sale and conveyance
 " to said Mapps, and as one of the terms thereof
 " it was distinctly agreed by and between said
 " Mapps and Royal, that said Royal
 " should execute a mortgage upon the whole
 " tract of One Hundred and Sixty acres
 " which should be put upon record, before
 " the deed to Mapps and subject to which
 " said deed to Mapps should be made
 " and said transaction was conducted in
 " accordance with this arrangement and the

" Debt to Mapps, though bearing date two days
 " before said mortgage to White, was recorded
 " afterwards, and on the 29th day of May A.D.
 " 1857 in Book No. on Page. and as these
 " defendants are informed and verily believe
 " the said Mapps was according to said assignment
 " to take care of and pay one half of said mort-
 " gage debt and relieve said Royal therefrom
 " it being contracted for his benefit as well
 " as the benefit of said Royal

" And they further answer that, as is said
 " Bill of Complaint alleged on or about the 10th
 " day of June A.D. 1857 the said Mapps had
 " occasion to borrow eight hundred dollars of
 " this defendant Bernhard W. Sharpe for
 " the period of thirty days, the said defendant
 " George W. Sharpe not then being a partner with
 " him, in having any concern in said loan, that
 " in response to the pressing importunities of
 " said Mapps, this defendant Bernhard W.
 " Sharpe consented to loan him that amount
 " that as said loan was to be but for a short
 " time, this defendant demanded and said
 " Mapps agreed to pay therefor a greater rate
 " of interest, than the legal rate, amounting for
 " the period agreed upon to twenty four dollars
 " and gave his promissory note for the sum

4 of Eight Hundred and twenty four dollars
 4 to said Benjamin W Sharpe, that to secure
 4 the payment thereof, said Mapps made executed
 4 acknowledged and delivered to this defendant
 4 Benjamin W Sharpe an Indenture of Mortgage
 4 of and upon the north half of said quarter
 4 Section, and other parcels of real estate in
 4 said mortgage described, bearing date the
 4 day and year last above set forth, a true
 4 copy whereof is attached as an exhibit marked
 4 "A" to said Bill of Complaint, and that
 4 said mortgage was duly recorded in the
 4 office of the Recorder of Will County
 4 on the same day, to wit the 10th day of
 4 June 1859 in Book 50, on page 103

4 And these defendants further
 4 answering say that in October 1859, said
 4 Benjamin W Sharpe and said George
 4 Sharpe, together with one George Allen
 4 did form a copartnership in the business of
 4 private Bankers in the City of Joliet, and
 4 said loan to Mapps was transferred to said
 4 new firm of Sharpe and Company, and credited
 4 to this defendant Benjamin W Sharpe on the
 4 Books thereof

4 And they further answer that
 4 on or about the 10th day of August following
 4 but prior to the expiration of the period of time

" For which said loan was made, the said Mapps
 " paid this defendant Bernhard W Sharpe the
 " interest for one month only, and being totally
 " unable to fulfill his said agreement, impor-
 " tuned this defendant Bernhard W Sharpe
 " to continue said loan for another month
 " and for such forbearance agreed to pay
 " interest at the same rate as originally agreed
 " on, and so said loan was in fact extended
 " from month to month, at the solicitation of
 " said Complainant, until November 1854
 " when said Mapps not being prepared to repay
 " said loan, importuned said Bernhard
 " W Sharpe to still further to continue it from
 " month to month, which he said Bernhard
 " W Sharpe agreed to do for the same rate of
 " interest as which he was then uniformly
 " and without difficulty lending his funds
 " which was five per cent per month on
 " loans like this being from month to month
 " and the interest paid was endorsed on said
 " note for each month for which payment
 " was made

" And they further admit that
 " between the commencement of said loan
 " and foreclosure of said mortgage, as in
 " said Bill stated and in this answer heretofore
 " to be referred to, the said Mapps did pay

4 to this defendant Bernhard W Sharpe, according
 1 to his best present recollection and the memoranda
 2 in his possession in part satisfaction of the
 3 interest upon said loan, according to his
 4 agreement, the sum of Three Hundred and
 5 fifteen ⁰⁰/₁₀₀ dollars or thereabouts but not the sum
 6 of Six Hundred and Sixty dollars as claimed
 7 in said Bill, and they say that the several
 8 payments of interest so made were at such
 9 successive accountings induced upon
 10 said note, and the interest thereby settled
 11 and discharged, and in relation to the
 12 allegation in said Bill; that this defendant
 13 Bernhard W Sharpe refused to apply any
 14 of these amounts upon the principal, they say
 15 he did not so apply them, because the said
 16 Mapps made them expressly and distinctly
 17 in satisfaction of the interest, on said loan,
 18 in accordance with his agreement therefor
 19 repeated from time to time, and never
 20 presumed to make to this defendant
 21 Bernhard W Sharpe or his agents so
 22 preposterous a request

23 And these defendants in reply
 24 to the insinuation in said Bill of Complaint
 25 that when said Complainant became embar-
 26 -rassed in his pecuniary circumstances (as
 27 to which they profess to have no knowledge)

they the said defendants, without cause
 and in order to oppress and harass said
 Complainant, refused to grant him any
 further extension after the 10th day of October
 1858, further answering say, that so long as
 he complied or showed a disposition to
 comply with his agreements, the defendant
 Bernhard W Sharpe although under no
 obligations so to do, was willing and so repeat
 edly expressed himself to continue said loan
 year month to month as originally made
 and it was not, until after repeated defaults
 on the part of said maps, and after he
 had shown a dishonest disposition to get
 rid of his voluntary engagements with the
 defendant, upon supposed legal advantages
 that this defendant Bernhard W Sharpe
 resolved to enforce said mortgage, and
 he admits that he did proceed as in said
 Bill alleged, in pursuance of the power
 in said mortgage conferred upon him said
 Bernhard W Sharpe, to sell the several
 parcels of real estate therein described
 for the several sums in said Bill men-
 tioned, for the purpose of satisfying
 the balance due on said mortgage
 And these defendants further
 answering say, that although the interest

1 on said note was marked and endorsed
 2 as paid up to the 23^d day of October 1858. Yet
 3 the same was not in fact paid entirely in
 4 money, but for several monthly instalments
 5 thereof in arrears, the said Mapps gave a
 6 new note, in which were embraced divers
 7 additional loans made to him at different
 8 times, securing the same by a chattel
 9 mortgage, upon certain personal property
 10 a portion only of which new note has been
 11 paid, leaving a balance of about one
 12 hundred dollars unpaid on said note

13 And these defendants further
 14 answering say, that the proceedings relating
 15 to said sale throughout were not only con-
 16 ducted in strict compliance with the
 17 terms of the power therein contained in said
 18 indenture of mortgage, but with perfect
 19 openness, fairness and good faith, said
 20 Mapps having, after the publication of
 21 the notice, ample opportunity to save
 22 said premises from sale by payment of the
 23 balance due on said note or by making
 24 new arrangements with these defendants for
 25 extension of the loan, and said sale being
 26 attended with all the ordinary chances
 27 of competition.

28 And these defendants further

" answering say, that after making the loan
 " of Eight Hundred dollars to said Complainant
 " and taking security upon the said North
 " Half of the South East quarter of Section
 " Four 14, in Township Thirty four (34) North
 " of Range Ten (10) East of the third principal
 " meridian, together with other tracts, this
 " defendant Bernhard W Sharpe learned
 " that the title of said maps to said tract
 " of Eighty acres was imperfect by reason
 " of an apparently fatal defect in the previous
 " chain of title to him, and that an action of
 " Ejectment had been instituted in the Circuit
 " Court of the United States for the Northern
 " District of Illinois, against the said maps
 " by one Brown who professed to hold and
 " by deduction of title on the records, did hold
 " an adverse and paramount title, that this
 " defendant Bernhard W Sharpe at great
 " trouble and considerable expense employed
 " attorneys, to attend to the defence of said suit
 " and the said Bernhard W Sharpe, has been
 " from the date of said suit hitherto obliged
 " not only to exercise constant care and
 " supervision of said suit for the protection of
 " his said security, but to make frequent
 " journeys to Chicago by himself or agents the
 " place of holding the said Circuit Court, he

10. The said Complainant having devolved nearly
 the entire burden of said litigation upon
 this defendant, and said suit is still
 pending and undetermined and the result
 thereof is yet doubtful, although the
 attorney in charge of said defence, expers
 a strong assurance of ultimate success

And this defendant further answering
 admits that said Ogden & White did at
 the time and in the manner and form set
 forth in said Bill of Complaint, proceed
 under his mortgage heretofore described to
 sell the South half of said quarter Section
 to satisfy the debt due under said mortgage
 and at such mortgage sale, the same was
 struck off and sold to said defendant
 George W. Sharpe for the sum of One thousand
 dollars, that being the highest bid made for
 the same,

And this defendant further answering
 says, that inasmuch as this defendant
 Bernhard W. Sharpe, had security upon
 one only of the two ^{acre} Eighty tracts in quarter
 which said White had security upon both
 of said tracts, by reason of which equity
 dictated that he said White should first

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" try and exhaust that part of his security
" which he held alone, before resorting to the
" other, he said Bernhard W. Sharpe after said
" White had advertised said quarter section
" for sale under his mortgage applied to him
" in a friendly way to sell in the manner
" above indicated, but the said White refusing
" to do so, this defendant George W. Sharpe
" applied to this Honorable Court and procured
" an injunction and caused the same to be
" served upon the said White, restraining him
" from selling said North Half unless the
" sale of said South half, which was first
" to be made, should leave a deficit or
" balance of said debts still unsatisfied and
" thereupon said sale took place as stated
" in said Bill and of the regularity thereof
" these defendants had and have no doubt
" as the same were conducted under the
" professional care, supervision and advice
" of Messrs McRoberts and Goodspeed, the
" Solicitors for the Complainant in this
" suit

" And these defendants further
" admit, as charged in said Bill, that after-
" wards, there still remaining a balance of
" over two hundred dollars due said White
" he said White did proceed to purchase

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2
" of the power contained in his said Mortgage
" and in accordance with the terms of said
" injunction, to sell the north half of said
" quarter Section, and he said George N. Sharpe
" did buy the same, at and for the sum of
" One thousand and fifty dollars which was
" the highest bid therefor at said Sale, and
" these defendants aver, that by virtue of said
" Sale and the mortgages duly executed thereon
" the said George N. Sharpe acquired a perfect
" title to said land. And you own all equity of
" redemption or any qualification whatever as
" by reference to a copy of said Mortgage
" hereto attached and to the original mortgages
" and in possession of this Defendant George
" N. Sharpe, will more fully and at large
" appear

" And these defendants further
" answering say that the late amendment
" to the Homestead Exemption law of this State
" requiring in all cases as an essential con-
" dition to any alienation of the homestead
" that the wife of the grantor should join
" in the execution thereof, was approved on
" the 19th day of February AD 1857 but by
" reason of the imperfect publication thereof,
" was not generally known among conveyances
" for a considerable time hereafter, and

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" That the mortgage of said Mapps to this
" defendant Bernhard W Sharpe, was ex-
" -ecuted without any knowledge or reference
" to said law, and was therefore not required to
" be signed by the wife of said Mapps in
" conjunction with him as it should have
" been, and afterwards, he the said Mapps
" claiming said land to be his homestead
" and threatening to set up and enforce
" his said supposed homestead exemption
" rights, against the mortgage of the defendant
" Bernhard W Sharpe, he said George W
" Sharpe was compelled to resort to such
" means as were within his power to justify
" his title and protect himself against
" the meditated fraud of said Mapps
" and he the said George W Sharpe admits
" that his principal object in repurchasing
" the said North half of said quarter Section
" at the aforesaid second sale had under said
" Royal Mortgage was to effectually frustrate
" the fraudulent purpose of said Mapps
" and preclude him from taking advantage
" of the defect above referred to in his
" mortgage, to this defendant Bernhard
" W Sharpe, and he said George W Sharpe
" submits to your honor, if as against said
" Mapps or any other person he had not

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" an unquestionable right in equity to lay
" hold of any opportunity within his power
" to strengthen his title, whether the supposed
" defect therein, had been caused by mistake
" in advertance or fraud. But these defendants
" expressly and absolutely deny, that said
" second sale was in any respect, procured
" or caused by any collusion arrangement
" or understanding with said White or for
" the mere purpose of making a sale to or
" for the use of these defendants or either of
" them, or in any particular to injuriously
" affect the just rights and intent of said
" maps, but on the contrary they say
" that defendant Bernhard W. Sharpe and
" one Rufus R. Allen as agent for the firm of
" Sharpe and Company, laboured long and
" earnestly with said White and his attorney
" McRoberts and Goodspeed, to prevent the
" sale of said north half, after the south
" half had been sold as hereinbefore stated
" and when the said White and his said
" attorney, were threatening to sell the said
" north half for an alleged deficit state remain-
" ing due these defendants, with a view
" if possible to prevent the same, made a
" rigid examination into the particulars of
" said White's claim to see if the same were

1 not really satisfied by the first sale, and
 2 at last, but not until after strenuous
 3 resistance to the determination of said White
 4 to sell, and not until they had become
 5 satisfied of the legal validity of said claim
 6 to set up by said White and his attorneys
 7 they desisted from further opposition

8 But they aver that said sale was a
 9 public sale upon due notice fairly and
 10 openly conducted without fraud on the
 11 part of said White or his attorneys and
 12 with the full usual opportunity & bidding
 13 to compete thereat, and though the amount
 14 for which said sale took place was certainly
 15 not the full value of the property, these
 16 defendants would remind your Honor of
 17 the condition of the title of said maps
 18 at the time, and would submit if a
 19 mortgage sale fairly and regularly
 20 made is ever to be impeached upon the
 21 ground of inadequacy of price however
 22 gross.

23 And these defendants admit
 24 that if as proposed in said bill of Complaint
 25 your Honor should set aside said sales
 26 and reopen the accounts between said
 27 complainant and these defendants and
 28 thereupon should further set aside the

6 45
agreements and successive settlements
between them and said Mapps, and should
them take money paid and applied for one
purpose and apply them to another, it is
quite likely the debt of these defendants
might be considerably reduced, but
whether to the sum stated in the said
bill of complaint these defendants cannot
say

But these defendants absolutely
and unqualifiedly deny that at any
time previous to said sale under said
mortgage, by said Mapps was made
a tender to them or either of them or any
agent for them, of any amount whatever
to discharge said mortgage

And these defendants, as to the
allegations in said Bill, that they have
refused to discharge said mortgage, or
deliver up said note, admit they have
done neither, they have not discharged
said mortgage, because the sale of the
mortgaged premises, operated as a
discharge thereof, and became by the
purchase of said land this defendant
George W Sharpe became and now
is the only person interested or concerned

ans
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" in this or any other incumbrance upon
 " the property, they have not given up the
 " note, because in the first place, the same
 " is not fully paid unless these defendants,
 " should see fit as a mere matter of favor
 " to said Mapps to so consider it, and
 " until the close of the Executors suit, now
 " pending as heretofore mentioned in
 " Chicago, testing the question whether the
 " title is good or bad these defendants are
 " and will be unable to say how much
 " ought in equity and good conscience
 " be claimed by said Mapps as an
 " endorsement upon said note, and further
 " they say that said Mapps has never
 " demanded said note at any time

" And these defendants further answering
 " say, that as to the value of said premises
 " the estimates in said Bill contained are
 " extravagant and absurd when tested
 " by the standard of real estate at the
 " present time, and although they are
 " unable, to speak with confidence on
 " the subject, they yet doubt, if said land
 " upon a perfect title would now sell
 " for twenty five dollars per acre, while
 " with the suit in the Federal Court now

" resting as a cloud over the title, it could not
 " probably be sold for any price approximating
 " its true intrinsic value, and this defendant,
 " Bernhard W Sharpe for himself positively
 " states that after the sale of said land to
 " George W Sharpe as above set forth, said
 " Mapps repeatedly expressed a desire that
 " he said Bernhard W Sharpe, as a guar
 " for said George W Sharpe should sell
 " the same, and he said Bernhard W
 " accordingly made strenuous efforts to
 " effect a sale, and offered the same
 " in vain at twenty dollars per acre, the
 " intention of said defendants being in case
 " of a speedy sale, to give said Mapps
 " the surplus over and above paying
 " the indebtedness and expenses

" And these defendants further avow
 " say as to the two tracts of land embraced
 " in said mortgage and referred to in said
 " Bill as valuable timber land, that after the
 " execution of said mortgage, and without
 " the consent of this defendant Bernhard
 " W Sharpe, and with intent to cheat
 " and defraud him and impair his said
 " security, he said Mapps cut off nearly
 " if not quite all the timber from said

" tracts and sold the wood in market as a
 " means of revenue, and they further say that
 " he said Mapps before the execution of said
 " mortgage had sold one of said timber tracts
 " to wit, the West half of the South West
 " quarter of the North East quarter of Section
 " Six (6) in Township Thirty four (34) North
 " of Range two (20) East of the third Principal
 " Meridian, to one Robert Mapps his brother
 " of which fact this defendant was ignorant
 " at the time of said loan and only became
 " informed thereof at a subsequent time, to which
 " matter these defendants now refer as
 " significant indications of the good faith
 " and honesty of said complainant

" And these defendants claim that
 " said complainant is not entitled to the
 " relief he prays for, according to the laws
 " of the State of Illinois, and to the principles
 " which should govern this Court under
 " those laws. Because there was no fraud on
 " their part in the purchase of said lands
 " under said mortgages or either of them and
 " because if there was an agreement for a
 " rate of interest exceeding the legal rate
 " such interest has been paid and the transaction
 " between the parties relative thereto fully settled

49 1 ~~fully settled~~ and closed, all which these
1 dependants are ready to aver, maintain
1 and prove, as this Honorable Court may
1 direct, and they pray to be hence dismissed
1 with their costs in this behalf most wrong-
1 - fully sustained

"Bernhard W Sharpe

1 Parks & Elwood }
1 Solo Jn. Sharpe, }
1 Sharpe & Allen Depts }

1 State of Illinois }
1 County of Will } } "Bernhard W Sharpe
1 " one of the dependants whose
1 name is subscribed to the foregoing answer
1 being duly sworn on oath & faith that the
1 same is true in substance and fact

1 Subscribed and "Bernhard W Sharpe
1 Sworn before me
1 this 29th day of June
1 1859
1 At M^{ts} Intert^{ts} Clerk

And on the same day last appeared
 there was filed in the office of the Clerk
 of said Court and exhibited in records
 and papers following to wit:

YES: " ~~Thomas A. Sawyer } " Will County Court~~
 " ~~Neighbors to Sawyer } " In Chancery~~
 " ~~St. George A. Sawyer }~~

" State of Illinois }
 " Will County } ~~James and Robert~~
 " of said County and State, being duly }
 " sworn depose and say that he is }
 " informed & believes that George Roberts }
 " one of the above named defendants }
 " is not a resident of the State of Illinois }
 " ~~Robert Roberts } " Roberts~~
 " before me this 12th day }
 " of May 1859 }
 " A. J. Roberts }
 " Clerk

" United States of America }
 " State of Illinois } P
 " Will County }
 "

" Pleas before the
 " Honorable Lewis O'Norton Judge of the
 " Eleventh Judicial Circuit of the State of
 " Illinois and Sole presiding Judge of the
 " Will County Circuit Court at a Term
 " thereof, began and held at the Court
 " House in the City of Joliet in said County
 " and State on the first Monday, the
 " same being (the third day) of October
 " in the Year of Our Lord One thousand
 " Eight Hundred and fifty nine, and
 " of the Independence of the United
 " States the Eighty fourth

" Present

" Honorable Lewis O'Norton, Judge as aforesaid
 " Fred R. Patterson State Attorney
 " Alonzo Leach Sheriff

" Be it remembered that on the Sixth day
 " of October in the Year of Our Lord One
 " thousand eight Hundred and fifty
 " nine, it being one of the regular days
 " of said October Term, and the Court

being thus duly organized and sitting
for the adjudication of business, the
following proceedings among others were
had and entered of record, by the said
Court in words and figures following
to wit;

- " Thomas A Mapp
 - " ^{vs} Perahed W Sharpe
 - " and George W Sharpe
- } Bill

" And now comes
 " said Complainant by Mr Robert Grosvenor
 " his solicitor, and the said Defendants
 " also come by Parks & Clewood their solicitors
 " and on motion of said parties it is
 " ordered by the Court, that the proofs
 " herein on both sides be closed by the
 " fifteenth day of November next

And afterwards to wit on the 11th day
of October AD 1859 there was filed in the
office of the Clerk of said Court a certain
paper called a "Replication" which is in
the words and figures following to wit

Replication The Replication of Thomas St Mapps
Complainant to the answer of Bernhard
W Sharpe defendant.

This replicant saying
and reserving to himself all and all
manner of advantage of exception to the
manifest insufficiency of the said answer
for replication therunto says. That he
will ever and prove his said bill to be
true, certain and sufficient in the law
to the answer unto, and that the said
answer of the said defendant is uncertain
untrue & insufficient & as replied unto
by this replicant without this, that any
other matter or thing whatsoever in the
said answer contained, material or
effectual in the law to be replied unto
confused or avoided or denied is true
All which matters and things this
replicant is and will be ready to aver
& prove, as this Hon Court shall direct
and pray as in and by his said Bill

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"he hath already prayed

"McRoberts + Goodspeeds

" for Defendant

And afterwards to wit on the 4th day
of December AD 1857 there was filed in
the office of the Clerk of said Court a
Deposition of E. H. White, Harvey S. Stoddard,
David Nicolas, J. Goodspeed, C. H. Man-
-ouler and Rufus B. Allen as words
and figures following to wit

" Just duly sworn, was interrogated by
 " Joseph M. Roberts Esq of Counsel for
 " said Complainant, and made answers
 " to the following interrogatories to him pro-
 " pounded as follows To wit;

July 1st What is your name, age and place of
 " Residence

Ans 1st Egbert H White, age 24, reside in Solist

July 2nd Are you acquainted with Thomas H Mapps
 " Complainant in this suit and Bernhardt
 " W Sharpe and George W Sharpe Defendants

Ans 2nd I am

July 3rd Did you at any time hold a Sale Mortgage
 " on the E 1/2 of the N E 1/4 of Section 4, Township
 " 34 North Range 10 East, T 20, who executed
 " said mortgage and how much was it
 " given to secure

Ans 3rd I did, it was executed by John G Royal
 " and to secure One Thousand Dollars

July 4th Did you at any time sell the South half
 " of said South East quarter upon said
 " mortgage, if so, when, who became the

50 " purchaser, and for what sum?

Ans 4th I did, on the 24th day of November 1858
" George W Sharpe became the purchaser for
" the sum of \$1000⁰⁰

July 5th Did you at any time sell the north half
" of the South East quarter said Section 4 if so
" when, who became the purchaser, and
" for what price?

Ans 5th I did, about the 1st day of February 1854
" George W Sharpe became the purchaser,
" for the sum of \$150⁰⁰

July 6th At the two sales above referred to, who
" acted for and bid off the said real
" estate for the said George W Sharpe

Ans 6th Rufus R Allen

July 7th Did you at any time before the sale made
" on the 1st day of February 1854 have a
" conversation or conversations with
" Bernhard W Sharpe, or ^{or George W Sharpe} Rufus R. Allen
" their agents in regard to the purchase of
" the said 1/2 of the S E 1/4 of said Section 4,
" if so, with which of said parties

Ans of ²/₁₁ I did, and with Rufus B Allen

July 8th In what capacity, did the said Allen
represent himself, as a trustee, at the time of
the conversation referred to?

Ans 8th I should judge as a agent

July 9th What arrangement was made between you and
the said Allen, at the time of the conversation
referred to, as to the amount that said Allen
was to bid for the said $\frac{1}{2}$ of the S E $\frac{1}{4}$

Ans 9th He was to bid \$150.

July 10th Did you at any time propose to assign to
said Sharpe & Company the said mortgage
upon which you made the sale referred
to?

Ans 10th I believe I did, but we could not agree
upon the amount

July 11th Did said Allen insist, or require that you
should sell the said $\frac{1}{2}$ upon said mortgage
and if so, why did he require said sale
to be made

Ans 11th He did insist upon its being sold. He said before the sale because he wanted to perfect his title, He said that Thomas Mapps's wife did not sign their mortgage and that would give him a homestead right, my mortgage was ahead of all other troubles

July 12th Did he in the conversation before the sale allude to any other defects in their mortgage or that the sale under it might not be good?

Ans 12th I could not say

July 13th Did he before or after the last sale was made say anything in regard to the defense of usury that Mapps might set up, should they rely for a title upon their own mortgage (Objected to)

Ans 13th I don't know whether it was usury or anything else, He said he would make his title good by mine

July 14th Was it or not the understanding that no other person should bid at said second sale except the said Allen or the agent of said Sharpe (Objected to)

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Ans 14th That was the understanding between us

- " Cross Examination of Said witness
" E. G. Herd & White by G. W. A. Parks Esq of course
" for said defendants, and his answers to
" the Cross Interrogatories which propounded

Cross Sub² Please look at the copy of the notice
" of Sale in the "Globe Signal" now shown
" you, and be attached to your deposition
" marked "A" and state whether that is the
" Notice under which the two mortgages sales
" of which you have spoken in your direct
" examination were made

Ans 1st I believe it is

Cross Sub² Please state, whether agreeably to the Power
" of Sale in said mortgage, said notice was
" published ten days before the day first
" appointed therein for the Sale?

Ans 2^d To the best of my knowledge it was

Cross Sub³ Where were the two sales made?

Ans 3^d At the north door of the Court House

Ques 2nd 4th Were both of said Sales made at the times
 " respectively appointed therefor?

Ans 4th They were

Ques 3rd 5th At the first Sale who were present?

Ans 5th Mr Allen & myself were then certain
 " and Mr McRoberts & Mr Power

Ques 2nd 6th Did you proclaim the first Sale in the
 " ordinary manner of Starting Public
 " Sales of this kind

Ans 6th I had Mr McRoberts ^{for} my adviser and
 " I proclaimed the sale in the ordinary
 " way,

Ques 2nd 7th Who bid at such first Sale?

Ans 7th Mr McRoberts and Mr Allen for Sharpe

Ques 2nd 8th What was Mr McRoberts bid?

Ans 8th I cannot tell, It was less than the bid
 " which Mr Allen finally made?

Ques 2nd 9th Was Mr Allen's bid the highest bid made on

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On the occasion?

Ans 9th It was.

Ques 10th - After or before the Sale, were any affidavits
" inserted to by you or Mr Allen to deter
" or prevent bidding thereat?

Ans 10th There was not

Ques 11th - After said first sale what amount of your
" claim against Royal, remained unsatisfied
" as stated by you to Allen?

Ans 11th Two hundred & two dollars

Ques 12th - When you first started your proceedings
" to foreclose the mortgage, and published
" the notice referred to, was it by any
" arrangement with either of the Sharps
" (or with) Allen or for their benefit?

Ans 12th It was not

Ques 13th - What was the occasion of the several
" postponements of the Sale of the Ship an-
" - nounced to the original notice of Sale

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Ans 13th - It was in consequence of an injunction
" I think,

Cross Ex¹⁴ - Who sued out the injunction, and who
" was the defendant therein?

Ans 14th - I could not tell without referring to
" the papers

Cross Ex¹⁵ - Was not the injunction served upon
" you?

Ans 15th - It was

Cross Ex¹⁶ - Was not the injunction suit brought
" by Sharpe as Plaintiff?

Ans 16th - I think it was

Cross Ex¹⁷ - Was not the object of the injunction
" to prevent you from selling, as you proposed
" to do in your original notice of sale, the
" said A.P.?

Ans 17th - I believe it was

Cross Ex¹⁸ - Was said injunction suit got up under
" any collusion arrangement between you
" and Sharpe?

Ans 18⁶³ It was not

Ques 19⁶³ - As to the 2^d Sale, who were in attendance
" present?

Ans 19⁶³ Mr Allen, Mr McRoberts and myself
" certain and several whose names I cannot
" remember

Ques 20⁶³ Was this 2^d Sale proclaimed and con-
" ducted in the ordinary manner?

Ans 20⁶³ It was

Ques 21⁶³ At this 2^d Sale, were any means
" resorted to by yourself or your attorney
" or Mr Allen, so far as you know, to keep
" said Sale secret or to prevent competition
" present?

Ans 21⁶³ There was not

Ques 22⁶³ What bids were made?

Ans 22⁶³ Only by Mr Allen, of which I have before
" spoken: off \$150⁰⁰

Ques 23rd Previous to said Sale, or at said Sale was
 " any arrangement made between you &
 " Allen, that you should decline receiving
 " any bid which should be made for said
 " property?

Ans 23rd No Sir

Ques 24th What arrangement was made between
 " you, and if any, when and where was
 " it made, please state particularly

Ans 24th There was a Chancery Suit pending, at
 " the time, and I wanted Two Hundred
 " and two dollars and he agreed to bid
 " One Hundred and fifty dollars, and
 " we settled it that way

Ques 25th If a larger bid than \$500 had been
 " made was there any arrangement between
 " you by which you would have been
 " prevented from taking such large bid

Ans 25th There was not

Ques 26th When you speak of an arrangement
 " with Allen do you not mean that while
 " you claimed \$200, to be set down, on

65
" the mortgage, he refused to bid more
" than \$150.

Ans 26th I claimed \$200,- and he refused to bid
" more than \$150.

Ques 27th When the first postponement was made
" under whose advice did you make it?

Ans 27th Mr Roberts & Woodruff

Ques 28th At that time what was your objection
" keeping the notice pending in the newspaper?

Ans 28th I believe it was the injunction

Ques 29th Had it not been for Sharps Injunction
" what would have prevented you from
" selling to the Eighty?

Ans 29th Nothing

Ques 30th On the day to which the sale was first
" postponed: being the 1st day of January
" 1859, what except Sharps Injunction
" prevented you from selling to the 80?

Ans 30th Nothing that I know of

66
Ques 31st On the 1st of January, 1859, you again
postponed it till the 1st of February. At
whose instance did you make such
postponement?

Ans 31st Mr Roberts & Goodspeed

Ques 32nd Did you make it by any arrangement
with Mr Allen or Mr Sharpe

Ans 32nd I did not

Ques 33rd Did Mr Allen at any time before the second
sale, state to you that he wished to use
a title under your mortgage to justify
a previous title that Sharpe had got
under his own mortgage to the maps
Eighty, if so, when and where was it?

Ans 33rd He wanted that I should go on and
sell the land under the mortgage, and
he would buy it, I wanted to sell him
the mortgage, but he would not buy it.
I should judge from the conversations
we had that his object was to justify
his own title. I can not tell when it
was, but I am sure it was before the
2^d Sale

67
Coop Int 34⁵ Do you not remember after the 2^d Sale
" had been made, and shortly after the
" property was struck off, that you went
" up to Allen, and asked him what his
" object had been in the course of policy
" he had pursued, or words to that effect

Ans 34⁴ - I don't think I did

Coop Int 35⁵ Do you remember a conversation in the
" office of Mr Roberts & Goodspeed between
" yourself and Allen at the time Allen
" came for the deed?

Ans 35⁴ - Mr Allen, came in and got the deed
" and paid his money, except five dollars
" Mr Roberts fee. Mr Allen asked Mr
" Roberts if that did not wipe out
" Mapps homestead exemption. Mr Roberts
" said he thought it did, Mr Allen said
" " White I've got a sure or safe thing now"
" Mr Allen also said that I might have
" the land if I paid all his claims

Coop Int 36⁴ - Are you sure that Mr Allen ever disclosed
" to you before the sale was made his object
" in purchasing under your mortgage

64
Ans 36th I think he did

Ques 37th How long before the sale did such conversations
" occur?

Ans 37th I can't tell precisely, sometime after the
" injunction was laid out

Ques 38th What circumstances, can you state as your
" particular reason for supposing that it was
" before the sale?

Ans 38th Because I tried to sell it to him & he would
" not buy

Ques 39th Have you any other reason?

Ans 39th I have not, that I know of,

Ques 40th Did Allen ever before the sale intimate to
" you that there was any defect in Sharpe's
" title growing out of Mapps homestead
" exemption rights?

Ans 40th I would not swear positively that he did
" The whole matter was talked over, and it
" was understood between us that there was
" a homestead claim upon it. Allen was

" saying that his title was good enough, but
 " I was telling him how it was about the
 " Powerstead and everything

Coop Sub⁴¹ Was your mortgage the first incumbrance
 upon the two 80's?

Ans 41^o It was said to be by R. C. Parker

Coop Sub⁴² Was you, advised, and did you believe, at
 the time you took it, that it was a good
 and valid mortgage?

Ans 42 I was satisfied it was so, for that amount

Coop Sub⁴³ At the time of the 2^d Sale what in your
 judgment was the value of the maps 80?

Ans 43^o It was worth say Five Thousand Dollars

Coop Sub⁴⁴ Did you believe that your mortgage
 upon that 80 being the first incumbrance
 was good security for the balance of \$202,
 then your due?

Ans 44^o Yes Sir

Coop Aug 25th Having taken previously the necessary steps
 " to effect a sale, and your debt being
 " \$202, what consideration induced you
 " to accept a bid of \$500 in satisfaction
 " of your claim

Ans 45th Well firstly there was a law-suit to recover
 " the land pending in Chicago, and the suit
 " as I understood was to cost \$500 or less
 " Secondly, I knew Mr Sharpe would run
 " it up so there would be no use and
 " Thirdly and lastly Extra interest and
 " the dismissal of the injunction suit
 " (Objected to)

Coop Int 46th At the time of the sale and in the
 " negotiation which you made ^{with} Allen
 " what was your own opinion of Mapps
 " title under which you acted

Ans 46th Judging from what Mr Mapps, and
 " Royal said I concluded they would
 " beat in that suit in Chicago. The title
 " was somewhat mixed I thought, I was
 " glad to get rid of it.

Coop Int 47th Did you learn from Mapps or from Royal
 " in Mapps presence for whose benefit and

71 " For what purpose the loan of \$ 1000. was
" made of you

Ans 47th It was for the benefit of both of them
" to make their last payment on the land,

Quesp July 48th Did you learn from Mapps or from
" Royal in Mapps presence what arrange-
" ments had been made between them at the
" time of Royal's sale to Mapps as to the
" recording of your mortgage

Ans 48th I know nothing about any arrangement
" Mr Royal himself, did not get his title
" until after I had furnished the money which
" I paid myself to Parks & Elwood, I had ex-
" amined the records and found no incum-
" berance on it prior to my mortgage

" The Direct Examination, of said witness
" was here resumed by Josiah M^c Roberts
" Esq of Counsel for said Complainant

July 1st At the time of the conversation between you
" and Allen before the second sale, what
" amount did you and he agree that he
" should bid for the said W^h?

Ans 1st One Hundred ^{and fifty} Dollars

Q^{ty} 2nd After you published the notice of the 2^d sale
and while the injunction against you
was pending, what was the agreement
between you and Allen, about the dismissal
of the Chancery Suit, and the purchase to be
made by him under the notice for George
H. Sharpe?

Ans 2nd He agreed to dismiss the Chancery Suit
and bid \$ 150.

Q^{ty} 3rd Was it not the understanding that George
H. Sharpe should purchase the said H^{rs}
as said Sale for the sum of \$ 150.

Ans 3rd It was the understanding between Mr Allen
and myself, that he should bid it off for
\$ 150.

Q^{ty} 4th What was said between you and Allen in
regards to your not bidding or allowing
others for you to bid at the said 2^d Sale

Ans 4th He was to give the \$ 150 and I was
not to bid or any one for me

July 5th In the conversations alluded to between you
and Allen, did he state to you or in your
presence the rate of interest that Mapps was
paying Sharpe and Company for the loan
which he had made of them
(Objected to)

Ans 5th I can't swear positively

July 6th Did you learn from either of the Sharps
as to the rate of interest which Mapps
was paying them for the said loan?

Ans 6th I am not positive

The Cross Examination of Saïel Britton
was here resumed by G. A. Parks Esq
of Counsel for said Defendants

Cross Ex^g When in the course of your previous examination
you say that Allen agreed to buy the
property at \$150. Do you mean that
he agreed to bid \$150. and no more?

Ans 1st I didn't say he agreed to buy it. He
agreed to bid \$150. - and it was not
expected that anybody would bid

74 "above it"

Crop July 2nd From your view of the condition of
"the title, was you yourself inclined to bid
"more than \$150.00?

Ans 2nd I don't think I was. As for bidding
"I did not want to buy any law suits

Crop July 3rd When Allen asked to bid \$150.00 was
"that anything laid between you, as to you
"not bidding yourself?

Ans 3rd Yes Sir. I think there was

Crop July 4th Are you not aware that being the
"mortgagee you had a right to bid your-
"self

Ans 4th I am, and was then

Crop July 5th On your 1st Crop examination you stated
"in substance that the sale was openly
"and fairly conducted in accordance
"with the notice, as to time & place, and
"that no artifices were used by yourself
"or your attorney or Mr Allen to prevent,
"any person from bidding who desired

75 Q do do, do you still adhere to that
Statement?

Ans 5th I do
Deposited E. J. & White

" Howay W Stoddard, one of the affiants
" witnesses being, duly sworn and
" interrogated, made answers to the
" several interrogatories to him propounded
" as follows, to wit:

July 1st Q What is your name, age and place of
" residence

Ans 1st My name is Howay W Stoddard, age 49
" years. I reside in Solivir

July 2nd Q How long have you resided in this
" country

Ans 2nd 21 years

July 3rd Q Are you acquainted with the value
" of the $\frac{1}{4}$ of Section 4 Township 34
" North Range 10 East of the 3rd PM

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Ans 3rd I suppose I am,

July 11th State how much it was worth, on the
" 1st day of February 1857

Ans 11th I should call it worth \$4500.

July 5th State if you know what portion of said
" quarter Section is known, as the maps
" form, and if yes, how much that
" portion was worth, on the 1st of February
" last

Ans 5th The maps form is the A/2, and was
" worth \$2400.

July 6th State if you know the value, of the West
" half of the South West quarter of the
" north East quarter of Section 6 in the
" Township and Range aforesaid, and
" the 3/2 of the A/2 of the E/2 of the S E/4
" of Section 2 in Township 34 N Range
" 9 E of the Third P M, containing
" 20 acres each, and whether the same
" is timber land or not, if so. State the
" value of each on the 1st day of February
" last

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Feb 6th 59
Dr is Kinder Land, but as to the value
I don't know

" Cross Examination of said witness
" Hoarey W Stoddard by G D A Parks
" Eng. of Counsel for said Defendants
" and his answers to the Cross interrogatories
" therein propounded as follows To Wit

Prop. Int. 1st In the estimate which you make, of the
" Maps 80, do you not, base it upon
" the Supposition of a good title?

Ans 1st I do

Prop. Int. 2nd Do you know the condition, and value of
" Maps title to said 80 acres, at the time
" of Sale, on the 1st of February 1859

Ans 2nd I do not

Prop. Int. 3rd Do you know what kind of interest in
" said Land was conveyed by the Sale under
" Royals Mortgage to White?

Ans 3rd I do not

Prop 2nd 4th Do you know from conversation, with
 " Mapps whether, or and before said Sale,
 " and since a suit was pending, at Chicago
 " in relation to said Paul?

Ans 4th I know from what Mapps told me before
 " said Sale that there was a suit pending
 " But I have heard him say nothing
 " about it since

Prop 2nd 5th Will you recollection serve you to state
 " what was the general talk and rumor
 " in regard to Mapps till as or about
 " the time of said Sale
 " (Objected to)

Ans 5th The talk was by some, that the till
 " was a poor one, and by others that
 " it was good, which way the balance
 " of opinion was I could not state,

" The Direct Examination of said
 " witness Hawley N Stoddard was here
 " resumed by Josiah M Roberts
 " Esq of Counsel for said Complainant

July 1st State if you know the value of timber
" land in the neighborhood of the two
" tracts mentioned in Sections 51 and
" 52.
" (Objected to)

Ans 1st It is worth from \$10. to \$75. per
" acre

" The Cross Examination of said
" witness Harvey W Stoddard was here
" resumed, by G L O Parks Esq of counsel
" for said Defendants

Ques 2nd Supposing the timber was cut off from
" any given tract of land in the neigh-
" borhood, what would you estimate
" the market value then of per acre

Ans 6th Ten Dollars per acre

" H W Stoddard

" The said witness David Nicols
 " being first duly sworn, was interrogated
 " by Josiah McRoberts Esq of counsel
 " for said Complainant, and made
 " answer to the following interrogatories
 " which propounded as follows To wit.

Inter 1st Are you acquainted with the N¹/₂ E¹/₄
 " of Sec 4 T 34 N R 10 E?

Ans 1st I am.

Inter 2^d State if you know, what in your opinion
 " was the value of said N¹/₂ on the 1st day
 " of February 1859?

Ans 2^d In my opinion it was worth \$30. per
 " acre

Inter 3rd State if you are acquainted with the
 " N¹/₂ of the E¹/₄ of the N E¹/₄ of Sec 6
 " T 34 N R 10 E. also the N¹/₂ of the N¹/₂
 " of the E¹/₂ of the E E¹/₄ of Sec 2 T 34 N R
 " 9 E, and if so, what was the respective
 " value of these two tracts on the 1st day
 " of February 1859

Ans 3rd ^{do} On regard to the first mentioned tract
" I am not much acquainted with
" it, but I should think that it was
" worth, at least \$10. per acre. The second
" one I would value about the same as
" the other

Query 4th Was there in your opinion any difference
" in the value of said tracts of land above
" mentioned between the 27th day of November
" 1858, and the 1st day of February 1859?

Ans 4th I consider there was some difference

Query 5th Do you know of any person cutting or
" removing any timber from the tract
" in Sec 6. T34 NR 10 E 12. when, and
" who did the same?

Ans 5th I know of my own knowledge of no
" timber being cut on the tract in Dec
" 6

" The said Britton David Nicolas was
" here cross-examined by E. L. Sparks
" Esq of Counsel for said Defendants, and
" to the cross-examinations which -

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"Propounded made answers as follows

Coop Dist^{1st} Have you ever had occasion for any purpose
" to ascertain the lines and corners of the two
" tracts of 20 acres each, to which you have
" referred on your direct examination?

Ans^{1st} No Sir.

Coop Dist^{2^d} What means then have you of determining
" the identity of those tracts

Ans^{2^d} I have passed over those lots, which were
" said to be, the timber land of Mapps formerly,

Coop Dist^{3^d} Who cut and removed the timber from the
" lot in Section 2 in the town of Chauvaton

Ans^{3^d} W. D. Birchols had it done

Coop Dist^{4th} From how many acres, did he cut
" and remove the timber as near as you
" can estimate

Ans^{4th} From my own observation, I should
" suppose there was some 3 or 4 acres

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Ques¹ Dut¹ 5th At what time was the timber cut?

Ans 5th A Year ago last Winter

Ques² 6th From whom did Mr Nichols obtain
" his contract to cut said timber?

Ans 6th From Thomas A Mapps, The timber
" was sold at a public sale, held by said
" Mapps, and Mr Nichols bought it

Ques³ 7th How many acres were sold at that
" sale to said Mr Nichols

Ans 7th Five acres

" ~~Sept~~ " David Nichols

" The said witness Charles A Neacombe
" being duly sworn, was interrogated by
" G. A. Parks Esq of Counsel for said
" Defendants, and made answers to the
" interrogatories which propounded as follows,
" to wit;

Dut² 8th What is your present occupation

Ans 1st I am deputy Circuit Clerk Recorder
of Mill County

July 2nd Look at the paper now showed you, and
to be attached to your disposition, as Exhibit
marked "B" and state by whom, and
when it was prepared?

Ans " I prepared it today

July 3rd Please state whether said paper truly
describes the parties, dates of execution
consideration, date of record and Book
and Page thereof, and the tract of land
conveyed of the several instruments
therein noted?

Ans 3rd It does

July 4th Please state whether said Abstract was
prepared by you or verified by an
examination of the original records
in the Recorder's office, of Mill County

Ans 4th It was taken from the original Record,
I prep. Chas H Macomber

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" The said witness Rufus B Allen being
" just duly sworn, was interrogated by
" G. D. Parks Esq, of counsel for said
" Defendants and made answers to
" the interrogatories to him propounded
" as follows. To wit:

Q^{1st} What is your name, age and residence

Ans 1st My name is Rufus B Allen, age 40
" years, residence Soliv

Q^{2^d} Are you acquainted with the parties
" to this suit, Complainant and Defendants
" and how long have you known them
" respectively?

Ans 2^d I am, I have known the Complainant
" Mr Mapps for 2 years, and the Defen-
" dants about 6 years.

Q^{3rd} In whose employment were you in the
" fall of 1858 and the winter following?

Ans 3rd Sharp & Company, of which firm the
" Defendants in this suit were members

July 4th In what capacity were you employed?

Ans 4th As Book Keeper, and as a genl doing their
" business generally

July 5th In your capacity, as a genl were you,
" at any time, during the fall of 1858 en-
" gaged in any negotiations with Egbert
" White concerning a certain mortgage
" executed by one John G. Royal to said
" White, upon the E & W of Dec 4, 1854 or R
" 10 E?

Ans 5th I was

July 6th Please state if you know from your
" position in the office of Shepard &
" Company, whether the negotiations, con-
" cerning said mortgage were conduc-
" ted by you exclusively?

Ans 6th They were

July 7th Please state when, and for what purpose
" you opened negotiations with said White
" and what was the occasion thereof. State
" fully and at large?

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Sus 7/4

The Refundary Richard W Sharpe had
a mortgage upon the Mapps's 80, and
Eggar & White had a mortgage upon the
80 of Royal and Mapps, which mortgage
was ahead of Sharpe's, and I went to buy
White's mortgage (as his was ahead of Sharpe's
to make Sharpe's mortgage good. This was
arranged in October 1858, at all courts before
he advertised to sell. He refused to sell it
to me, for the reason as he said that he
calculated to sell Mapps's 80 on his mortgage.
He said that Mapps had had the large
share of the money and that he wouldn't
sell it, that Mapps had ought to paid
it. He calculated to sell Mapps's 80 first,
I offered him the principal and interest
of the face of his mortgage and he wouldn't
take it. He then advertised to sell,
Then I went to see him again and
proposed to him to sell Royal's 80 first
and he said he shouldn't do it, he
should sell Mapps's first for it wouldn't
be fair to sell Royal's first as Mapps had
most of the money. I told him then that
we should enjoin him from selling.
It said we couldn't do it. He said
that he had a right to release Royal's
part and sell Mapps's part. I told him

" we would see, I then went and consul-
 " ted with Judge Parks, and we got our au-
 " injunctiow. This was before the day appoin-
 " ted for the Sale, Royal's 80 was sold on
 " the day appointed for the Sum of \$1000.
 " to George W. Shape, I bid it off for
 " him. The Sale as to the Maps 80 was
 " adjourned, Mr White claimed \$1202,
 " and when I bid the \$1000, Mr Roberts
 " said I had better bid the balance, and
 " make a clean thing of it or words to that
 " effect, I told him I shouldn't do it?
 " The Sale was adjourned as showed by
 " the published postponement and on the
 " 1st of January 1859 it was adjourned
 " again until the 1st of February following
 " The injunctiow was pending during
 " this period up to the 1st of February, On the
 " 1st of February I made an arrangement
 " with said White to dismiss the injunctiow
 " and as the Plaintiff cost and bid \$150.
 " on the Maps 80, and he agreed to go on
 " and sell on these terms, He then went
 " to the North Court House door and
 " offered the 80, for Sale which I bought
 " in the name of George W. Shape for \$150.
 " and the mortgages deed, was executed
 " the same day, and prepared by Mr

89 " McRoberts

July 8th Was there any arrangement entered into
" between you and White that he (White)
" should not bid against you at said
" Sale?

Ans 8th No Sir

July 9th Was there any arrangement express or
" implied that no one should bid for him
" against you?

Ans 9th No Sir

July 10th Was there any agreement between you & James
" or implied, or was it your understanding
" that any artifices should be employed
" to keep said Sale secret from the public
" or to prevent competition there?

Ans 10th No Sir

July 11th Were any such artifices employed
" on the occasion?

Ans 11th No Sir, not to my knowledge

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July 12th Who were present at the Sale?

Ans 12th Mr McRoberts, E A White and myself
" and several others passing whose names
" I do not recollect

July 13th How was the Sale conducted?

Ans 13th White reads over the description of the
" lot and offers it for Sale to the highest
" bidder for cash?

July 14th What bid or bids were made?

Ans 14th I don't think there was any other bid
" than mine?

July 15th At the time of said Sale what was the
" condition of Mapps title to the 80^a

Ans 15th The title was in dispute. There was
" an ejectment suit, commenced in
" Chicago by one Brown, as Plaintiff against
" Thomas A Mapps as Defendant, This
" suit was then pending, and is yet

" Objected to Question & Answer by Plff's counsel

July 16th State if you know who at that time was
" managing the litigation referred to on
" the part of the defense?

Aug 16th Hoynes, Miller and Lewis of Chicago

July 17th State who paid the fees of said Attorney?

Aug 17th I paid fees to Messrs Sharpe

July 18th Was Mapps, at that time himself or you
" as you know taking any steps, or making
" any exertions to defend the title?

Aug 18th Not that I know of.

July 19th On whom since that time has the burden
" of defending said title rested?

Aug 19th Sharpe

July 20th After said sale, was you present, at any
" interview between Mapps, and Bernhard
" W Sharpe in relation to said land, and
" if so when and where was it, and
" what was the nature of it?

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Ans 20th I was. It was after the Sale in February
" I think it was in Sharpe's office. Mapps
" told Sharpe to go on and rent the place
" if he could find a man that wanted
" it. Mapps came in frequently to
" find out whether we had rented it
" He said he knew of a man that would
" and would send him to Sharpe

July 21st Until the day of Sale were White and
" Sharpe in their relations to each other
" as to said Royal Mortgage, at all
" times adverse, or otherwise?

Ans 21st They were at all times before the Sale
" in dispute, about the matter

July 22nd Was the original notice or was either of
" the postponements at your instance
" and by your advice as the agent of
" Sharpe?

Ans 22nd No Sir

July 23rd Was there any talk between you and
" White on the day of Sale or previously
" that the Sale should be conducted in
" any other than the regular and ordinary

Q³ " way of conducting Such Sales

Ans 2³^{to} No Sir

July 24th Before receiving the deed, did you ever
" disclose to said White, or to anybody
" else particularly your object in procuring
" a title under said Royal mortgage

Ans 24th No I never did outside of Sharpe's office
" I had frequently told White that we wanted
" to get a title under his mortgage, ^{to} perfect
" Sharpe's original title?

July 25th In your negotiations with White, what
" generally was the position he took and
" what, generally the position you took
" as to the effect of his mortgage upon
" Sharpe's interest?

Ans 26th He always urged that we ought to buy
" his mortgage, as it would cut off Mapp's
" homestead exemption, it would make
" Sharpe's title all rights. I told him
" in regard to the homestead exemption
" it was good enough, that he couldn't
" hold a homestead exemption where he
" did not live

July 27th Please state again whether after the 1st Sale and before the 2^d Sale, and before the delivery of White's deed to Shaape, or reflection you can remember, any instance of a conversation with Egbert H White concerning your proposed purchase under his mortgage in the office of M^r Roberts & Goodspeed in the presence of Messrs M^r Roberts & Goodspeed or either of them

Ans 27th I think I told White in the office of M^r Roberts & Goodspeed, at the time of taking the 1st deed that I would pay him what legally belonged to him on the Royal mortgage, but that I would not pay him, the \$200 - he claimed. I don't recollect having a conversation in said office at any other time

The said witness Rufus R Allen, was here, cross-examined by J M^r Roberts Esq of counsel for said Complainant, and to the several cross-interrogatories to him propounded, made the following answers to wit:

⁹⁵
Cross Q^y 1st Did you not make an arrangement
" as the agent of George H. Shape with Egbert
" H. White, that neither he (White), or anyone
" for him should bid on the maps for
" the 2^d Sale?

Ans 1st No Sir I did not.

Cross Q^y 2^d Did you not have, a conversation, or
" conversation with said White in the office
" of M^r Roberts & Goodspeed, and in the presence
" of one or both of them, in which it was
" agreed that neither White nor any one
" for him should bid, at said 2^d Sale,
" and was it not then agreed and under-
" stood that you were to dismiss the
" injunction proceeding and was to bid
" off said maps so for the sum of \$150.

Ans 2^d I don't recollect that I ever had
" anything to say in M^r Roberts & Goodspeed
" office with White, about this Sale before
" the Sale

Cross Q^y 3^d Did you not on the day that the Sale
" took place or a short time before that
" period, and before the Sale have a
" conversation in the back room of the

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" office of McRoberts & Goodspeed with the said
" White, and in the presence of said McRoberts
" & Goodspeed in which the conversation
" alluded to, or the substance of it was
" had ?

Ans 3rd I do not recollect that I did

Cross July 4th Was it not to prevent the homestead
" redemption rights of the said Mapps
" that you insisted upon having the
" Mapps so sold, and by obtaining a
" title from the said White under the
" Royal Mortgage, cut off the homestead
" redemption of the said Mapps ?

Ans 4th No Sir

Cross July 5th You state in your answer to direct
" interrogatory No 7 that you went to buy
" White's Mortgage for the purpose of making
" Sharp's title good under the Sale previously
" made under his said Sharp's Mortgage
" Please state what defect there was in
" Sharp's Mortgage that you desired
" to cure by purchasing White's Mortgage

Ans 5th It was that Sharp's mortgage was
" behind Whites, Whites being on the
" whole 160. and White proposed to sell
" Mapps 80. for his debt which would
" make the whole incumbrance on that 80
" two thousand dollars

Coop Dwyth If you considered Sharp's title to the
" Mapps 80 good without regard to the
" homestead exemption why did you not
" take an assignment of the mortgage
" from White instead of requiring him
" to sell, and you to become the purchaser?

Ans 6th As I said before I tried to buy it and
" he wouldn't sell it, I offered him
" principal and interest

Coop Dwyth When you agreed with White to give
" him \$150. and dismiss the injunction
" suit, why did you not take an assign-
" - ment of the mortgage instead of
" requiring him to sell the Mapps 80?

Ans 7th When I agreed to bid the 150. I thought
" it would make it better for him to go on
" and sell and save time and cost

18
Cross July 8th You have just stated in your answer
" to Cross interrogatory 6th that you tried to
" purchase the mortgage of White, and
" that he refused to sell, Was this before
" the 1st or 2^d Sale?

Ans 8th It was before the first Sale, and I
" think before he advertised

Cross July 9th State if you know the rate of interest
" that said Mapps agreed to pay to Sharpe
" & Company for the \$800, loan made on
" the 10th day of June 1857

Ans 9th I did not know if anything about the
" loan till the first of October 1857. On that
" day or about that time I came in
" the office of Sharpe & Company and
" commenced work for them on the
" 4th. I there saw the mortgage and
" note referred to. Then he agreed to
" pay 3 per cent per month for the
" month of October?

Cross July 10th I did not know anything about
" did not said Mapps agree to pay 3 per
" cent per month for a certain period of
" time, and did he not pay for some portion

99 " of the time, the said note said, at the rate
" of 5 per cent per month?

Ans 10th He did agree to pay 5 per cent per month
" for part of the time, and he did pay 5 per
" cent per month for some portion of the time
" He paid some, and sometimes gave notes
" for the interest

Cross Q^y 11th Was it not to prevent Mapps from setting
" up this usurious interest that you required
" White to sell on his mortgage, so that you
" might by purchase from him, obtain a
" title free from the taint of usury?

Ans 11th No Sir, after the 1st Sale, and before the
" 2^d I told White I would not buy the
" mortgage but that he might go on and
" sell

Cross Q^y 12th Why would you not buy the mortgage
" after the 1st and before the 2^d Sale?

Ans 12th As I said before I thought it would be
" better for him to go on and sell and
" save cost and time

Cross Q^y 13th Was it not understood by Sharpe &

" Company and yourself, or yourself alone,
 " that Mapps had been intended to institute
 " proceedings to set aside the Sale of the Sharpe
 " mortgage, and did Mr Sharpe & Company
 " direct you to have White sell on his mortgage
 " to avoid such proceedings on the part of
 " Mapps

Ans 13th No Sir we did not understand that
 " Mapps intended any such thing. No such
 " direction was given

Ques July 14th What did Sharpe & Company or any one
 " of the firm say to you if anything as to the
 " probability of Mapps setting up the defence
 " of usury upon said loan of £ 824. —

Ans 14th I never heard anything said by the
 " partners of the firm about the defence
 " of usury before the sale

Ques July 15th Was it not an absolute purchase
 " by you of White's mortgage before the
 " sale

Ans 15th No Sir

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Cross July 16th Were you to pay him any more than
the \$150.

Ans 16th I agreed to bid \$150.

Cross July 17th In answer to direct interrogatory 20th
" You say that Mapps agreed with Sharpe
" & Co. that he Sharpe should rear the place,
" was it not agreed at that time that Mapps
" should have a reconveyance of the 80 acres
" and all the property sold by them and
" that the rest should be accounted for by
" him to Sharpe?

Ans 17th No Sir, There was no such understanding.

Cross July 18th Did Sharpe & Company or you for them
" agree with said Mapps to reconvey said
" property, and did you at any time furnish
" said Mapps with a statement of the
" amount for which they would reconvey?

Ans 18th Sharpe & Company told Mapps that if
" he would pay them the amount of money
" that they had paid out for him, & what
" he owed them, that they would convey
" the property back to him or to whom he
" directed, I don't know if the amount
" was figured up.

" was figured up, Mapps said he couldn't
 " do it, Sharpe then said if Mapps could
 " get his father, father in law or brother,
 " to secure him, he would convey to them
 " and that he didn't want the property
 " Mapps then wanted Sharpe to give him
 " a bond, that he Mapps would have the
 " privilege to secure it within a year,
 " Sharpe's answer to that was, that he would
 " not do it as he had that day in
 " Chicago to fight, and urged Mapps
 " to get some of his friends to secure him
 " and Mapps said that they wouldn't do
 " it till that day in Chicago was settled
 " and out of the way

signed " R R Allen

" The said witness Francis Goodspeed
 " being first duly sworn, was interrogated
 " by Josiah M. Roberts Esq to the
 " interrogatory to him propounded answer
 " as follows

Query 1st State if you were present at a conversation
 " between Egler & White and Rufus
 " R Allen in regard to a proposed

" arrangement between them in reference
 " to a certain mortgage held by said
 " White against John G. Royal, of Co.
 " state when and where said conversation
 " took place and what it was?

Ans, st On the day of the ^{last} Sale under this
 " mortgage of Whites. Said Allen and
 " White came into our office, together
 " and White said to me that they had
 " arranged the matter, and that he
 " was to let the Sharpes have said
 " mortgage for \$150. or thereabouts being
 " some \$50. less than he claimed as I
 " understood, I think I then asked
 " Mr Allen if he would take an assign-
 " -ment of the mortgage or wanted it
 " He said that he preferred to have
 " the Sale go on, and that he would bid
 " the amount agreed upon in order to
 " save any questions in relation to their
 " own title, and it was arranged in
 " that way, and they left the office together
 " to make the Sale as I supposed. This I
 " believe was the substance of what was
 " said at that time. That was the only
 " conversation. I now recollect of hearing
 " heard between them in regard to this matter
 " signed B. Goodspeed

" The direct examination of said
 " Britton Rufus B Allen, was here
 " resumed by G D A Parks Esq of counsel
 " for said Defendants, and made answer
 " to the interrogatories to him propounded
 " as follows

July 28th In the course of the dealing between Mapps
 " and Sharpe in reference to the loan of
 " \$824, of which you have spoken was
 " there any other note given for the principal
 " except the original note dated 10th June
 " 1857 at 30 days?

Ans 28th No Sir

July 29th Have you seen, or did you make your-
 " self, all, or any of the endorsements
 " of interest on said note

Ans 29th I have made a portion of the endorse-
 " ments, and saw some of them made

July 30th Were any of the endorsements to your
 " knowledge made without the payment
 " of money by Mapps, and if so, under
 " what arrangement were such endorsements
 " made

Ans 30th Yes Sir. Some were made without the
" payment of money. I think for one
" or two of the 1st endorsements made
" after I came there on the 1st of October
" he gave his note

July 31st Have you any distinct recollection how
" many endorsements were so made?

Ans 31st I have not

July 32nd Did the note given by Snapps for intent
" include any other consideration?

Ans 32nd Yes Sir

July 33rd What was the ^{other} consideration?

Ans 33rd Money loaned

July 34th Was said note been paid?

Ans 34th Not all of it

July 35th What amount is still due on said note?

Ans 35th Somewhere about \$75.00

July 30th Previous to the Sale to Sharpe under the
 " Royal Mortgage of Mapps' 80 had
 " Mapps ever informed you that he intended
 " to institute proceedings to set aside
 " the Sale under Sharpe's mortgage

Ans 30th No Sir

July 31st Had he ever informed you that he intended
 " in any legal proceeding to take advantage
 " of any usury in the transaction with
 " Sharpe?

Ans 31st No Sir

July 31st Had he ever informed you that he intended
 " to take advantage of any supposed homestead
 " exemption rights remaining to him from
 " the Sharpe mortgage Sale

Ans 31st No Sir

July 31st Please state the time place and circum-
 " stances of the interview between you, White
 " & Mr Roberts just previous to the Sale

Ans 31st As I said before White and I had
 " some talk before of making some

" arrangement in regard to this matter
 " and on the day of the last Fall White
 " either came to me; or I went to see him
 " (I am not positive which, In our
 " conversation coming from Sharpes office
 " on our way to the Court House, I told
 " him, that I would withdraw the agree-
 " -ment Sir at Sharpes cost and bid
 " of \$150. and we came into the Court
 " House went to Judge Norton's office,
 " and Mr M^cRoberts was there & Mr White
 " spoke to Mr M^cRoberts, and they went
 " out in to the hall leaving me in the
 " office, They were gone a short time
 " & returned, and White said they would
 " go on and sell

Inty 40th " Until said White had such conversation
 " with Mr M^cRoberts, and accepted your
 " proposition, did you consider the arrange-
 " -ment previously proposed between you
 " as being consummated?

Ans 40th " No Sir. It was not accepted until
 " after he had talked with Mr M^cRoberts

" The Said Witness Rufus B Allen, was
 " here again cross examined by I Mc
 " Roberts Esq and in answer to the following
 " ^{cross} interrogatories which propounded, respon-
 " ded as follows to wit?

Cross Int^g 19th What consideration other than the
 " interest did the note given by Mapps
 " to which you have alluded, embrace?

Ans 19th Money loaned

Cross Int^g 20th How much of the consideration of said
 " note was money loaned, and how much
 " interest?

Ans 20th I can't tell now, without looking at
 " the Books, my impression is that it
 " was \$100, though I am not certain

" Signed " R B Allen

" State of Illinois
" Prick County 38 " I William Thomas Clerk
" of the County Court in and for said County
" in the State aforesaid, do hereby Certify that
" the foregoing annexed depositions of Said witnesses
" Ogden & White, Harvey & Stoddard, David Nichols
" Francis Goodspeed, Charles & Macomber and
" Rufus B Allen, were taken before and by
" me as my office in Solist in said
" County as a Commissioner, on the 30th day
" of November, and the 1st and 3rd days of
" December A D 1859, respectively pursuant
" to mutual agreement of said parties in
" the aforesaid entitled Cause and their respective
" Counsel - That Said Witnesses before signing
" their said depositions were duly sworn by me
" to testify the truth in said matter so far as
" they should be interrogated, and after giving
" their said depositions, signed the same in
" my presence, and made Oath before me
" that the several answers respectively in
" their depositions contained were true according
" to the best of their knowledge and belief

" In witness Whereof I have hereunto
" Subscribed my name and affixed
" the Seal of said Court as my office
" in Solist this 3rd day of December
" 1859 " Wm Thomas Clerk
" Seal

And afterwards to wit: on the 4th day of
December 1857 there was filed in the office
of the Clerk of said Court in certain papers
certain a deposition which is in words
and figures following to wit:

- " This annexed is the notice referred to in the
" Cross examination of Egbert & White
" Green Towner
" Commissioner

" A "

"Mortgage's Sale"

- " Whereas John G Royal of the County of Will
" and State of Illinois did on the twenty fourth
" day of April A D 1857 make execute and
" deliver to Egbert & White of the City of Solon
" in the County of Will and State of Illinois
" aforesaid, a mortgage of the hereinafter
" described premises to secure the payment of
" one certain promissory note therein mentioned
" dated the 24th day of April A D 1857 and
" payable sixty days after date with interest
" thereon, at the rate of ten per cent per annum
" after the expiration of sixty days ^{from the date} thereof
" said note being executed by said John G
" Royal payable to said White or his order

" Said mortgage is recorded in the Recorder
" Office in and for the County of Will and
" State of Illinois in Book 50 Page 49. and
" whereas it is provided in and by said mortgage
" that in case of default in the payment of
" said note above mentioned or any part thereof
" according to the tenor and effect thereof
" then the said Ogden & White, or his legal
" representation or attorneys, after having
" advertised the sale of the premises in said
" mortgage mentioned, in a newspaper ~~for~~
" published in the City of Solist, two days
" prior to the day of sale of said premises, might
" sell the said premises, or any part thereof
" and all right and equity of redemption
" of said John T. Royal, his heirs, Executors,
" administrators or assigns therein, in the
" same in said mortgage described as
" public vendue to the highest bidder for
" cash, at the place and at the time
" appointed in such advertisement, And
" whereas default has been made in the
" payment of the said promissory note
" in said mortgage described, payable on
" the 23^d day of June A.D. 1857 for the
" sum of ten hundred dollars and interest
" thereon at the rate of ten per cent per annum
" after the expiration of sixty days from the
" date

1 then of. Now therefore, public notice is hereby
1 given that the undersigned by virtue of the
1 power given in said mortgage will on
1 Saturday the 27th day of November A.D.
1 1858 at ten o'clock A.M., sell at public
1 auction at the north door of the Court
1 House in the City of Joliet in the County
1 of Will, in the State of Illinois to the highest
1 bidder for cash, the real estate and all
1 equity of redemption of the said John
1 G Royal, his heirs, executors, administrators
1 and assigns in the same described in said
1 mortgage lying and being in the County
1 of Will and State of Illinois to wit, South
1 east quarter of Section Four (4) Township
1 Thirty Four (34) North of Range Ten (10) East
1 of the Third principal Meridian all being
1 in the County of Will and State of Illinois
1 for the purposes in said mortgage de-
1 scribed
1 "Egler & White
1 Mc Roberts & Sons pub^{rs}
1 Joliet Nov 16th 1858 3

1 The Sale of the north half of Sec Four (4)
1 Township 34 N R 10 East of the 3^d P in
1 is postponed till Saturday the first day of
1 January A.D. 1859 then to take place at
1 the same time and place
1 Nov 27. 1858 "E & White Mortgage

" The sale of the above property is postponed
" to Tuesday the first day of February 1859
" then to take place above named, if not
" adjourned " C. H. White
" Jan 1st 1859 " Montague

Exhib "13"

" Refund to in the Examination of
" Charles H Macomber, as follows

"Thomas & Mapps } "Warrant dated Oct 13. 1856
"To Robert H Mapps } "Rec'd Saw date in Book 46 P 279
"Covering 20 @ West End $8\frac{1}{2}$ & $8\frac{1}{4}$
"See No 4. P 34 R 10 Except the timber off
"2 acs sold to Spaulding
"Cow of 600,

"Robert H Mapps } "Warrant dated April 1. 1857
"To Thomas H Mapps } "Rec'd Saw date Book 48 P 159
"Covering 20 acs above except 5 a
"in N W corner "Cow duration of 450,

"Thomas H Mapps } "Saw mortgage dated June 10
"To Benjamin W Sharp } "1857 Recorded Saw date Book
"50. P 103
"Covering 20 @ $8\frac{1}{2}$ & $8\frac{1}{4}$ & $8\frac{1}{4}$ Sec 6. 34. 101
"and other lands to secure the pay of \$824
"in 30 days

"The foregoing is the Exhibit marked
"B" referred to in the deposition of
"Chas H Macomber
"Wm Turner
"Comr

And on the back of the same appears the following indammur & vic

" No 1433
" Brill County Court
" In Chancery

" Thomas A Mapps
" ^{ms}
" Beruhaut W Shapo
" and George A Shapo

" Deposition of Est White
" H W Stoddard, David
" Nichols, F Broadus
" Est Macomber and
" Rufus B Allen

" Filed Dec 7, 1859
" A McIntosh Clerk

" Court Fees
" Patrick Dep - 15.00
" Sew Britains 65
" Court sub 35
" \$16.00

And afterwards to wit; on the Twenty
fourth day of May in the Year of our
Lord One thousand eight Hundred and
Sixty it being one of the regular days of
the May Term of said Court for said
Year. And the Court being then judicially
sitting for the adjudication of business
the following among other proceedings
were had and entered of Record by said
Court in words and figures following
To wit;

" 1863 " Thomas A Mapps }
" " " " } Bill
" " " " }
" " " " }
" " " " }
" " " " }

And now at this
" day comes said Complainant by m^e
" Roberts & Goodspeed their Solicitors and
" said defendants also come by Parkes &
" Elwood their Solicitors and by the
" agreement of the parties herein and on
" their motion, it is ordered by the Court
" that this case be and is hereby set for
" hearing on the pleadings and proofs
" cited herein on the first Monday of
" July next

And afterwards ~~to~~ ^{to} wit: on the Twenty
first day of March the Year of Our
Lord Our thousand Eight Hundred and
Sixty one in being one of the regular days
of the March term of said Court for said
Year: and the Court being then judicially
sitting for the adjudication of business
the following among other proceedings were
had and entered of Record by said
Court in words and Figures following
To wit:

" Thomas A Mapps }
" 11/33 } Bill
" } vs
" } Richard W Sharpe
" } and George A Sharpe

" } and now at this day
" comes said defendants by G D A Parks
" their Solicitor and enter their motion
" herein that this cause be set for hearing
" on next Monday morning, Whereupon
" comes said complainant and by the agreement
" of the parties and on their motion it is
" ordered by the Court that this cause be
" set for hearing on Monday morning
" next

And afterwards To wit; On the Twenty
Eighth day of March in the year of our Lord
One thousand Eight Hundred and Sixty one
it being one of the regular days of the
March Term of said Court for said Year
and the Court being then judicially sitting
for the adjudication of business the following
among other proceedings were had and
returned of Record by said Court in words
and figures following To wit;

" Thomas A Mapps)
" 1861)
" no)

" Beruband W Sharpe)
" and George A Sharpe)

And now at this

" day comes said Complainant by Mr Roberts
" & Goodspeed his Solicitor and said Defendants
" also come by G D A Park their Solicitor and
" by the agreement of the parties and on their
" motion it is ordered by the Court that the
" cause be and it hereby is set for hearing
" on Saturday morning next

And afterwards To wit; on the Seventy ^{our thirteenth} ninth
day of March in the year of our Lord eight
Hundred and Sixty one it being one of the
regular days of the March Term of said

Court for said year, and the Court being
then judicially sitting for the adjudication
of business, the following among other
proceedings were had and entered of Record
by said Court in words and figures fol-
-lowing, To wit;

" Thomas A Mapps

" 1933 " as
" Beruband W Sharpe

" and George A Sharpe

} Bill.

" And now at this day
" comes said Complainant by Mr Roberts &
" Goodspeed his Solicitors and said Defendants
" also come by G A Parks their Solicitor
" and on motion of the parties and by their
" agreement, it is ordered by the Court, that
" the intervention of a Jury herein be and
" it hereby is waived and that the issues
" in this case be heard and tried by the
" Court. And it is also on motion of the
" parties ordered by the Court that this
" cause be now taken up for hearing on
" the Bill and answer thereto, and the
" proofs and papers filed herein. And
" after hearing the proofs and arguments
" of counsel and the matter and things
" contained herein being submitted to

7
" defendant was held under advisement
" by the Court. The Court being now fully
" advised in the premises it is ordered ad-
" -judged and decreed that the Bill of
" the Complainant be and the same is
" hereby dismissed at the costs of the
" said Complainant and that the said
" defendants have execution for their
" costs and charges in this behalf,
" and in conformity with the agreement
" of the parties it is ordered that this
" decree be and the same is entered of
" Record as of March Term A.D. 1861

State of Missouri

Wright County

I Bay^r P Russell
Clerk of the Circuit Court
in and for said County of Wright and State
aforesaid. do hereby certify that the above
and foregoing is a full true and perfect
copy of the Record of the proceedings had in
the Wright County Circuit Court in the cause
therein entitled. And I do further certify
that the foregoing are full and perfect copies
of the "Pleadings" "Affidavits" "Summons" "Answers"
"Replication" "Depositions" filed in this cause
and remaining in my ^{said} Office



Wright Bay^r P Russell Clerk
of said Court and the seal hereof
hereto affixed. At my Office in
the City of Joliet in said Wright
County this 1st day of March
A.D. 1862

P P Russell Clerk

Joliet March 12 1862 Rec of the Comptroller
Solicitor Twenty five dollars fees in for
the above Transcript

P P Russell
Clerk

The following are the errors assigned by Thomas A. Mapps :

1st. The Court erred in dismissing the bill of complaint.

2nd. In not ordering an account to be taken between the parties; and after deducting all payments made, and the usury paid by plaintiff in error, to defendants in error. In not ordering that the plaintiff in error be permitted to redeem the premises sold, by paying defendants in error the balance found to be due.

3d. In not ordering defendants in error, upon payment, or tender of such balance, to recover the said premises to plaintiff in error.

McROBERTS & GOODSPEED,
Attorneys for Pl'ff in Error.

1933 105

Thomas A. Mays

¹⁴
Shupe & Company

Beautiful copy of
Records

Will County Circuit
Court

Filed March 7. 1863
L. Ireland
Clerk.