

12742

No. _____

Supreme Court of Illinois

Cochran

VS.

Barrow

THIS  I

195 m

Jeanes W. Cochran

or

Thos. A. Hanson

12742

1859

+

State of Missouri
County of Cook

Placed before the Honorable John M. Wilson Judge
Judge of the Cook County Court of Common
Place within and for the County and State
aforesaid, at a regular trial term of said Cook
County Court of Common Place begun and
holden at the Court House in the City of
Chicago on the first Monday being the second
day of January in the year of our Lord one
thousand eight hundred and fifty seven and
of the Independence of the United States of
America the eighth second.

Present The Honorable John M. Wilson Judge
Charles Haran Prosecuting Attorney
John Gray Sheriff of Cook County
Alfred Walter Kinkead, Clerk

Do it remember that heretofore to wit on the County
first day of August A. D. eighteen hundred and fifty
six came Thomas A. Harrow by Sidney Mather & Jaffe
his Solicitors and filed in the Office of the Clerk of the
said Cook County Court of Common Place his certain Petition

in Chancery, together with process for Summons & Deposition
Which said Bill, ^{Process for} Summons and Deposition, and also
process, for each is in the words and figures following to wit

The Cook County Court of Common Pleas
In Chancery.

To the Honorable John M. Wilson Judge of the
Cook County Court of Common Pleas. In Chancery
Humbly Complaining sheweth unto your Honor
your Orator Thomas A. Harris, that on or about the twenty
third day of February in the year 1864 your Orator purchased
from Samuel A. Hart Acquire of the City of Cincinnati in
the State of Ohio certain premises & tract of land in the County
of Cook in the State of Illinois known and described as
out lot or Block Number Thirteen (13) in the Second Street
division of Section seven (7) in Township Thirty, north
(39) North of range fourteen (14) East of the third or
principal Meridian containing Ten acres of land more or
less for the sum of Twelve thousand dollars which sum
was paid therefor by your Orator on said purchase
one fourth in Cash and the balance by your Orator three
several promissory negotiable notes of three thousand dollars
each bearing interest at six per cent per annum and
payable in one, two and three years respectively and given
in the premises aforesaid by a Mortgage executed by your
Orator of bear date with the purchase aforesaid.

And your Orator further states to your honor
that prior to said purchase said Samuel M. Hart had

employed Messrs Solomon S. Sharp and C. Remondph Smith
of the City of Chicago land agents & brokers who kept an office
in the City of Chicago aforesaid doing and transacting the
business aforesaid under the firm of Sharp & Smith to make
sale of said premises as his Agents and Brokers for that
purpose employed and retained and the first proposition on
that behalf to your Orator was made to him by said Hart
through said Sharp & Smith as his Agents for that purpose.

And your Orator further shews unto your Honor that
during the progress of the negotiation which resulted in
said purchase several interviews took place between your
Orator and said Sharp & Smith and one or more between
your Orator and said Samuel M. Hart and inasmuch
as your Orator was unacquainted with title to lands in
Chicago he reposed confidence in said Samuel M. Hart
and also in said Sharp & Smith and gave them direction,
on his part to look carefully into the matter & not to suffer
him to be defrauded or get a bad title, all of which the
said Sharp & Smith being old acquaintances & friends of
your Orator agreed for him to do and your Orator
personally and through said Sharp & Smith inquired
particularly of said Hart before consummating the said
purchase to know and be informed if his title was clear and
unincumbered to said premises and ^{that} your Orator personally
and said Sharp & Smith on inquiries made by them on
request of your Orator as aforesaid received in answer from
said Hart his affirmation and assurance that his title to the
premises was entirely clear & unincumbered.

And your Orator further shews unto your Honor
that it appeared of record at the time of this treaty for said
purchase, that said Hart had devised his title to the premises
from James H. Cochran of the City of Chicago a person
largely interested in and dealing in real estate in said
City of Chicago and inasmuch as your Orator had not
time to get a full and regular Abstract of title to said
Land, Tract or Block made before said purchase by
Commencement & Abstract made in said City he caused an
examination of the records in the Records Office of the
County of Cook to be personally made by said Sharp &
Smith on the occasion of said purchase & prior immediately
thereto who on examining found the Deed of said James
H. Cochran to said Hart bearing date the 21st day of
February A.D. 1854 acknowledged on the same day and
filed for record in said Records Office on the 22nd day
of February A.D. 1854 conveying to said Hart the premises
premises in consideration of Nine thousand dollars acknowledged
to be paid and the receipt thereof further acknowledged by
the grantor with the usual full covenants of title and
that the premises were clear and unincumbered (to
wits Deed in possession of said Hart or the record
thereof your Orator may have to refer) But they found
no Mortgage, trust deed or other incumbrance of any
description filed or recorded from said Hart to said Cochran
in said Records Office all of which was duly reported by
them to your Orator, and for further precaution your
Orator prior to said purchase by him from said Hart

cause said application to be made by said Sharp and Smith to the said Cochran in person and your Orator states and charges that said Cochran was informed by said Sharp and Smith or one of them respectively that your Orator was in treaty with said Hart for the purchase of said premises and that they were the same identical premises which were then recently before sold by said Cochran to said Hart & that said Hart had represented that his title to the premises were clear and unimpaired and for the safety of the purchaser the said Sharp & Smith wished for information in behalf of your Orator from said Cochran whether in fact said Hart was a reliable person whose word and information might safely be taken in the premises and relied upon in making the purchase aforesaid And thereupon in answer to said inquiry made on your Orator's behalf by his procurement the said James H. Cochran answered and stated to said Sharp & Smith as your Orator is informed and believes, that said Hart was a reliable person whose information in the premises could be fully & safely taken & relied upon in buying and purchasing said lands and premises from him as aforesaid.

And your Orator further states and charges that said James H. Cochran was also personally present when your Orator through Sharp and Smith was transacting doing business in regard to such purchase on or about the day of date and location of said Hart aforesaid due to your Orator and knew of said said purchase and sale

and was bound in good faith if he had an insurance
Trust Deed Mortgage or other claim or lien on said
premises & against said Hart for the purchase money or
any part thereof or any other debt or claim whatever that
he made known and declare the same or former after
to be estopped from setting up the same against your
Grator said title thus acquired from said Hart or against
any person claiming under your Grator Nevertheless your
Grator states and charges that said James H. Cochran late
on the occasion last specified and also when therunto
particularly interrogated by Sharp Smith on behalf of
Complainant shrewdly and designedly kept out of view
concealed and failed & neglected to make known the existence
of any lien or encumbrance here or later say him against
said Hart & upon said premises)

And your Grator further states and shows to your
honor that at the time of his purchase aforesaid from said
Hart and at the time and occasion last above specified
said James H. Cochran had and later in encumbrance
Mortgage Trust Deed or other lien against said Hartson
said premises which ought to be discovered on the records of
Cook County Records Office or from the said Cochran
personally by any effort which it was in the power of
your Grator to make or to cause to be made.

And your Grator further shows to your honor
that his Deed from said Hart & wife for said premises
bears date the 23rd day of February A. D. 1881 which as
your Grator is advised and believes is the true day and

date of the purchase aforesaid and of which said Cochran
on that day had knowledge and information as above
stated and the note and Mortgage of your Orator for
Nine thousand dollars and interest for balance of purchase
money bear the same date and draw interest from the
same time.

And your Orator further states to your honor
that on said Twenty third day of February A.D. 1863
being then in Chicago on a journey passing through the
place aforesaid making said purchase he paid to said
Hart the sum of Fifteen hundred dollars of the purchase
money and left by agreement his three Notes and Mortgage
aforesaid for Nine thousand dollars balance unpaid of
purchase money with Messrs Sharp & Smith as the
mutual Agent of both parties, the Fifteen hundred dollar
balance of the down payment or cash to be permitted
on your Orator's return to Kentucky (as was actually
done immediately after) by a purchase of the amount
from Kentucky on your Orator's return thence and the
three Notes and Mortgage for Nine thousand dollars and
Cash Fifteen hundred to be advanced to said Hart by
said Sharp and Smith on return of said Hart from
Cincinnati aforesaid whether it was necessary for him to
take the said aforesaid to your Orator which had been
prepared and executed by said Hart in Chicago aforesaid
to be executed and acknowledged by the wife of said Hart.

And your Orator further states to your honor that
immediately thereafter he left Chicago to return to Kentucky

by way of Springfield in this State where he has been
and on his return to Kentucky soon after forwarded the
paid sum of Fifteen hundred dollars to said Sharp and
Smith who paid over the same to said Hart and also
as the same were delivered to him your Orator Notes &
Mortgage aforesaid for Nine thousand dollars & interest
and thus the paid Sharp & Smith at the same time
received from said Hart your Orator Debt aforesaid,
which in the meantime had been duly acknowledged by
said Hart & wife in Cincinnati, which Deed was filed
for Record in the Recorder Office of Cook County on that
third day of March 1851 and is recorded in Book No
64 of Deeds page 378 &c to which now in the possession
of your Orator, or the record thereof your Orator feels
free to refer.

But now so it is may it please your honor that
the said James M. Graham combining & confederating with
the said Samuel M. Hart and one J. Mason Parker and
with other persons as yet to your Orator unknown, but
whose names when discovered he prays may be made
known as Defendants and they made parties hereto with
false and apt words to charge them here to injure and
sland your Orator, the said James M. Graham on the
twenty fourth day of February in the year 1851 and
immediately after your Orator had completed his aforesaid
purchase and left Chicago for Kentucky by way of
Springfield as aforesaid, for the first brought out to
light unknown to your Orator & the paid Sharp & Smith

his Agents & filed for record in the Records Office of Cook
County in favor of your Orators rights in the premises as
certain trust Debt secured to him by said Hart bearing
date February the 21st in the year 1834 & acknowledged
on the same day of date numbering and charging the
same premises debts by said Hart to your Orator and
undertaking to secure a debt due to said Crookman by said
Hart to the amount of Five thousand & thirty nine dollars
due in three several Notes of said Hart in one, two and
three years respectively after the date thereof and each note
of date May 7th 1834 for the respective sums of five hundred
hundred thirty dollars one year from date, fifteen hundred
thirty dollars two years from date and fifteen hundred
and thirty dollars in three years from date, in which said
Trust Debt the premises aforesaid are granted to said
J. Mason Parker as a Trustee for said James H. Crookman
to secure said Notes with full power and authority from
said Hart to sell said premises in case default should
be made in the payment of said Notes or any part thereof
according to the tenor and effect thereof on application of
said Crookman or of the legal holder of said Notes after
publishing a Notice of sale in a Newspaper printed in this
city of Chicago yearly days before the day of sale together
with all rights and Equity of redemption of said Hart and
in said sale to receive and deliver a deed & deed to the
purchaser or purchasers and out of proceeds of sale to keep
and receive the said Debt and interest with costs & charges
of sale & advertising same: Which said Trust Debt was

recorded in the Recorder's Office of North County in Book 7th
of records page 338, a copy whereof Certified by the Clerk
and recorder of said County under the great Seal of Office in
Book of North County, said Court is here annexed

And your Orator further states and shows that
until the discovery of the Trust Deed aforesaid at a
late day as hereinafter mentioned he was at all times
knowing and intending to be in readiness for and to meet
his three several Notes payable by Mortgage to said
Samuel M. Hart, as they should from time to time fall
due; that before the discovery of said Trust Deed he
had actually advanced to said Hart when he was in
business, and for said Hart's convenience & at his
request, having at that time perfect confidence in said
Hart, gave to said Hart his three several acceptances to
the amount in the aggregate of about three thousand dollars,
thence to anticipate and provide for the first due of said
three several Notes, which he did not take up but
continued to leave with said Hart, after this arrangement
your Orator occasionally met said Hart again on the case
in the State of Indiana when said Hart informed your
Orator that he had made such other arrangements in his
business that it would be unnecessary for your Orator to pay
and requesting him not to pay the first due of said
acceptances above specified and in consequence thereof your
Orator did not pay the same And with regard to the
residue of said acceptances before maturing of same your
Orator discovered the fraud that had been practiced upon

him in relation to the trust And aforesaid & for that reason
requested to pay the same until your Orator rights & Equities
in the premises should be adjudicated & declared by competent
authority, so as to protect your Orator & enable him to pay
promptly without loss or damage: Otherwise and in all re-
spects as it has now become necessary for your Orator
that his rights and Equities should be adjudicated and
declared in this Honorable Court he is yet ready and will
hold himself at all times ready and willing promptly and
effectually to meet and cancel his Notes and Mortgage after
paid to paid that as the payments may fall due

And your Orator further pleads unto your Honor
that he has been informed and believes that his aforesaid
Notes given to paid that to the amount of Nine thousand
dollars balance of purchase money for paid Premises have
been negotiated by paid that and passed out of his
hands and are all in circulation and held by other persons
than paid that even that paid acceptance of your Orator
given to paid that have also been negotiated and put
in circulation in like manner by him.

And your Orator further pleads unto your Honor
that at the time of making his aforesaid purchase from paid
that he had no knowledge information or belief whatever
that any law or unimpeached statute against the Premises
for any price due or owing from paid that to paid
Cashier or to any other person nor that he any knowledge
information or belief whatever at paid time that paid has
sent anything on his purchase money of the premises or

and as your Orator is informed and believes both said Sharp
and Smith were on the occasion of said sale equally ignorant
and uninformed as to any incumbrance on the premises or
the knowledge and information of the incumbrance to said
Cochran by the Trust Deed above mentioned since which
your Orator could be discovered the advertisement of the
premises for sale in the Public Newspaper, on the Trust deed
and as your Orator is informed that said Sharp & Smith
had no knowledge of said Cochran incumbrance till long
after the consummation of your Orators purchase of the
premises - and your Orator states and shows that the discovery
of said Trust deed both by said Sharp & Smith & by your
Orator was not until after the negotiation and sale of your
Orators said Note to said Hart -

And your Orator further shows unto your Honor
that said J. Mason Parker has recently caused said
premises to be advertised on said Trust Deed for sale on
default of payment of the first of said Three Notes of said
Hart to said Cochran, and as advertised said Sale is to take
place on Tuesday the Twenty first day of August A.D.
1863 at Ten o'clock in the forenoon of that day

All which aforesaid things and pretenses of said
Samuel M. Hart James M. Cochran & J. Mason Parker
and their confederates are contrary to equity and good conscience
and tend to the manifest wrong injury and oppression of
your Orator.

On further consideration whereof and forasmuch
as your Orator is persuaded in the premises at and by

the strict rules of the Common Law and is only relievable
in a Court of Equity where matters of this sort are properly
cognizable and relievable.

To the ~~fact~~ therefore that the said Samuel M.
Hart, James M. Cochran and J. Mason Parker and their
Confederates when discovered were full free direct and perfect
adversus mundi, but without this or either of their corporal
Oaths (and the answer of the said defendants or either of
them on their Oath aforesaid is hereby expressly waived
according to the provisions of the Statute in such case made
and provided according to the best of their profession knowledge
information and belief to wit and peculiar the matters and
charges aforesaid & that as fully & effectually in every respect
as if the same were here again repeated and thus the same
particularly interrogated.

And that your Honor may allow and grant to
be seen and proved upon the said James M. Cochran &
upon the said J. Mason Parker due process of Injunction
under the great of this Honorable Court thereby strictly
restraining, restraining and commanding the said James M.
Cochran or his Trustee and said J. Mason Parker their
and each of their servants, Attorneys, Commissioners & Agents
under an adequate penalty that they utterly and wholly cease
and refrain from selling or attempting or offering to sell the
premises above mentioned on the Trust deed be as aforesaid
executed by said Samuel M. Hart and purporting to be
date on the 20th day of February A. D. 1861 or under
any pretence whatever as advantage as aforesaid or otherwise

until this Honorable Court in Chancery sitting shall
affirmed Order or allow: And that on the hearing of this
Cause this Honorable Court may by its order and decree
adjudge and declare the aforesaid Trust Deed of said
Samuel M. Effort to said James M. Cochran and his heirs
the said J. Mason Parker to be utterly and to all intents
Void fraudulent and of no Effect as against your Orator
and all persons claiming or to claim by through or under
him the premises aforesaid or any part thereof. Also that
they the said James M. Cochran & the said J. Mason Parker
be perpetually and forever enjoined from asserting interfering
or getting up the same as any valid lien incumbrance or
charge to the prejudice of your Orator aforesaid till he
said Summons & every part & parcel thereof either as against
your Orator or any person or persons holding or claiming
the same or any part thereof under by or through your
Orator: And that your Orator may have such other relief
or such further relief in the premises as to your honor may
seem to be most & agreeable to Equity.

May it please your honor the premises Cause
to stand unto your Orator the Petitioner Next of Injunction
aforesaid to be issued under a certain penalty therein
expressed and under the Seal of this Honorable Court sitting
injoining commanding Restraining the said Defendants
or aforesaid no abuse for ever.

And may it please your honor to grant on the
same equitable consideration to your Orator the Petitioner
Next of Summons claiming out and under the Seal of the

Honorable Court directed to the said Samuel M. May, James
W. Croham and A. Mason Barker commanding them under a
Circuit writs thereto to be named to be and appear before
your honor in the Cook County Court of Common Pleas in
Chancery sitting on a certain day therein to be named then
and there to answer the Petition and further to stand to
plead, say and perform such Oath and duty in the premises
as shall be agreeable to Equity and good Conscience.

And your Order please early pay to.
Sister Mather & Jaff F. A. Monroe."

Drifting Markers & Jetties

De Matur.

Date: _____

State of Illinois
Cook County ss. }
I, _____ }
Notary Public }
do hereby certify }
that _____ }
has been duly elected }
to the office of }
_____ }
for the term of }
years commencing }
on the _____ day }
of _____ A.D. 19____ }
and terminating }
on the _____ day }
of _____ A.D. 19____ }
In testimony whereof }
I have hereunto set }
my hand and seal }
this _____ day }
of _____ A.D. 19____ }
at _____ }
in Cook County, Illinois.

Book Twenty - 18

On this 31st day of August A. D. 1835
before me the undersigned personally appeared the aforesaid
Thomas A. Harrow complainant in the foregoing Bill & being
by me duly sworn made oath that he has heard the above
Bill passed by him past and that he knows the contents
thereof and that the same are true of his own knowledge
except as to the matters which are therein stated to be on
his information and belief and as to those matters he believes
it to be true.

Dear Mr. Vanhook, I hope
you this Day say August
A. D. 1855

D. M. Henderson

L. E. Davis, Jr.

3. *Myiarchus cinerascens*, *Cont. Co. Ill.*



One which said Bill is taxed the following
" Book Equity Court of Conn: Has
Office of Master in Chancery.

August 31st 1865.

Let the Writ of Injunction issue in conformity with
the purport of the foregoing Bill of Complaint. The Complaint
will stand on file with sufficient justice in the sum
sum of Three thousand dollars.

L. C. Paine Clerk

To the Clerk of the Court
of the Court of Common Pleas

Master in Chancery
Court Co. Hs

Copy Deed of Trust above referred to

Sammuel M. Hart to J. Mason Parker, Trust Deed.
Whereas Sammel M. Hart party of the first part of a
"Instrument" in the County of Hamilton in the State of Ohio
has executed three certain Promissory Note of some date
herewith payable to J. M. Cochran or assigns at each Note
respectively at over two and three years after the date thereof
and each Note of date May 7th 1863 for the respective
sums of Five hundred and twenty dollars, dollars one
year from the date thereof, one hundred and eighty
dollars two years from the date thereof and Fifty hundred
and twenty, dollars, three years from the date thereof making
in all the full sum of Five thousand and forty dollars
Now therefore the said Sammel M. Hart party of the first
part to power the purport of said Note, according to the

law and Effect in consideration of One dollar and the
further sum of Five thousand and thirty nine dollars the
receipt whereof is confessed with great larceny and felon-
try by S. Mason Barker of the County of Cook in the State
of Illinois his heirs and assigns forever the premises charge
as follows, to wit:

To Cashier or Block (13) Market in Canal
Trustee subdivision of section seven (7) Township (39)
North nine range (14) Section East containing 16 acres or
less more or less, and being the same premises known
to said tract by S. H. Cochran by Harriet Dred Hunt,
first day of February 1868 as two parcels situated in the
City of Chicago, County of Cook, State of Illinois, together
with all and singular the privileges and appurtenances
thereto belonging. In trust nevertheless that in case of non-
payment in the payment of said Notes of five hundred
and seventy dollars, \$1150⁰⁰ & \$1690 or any part thereof
according to the law and Effect of said Notes of \$1770⁰⁰-
\$1680⁰⁰ and \$1690⁰⁰ then on the application of the legal
holder of the said Notes the said S. Mason Barker after
publishing a Notice in a Newspaper printed in the City of
Chicago thirty days before the day of said sale to sell the
said premises and all right and equity of redemption of the
said Samuel M. Hunt the party of the first part his heirs
and assigns herein at public auction at the Court house then
in said City Chicago to the highest bidder for Cash at the
time mentioned in said Notice even to make private and
deliver to the purchaser or purchasers thereof a deed or deeds

for the purchase or sale and out of the proceeds of such sale to pay all costs and expenses incurred in advertising in selling said premises Also the principal and interest due on said Note And the said Samuel M. Hart the party of the first part for himself his heirs executors and administrators covenants with the said J. Warren Parker and any one else interested that he was well aware of said premises in the receipt and that he has good right and full power to grant bargain sell and sole the same in form aforesaid Also that the same are free from all encumbrances and that he will and his heirs executors and administrators shall forever warrant and defend the same against the lawful claims of all persons.

Signed at this 24th Twenty first day of February A. D. 1854.

Witness, ratification of
"and each Note of date of
May fourth 1854" made
before signing".

"Sam. M. Hart" (Sd.)

"State of Missouri
Rock County . . .

J. John B. K. Russell, Notary Public in and for said County in the State aforesaid Do hereby Certify That Samuel M. Hart, who is personally known to me as the same person whose name is subscribed to the within last deed as having executed the same appeared before me this day in person and acknowledged that he

signed, sealed and delivered the said instrument of writing
as his free and voluntary act for the uses and purposes therein
set forth. Given under my hand and Notarial Seal this twenty
first (21) day of February in the year of our Lord one thousand
eight hundred and fifty four.

Seal

J. B. A. Russell

Notary Public

"No 48222. Filed for Record Feb 24. 1854

Recorded in Book 73 page 388."

State of Illinois

Cook County ...

I Lewis P. Heard Clerk of the Circuit
Court and Ex Officio Recorder in and for said County in
the State aforesaid Do hereby certify that the annexed
 foregoing is a true and correct copy of a First Due plan
for Record February 24th 1854 Numbered 48222 and
recorded in Book 73 of Deeds page 388."

In witness whereof I have hereunto
set my hand and affixed the seal of
said Court this 28th of August
A. D. 1855.

Seal.

L. P. Heard

Clerk Circuit Court."

Thomas Ashmun

Complainant

vs

Samuel M. Hart, James
W. Cochran and J. Mason
Parker . . . Defendants

The Creek County Court of
Common Pleas.

In Chancery.

The Clerk, in filing the Bill
in the above cause, is requested to issue a Writ of
Injunction to 'doce' cause directed to the Defendants above
named enjoining restraining and commanding them as in
the Bill is prayed.

Also a summons against the same
returnable at the next term of this Court.

Dated August 21st 1866.

William Mather & Telf

J. Walter Kimball Esq. Solicitors for Complainant.
Clerk of the Creek County
Court of Common Pleas.

Thomas Ashmun

Complainant

vs

Samuel M. Hart, James W.
Cochran & J. Mason Parker
Defendants . .

Creek County Court of
Common Pleas

In Chancery.

I do hereby certify myself plaintiff
for costs in this cause and acknowledge myself bound
to pay, or cause to be paid all costs, which may accrue

in this action, either to the opposite party or to any of
the Officers of this Court, in pursuance of the laws of
this State.

Dated this 21st day of August A. D. 1866.

Heroin R. Mathew.

And thereupon accordingly, on the said twenty first day
of August A. D. eighteen hundred and sixty six there
was issued out of and under the seal of said Court
Certain Writ of Summons together with Writ of Captation &
Return Thereon; Which said Summons, Information and Return
is in the words and figures following to wit

State of Illinois;
County of Cook;

The People of the State of Illinois To the
Shaiff of said County, greeting

We command you that you summon James M. Hart
James H. Cochran and J. Mason Parks if they shall be
found in your County personally, to be and appear before
the Court County Court of Common Pleas for the County of
Cook on the first day of the next Term to be holden at the
Court House in the City of Chicago in said County, on the
3rd Monday of September next to answer unto James H.
Harrow in his certain Bill of Complaint against them
filed in the said Court on the Chancery side thereof.

And have you then and there this Writ with an
Endorsement thereon in what manner you shall have

intended the same.

Sub

Witness Walter Kimball, Clerk of our said Court
cause the said record at the City of Chicago
aforesaid this 31st day of August A.D. 1865.

Walter Kimball, Clerk.

(Enclosed) * Given this 1st of the within named J.
Mason Parker for delivering a Copy hereof to him the
1st day of August 1865.

James Andrew, Sheriff

By J. M. Bradley, Deputy.

* Given by delivering a Copy hereof to James M. Cochran
August 28th 1865. Samuel M. Hart not found in my
County Sept 10th 1865.

James Andrew Sheriff *

'State of Illinois
Cook County .. } *for*

The People of the State of Illinois

To Samuel M. Hart, James M. Cochran and Mason
Parker their agents Counselors and Attorneys. Speaking

Whereas Thomas A. Harlow Complainant has filed
his Bill of Complaint against you the said Samuel M. Hart
James M. Cochran & J. Mason Parker, in the Cook County
Court of Common Pleas within and for the County & State
aforesaid praying among other things in said Bill of Complaint
set forth that a Writ of Injunction issue restraining and
preventing you as hereinafter set forth.

And whereas said Bill of Complaint has been

testified to L. Q. P. Green Esq. Master in Chancery of said County and he having made an Oath thereon that a writ of Supersedeas issue as prayed for in said bill.

We do therefore command you the said James M. Hays, James M. Graham and J. Mason Parker, you and each of you against Counselors and Attorneys, that you and each of you do wholly and wholly abstain and refrain from selling or attempting or offering to sell Out lot or Block No. Thirteen (13) in the Canal Eastern subdivision of Section Seven (7) Town Thirty nine (39) North of range London (10) East, containing ten acres, or any part thereof on a Trust Deed purporting to be executed by James M. Hays to Charles M. Graham or to J. Mason Parker as his trustee bearing date the 21st day of February A. D. 1861 for the payment of the debt thereby purporting to be secured or any part thereof; or as witnesses for sale to take place on the 21st day of August A. D. 1865 at ten o'clock A. M. or on any future day, or for any cause whatever, until the further order of our said Court County Court of Common Pleas in the premises.

And fail not under penalty of what the law directs.

Witness Walter Hinckley, Clerk of our said Court and the great Seal of the City of Chicago in said County this 21st day of August A. D. 1865.

Walter Hinckley
Clerk

Enclosed,

" Given by reading and delivering a Copy hereof to
D. Mason Parker the 21. day of Aug 1855.

James Andrew Sheriff

By J. M. Bradley, Deputy "

" Given by reading and delivering a Copy hereof to
James W. Cochran the Aug. 28th 1855. Samuel M. Hart
not found in my County. Sept 10. 1855.

James Andrew, Sheriff.

" Know all Men by these Presents that we Thomas G.
Harrow as principal and Benjamin B. Bradley & Ezra L.
Shuman as securities are fully bound unto
Samuel M. Hart, James W. Cochran and D. Mason Parker
in the sum of Three Hundred dollars for the payment
of which said sum and duty to be made we bind ourselves
our heirs executors and administrators - hereby witness our
Seals and signatures this 21st day of August 1855.

The Condition of this Bond is such that said
Harrow is about to sue out of the Court County Court
of Common Pleas of Cook County a Writ of Injunction
in a certain suit against said Obligees, Now if he shall
procure said writ with effect and in case of a dissolution
of said Injunction shall pay to each of said obliges
whatsoever damages they may respectively have suffered by
reason of the wrongfulness going out of said injunction -
then this obligation to be void. otherwise of force.

(Signed) T. G. Harrow (21)

B. B. Bradley (2)

(20) E. L. Shuman (2)

And thereafter to wit on the tenth day of September
A. D. Eighteen hundred and fifty five the said defendant
D. W. Cochrane filed in the Office of the Clerk of said Court
his Answer to said Bill of Complaints Which said
Answer is in the words and figures following, to wit.

North County } Cook County Court of Common
State of Illinois } Pleas. September Term 1855.

This respondent James W. Cochrane for
answer to the Bill filed against him and Samuel M.
Hart and S. Mason Parks by Thomas A. Harrow prising
for exceptions the many errors and inconsistencies of law &
fact therein contained respectfully says - That he admits the
date of the land mentioned in said bill by S. M. Hart
to Thomas A. Harrow on the 23rd day of February 1844,
that on said day it appeared of record that said Hart deeded
his title to the land from this respondent free and clear
bearing date and record as in said Bill set forth, and
that upon the said 23rd day of February the trust due of
said Hart to S. Mason Parks to receive the balance of
the purchase money due by said Hart upon said land
to this respondent, was not filed for record and that said
Trustee S. Mason Parks had advertised said land for
sale as in said bill set forth.

This respondent however knows nothing of the
employment by said Hart of Sharp & Smith to and him
in the selling of said land, but is aware that they acted
in the matter for some one of the parties, but does not

know of his own knowledge by whom they were represented.

This respondent denies nothing of any conversation between said Sharp and Smith or either of them and said Hart, either when this respondent was present or at any other time when said Hart represented to them or the said Harrow that his title to the land was clear and unincumbered, and denies that any such representation was ever made by said Hart to said Harrow or Sharp and Smith or either of them, either in the hearing of this Defendant, and if made at all this Defendant never heard it.

the latter

This Defendant denies that he knew in any manner of the representation of said Hart, if ever made, that said land was clear and unincumbered previous to or at the time of Sale & never heard it charged upon him until a short time before the filing of Complainant's Bill and then from said Smith.

This respondent also denies that said Sharp or Smith or Harrow ever called upon him in person and informed him that said Hart had represented to either of them "that his title to the premises was clear & unincumbered" & for the safety of the purchaser they wished for information in behalf of the Complainant "whether in fact said Hart was a reliable person whose word & information might safely be taken as the premises & relied upon in making the purchase," and that Harrow in answer to said inquiry made in behalf of said Complainant, this respondent "assured and stated to said Sharp & Smith that said Hart was a reliable person whose information in the premises could be fully and safely taken

and asked upon in taking and purchasing said lands, that
your respondent does not admit, but positively denies that any
such conversation ever took place between himself and said
Sharp Smith and further denies that said Sharp Smith ever
asked him any question in relation to the title of said land
whether there was any circumstance upon the property -

This respondent was not acquainted with either Sharp or
Smith until within a day or two previous to the purchase of
said land by Harrow from Hart. He remembers having
passed in the gentleman's parlor at the Tavern House one
afternoon after the conversation with Mr Harrow, when
Mr Smith entered the room and Mr Harrow introduced
your respondent to him. This was the day before the
purchase was closed between Harrow and Hart. Said
Smith asked this respondent in relation to his title to the land
whether it was good & some other general questions in relation
to it & your respondent told him of whom he purchased &
that he considered that he had received a good title to the
land, but said Smith never asked him a word in relation
to any circumstance or his title by this respondent upon said
land. The conversation did not last more than five minutes
when Mr Smith perceived himself paying he had an engage-
ment. This respondent paid nothing more of said Smith
until the evening afterwards, when he came into Hart's room,
where said Hart & this respondent were conversing -
said Smith came for the purpose of closing the sale and
said Hart & Smith settled the matter among themselves, and
this respondent did not think of mentioning to said Smith

there or before or at any time that he had a deed of Granton
and land, because he supposed that said Sharp & Smith and
Harrow knew of it, from the fact that the original contents of
agreement, between this respondent and the said Hart for
the purchase of this land was in record and he supposed
that the stipulations thereof were known to all parties, what
article of agreement will be found herewith as a part of
this answer, and also from the fact that said Smith later
withdrawing from the said Hart room after the closing
the trade with him remarked, that he hoped the said Hart
would take care of his payments to this respondent; and that
the said Harrow would take care of his to the said Hart
during this conversation between said Hart and Smith at
which your respondent was present not a word, that your
respondent heard, was said or any question asked by the
said Smith about the encumbrance upon said land or
about the title to the same in the said Hart being first
unembarrassed, and he also states that the deed of Granton to
this respondent was lying open on the table before the said
Smith, said Smith was in the room but for a short time
and retired. This defendant states as will be seen by reference
to the article of agreement aforesaid, that the said article was
inserted into between the said Hart & himself March 7th 1863 &
recorded May 10th 1863, that said Hart paid a part of the
purchase money down and the rest was to be paid by
installments in sum, but, three and four years from said month
of May, that about the time said Hart was going to pay to
the said Harrow, he the said Hart applied to this respondent

to make him a deed to said land and take a Deed of Trust
to secure the residue of the purchase money. This being a
very usual thing in the City of Chicago being the most
general mode in which land sales are made and a mode
with which almost every person who has any knowledge of
land sales in said City is acquainted your Order being in
obedience to it, consented to the proposition. He therefore made
a deed to the said Hart on the 3rd February 1864 & the said
Hart made him a Deed of Trust on the same day to secure
the part of the purchase money as specified in said article of
Agreement. Your respondent states that he did not record
said Deed of Trust immediately, not supposing there was
any pressing necessity for so doing, or that it was necessary
to record the same in order to give said Harrow & Sharp and
Smith notice of its existence as he supposed they knew all
about it - This respondent says that he is, as charged in
said Bill, largely engaged in the sale of lands and is in
the habit of receiving deeds and deeds of Trust and frequently
does not record them for several days after they are given
and sometimes waits until he has two or three before he
files them for record (not supposing there was any more
necessity for filing the Deed of Trust as above furnished,
than any of his other papers of the same kind, he did not
make it an exception but acted in its usual manner in all
regards). That this Defendant had any fraudulent intention
in keeping said Deed of Trust two or three days before he
filed it, or that he wished to conceal its existence from said
Harrow or Sharp or Smith, or that he wished to aid the said

Hart in concealing the same from them or aid him in any fraudulent intention, he utterly and unequivocally denies. That this Defendant further says if said Harmons or said Sharp or Smith did not know of the existence of said Debt of Trust they ought to have known it and has sufficient upon the records to put them on their guard and leave them to enquire if any such Debt of Trust existed for your response, states that the article of agreement aforesaid is recorded as after said in the Recorder's office of Cook County, Illinois, specifying that the payments of the balance of this purchase money or to be made in six, ten, three and four years from the date thereof, namely, 7th May 1853 the last of which payments does not fall due until May 7th 1857. The debt from this respondent to Hart bears date Feb. 21st 1851 more than three years before the last payment is due. This respondent states that it is the custom well known in this community whenever a transaction of this kind takes place a deed of indisputable fact is given in which the payment of the purchase money is acknowledged and a debt of trust is simultaneously made by the purchaser to secure the payment of the residue of the purchase money.

This respondent denies all knowledge of fraud on the part of said Hart and also denies that he in any action or at any time when therewith interrogated or under any other circumstances, fraudulently aided and abetted or kept out of view concealed or failed and neglected to make known the existence of his said circumstances to him against said Hart, upon said premises; and the

said Graham denies that he held no instrument upon the said land, at the date of the sale from Hart to him but expressly states and shows that he held the deed of Trust on said day and for two days previous thereto, the date of Trust bearing date the 21st February 1854, whilst the true date of the said deed is shown to have bearing date 23rd July 1854. Says that if said Sharrow or Sharp Smith had made the inquiry of him whether he held any deed of Trust or other instrument, they would have discovered the existence of said deed of Trust, if they were not aware of it before.

This respondent further denies all combination or confederation on his part with the said James M. Hart or J. Mason Parker or either of them, or with any other person or persons in said Bill and states that he had not either before or at the time of said sale to said Hart, or since any intention of any fraudulent intent or dishonest purpose entertained by the said Hart in the sale of said property to the said Sharrow and this respondent calls upon the complainant to prove his primary charges of fraud made by him in his Bill against your respondent.

This defendant admits more of the charges made against him in the said Bill, and denies everything else. In answer to this respondent that is not specially admitted in this answer he states that said Deed of Trust was made & procured by him for the honest purpose of securing the pay of the balance of the purchase money due him by the said Hart & for no other purpose, that there was no fraud or collusion

used in the making of the same and that if said debt of trust
be put aside he will have no security for the money due
him by said Hart & that the said debt ought to stand in
in law should not be set aside and closed to be made
void according to the prayer of the Bill in this case.

Having answered fully, according to the best of his
knowledge & belief this Defendant requests that the Bill in
this case be dismissed and that justice be done to the
plaintiff.

(Signed) James M. Cochran.

Walter V. Caulfield

Deft. Solic.

And thereafter to wit on the seventeenth day of
September A. D. Eighteen hundred and fifty five came
the said Defendant James M. Hart, and filed in the
Office of the Clerk of said Court his separate answer to
said Bill: Which said Bill is in the words and figures
following to wit:

Thomas A. Harrow
vs
James M. Hart & others

Bill in Chancery

The separate Answer of James
M. Hart.

This respondent having all benefit of Exception to
the many errors contained in said Bill, answers & says
that it is true as stated in said Bill that about the 20th

day of February, 1862 this respondent told to Complainant the sum was deposited in said title.

This respondent admits that he agreed to cash and pay Sharp & Smith \$100 for the sale of said summa, but from the manner of the negotiation and the apparent friendship & confidence subsisting between Complainant & Messrs Sharp & Smith this respondent throughout the transaction regarded Mr. S. & S. rather the Agents of Complainant than of this respondent.

This respondent at the time of the contract referred to received \$100 a portion of the Cash payment - the residue of which was to be paid and the papers exchanged at the expiration of ten days, or within that period, according to respondents present recollection.

This respondent denies having made the statement alleged in said title to either Complainant or to Sharp & Smith touching the title - Respondent may have said to the Complainant that the title was good, but of this respondent has no recollection. Respondent has at all times felt confident that the position of respondents title to said summa was at the time of the sale and prior well understood by Sharp & Smith, or at least if there was any doubt or short time prior to the filing of Complainants title respondents supposed Complainant himself was fully aware of it.

At the time of the sale, it was not the title of respondent which was discussed, but the form in which the papers as between the Complainant and this respondent were to assume. Respondent proposed and insisted upon giving an ordinary contract, pursuing ordinary rules

and a Mortgage. Complainant insisting through Sharp and Smith, that he would either execute a Deed of Trust over the same a Contract, but must receive a Deed directly from this Respondent, promising to him an Ordinary Mortgage securing his Complainant's Notes for the deferred payments. Respondent's recollection is that he pointed out the advantageous Complainant or to the parties trading, of the Contract form of Assurance, as in that case Complainant would at all times have it in his power to protect himself against the expense of payments becoming due to Cochran. The answer made was, that this Respondent would of course make his payments to Cochran, and Complainant would of course make his to this Respondent, ^{Finally this Respondent} then perceiving it a whim, & as yet having preference to the difficulty, of enforcing payment under an Ordinary Mortgage, but the Ordinary proceeds in Chancery in this State, rejected the point and the papers took their present shape. Respondent's impression is that it was, in reference to this point, that he requested Mr Cochran to bring his Deed of Trust to Respondent's room at an hour appointed, and that it was accordingly brought and displayed on the table of Respondent's room. From one of the parties representing Complainant being present.

This Respondent has no recollection of questions asked him by Respondent Cochran, by any of the parties touching the Deed, if any such were asked. Nor the reason of the delay in the recording the Trust Deed, but this Respondent is confident that so far as concerns this respect his Co-Respondent Cochran has no motive, to mislead

Complainant or any other person in respect to said debt or
debt. Respondent up to about the 21. February 1878 has
his title from Complainant by an agreement or record, which
recites the payment made in cash and the terms of
payment and price, of the above purchase money. This
respondent changed or had changed the form of his
agreement of title he does not now remember, but is confident
that it took place to accommodate the views of some person
or persons in treaty for the premises about the time the
transaction with Complainant took place.

This respondent at the time of the purchase did not
suppose that Complainant, or those acting for him would or
could rely upon verbal statements made by any person in
respect to the title to the premises, or this respondent's ability
to make good the title, but that as simple title for Elmore
and an examination of the title would transpire before an
exchange of the papers could take place, the records of the
county would be resorted to for satisfactory information.

At the time the purchase took place there was much
and frequent conversation, but this Respondent is not known
with a memory to detail with any accuracy the substance
of the many talks which were had. This respondent is not
in the habit of taking any notes, even in the conversation of
title. Nor does he ask or expect others to rely upon his word
in respect to the question whether or not a title he is about
to convey, be good or not, remembered or not, and for this
reason Respondent thinks that Complainant or his friends
Sharp & Smith put the questions and received the answers.

enclosing the title to this property, except in the Complainant's Note.

This Respondent states that at the time the purchase was consummated to wit, about the 3^d of March following he dismissed the subject from his mind and from thence & until sometime in the Month of February of the year following the Respondent scarcely thought of the transaction. Not during the last winter month, the last of said Complainant's Note to wit \$3000 was about maturing when Complainant called upon this Respondent at Cincinnati and requested him not to have his Note protested, but to have the same withdrawn from Bank, assigning as a reason his inability to pay. With this request this Respondent promptly, and with pleasure, complied, remarking to Complainant that he was relying upon this Note to meet payments in Chicago, which however, did not mature until April and May following, and that this Respondent hoped the Complainant would be prepared with the amount in time. This Respondent was then aware that during the Months of March and April following he would remit the amount without fail. With this promise Respondent was entirely satisfied, and felt confident of receiving the money, and felt relieved upon it with which to meet Respondent's payment to Mr Cochran, maturing about the first of May following. But so it is instead of meeting this promise, Complainant paid no attention to Respondent's just expectations in this regard, & apprehensive, that he might be unable to obtain the means of meeting his own obligations in Chicago, this Respondent put a friend to the residence

of said Complainant's promissory in April last, without success
in obtaining the whole or any part of the \$3000.

Respondent further states that a few days subsequent
to this the Complainant came to Cincinnati and in the
Office of N. & Mrs. Jean Esque this Respondent met the
Complainant and urged him to do something towards the
payment of his paper, as upon it this Respondent relied to
make the payments to Mr. Crookman then about maturing.
At the same time assuring Complainant that the urgency
arose from the fact that Respondent had on his hands a
large amount of paper, currency, for property sold by a
Respondent in Chicago, to parties who had neglected their
payments. This Respondent asked Complainant to give him
some paper, upon which he could pledge, and in response
Complainant suggested that the only thing he could do was
his blank acceptances. Three of which - one for some \$1500.
Three others for the sum of \$750 each, corresponding in
amount with the Complainant's Note of \$3000. which this
Respondent held and which was fast due some two months.
With these acceptances Respondent undertook to raise money,
and did negotiate the first of \$750, and offered the proceeds
for the like amount for discount, but it was returned to
Respondent with such information as satisfied him that none
of the acceptances would be paid. Respondent at once arranged
to substitute other paper with the person holding the first
of said acceptances, and did so arrange it, but as the person
referred to informed this Respondent that he had mislaid the
paper. Respondent did not then receive it. Rushing to at

promise that it should be returned through the Post Office
to Respondent's care. The remaining two acceptances on
the \$3000 Note thus respondent retained and about the time
this Respondent's payment became due to Cochran he placed
the Note and the acceptance of \$1570 in his Cochran's hands
taking his receipt therefor which with the other \$750
acceptance this respondent delivered to Complainant at
Vincennes. This Respondent requested Mr Cochran to apply
the whole sum of \$3000 if paid by Complainant to his
this Respondent's payments in account of the promissory, and in
the letter addressed to Complainant at Vincennes those facts
were stated and an assurance given to Complainant that as
Respondent refused to discriminate, the first of the three ac-
ceptances which had been violated should be likewise
returned. It was in reference to this acceptance that the
conversations at Lafayette in Indiana was had between
Complainant & Respondent referred to in said Note, and the
suggestion made by Respondent to Complainant, was in
consequence of the fact that this Respondent had not at that
time promised, though intended, to a return of the paper.

This respondent in further answering states that about
the time of the advertisement of the promissory under the
first Note, this respondent was spoken to by Mr Smith
and Mr Harris in the Office of Smith, Bradley & Co. and
subsequently by Complainant himself, but no purpose
was expressed in regard to the existence of said Trust deed
but this Respondent to enable the Complainant, to raise money
to meet his Note, was asked to either purchase the Trust deed

or deposit something which would be equal in value to \$3000, the amount which would remain to be paid in 1850 and was given to this Respondent's Vendor, Graham. This Respondent when thus applied to informed the parties that the papers had been thrown into their present form at their instance and that the trouble had arisen in compliance with a ruling filed to save his paper expenses. Nevertheless, this Respondent agreed to place with Messrs Smith the stock to the amount of \$25000 which passed at the time satisfactory, but which a few days after in the opinion of Complainant was not deemed sufficient. This Respondent then proposed, privately discussing Complainant with all, which might be necessary, to enable Complainant to raise the money to deposit a Mortgage Note of \$25000 due in three years from February 1851, which to Mr Smith appeared to be all that could be asked, and with it he expressed himself satisfied. The stock referred to, in amount, this Respondent had deposited at the Truven House, as a safe deposit, but the Note was at Complainant's, and could not be procured until this Respondent returned home. This Respondent states that he brought with him the Note upon as a Deposit, on his recent return to Chicago and both it and the stock were ready for delivery, but neglected some day to day for no other reason, than that this Respondent supposed that the parties had come to feel that it was a matter of any importance.

This Respondent in further answer states that when advised of the filing of this bill, he proposed to Mr Harrison & to Mr Smith that in the event that the Complainant would

pay his Note this Respondant would require the aid of Mr. Cochran and give testimony that the fact of the complaint refers to should be returned.

This respondent, is quite willing with this arrangement to comply, and dropping all fraud and combination to pay, to be never dismissed with his Note."

"Saml. M. Hart

On per. jur."

And thereafter to wit on the twenty fifth day of September A. D. Eighteen hundred and fifty five the said J. Mason Parker filed in the Office of the Clerk of said Court his Answer to said Bill of Complaint, which said answer is in the words and figures following that is to say:

* State of Illinois } Cook County Court of Common
Cook County. } Pleas. In Chancery.

The separate Answer of J. Mason Parker to a Bill in Chancery filed against him, James W. Cochran and Samuel M. Hart.

This defendant receiving to himself the benefit of all complaints to the many errors to in said Bill sustained for answer to so much of said Bill as he is advised it is necessary for him to respond to said

That he knows nothing of any of the allegations of
said Bill except in reference to the fact that he is
now the trustee in said Deed of Trust from said
Hart to Cochran and that the land mentioned in said
Deed of Trust has been advertised for sale as set forth
in said Bill. These things he admits but positively
denies on his part all combining and confederating with
the said Samuel M. Hart and James W. Cochran
or any body else to injure and oppress the Complainant
in the making or executing of said Deed of Trust, or
in any of the acts and doings of this Respondent under
said Deed of Trust or in accepting the same, and
therefore prays he may be heard satisfied with his
bill &c

"D. Mason Parker"

Walter Haulpita
Deft. Org.

And thereafter to wit on the twenty fifth day of January
A. D. Eighteen hundred and fifty five the said Complainant
filed in the Office of the Clerk of said Court his Replication
to the said several Answers of the said Defendants; Which
said Replication is in the words and figures following
to wit:

“Involuntary Court of Honour
Shas. In Chancery.

The Replication of Thomas A. Harrow Complainant
to the several Answers of James M. Hart
James H. Cochran & S. Mason Barker defendants

This replant paying and possessing unto himself all
and all manner of advantage of redemption to the manifest
injustice of the said Answers, for replication therefore
saith that he will and from his said Bill to be
true, certain and sufficient in the law, to be answered not
by the said Defendants, and that the said Answers of
the said Defendants are uncertain, untrue and insufficient
to be replied unto by this replant; Without this that any
other matter or thing whatsoever in the said answer certain
material or essential in the law to be replied unto before
and avoided, traversed or denied is true: After which
matters and things this replant is and will be ready to
aver and prove as this Honourable Court shall direct or
command, from as is answered by his said Bill he hath already
prayed -

“Dingley, Mather & Tappin

Attos for Complainant

And thereafter to wit on the sixth day of January A. D. eighteen hundred and fifty seven, the following Deposition of E. R. Smith on the part of the Complainant was filed with the Clerk of said court in said cause.

'Elias R. Smith is witness on the part of Complainant of lawful age was produced and sworn and examined and believed as follows.

1st Quest: What is your name age residence and occupation.

Ans: My name is Elias R. Smith. I am about thirty three years. I reside in Chicago, by occupation Real Estate Dealer.

2nd Quest: Are you acquainted with the parties to this suit? If yes, how long have you known them respectively.

Ans: I am acquainted with the parties to this suit. I have known Thomas A. Harrow about seven years. I have known Samuel M. Hart about three years, have known James W. Cochran about three years. have known J. Mason Parker about two years.

3rd Quest: When did you first become acquainted with Defendant Cochran?

Ans: It was previous during the winter of 1853 & 4.

4th Quest: Did your acquaintance commence prior to the 20th February 1854?

Ans: Yes it did.

5th Quest: Where did the Complainant reside during the month of February 1854?

Ans: I believe he claimed Riverfront. I believe to be his share.

6th Quest: Where did Defendant Hart reside during that month?

Ans: At Cincinnati.

7th Quest: Did you in the Month of February 1861 know certain premises in the City of Chicago, Illinois designated as Lot 1 or Block 13 in the Second District subdivision of Section seven Township thirty nine North of range 14. East of the 3rd E. 1/4.

Ans: Yes.

8th Quest: Had you during the said Month of February 1861 any interest in or connection with the said property. If yes, state in what capacity?

Ans: The firm of Sharp & Smith of which I was a member were authorized to sell that property.

9th Quest: Who was the reputed owner of that property at that time and by whom were you authorized to sell it?

Ans: George Samuel M. Hart one of the Defendants was the reputed owner and he authorized us to sell it.

10th Quest: Did you make sale of the property on the Order of Hart. If yes, when and to whom?

Ans: We did make sale of the property on the Order of Hart. About the 20th of February 1861, to Thomas M. Harrow, the Complainant.

11th Quest: When were the papers evidencing said sale received and delivered? give the day and hour as near as you can remember it?

Ans: On the 23rd day of February 1884 it was after tea in the Evening. I think about 8 or 9 o'clock in the Evening, at the Traders Store in Chicago in Mr Hart's room.

12th Ques: Who were present when the papers were executed?

Ans: Mr Hart and Mr Cochran were present when the papers were delivered in the Evening above referred to. They were signed previous to that. I don't recollect the day. I saw them signed. I think Mr Hart and Mr Sharp were present but are not positive.

13th Ques: State whether or not the Defendant Cochran was aware of the nature of the business being transacted between you and Hart at the time referred to, when the papers were delivered.

Ans: He was. I had previously told him of the sale of the property to Harrow and asked him as to the title and Mr Hart's reliability as a gentleman.

14th Ques: State all you know in relation to the negotiations carried on through your firm by Harrow with Hart for the purchase and sale of said property? including a complete history of all the conversations between you & Hart and the Def^t Cochran relative to the title to the premises upon said property - giving the conversations and negotiations in the order of time in which they occurred together with the time and place where & where they respectively occurred?

Ans: Some time previous to the 23rd of February 1884 - I think there or four days Mr Harrow being in Chicago we called his attention to the said Block 13. & commenced

it as a good purchase, He, after repeated conversations with an amicus curiae Hart agreed to purchase the property conditioned that the title was all right and the papers could be made satisfactory to him and the said Hart-
said Hart stated that his title was good & unimpaired. He did not cause a strict examination of title nor even an Abstract, but looked at the record, as then appeared in the records Office of Cook County. This examination was made on or about the 22^d of February 1854. The title then appeared of record by Deed from Cookman to Har-
without any Mortgage or incumbrance whatever against Block 18 section seven. The question of what part of square should pass from Hart to Harrow was fully & fairly discussed. Hart desiring to give a Contract, Harrow asking a Deed and to give back a Common Mortgage, Hart then agreed to give a Deed, but asked a Trust Deed or Con-
ditional Mortgage to be given back by Harrow. This Harrow positively refused to do, stating emphatically in presence of myself & Hart, that he would neither give such a paper nor own a piece of property having such an instrument over or upon it in any way. A Common Mortgage was finally agreed upon. Previous to the closing of the title on the night of the 23^d of February aforesaid I asked Mr Cookman concerning the title to said property and told him that Harrow had bought it of Hart, or alluded to the purchase, which I believe he before knew - said Cookman said the title was good in Hart, he having sold it to him. I asked said Cookman in substance, if there

was a reliable man whose representations of the bill we
could rely on, without a strict examination - he stated
Hart was such a gentleman. Previous to the night of
the 23rd February 1831 Mr Cochran & Mr. Harrow were
both together in our Office. Mr Harrow having agreed to purchase
Block 13, asked Mr Cochran to look at the Maps and give
him his idea of the value of certain pieces of property. Mr
Harrow called his attention to several Blocks in said portion
saying asking their value and finally to Block 13.
Mr Harrow then conversed with him about the purchase, price
and terms. Mr Cochran remarked in substance that it was
worth more money than Harrow was to pay for it. After the
above occurrences and before the delivery of the Deeds by Hart
to Harrow, Mr Cochran, Mr Harrow & myself went at the Thomas
House, and had a conversation about the trade & papers to be
given. On the Night of the 23rd of February 1831 I having
about \$1000 of Harrow's money. He & I went to Hart at his room at the Thomas
House. I either found Mr Cochran there or he came in
soon thereafter, at all events he was present when I gave
the money & Note to Hart and knew that Hart gave me
the Deed and that it was for the Block 13, and that it
was then agreed that Hart should take paid Deed to
be witnessed and get his Wife's signature. I soon left
Mr Hart's room, Mr Cochran remained.

18th Ques. When was the Mortgage from Harrow to Hart
delivered?

Ans. On the Night of the 23rd February 1831.

16th Ques: Did Hart return the Deed from Cincinnati with his wife signature and acknowledgments? If yes, when.

Ans: He did some several days afterwards.

17th Ques: On the conversation between Harrow, Cochran & yourself at the Lumber Store was there anything said by Mr Harrow or yourself in the presence of Mr Cochran as to the form or nature of the promise to be given by Harrow to Hart for the residue of the purchase money? If yes, state what was said. State the time ^{when} it was said.

Ans: There was a general conversation about what sort of paper and form remarks about the objection the Kentucky ~~trustee~~ ^{had} to that tract Mortgage. Mr Harrow stated his views upon that subject. I don't know the day this occurred. It was however previous to paying the Deed.

18th Ques: State whether or not in any of the conversations between Mr Cochran & yourself. Mr Cochran alluded in any manner to any lien or priority held by him upon the property in question for any unpaid purchase money due him by paid Hart? If yes, state what he said.

Ans: He made no such allusion to me at any time.

19th Ques: State whether or not Mr Harrow was in Chicago at the time the papers were delivered by you and Hart?

Ans: He was.

20th Ques: When did Mr Harrow leave the City?

Ans: The next day in my recollection.

21st Ques: At the time the Deed from Hart to Harrow was returned to this place from Cincinnati, was Mr Hart in Chicago?

Ans: No Sir, not that I know of.

23rd Quest. State the extent of your Examination of the Records touching Hart's title to the property in question?

Ans. I examined the Records sufficient to find a Deed from Cochran to Hart, then if there was any Mortgage &c. or incumbrance after the date of that Deed upon the premises in question.

24th Quest. Did you find any incumbrances upon said premises after the Deed from Cochran to Hart was executed?

Ans. I find none because there was none to find.

25th Quest. State the reasons why you searched no further back than the Deed from Cochran to Hart?

Ans. Because Hart states that his title of record does free and incumbrances - because the Record so showed it - because Mr Cochran states that Mr Hart was a reliable gentleman - Because I thus believed Mr Cochran was a gentleman reliable also.

26th Quest. State if you know who introduced Harrow and Cochran to each other?

Ans. I don't know whether it was Sharp, Hart or myself - They were introduced in our Office. It might have been some other person present.

27th Quest. State whether or not Mr Harrow introduced you to Mr Cochran on that occasion.

Ans. No Sir, I had known Mr Cochran before.

28th Quest. State on whose behalf you acted when you conversed with Cochran and Hart with reference to the title to the property in question & in the Examination of the Record?

Ans. I acted for Mr Harrow at his request.

28th Quest: State if you please what you mean by out - threat Mortgage?

Ans: That is a term in common use according to my understanding description of all that part of Contract, Trust deed and Mortgage with clause of forfeiture & power of foreclosure in that matter.

29th Quest: Where did Mr. Harrow reside prior to his going to Wisconsin?

Ans: To Benton County, Kentucky.

30th Quest: State when you first became aware of the fact that the property was in Harrow's hands for fear of the purchase money due Mr. Coburn and how did you derive your information?

Ans: After the publication of the Sale of said property by Mr. Parker as Trustee, I became acquainted with the fact through the Advertisement. My recollection of it is that it was in the Spring of 1855.

After the direct Examination of witnesses was closed and the verdict was then examined by Judge Bennett Henry Waller.

1st Resp: Have not you and Thomas A. Harrow been in friendly and intimate terms for years, and were you not so prior to this sale?

Ans: I have been intimately acquainted with Mr. Harrow for years, have frequently & paid my, for we were in love with the same lady once rivals for a time. We were in

privately terms at the time of the sale.

2nd Corp. Were you not acquainted with Samuel M. Hart before you were introduced to James H. Cochran?

Ans. I think so but it was but a short time before.

3rd Corp. How long before the 30th February 1854 had you been acquainted with Mr Cochran?

Ans. I can't state the exact number of days I think five or six.

4th Corp. Where and where did you first become acquainted with Mr Hart?

Ans. It was a few days previous to this trade and in this city.

5th Corp. Did you not know him as Judge Hart of Cincinnati and had you not regarded him as a Man of character and standing before this sale?

Ans. I knew him as Judge Hart of Cincinnati he had been represented to me by different - as of good standing and character.

6th Corp. Did anything occur during that negotiation to cause you to entertain a different opinion of him at that time?

Ans. No Sir.

7th Corp. Had you not always known Mr. Harrow as a resident of Kentucky up to the time of that sale?

Ans. I knew him as hailing from Kentucky, but as from Virginia at that time, I think he told me so.

8th Corp. Had you not been a resident of Kentucky prior to your removal to Chicago?

Ans. Yes Sir.

9th Cuf. *Quet.* When and how was your attention first attracted to the property involved in this suit?

Ans. Not long before the sale of the property to Harrow. Judge Hart called the attention of Sharp & myself to it, and offered us a Commission for selling it.

10th Cuf. When did Judge Hart first authorize you to sell the property for him? Please state the day as nearly as you can?

Ans. I cannot state the exact day. I think it was four or five days before the sale, probably more.

11th Cuf. Did you not know before having any conversation with Mr Cochran, from whom Hart had purchased it?

Ans. My recollection is that I knew that, but can't remember it. I think Mr Hart told me so. I know that we were acquainted with the fact, that Mr Cochran had conveyed the property to Mr Hart.

12th Cuf. Did you not learn from Hart when or about what time he had purchased it; and that he had not owned it for a year prior to February 1854?

Ans. I do not know that.

13th Cuf. *Quet.* Did you not inquire of Judge Hart, at the time he put this property in your Office for sale, or about that time or shortly after, the title, as to the time he purchased it, the manner in which he held it, and the price he was agreed to pay for it. Answer fully as to all these points?

Ans. The inquiries of Judge Hart as to his title about that time, as to the time he purchased it. I do not recollect of making any inquiries as to the manner in which he held

it, I inquired as to the price he paid for I made no inquiry.

14th Corp. Are you not in the habit of informing yourself as fully as you conveniently can on everything connected with property placed with you for sale?

Ans. I am now, but this transaction was when I first commenced here and knowing these men are gentlemen I did not make those inquiries. It is customary to ask no questions as to the title until a sale, and then to inquire into the title.

15th Cross Did he not at that time give you full satisfaction as to the State of the title?

Ans. He made me believe that the title was good in form.

16th Cross In what manner did he pay that he held it?

Ans. He paid that he held it for a Dea.

17th Cross Did he pay that the Dea was correct?

Ans. I do not recollect as to that.

18th Cross Can you state the conversation fully or in substance between yourself and George Hart on the occasion of his placing the property for sale in your Office, state fully as you recollect?

Ans. I recollect some little about the conversation. I know that we had the property for sale and that he paid us for selling it.

19th Corp. What induced you to inquire as to the manner in which he held title?

Ans. To know if it was safe for Mr. Morrow to buy.

20th Corp. Was not this property placed in your Office for sale?

before it was offered to Mr. Warner?

Ans. Yes Sir.

21st Cross. What induced you to inquire as to the manner in which the title was held when the property was placed in your Office for sale?

Ans. I don't know that I enquired at that particular time.

22nd Cross. Did you not learn from Hart or others as to the time when he first came to Chicago to make investments in Real Estate?

Ans. I do not recollect that I did.

23rd Cross. Did you not understand from him that he had not been operating over a year in Real Estate in Chicago?

Ans. I don't recollect that I understood of him anything about the time.

24th Cross. Did you not know that he was regarded as a man of private means?

Ans. On the contrary I thought he was a very wealthy man.

25th Cross. What are the most usual terms in the sale of Real Estate in Chicago?

Ans. I think the most usual one is, a quarter down & the balance in one, two and three years.

26th Cross. Are not such purchases of comparatively very rare occurrence?

Ans. They are by no means as common as others.

27th Cross. Is it not the fact that in most of the sales made of Real Estate in Chicago the property sold is remembered by

deferred payments of the purchase money?

Ans. That is the fact.

38th Ques. Is not this the fact in reference to the sales made in your Office?

Ans. It is.

39th Ques. Is it not very rarely that a sale of Real Estate is made in your Office which is wholly incumbered?

Ans. It is rather rare but not very rarely. I have known a great many sales of incumbered property.

40th Ques. Is it considered an objection of any moment to the purchase of real estate that it is so incumbered by deferred payments?

Ans. Generally it is not but very often it is.

41st Ques. Is it considered that such incumbrances invalidate the title, so that it cannot be paid to be sold by a good title, when there are no other objections?

Ans. It is not considered that such incumbrances invalidate the title.

42nd Ques. Have you not often represented the title to real property to be good when in fact it was incumbered by deferred payments?

Ans. Yes Sir, and I always told of the deferred payments (that part of the Answer not responsive to the question objected to by Counsel for Defendant).

43rd Ques. Did you never state that a title was good without mentioning the deferred payments, when deferred payments really existed?

Ans. Yes I have.

33rd Corp. Would you have any hesitation in recommending a friend to purchase property so indiscriminately when you were satisfied that the title was otherwise good?

Ans. No.

35th Corp. When did you first propose to Mr Harrow to sell him this property? State the day of the Month as near as you can recollect?

Ans. As near as I can recollect it was several days previous to the 22nd February 1881.

36th Corp. Was it as much as five days prior to the 22nd?

Ans. I think so. I can't say certain.

37th Corp. What date the 22nd in your memory?

Ans. The fact that it was the day before the delivery of the Deeds, when Harrow was here and had been some days previous.

38th Corp. What date in your memory the 23rd of February as the day of the delivery of the deeds?

Ans. I knew that was the day of the transaction. I recollect it because Mr Harrow left Town the next day.

39th Corp. How do you happen to recollect that the 31st was the day on which Mr Harrow left Chicago?

Ans. Because it was the day on which he acknowledged the Deeds. I was with him when he acknowledged it, and from the transaction the day before.

40th Corp. Would you have recollecting any of these days without referring to the date of that acknowledgment. If so, state how?

Ans. Yes Sir. I would recollect it by the Register of the

Freemont House, which shows the time that he left. I have other ways of procuring it, from references to Memorandums in my Bank Book as to time of payments.

411st Cross. Have you examined the Fremont Register if so, when?

Ans. Yes. I examined it last summer or fall.

412nd Cross. When did Harrow arrive in Chicago in February 1861 according to that Register?

Ans. I don't now recollect.

413rd Cross. Did you take Mr Harrow to see the land?

Ans. I don't recollect that I did.

414th Cross. Were you not very anxious to sell him the property, and did you not recommend it very strongly to him?

Ans. I was anxious to sell the property and recommended it strongly. I thought it cheap property.

415th Cross. What compensation did Judge Hart pay you for your services in selling it? and did he pay you all he agreed to pay?

Ans. My recollection is that he paid me \$500 just exactly, what he agreed to pay, though not at the time.

416th Cross. Were not you & Mr. Stuart keeping an Office as Attorneys at Law as well as dealers in real Estate at the time?

Ans. Yes Sir.

417th Cross. Did Mr. Harrow employ you as Attorneys to examine into the title?

Ans. No Sir.

418th Cross. Did he pay upon you as a fee to examine into the title for him?

Ans. I believe he did.

49 Crp. Did you promise him to do so?

Ans. Yes Sir.

50 Cross Did he not agree to purchase upon the Condition that the title was all right?

Ans. Yes Sir.

51 Crp. Did you not promise to see that it was all right?

Ans. Yes Sir.

52 Cross Did you not make yourself acquainted with the general character and chain of title?

Ans. I believe not. I took the statements of Mr. Crockett & Mr. Hart & examined the Record only partially.

53 Crp. What Record do you mean?

Ans. The Record of the Recorder Office of Cook County.

The further examination of records was postponed until April 11 at 2 o'clock P.M.

April 13th parties not pursuant to adjournment, and proceeded with the Crp Examination of records.

54 Crp. How many Record Books did you examine?

Ans. I don't remember.

55 Cross Did you examine as many as two?

Ans. I can't pretend to state the number.

56 Cross Did you examine an index Book?

Ans. I don't remember.

57 Crp. Did you examine one Record Book?

Ans. I examined for a Conveyance from Crockett to Hart.

58 Cross In what?

Ans. In the proper book of Records & found a Deed from

Cochran to Hart.

54. Croft. If you did not use an Index Book how were you guided in your researches?

Ans. I inquired of persons who were acquainted with the Records to find that part of a Decree. I don't know what Books I examined.

55. Croft. What time in the day was it, you made the examination?

Ans. I don't remember.

56. Croft. Was it in the forenoon or afternoon?

Ans. I don't remember that.

57. Croft. Why did you search the Records at all? If you had perfect confidence in George Hart's representations and Mr. Cochran's endorsement of his character?

Ans. I did it the better to satisfy myself that his representations were true.

58. Croft. Did you then rely upon George Hart's representations?

Ans. Upon his and Mr. Cochran's and what I saw upon the Records.

59. Croft. Did the Records verify everything George Hart had told you as to the condition of the title?

Ans. It exhibited a clear & unincumbered title in George Hart.

60. Croft. Did the Records verify everything George Hart told you as to the condition of the title?

Ans. Sufficiently so to satisfy me his representations were true.

61. Croft. Would not incumbrances have existed on the property mentioned in the Decree which were recorded prior to the

making and record of the deed, and did you not know this at the time of the examination?

(Object to lay Compliments Connect.)

Ans. Yes they could have existed. I did know this at the time of the examination.

67 Cross Why then did you not rely upon George Hart's representation that he had a deed for the property as fully, as you did upon his representations that there were no circumstances upon it?

Ans. I relied upon his representations that there were no circumstances upon the property because I believed there were such things as truth and honesty in the world. I examined the record through abundant caution as I then thought that George Hart was an honest man.

68 Cross Why did you not apply your belief of the existence of truth & honesty in the world to his statement regarding the deed, as well as to his representations that there were no circumstances?

Ans. Because a man may take one to be honest while wish to satisfy himself of the fact.

69 Cross Why did you not satisfy yourself by examination as to the existence of the circumstances?

Ans. I relied there upon the honesty of George Hart.

70 Cross Did you use abundant caution in the examination of the deed because you believed George Hart honest?

Ans. I don't know that I used abundant caution.

71 Cross Did you not say so in your answer to the 67th Cross Interrogatory?

Ans. I do not so understand it.

70 Crp Did you not learn in course of the negotiations that the title to the property was derived from the Casual Trustee, that they conveyed to William Briggs and he to James H. Cochran?

Ans. According to my best recollection, and it is pretty positive I did not learn any of these facts?

70 Crp Did you make no inquiries with reference to the derivation of title at any time during the negotiations and up to the time when you filed the deed from Hart to Harrow for Record on the 3rd of March 1864?

Ans. I do not remember that I did. I don't think I did.

70 Crp May you not have done so?

Ans. It is possible I might.

72 Cross Had you never heard before or during the negotiations that Hart had purchased the property of Cochran in 1863 and held it by a contract?

Ans. I do not remember to have ever heard it.

76 Cross May you not have heard it? possibly.

Ans. Possibly I might.

77 Cross Did not Hart ever give you to understand how he held title? either by stating to you how he held title or by a synopsis?

Ans. He never gave me a synopsis, he told me a short time previous to the closing of the title, that he held by Deed.

78 Crp Did he not tell you that owing to Mr. Harrow

insisting upon a Deed instead of a Contract, that he would get a Deed from Buchanan?

Ans. I don't remember that he ever told me that.

79 Cross Do you not recollect upon reflection that one reason given by Judge Hart for preferring to close the matter with Harems by Contract was that he had no deal from Buchanan?

Ans. I don't remember that. The reason he preferred giving a Contract rather than a Deed, was he did not particularly love the control of his property.

80 Cross What difference in the control did he speak of?

Ans. I don't remember the technical difference he mentioned.

81 Cross Do you recollect the whole of the discussion in the subject of the form the papers were to take?

Ans. The main points of them, but not all.

82 Cross In that discussion may not Judge Hart have given as a reason the one contained in my 79th interrogatory?

Ans. It is possible that he did give that.

83 Cross Did not that discussion take place before the 22nd day of February, 1864?

Ans. I don't remember whether before or after.

84 Cross Did it not occur before the day on which you examined the Records for the Deeds?

Ans. I think so but I can't state positively.

85 Cross Do you not know that the Deed was executed by Buchanan to Hart during the pendency of these negotiations and bears date the 21st of February 1864?

86 Cross I know it was true.

87 Cross Did not your examination of the Records take place on the 22nd February?

Ans. I don't remember specifically, that it was on that day.

88 Cross. Have you not stated in your direct examination that this examination was made on or about the 22nd of February 1831?

Ans. I think I did state that it was on or about the 22nd.

89 Cross. Did you consider that you had complied with your promise to Harrow to examine into the state of the title and see that all was right by simply looking at the deed put forward by Cochrane to Hart & asking them whether the title was good?

Ans. I then did.

90 Cross. Could not Harrow have asked them as easily as you could?

Ans. He could.

91 Cross. What report did you make to Harrow as to the title, and when?

92 ~~Ans.~~ My recollection is I told him what Hart said, what Cochrane & others said about Hart & what I had seen on Record and that I believed the title was good. This was some day or two previous to the 23rd February. I have no distinct recollection as to the day of the month.

93 Cross. Had not Harrow himself talked with Hart about the title?

Ans. I think he had.

94 Cross. Did you give him any fresh information as to Hart's

representations about the title?

Ans. I don't now know, that I did, or did not.

93. Ques. Did you report as to your clerk's words satisfy Mr. Harrow that the title was all right?

Ans. I presume so for he bought the property and gave the money for it.

94. Ques. What did he say when you made the report to him?

Ans. I don't remember.

95. Ques. Do you not know that Cookman's deed to Hart of the 21st of February 1861 was lodged in the Recorder's Office on the 30th February?

Ans. Yes.

97. Ques. Are you certain that Judge Hart used the word good in speaking of his title?

Ans. To the best of my recollection he did.

98. Ques. May he not have used some other word?

Ans. Possibly he might but I don't think he did. I am certain he used that, but he might have used others.

99. Ques. Did he speak of his title as good in more than one conversation?

Ans. Yes Sir.

100. Ques. Did he always use the same word good in describing his title, in all the conversations about it?

Ans. I don't recollect whether he did or not.

101. Ques. What particular conversation was it then in which you are certain he used the word good?

Ans. It was in a conversation that occurred sometime previous to the closing of the books.

112 Cross Was it in the first, second, third, fourth or last conversation?

Ans. I do not remember that there was any specified number of conversations. I do not recollect which conversation it was in.

113 Ques Do you recollect the day on which this conversation occurred?

Ans. I do not.

114 Cross Do you recollect the place where it occurred?

Ans. It occurred in the City of Chicago. I think in our Office.

115 Cross Who was present?

Ans. I don't remember.

116 Ques Can you state the gist of this conversation? if so, please state it?

Ans. I can state the substance of the conversation or conversations, which was that his title was given to the property in question and also remembered. I think he stated that he had lately left all reminiscences from it. I would not state under Oath that he said he had lately left the reminiscences but think he did.

117 Ques As this substance of one conversation or of all the various conversations you had with Chicago that concerning his title?

Ans. I do not recollect whether it is the substance of one or several, it is not the substance of all.

118 Ques. What else did he say about his title if this is not the substance of all the conversations about the title?

Ans. I can't remember all he said about his title. He said sufficient to satisfy me that it was a good title.

109 Q. Can he not have said many things about the title which you do not now recollect?

Ans. Yes Sir

110 Q. Can you specify any one distinct conversation in which he used the word good? in relation to his title?

Ans. I do not now remember any specific conversation in which he used the word good.

111 Q. What has ~~led~~ that particular word upon your memory?

Ans. Because without its use or some equivalent word he could not have conveyed to me the idea that his title was good. Moreover I remember distinctly that in some conversation George Hart did state his title was good.

112 Q. Do you mean to pursue positively, to the use of the particular word 'good', or merely to the use of an equivalent term?

Ans. I mean to pursue that he used such language as to make me believe that his title was good and I have a distinct recollection that he used the word 'good' and I think 'perfect' also.

113 Q. Did he use the word 'good' and 'perfect' in one & the same conversation?

Ans. I do not recollect that he did.

114 Q. Do you recollect that he used either or both of these words in more than one conversation?

Ans. I am not positive, but think he did. In repeated

conversations my recollection is that he did use them.

115. Ques. What has fixed these two words in your memory so that you are enabled to swear that they were used in conversations which occurred more than two years ago?

Ans. The fact that I know Jackson that if his title was good. That I never in my life asked any man for such information as I demand from Hart without using them or equivalent words, and the fact that my memory was clear as to the idea Hart gave me about his title.

116. Ques. Is not your whole testimony as to the use of the words "good" and "perfect" based upon the inferred language you have just made? and not upon a distinct recollection that Judge Hart on any particular occasion actually spoke the identical words "good" and "perfect"?

Ans. No.

The further examination of witnesses was adjourned until April 16th 1836 at 9 o'clock.

April 19. Notice was pursuant to adjournment and proceeded with the examination of witnesses.

117. Ques. Can you remember any other particular words that were used by Judge Hart in the conversation in which the word "good" or the word "perfect" was used?

Ans. I recollect during the negotiation Judge Hart used the word "unimpeachable," this was in presence of Harren and myself.

118. Ques. Was this in the same conversation in which he used

the word "good" or the word "perfect"?

Ans. My recollection is that it was.

119 Ques. Can you swear to any other particular word that was used by Judge Hall in that particular conversation?

Ans. I can swear to several words that occurred some time during the negotiation.

120 Ques. Can you swear to any particular word or words besides "good" "perfect" and "unimpaired" that were used in the same conversation in which they were used. If you can please name them?

Ans. I can swear to other words that occurred sometime during the negotiation.

121 Ques. Can you swear to any particular word or words besides "good" "perfect" and "unimpaired" that were used in the same conversation in which they were used. If you can please name them. I do not ask for any words not in the negotiations except in the conversation alluded to in this question?

Ans. In some conversation which occurred prior to the 28th of February 1861, the words "Block 13" "Harris' Cotton" were used.

The last above question and answer were objected to by the plaintiff's counsel.

122 Ques. Were these last named words used in the same conversation in which the other words above specified were used?

Ans. I do not remember. I think they were.

123 Ques. Can you now recollect the exact posture or distance

in which these words occurred? If so, please state?

Ans. I cannot.

134 Brof. What has fixed in your memory the word "circumstances"?

Ans. The power of memory has fixed it there. Mr. Stator
I remember it distinctly.

135 Brof. Were there not many other words used in that
circumstances which you cannot recollect?

Ans. Possibly so. I remember the name of Napoleon
who fought at the battle of Waterloo, but not the name
of all his officers or subordinates.

136 Brof. Was the word "circumstances" the "Napoleon" in
this conversation? and was everything else subordinate
to it?

Ans. The learned Counsel may decide, as have four
have may he decided, he can decide.

137 Brof. Did you not mean to say that a similar reason
that enabled you to recollect the name of Napoleon had
enabled you to recollect the word "circumstances"?

Ans. I mean to say that the word "circumstances"
was a prominent word in the conversation.

138 Brof. What made it so?

Ans. It was used emphatically.

139 Brof. Do you mean to say that Judge Hart laid special
emphasis on the word "circumstances"?

Ans. Yes Sir.

140 Brof. Did he say this as an inducement to the
purchase?

Ans. I do not recollect that he did.

131. Cross May not he have said that the property was free from "incumbrance" or that it was not "incumbered" instead of using the word "unincumbered"?

Ans. Possibly he might say recollection is that he used the word "unincumbered".

132 Cross Is you not bound to swear positively to the word and not to the particular word?

Ans. Yes Sir.

133 Cross May not George have said that there should be no difficulty about any incumbrance, instead of stating that there was no incumbrance?

Ans. Well Sir, he did not say that.

134 Cross May you not be mistaken?

Ans. I am not mistaken in that.

135 Crof May you not have misunderstood George Hart at the time?

Ans. I think I understand the English language.

136 Crof May not you ear have misled you?

Ans. My hearing has been very good all my life. I never had a cold even that has affected it.

137 Cross Has it always been so good that you never fail to hear accurately what was said to you or to others in your presence?

Ans. I do not mean to say that.

138 Crof May not you then have heard imperfectly what was said by George Hart in reference to the matter of an incumbrance?

Ans. It is hardly possible having had different conversations

with him on the same subject and always hearing him
the same way and to state substantially the same.

139 Cross And you saw he used the word "unintentional"
in more than one conversation?

Ans. My best recollection is he did.

140 Cross Before Mr. Harmon agreed to purchase the land, had
you inquired particularly of Judge Hart about the
circumstances on the property?

Ans. I had not, it was not the custom, nor did we
humble ourselves to look into little particulars to the Judge.
'Sufficient until the day is the end thereof.'

141 Cross Did Judge Hart emphasize any other words
particularly?

Ans. My recollection is that he emphasized the words
"free and unincumbered."

142 Cross Are you certain he used the word "free"?

Ans. I have a clear recollection of that.

143 Cross Do you recollect of his emphasizing any other
words?

Ans. Yes.

144 Cross Please give a complete list of them?

Ans. He emphasized the words "cheap," "good bargain,"
being very anxious to sell the property.

145 Cross Are those all the words he emphasized so far as
you now recollect?

Ans. Yes, and all I now recollect.

146 Cross Do you mean to say that you recollect distinctly
that Judge Hart pronounced the words named, in a loud

more or in a more earnest manner than the other would
be used in the course of conversation?

Ans. I mean to say that same thing.

147 Q^y. How many interviews did you have with Mr Cochran
in reference to the property, up to and including the time
of the delivery of the papers on the 28th of February 1844?

Ans. I don't remember.

148 Q^y. State all the times and places and in the order in
which they occurred, so far as you can recollect?

Ans. I don't remember all the times and places excepting
that I remember to have conversed with Mr Cochran one
night, at the Tremont House, about the property in question
till 10 and I think one or two occasions on the street between
the Tremont House & the North east corner of Randolph &
Dearborn Streets. I conversed with Mr Cochran about the
property in question on one occasion in our office Mr Harris
being present.

149 Q^y. Are these all the conversations with Mr Cochran
which you recollect occurring within the time specified in
my 146th question?

Ans. I do not now remember any other conversations, private,
that are alluded to on the Night of the 28th as indicated
in the 146th Question. There were two conversations which
I remembered to have occurred at the Tremont House.
There might have been more.

150th Q^y. Do I understand you to mention four conversations
with Mr Cochran in reference to this property, once to state
that these are all you recollect?

Ans. I remember distinctly of these conversations or interviews including that on the night of the 23rd in Judge Hart's room - I think that alluded to on the Street, did occur but am not positive.

151 Crp. If it did occur was it within the time specified?

Ans. It was after Mr Harrow had agreed to take the property that I think it occurred, it was before the night of the 23rd of February 1861.

152 Crp. Please now state the Order of time in which they occurred?

Ans. That I do not remember distinctly.

153 Crp. State which was the first conversation?

Ans. I don't remember.

154 Crp. Did you have a conversation with him previous to the one on the Street?

Ans. I don't remember that.

155 Crp. May that have been the first?

Ans. It might?

156 Crp. Did you have a conversation with Mr Cochran previous to the time when Mr Harrow agreed to purchase the property?

Ans. I think not.

157 Crp. How did the first conversation with Mr Cochran occur?

Ans. I remember to have sought to see Mr. Cochran to inquire of him about Judge Hart & the property in question & told him of the sale to Harrow.

158 Crp. Did you not examine the Records on the day or

the day after Harrow agreed to purchase?

Ans. I don't think I did, I think it was some days after that, several days.

159 Ques. How Harrow agreed to purchase as early as the 20th of February?

Ans. My recollection is that it was previous to the 20th, probably several days. I think it was several days.

160 Ques. Did Mr Harrow go out to see the property, during the negotiation?

Ans. I don't remember to have driven him out, he might have gone with some other person. I can't say certainly, whether he did or did not.

161 Ques. What three gentlemen did you apply to during the negotiations to learn the character of Judge Hart?

Ans. I don't remember distinctly any one.

162 Ques. What is your best recollection as to the number of those to whom you applied?

Ans. I think I asked but one or two more.

163 Ques. How many discussions took place as to the form the papers were to take?

Ans. I don't remember the parties number.

164 Ques. How many days were consumed by this difficulty as to the form the papers were to take?

Ans. I do not think any days were consumed.

165 Ques. Did I understand you to say in a previous part of your Deposition that this negotiation took place shortly after you commenced business with that you had but but little experience in dealing in real Estate at that period?

Ans. I stated in substance that it was prior after we commenced business and I haven't had much experience in dealing in real Estate in Chicago.

166 Ques. Had you much business on hand in Chicago at that time?

Ans. I was exceedingly busy, having made several large purchases and subdivided it into Lots, the details of which were very laborious.

167 Ques. Did your other business occupy most of your time and attention during the negotiation with Harrow & Hart?

Ans. I can't say most of it, though I think it did, much the largest portion of it.

168 Ques. Did you pay great attention to this negotiation?

Ans. What I then thought sufficient.

169 Ques. Did you delay the parties by your failure to attend to it?

Ans. I think not long, if at all.

170 Ques. Did you delay them as much as a day?

Ans. I don't think I did.

171 Ques. Was Mr. Harrow a partner of yours at the time?

Ans. He was not.

172 Ques. Did your partner Mr. Sharp participate in this negotiation?

Ans. To a limited extent.

173 Ques. What did he do?

Ans. He talked with Harrow several times about what part of a bargain he thought it.

174 Ques. Were you anxious to close it as soon as you could?

Ans. As soon as it could be done satisfactorily and properly
175 Cross How long did it take you to examine the Records &
find the Deed from Graham to Harro?

Ans. I do not remember the number of hours or minutes
176 Cross Did you not do it in a very short time?

Ans. It did not take me over a half a day. I think
not half so long.

177 Cross Do you believe it took you an hour?

Ans. I think it did not.

178 Cross Did you have an interview with Graham very soon
after Harro had agreed to purchase?

Ans. It was not long after that.

179 Cross Had you seen Graham on the subject of the title before
you examined the Records?

Ans. I don't remember whether it was before or after.

180 Cross Had not Harro agreed to purchase upon condition
that the title was satisfactory and did he not request you
to examine into the title?

Ans. He had - He did.

181 Cross Did you not proceed immediately after that to
investigate the title?

Ans. I did not, being very much engaged in business, &
delayed it for some days.

182 Cross Was the progress of the investigation thus delayed
for several days?

Ans. I do not think the investigation was delayed after
it commenced thus.

183 Cross Was the investigation of the title carried on at all

during the period days which you pay interest, between the time when Harrow agreed to purchase and told you to examine the title, and the time when you actually commenced to investigate it?

Ans. I do not remember to have commenced the examination before I did commence the examination.

184 Crof. Did any one else investigate the title during the time you say you were prevented from doing so by other business?

Ans. I know of no one else investigating the title during the time alluded to, or after that.

185 Crof. Was not there this delay in the negotiation produced entirely by your attending to other business?

Ans. No Sir, It was produced or occasioned by the reliance which I myself placed in the words, the honor & integrity of George Hart & Mr Cochran and others connected in the case.

186 Cross. Had you talked with Mr Cochran on the subject of the title, before you commenced the investigation of the title?

Ans. My best recollection is that I have.

187 Cross. What do you mean by the investigation of the title, does it refer principally to your examination of the Deed from Cochran to Hart?

Ans. I mean all the communications I have with all persons about the same, together with my examination of the Records in the Recorder's Office of Cook County.

188 Cross. Have you not placed in answer to the 184th cross interrogatory, that you did not proceed immediately to

investigate the title after the agreement to purchase, but that being much engaged in business, you delayed it for some days?

Ans. That is my recollection.

159 Cross. Was not the investigation delayed during those days when you were attending to other business and did not investigate the title?

Ans. I do not consider that it was delayed, because I do not remember that it was commenced. It might have been commenced during the early part of those days or the latter part.

160 Cross. What do you understand by the term negotiation as used in the preceding question?

Ans. I understand by it what the term negotiation means when used in such negotiation connection.

161 Cross. What do you understand it to mean in such connection?

Ans. I can't express it better than that it means negotiation.

162 Cross. Do you decline giving an explanation of what you mean by the term negotiation when used in the connection in which it has been used above?

Ans. I think I have sufficiently explained to an intelligent mind. I am not a Lawyer. I think what I have stated is as full an explanation as I am called upon to give.

163 Cross. Do you think the statement that the term negotiation means negotiation, is an explanation at all of that term?

Ans. I think it a precise explanation, as good a one to

undiligent minds as I have given, and sufficient for all honest purposes.

194 Crp. When do you consider that the negotiation for this property had commenced?

Ans. When we first called the attention of Mr Harrow to the property.

195 Crp. Did not this interval of some days of which you have spoken occur after Mr Harrow agreed to purchase?

Ans. That is my understanding.

196 Crp. Did not this interval then occur in the midst of the negotiation?

Ans. It occurred sometime during the time of the negotiation.

197 Crp. Thus did it not delay or suspend the negotiation for that interval of some days?

Ans. I do not consider that it did.

198 Crp. Did the negotiation progress during that interval?

Ans. I do not think the negotiation was suspended from the time that Mr Harrow agreed to take the property until its consummation.

199 Crp. As delaying the investigation of title for some days was not the negotiation's delay for the same time?

(Object to his Compliments himself)

Ans. I do not consider that it was. I will tell you why after Mr Harrow agreed to purchase the property the title being all right, I think he was absent from Chicago some days. I consider the negotiation to have been pending during all that time. I do not consider that any delay in the investigation of the title, caused or suspended the negotiation.

(Answered by Complainant withdrew his objection to the last interrogatory)

Dec. Corp. Was Mr Harrow in Chicago during the time you were investigating the title?

Ans. I do not remember distinctly. I believe he was here during the latter part of the time.

Dec. Corp. Was he not here on the 28th of February 1854.

Ans. Yes Sir.

Dec. Corp. Was he not here on the 29th of February.

Ans. I can't say certainly that he was.

Dec. Corp. What is your best recollection?

Ans. I think he was not.

Dec. Corp. Will you be so kind as to examine the register of the Tremont House for the purpose of ascertaining what days Mr Harrow was absent on the occasion to which you have referred and the day in February on which he returned?

(Objected to by Complainant's Counsel)

Ans. I do not consider that I am called on in the premises to do so. I consider that I am called upon to tell the truth of all I know in the case. The register of the Tremont House is open to the examination of the Attorney on both sides of this case. I have no objection except the consumption of time to making the examination.

Dec. Corp. Do you now say that there was no delay in the negotiation produced by any cause?

Ans. No material delay, our business matters retarded it, and the objection of Mr Harrow to take a contract instead of a deed might have retarded it, don't remember certainly.

that it did.

208 Crp. Have you not always, sworn that a delay in the negotiation was produced or occasioned by the peculiar sharp and yourself placed in the words, the "honor and integrity of Judge Hart & Mr. Croshaw and others Counsel in the case."

Ans. No Sir, if I did so swear I did not understand the sense of the question. My recollection is, I swore that the investigation of the title was delayed.

217 Cross. Did not the progress of the negotiations depend upon your investigation of the title?

Ans. I avow that the negotiations might have been pending all the time from commencement to termination, whilst at the same time the investigation of title was not progressing.

208 Crp. I am not ask as to the procedure, but as to the progress of the negotiations, will you now please state whether the progress of the negotiation did not depend upon your investigation of the title?

Ans. I have not so considered it, the learned Counsel being a better metaphysician than I, may determine that. I think I have said enough to satisfy the ends of justice what I mean.

209 Crp. Could the negotiation have progressed to a conclusion without an investigation of the title?

Ans. It could.

210 Crp. Did you not say that Mr. Harrow had agreed to purchase upon the condition that the title was found to be

all right, and did he not request you to examine the title with the view of bringing the trade to a conclusion?

Ans. I did - he might have withdrawn that request

211 Cross Did he withdraw that request?

Ans. He did not.

212 Cross Then how could the trade be concluded with you investigating the title?

Ans. I do not see how it could.

213 Cross Did not then the progress and conclusion of the trade depend on your investigation of the title?

Ans. The conclusion I consider did, the progress did not.

214 Cross Could there be a conclusion of the trade without a progress in the negotiation?

Ans. I don't see how.

215 Cross Was there anything done in the negotiation whilst you were investigating the title?

Ans. I do not remember that there was or was not, my best recollection is that several conversations occurred about the form of papers to be passed between the parties.

216 Cross Do you mean to say that these conversations occurred during your investigation of the title?

Ans. Yes Sir, I refer back to a previous statement wherein I defined what I understood by investigation.

217 Cross Was Mr Harrow present during these conversations with reference to the forms of papers to be passed?

Ans. At one or more of them he was

218 Crp. Did you not say that Mr. Harrow was present at an interview between yourself and Mr. Cochran?

Ans. Yes Sir.

219 Crp. Had you completed your investigation of this before Mr. Harrow's return, would you not have been that much nearer the conclusion of the investigation?

Ans. It is impossible for me to say now, whether I should or not have been. I think the trade was completed as far as it could have been reasonably done after Mr. Harrow's return.

220 Crp. In your first interview with Mr. Cochran did you inquire of him as to the character of the title case as to Judge Harro's reliability?

Ans. I do not remember whether it was at that interview or a subsequent one.

221 Crp. Was not the first interview with Mr. Cochran bought by you?

Ans. That is my recollection.

222 Crp. Have you not said that you bought that interview for the purpose of inquiring about the title and Judge Harro's responsibility?

Ans. Yes Sir, I think I said that.

223 Crp. Did he then satisfy you on those points?

Ans. Yes Sir.

224 Crp. How long after that interview was the second?

Ans. I don't remember.

225 Crp. How long after it was the third?

Ans. I don't remember that.

226 Crp. Had you more than one interview with Mr. Crookam
in any one day?

Ans. I don't remember that.

227 Crp. Did you seek any other interview with Mr. Crookam
than the first one?

Ans. I don't think I did. I might have done so.

228 Crp. For what purpose might you have done so, if you
were satisfied with the first?

Ans. I might have done so for a great many purposes.

229 Crp. Name what purposes consistent with this purpose other
than those you have already specified for which you might
have sought him?

Ans. To render assistance more pure satisfaction more prosperity

The further examination of witness was adjourned
until April 30th A.D. 1886 at 9 o'clock A.M.

Monday April 27th parties met pursuant to adjourn-
ment and proceeded with the examination of witnesses

230th Crp. Was Mr. Crookam invited to be present at any interview
or interviews between the parties engaged in the negotiations?

Ans. I don't remember whether he was or was not.

231st Crp. How did he happen to be present on the two occasions
at the Fremont Hotel, and the one at your office which
you have specified?

Ans. I do not know how. I presume he sought to be
present from the interest he felt in the trade.

232 Crp. Did you perceive so at the time?

Ans. I did.

233 Crp. Did Mr. Harrow wish him present?

Objected to lay Compliments (Court!)

Ans. I do not remember whether he did or did not.

234 Crp. Did you wish him present?

Objected to lay Compliments (Court!)

Ans. I did not care whether he was there or was not.

235 Crp. Were you perfectly satisfied before those interviews as to Judge Hart's reliability and the goodness of the title?

Ans. I do not remember now, at what particular time my mind became satisfied that the title was good as Judge Hart stated it was.

236 Crp. May you not then be mistaken in your answer to the 231st interrogatory?

Ans. I am certain that I am not mistaken.

237 Crp. Had you not then derived from Mr. Cochran before those interviews all the information you wished?

Ans. No Sir, I had before the last interview.

238 Crp. Did you not then desire his presence at the previous interviews?

Ans. I can't say that I did. I desired to see Mr. Cochran. I didn't care whether any body else was present or not.

239 Crp. Did you desire to see him on the subject of Judge Hart's reliability and the goodness of the title after the first interview when you say he satisfied you on those points?

Objected to lay Compliments (Court!)

Ans. I don't remember that I did.

240 Cross. Did Judge Hart express a desire that he should be present?

Ans. I do not remember that he did.

241 Cross. Did Cochran himself seem interested in the negotiation?
Objected to by Complainant's Counsel.

Ans. Yes he did seem very much interested.

242 Crp. Did he seem anxious to be present?

Objected to by Complainant's Counsel.

Ans. I don't recollect that he did.

243 Crp. Did it strike you as singular at the time that Mr. Cochran should have manifested so much interest in the negotiation?

Ans. No, I didn't think it was singular Mr. Cochran being engaged in the purchase and sale of Real Estate & desiring to see things get along, and having sold this property first to George Hart. I thought it not at all singular that he should feel a particular interest in the matter.

244 Crp. Is such conduct usual in the part of those who have sold property, have paid for it & conveyed it by deed?

Objected to by Complainant's Counsel.

Ans. Some persons who have sold property through our office & have received the purchase money all cash down have afterwards exhibited such conduct and manifested a deep interest in the after history of the property, others however manifested such interest.

245 Crp. Did those who have manifested such interest carry it so far as to be present during subsequent negotiations in which they had no pecuniary interest to the extent that Cochran did?

Ans I dont remember.

246 Ques. Can you name those who have manifested such interest as you have stated?

Ans I dont remember any special cases.

247 Ques. Do you remember any such occurring before this negotiation between Hart and Harrow?

Ans I do not.

248 Ques. Have you stated all you recollect as to what Croham said of George Hart's reliability, & the condition of the title?

Ans The substance of all I recollect.

249 Ques. Did you learn the poor character of Hart from other gentlemen from whom you inquired, that you did from Croham?

Ans I think I did.

250 Ques. Did not Mr. Croham's opinion of the value of the property as stated to Harrow in your Office correspond with your own opinion?

Ans No, I thought the property was worth more than Mr Harrow was to pay for it.

251 Ques. Did you rely upon Croham's representation that the title was good?

Ans In a certain extent.

252 Ques. Did you inquire of Hart whether Croham was a reliable man?

Ans. I dont remember that I did or did not.

253 Ques. Before Harrow left for the few days you have mentioned and before the 21st of February 1841 did you not know or believe that the legal title was in Croham?

Ans. I did not.

266 Ques. Did Mr. Cochrane during the interview you have mentioned make any effort to conceal his interest in the registration?

Ans. I can't tell whether he did or did not. I could tell what they are doing in the room just as well. He made none that I noticed.

267 Ques. Was not his interest so openly manifested that you perceived that he was much interested without difficulty or any particular attention on your part?

Ans. That is my recollection.

268 Ques. Has not your recollection as to dates and especially as to Mr. Harrow's movements in February 1838 been refreshed by conversation with Mr. Harrow, within the last few days and did he not inform you that he had recently examined the Register of the Fremont House on that subject?

Ans. I remember all I have stated as to dates & Mr. Harrow's movements otherwise before Mr. Harrow came to Chicago, this last time. Mr. Harrow informed me that he examined the Register of the Fremont House last evening or I had requested him to do, Mr. Harrow having examined it a few minutes previous.

269 Ques. Did he not have a conversation with you on the subject of the dates and his examination of the register prior to last evening or the evening previous?

Ans. We had a conversation prior to last evening on the evening previous on the subject of dates. Mr. Harrow told nothing then that I did not before recollect. I don't remember that he told me that he had examined the register at the

Freemont House.

258 *Grp* Have you not felt great interest in the subject of this suit?
Ans Yes Sir.

259 *Grp* Before the suit was instituted have you not spoken of the effect which such a difficulty as existed between the parties would have or might have upon your own reputation and business?

Objection to by Complainants Counsel.

Ans Before the suit was instituted I remember to have said that I greatly regretted the difficulty between the parties that in the event of Mr. Harrow having to pay more than he had agreed to pay for the property, having purchased it through us it might very materially injure our business in Kentucky or with Kentuckians, who would have the sort of his loss, inquiring into the facts of the case. This is the substance of what I have said.

260 *Grp* Do you not then feel a deep interest in the success of Mr. Harrow in this suit?

Ans I do feel a very deep interest in it because I believe that it is the cause of truth and justice.

261 *Grp* Do you not feel that your reputation is involved in the result it will be affected by the result of this suit?

Ans I do not believe my reputation will be injured in the slightest degree by the result of the suit, certainly in the opinion of no one who acquaints himself with the facts of the case, unless the fact that I relied too much in the honor and truth of some man, should injure my reputation.

213 Ques Did not you have an interview with Mr. Cochran
privately before the publication of the Notice of Sale under his
Trust Deed from Hart; in reference to that subject?

Ans. I do not that I recollect. I had an interview with Mr.
Cochran in the back room of our Office not long before the
property was to be sold under the Trust deed but sometime
after the publication to sell.

Cross Examination here closed.

The further examination of witness was adjourned
until April 22nd 1866 at 9 o'clock A.M.,
(Signed) "E. R. Smith".

And thereafter on the fifteenth day of April A. D.
Eighteen hundred and fifty seven there were filed in the Office
of the Clerk of said Court Depositions of said Hart on
behalf of said Complainant, together with Depositions of
said Hart on the part of Defendant Cochran; Which
Depositions are in the words and figures following to wit:

'Interrogatories to Hart on the behalf of Complainant

1. At the time you placed the same in controversy in the
Office of Messrs Sharp & Smith, did you furnish them
with an Abstract of the Title?

Ans. I do not that I remember.

2. Did you place to said Sharp & Smith or either of
them at the time of placing said property with them

for Sale as aforesaid that said property was encumbered with the claim of said Graham for the purchase money thereof.
Ans. I have no recollection that I stated anything concerning the title.

3. If you state in your answer that you are confident that said Sharp & Smith were at the date of Sale to the Complainant acquainted with the fact of the incumbrance on said property held by said Graham. State what circumstances contributed towards that conviction in your mind?

Ans. The circumstances were these: Smith, Harris & Mr Sharp were in the habit of speaking about purchases and sales made by myself and to one or other of these gentlemen. I began at the time this negotiation was going on with Harris, the propriety of his (Harris) taking a simple Contract from me instead of a Deed in fee simple he consenting to me as they proposed his Note and Mortgage for deferred payments placing as the person that should anything happen to me as to my deferred payments to Graham (Harris) would at all times have the means in his hands to protect himself. In addition to this it was not proposed to close the papers until the expiration of ten days from that time going to Sharp, Smith & Harris or Harris ample time within which to ascertain the condition of the property.

4. On the signing of the Deed of Indemnity when the said Contract of yourself & the Complainant for said property was consummated state whether or not you exhibited to said

Smith the Deed of Trust held by said Cochran on said property & what remarks, if any, were made by said Smith concerning the same.

Ans. Sometime during the day or evening of 23rd February I have a recollection indistinct of sending a Note to Mr Cochran requesting him to call at my room as the Honourable House being with him the Deed of Trust intending to insist if the Deed was made that said Harrow should take either a simple Contract or a power of sale covered by Cochran's Mortgage. I remember Mr Cochran was in my room about that day or evening and told me his Mortgage or Deed of Trust, which I think was laid upon my table. My impression is that either Smith, Sharp or Horne was present at the time and in the discussions remarked with a view to induce me to execute a deed out and out that Note & a Mortgage from Harrow. "You of course (meaning me) will take care of your payments to Cochran & Harrow will take care of his Note to you." This remark put quiet as coming from either Mr Smith, Mr Sharp or Mr Horne took place either at the time mentioned or during our discussions as to the form in which the papers should be presented about that period.

5. In the discussions had with reference to the form of the papers to be executed by himself & the Complainant and upon state to the Complainant as an objection to the form proposed by him that you had not received a conveyance of the property from said Cochran & could not therefore comply with his desires in that regard?

Ans. I have no recollection of making any such statement.
6. Were you not aware of the fact that on the Evening
of the 23rd of February aforesaid the said Deed of Trust
was not recorded and did you not then observe that the
usual Certificate of the Recorder was not secured or pro-
duced? If yes, did you mention the fact to said Smith?
said Deed was not recorded?

Ans. I was not aware of the fact that I now remember
I did not mention any such fact to Smith though I
conducted the negotiation with no other idea than that
Smith or his partner Sharp or Mr Howard perfectly well
understood that I had not made my full payments
beforehand.

7. Did you not on receiving the Deed of said property
from said Cochran and delivering said Deed of Trust to
said Cochran not to file said Deed of Trust for record until
after the conclusion of the negotiations then pending between
said complainant and yourself for the purchase & sale of
said property, and if not, state what conversation you had
with said Cochran with reference to the recording of said
Deed of Trust?

Ans. To accommodate some parties who had been in the
negotiation for the property in question I had previously
taken a Warranty deed in fee simple from Cochran and at
the time of receiving said Deed from him I executed back a
trust or Mortgage Deed to secure deferred payments. Over this
Deed of Trust I had no control. I had no right to take
note that I am aware of giving him any advice touching

its recording, procuring that Mr Cochran understood what was necessary for the protection of his own interests.

8. Did you not state to said Complainant and said Smith or one of them during the pendency of the negotiations that you had a deed of said property from said Cochran which was of record and did you not neglect to inform the that there was a Deed of Trust from you to D. Mason Barker to secure said Cochran the purchase money unpaid on said premises?

Ans. I presume that I stated to some one of the parties that I had a Deed of the property and may have said to them that I believed the title to be good now, as I have already said I believe that the parties understood that I had not paid Cochran in full, and that said Cochran to secure said deferred payments had a lien on the property.

9. Did not said Complainant during the pendency of the negotiations afterwards state to you or in your presence that he would not purchase property upon which there were incumbrances and if you was not this statement made in the presence and hearing of said Smith?

Ans. Complainant made in such statement in my presence that I remember. He seemed to be most anxious not to give a form of Mortgage, different from the ordinary Mortgage created in Kentucky that is as to form. I believe as I have frequently said that their anxiety to follow the papers in the form their afterwards assumed, instead of examining an ordinary Contract & Complainant's non payment of his paper bore was the power of all this trouble.

10. If you know that the Trust aforesaid was put of record State why you did not mention the existence of the same to said Complainant?

Ans. I have already said that I know nothing of the recording of the Mortgage or Trust of Trust and that I have no control over it.

11. If you state that you are convinced that said Trust I Smith, or said Smith was aware of the existence of the incumbrance of said Cochran before the date of the Complainant does not that conviction result from the fact that the Trust deed was upon the table the Evening of the 23^d aforesaid and not from any conversations had with said Smith about said incumbrance?

Ans. It was not from the fact that the Trust Deed was brought to my room by Cochran and there as I believe displayed but from conversations with Sharp, Smith or Moore touching the advantage to Harrow of a simple Contract instead of a deed Trust Mortgage, pointing out as I have already said the fact that by taking a simple Contract from me he could at all times pocket himself my payments or rather my overpayments to Cochran. But I will not add as I have already said that I am perfectly satisfied that some one at least of these parties perfectly understood the terms upon which I bought this property from Cochran as well as the price I paid for it.

12. Did you ever discuss with said Sharp Smith Moore or either of them as to the Effect of the Trust Deed aforesaid in casting a shadow upon the contemplated title to said

to said Complainant Harrow and did you state to either of said persons when they were the verifying the adoption of their form of preparing the papers that said Trust did would in any event take precedence of the contemplated conveyance from yourself to the Complainant?

Ans. I have no recollection of any such conversation. If any such conversation was had touching the Trust due at this time, they certainly were aware of its existence and must have known before the 3^d of March the date of the delivery of my Deed to Harrow, of its record, that is of the Deed of Trust.

13. If you state that you regarded Messrs Sharp Smith rather as the Agents of the Complainant in the negotiations than as your own state upon what circumstances you proffered such opinion?

14. Did you derive your opinion of the fact aforesaid in the last interrogatory aforesaid from any statements made to you by the Complainant or from the conduct of the Complainant, and if from either state what was said by Complainant on the subject, and what said conduct was?

15. State whether you did not pay Messrs Sharp Smith a Commission for making the said Deed to the Complainant.

Ans.
to 13-14 & 15

I certainly did propose to give Messrs Sharp Smith \$1000, to take the Block, but they came to me with a statement, that this Complainant was an old Kentucky friend of theirs, and that they thought they could induce him to buy this Block, and throughout the negotiation

I saw but little of Mr. Harrow who seemed to have placed his confidence exclusively in Messrs. Sharp & Smith. I did pay them (S. & S.) £100.

16. What circumstances led you to suppose that the Complainant relied more on the good faith & information on the part of said Sharp & Smith or other of them so concerning the title to said property, than on your own part?

Ans. I have already said that I paid last sister of Mr. Harrow, but saw little communication with him since then. I saw him before and throughout the negotiation he seemed to place his confidence entirely in Sharp & Smith &c.

17. After you consented to execute to said Complainant a Deed for said property did you not ask him to execute a Deed of Trust or Mortgage thereon containing a power of Sale & other provisions usual in the Ordinary form of said instruments and if you did not the Complainant reply that he would rather execute such an instrument over own property incumbered in that manner and if not, then state what Complainant did pay on that subject and what proportion you made to Complainant after you consented on your part to execute a deed or assign as above fully & particularly to the best of your recollection and belief?

Ans. I did not ask him to execute the trust deed, with a power of Sale, that I now remember, but urged him as I have repeatedly said to take a simple Contract which would be an effectual assurance of title and at the same

him enable him without risk or loss to himself to look to
my payment to Cochran. It may be, thinking he desires
a deed in fee simple from me I required the Mortgage
Deed of the Ordinary form, providing in substance, but
from the generosity of such instruments. The fact of his non
residence and other reasons I consented to take the
Common Mortgage depending from representations made
at the time of his assuming position & condition in Church,
that the form of Mortgage was a mere whim and not
insister upon by him but by Sharp Justice & Co with
a view of delaying the Collection of the paper by the
Ordinary process of a suit in Chancery.

(signed) Samuel M. Hart."

Depositions of Samuel M. Hart to interrogatories
on behalf of Defendant Cochran

1. Are you one of the Defendants in this suit?
Ans I am
2. State where and under what circumstances you sold
the property involved in this Contest to the Complainant
Thomas A. Harrow & through whose agency the same
was effected?
Ans I have already stated the circumstances of the Sale
made to Harrow and by whose agency it was effected?
3. State what representations you made to your Agents
and to Mr Harrow as to the State of the title and the
Condition of the property as to incumbrances?

Ans. I have stated as near as I can what representations were made as to the State of the title & circumstances.

4. Was there any delay or difficulty or delay in the negotiation; if so, from what & how did it originate?

Ans. There was delay, and difficulty in the negotiation, the origin of which I have already stated in my answers to Complainant's interrogatories.

5. Was there any discrepancy as to the form of the paper to be paper, if so state it fully and also the origin and termination of it?

Ans. I have already stated that there was discrepancy as to the form of the paper to be paper. I remember it was my wish at the time that a simple Contract should be taken or that I should discontinue myself from future payments.

6. Did you represent the property as free from encumbrance to Smith & Sharp and Harrow, or to either of them, if so, state when & how, what you paid; if not, state what you did pay, if anything on that subject?

Ans. I did not so represent it & could not for the reasons I have already stated, acting all the while as I did under the impression that some of the parties understood the condition of the title and supposing as a matter of course they would not take mine or any other man's word as to the condition of the title, but would within the few days allowed them for the exchange of papers make an examination of the title and satisfy themselves of the condition of the same.

4. Did Mr Harrow make it a point that the prospects, he thought must be remembered?

Ans. As I said before I saw but very little of Mr Harrow and the sale was not concluded until after I had retired to bed, perhaps at 11 o'clock at night, at which time Mr Harrow paid \$1500 towards dollars, & took my receipt which interview was very brief. The point throughout in the negotiation made by Mr Harrow was that he would not take an Ordinary Contract or secure anything but an Ordinary Mortgage for the reason that his prospects might be forfeited in his absence and without his knowledge.

8. Was or was not Harrow aware that you had not made all your payments to Cochran for the land?

Ans. I supposed all along that he was until a short time before the filing of the Bill.

9. Were or were not Smith & Sharp aware of the same fact?

Ans. I had no other idea than that none of that firm either Sharp, Smith or Harrow were aware of payments yet to be made by me to Cochran, and in the interviews and negotiations for securing, preceding the filing of this Bill, they never then never pursued otherwise, but I think something was said of the loose way in which the money was done and if known it would injure their standing among their Kentucky friends, I have an impression of this last conversation, but am by no means positive of its taking place.

10. State also what was said between you & them on that subject during the negotiation?

Ans. It is impossible for me to give even the substance of all the conversations, it is so long time since and was something with which I did not charge my memory, beside at that time and at the Fremont House there were numerous negotiations and so many conversations before, since of property bought and sold and things generally conducted in such hot haste, it would require a much better memory than I possess to approach a statement of details.

11. State what occurred in the Evening of the 23^d Feb. 1881 when the transaction was closed and the papers signed and who were present?

Ans. I have already stated the impressions I have in reference to what occurred.

12. State how you held the property at the commencement of the negotiation. What change was made as to the title between yourself & Cochran. the time it was done. and the reason?

Ans. I have already stated that I held the property by simple contract from Cochran which was on record, and that he conveyed the same to me in fee simple to consummate the views of some party or parties other than the Company or it may have been done at the instance of Mr Cochran to enable him to raise money on my paper.

13. Were you aware that Sharp & Smith and Hannes all relied on your representations as to the title &c. and that

they did not search or did not intend to search the records to ascertain the condition of the title?

Ans. I supposed as a matter of course that within the few days allowed for the exchanging of papers reference would be had to the records for information upon the subject of the title.

14. State what occurred between yourself & Mrs. Harrow, subsequent to the sale, with reference to the payments, when became due, the \$3000 Note and the acceptances?

Ans. My answer filed in this case contains substantially what is asked in this question and I refer to it for my answer hereto. I will only add, that subsequent to the \$3000 Note deposited, with Mr. Cochran the other of Complainant's Notes were exchanged with a party who stated that he desired Chicago Securities to deposit at Collectors and that I could at any time make an arrangement for the substitution of other securities or for the purchase of the same.

15. State whatever else you may recollect of service to Defendant Cochran in this suit?

Ans. I would state that these transactions took place some time ago and under such circumstances as of course render my statement simply as impression left upon my mind, feeling it out of the question to affirm positively to any conversations that took place, or the transactions. I also state that about the time I was spoken to about the removal of this lien of Cochran, or the substitution of some other securities I had large amounts of Mortgage

paper given by Henthall, gentlemen, which was under
protest, and with the accompanying his Complainant of
his \$3000 Note. I thought myself embarrassed, but if
I had supposed that the Complainant & Smith, Sharp and
Harris, one and all were not originally & all along aware
of the payments due Cochran, I should have promptly
indemnified the Complainant against the payments to
Cochran & that I did not do so before the filing of this Bill
was the result of carelessness and a little relaxation in that
the parties had not pursued the course I had originally
desired. Upon being informed by Complainant that he felt
himself compelled to file a bill I promptly offered to remove
Cochran's Mortgage, if he would pay in full his \$3000
Note that arranged for that purpose with Cochran. I
would further state that I was quite intimate ^{with} Moore
Sharp, Smith & Harris & felt a friendly desire to promote
their interests and my impressions in reference to this matter
may be based upon the fact that at that time none of us
made a purchase or sale as I suppose without talking
the thing over with each other, which is certainly the case
so far as my operations went. In our last interview at
Chicago about the time of filing this Bill I repeatedly
stated that I should undoubtedly protect Mr Harris on
account of this Cochran Mortgage, and at the filing of
his Bill, the charges it contains would delay the object
at which he aimed, and I will add now the delay in this
deposition has returned in the reputation on my part of
daily realizing large sums due me to enable me to

transmit to Cochran the amount due him
Sam. M. Hart: "

And thereafter he was on the twentieth day of January
A. D. Eighteen hundred and fifty nine the said Complain-
tiff in the Office of the Clerk of said Court his exceptions
to the Deposition of said Hart: Which said exceptions
are in the words and figures following, to wit: -

" In the Cook County Court of Common
Pleas.

Thomas A. Harris

vs

Samuel M. Hart, James
W. Cochran & Marion Barker } In Chancery

The Complainant excepts and objects to
the Deposition of Samuel M. Hart taken in this cause for
the following grounds of objection

1. The said Samuel M. Hart was and is incompetent, being
a party to the suit, and interested in the result.
2. The deposition was taken without any Order of the
Court.
3. The said deposition was taken without any Commission
issued from this Court, or from the Clerk's Office for the
taking thereof.
4. The said Deposition was irregularly taken, the deponent
appearing to have been called and examined as a witness
by the Complainant, & having testified to the interrogatories

of the Complainant as to an Commissioner in Chief, and to the interrogatories of the Defendant Counsel as to a Chief Examiner when in fact the said Complainant did not call the said Hart as a witness, nor propose to admit him as such.

5. It does not appear by the Caption or Final Certificate of the Officer on behalf of which party said witness was called.

6. The answer of the witness to the Plaintiff's 2^d interrogatory is evasive and not responsive to the question.

7. The answer of the witness to the 3^d interrogatory of the Complainant is incompetent and evasive. It states what the witness urged upon Smith, Sharp or Howell, the persons last mentioned having no connection with the hearing. It is further incompetent as giving the statements of the witness to one or another of the persons mentioned without distinguishing to whom, and if to Howell there were no relevant.

8. The answer of the witness to the Complainant's 11th interrogatory is liable to the same objection as that made above to the 3^d and said answer is evasive and not responsive to the question.

9. The answer of the witness to the 6th interrogatory of the Complainant is liable to the same objection as that to the 3^d + 11th.

10. The answer of the witness to the 7th interrogatory of the Complainant is evasive and not responsive to the question.

11. The answer of the witness to the 8th interrogatory of

The Complainant is evasive and not responsive to the question and instead of answering it refers, back to an answer before given, which is itself incompetent.

12. The answer of the witness to the Complainant's 11th interrogatory is incompetent for the same objection above stated in respect to the answers to the 2^d & 3^d interrogatories and is evasive.

13. The 12th, 14th, & 15th interrogatories of the Complainant are not answered separately.

14. The answer to the 2nd interrogatory of the defendant Cochran is not responsive to the question, gives no testimony and reverses the Order of the Examination, putting the Defendant the Complainant's instead of the defendant's witness.

15. The answer to the 3rd interrogatory of the Defendant Cochran is liable to the same objection.

16. The Answer to the 11th interrogatory of the defendant Cochran is liable to the same objection.

17. The answer of the witness to the Defendant Cochran's 5th interrogatory is evasive, irrelevant and not responsive to the question.

18. The answer of the witness to the 7th interrogatory of the defendant Cochran is evasive and not responsive to the question and irrelevant.

19. The Answer of the witness to the 9th interrogatory of said Cochran is liable to the same objection above made to the answers to the 2^d & 3^d interrogatories of the Complainant.

20. The answer of the witness to the 11th interrogatory of the defendant Crookman is liable to the same objection above stated in respect to his answers to the 3rd 3rd & 4th and is evasive and not responsive to the question.

21. The answer to the 11th interrogatory of the Defendant Crookman is incompetent referring to the answer of the witness, which was not sworn to instead of giving the testimony asked for by the interrogatory and the whole of said answer is irrelevant.

22. The answer of the witness to the 14th interrogatory of Def^t Crookman, except so far as relates to the want of memory on the part of the witness is wholly irrelevant and incompetent.

And afterwards to wit on the twenty fourth day of February (being one of the days of the regular February Term of said Court) A. D. Eighteen hundred and fifty nine, the following proceedings were had in said Court and entered of record in said Court to wit.

Thomas A. Barron

vs

James W. Crookman, Plaintiff

De^fendant

Wm Hart & S. Mason Parker

Came now the Complainant by Messrs Blackwell and Perkins, Thomas & Roberts his Solicitors, and the said James W. Crookman & S. Mason

Further by Messrs. Waller & Huntfield's Recd. Consent, and the said Complainant suggests that since the last continuance of this cause the said Samuel M. Hart has departed this life, whereupon it is Ordained that this suit as to him be abate.

And this cause is now set down for hearing upon the Bill, Answers, Replications & proofs and the said Complainant having given in evidence the Deed of Trust attached to the Complainant's Bill and made an exhibit thereto, and the Deposition of E. Randolph Smith and also an Abstract of the title to the said lot or block number thirteen, in the Complainant's Bill mentioned, which was by mutual agreement of the parties admitted & read in evidence in the place and stead of the Complainant's Deed referred to, and the evidence of the Recording Survey and the said Complainant having also given in evidence the records & proceedings of the Cook County Court of Common Pleas, in & certain causes lately tried and determined in said Court between The Farmers Bank of Kentucky and others Complainants and Late J. B. Sanders and others Defendants, and the said defendant Samuel M. Cochran having given in evidence an agreement between himself and the said Samuel M. Hart as follows to wit

'Articles of Agreement made this seventh day of May in the year of our Lord one thousand eight hundred and fifty three between Samuel M. Cochran of the County of Cook and State of Illinois of the first part and Samuel M. Hart of Greencastle in the County of Hamilton and

State of Ohio of the second part Witnesseth that of the
parties of the second part shall first make the payments
and perform the covenants hereinafter mentioned on his part
to be made and performed the said party of the first part
hereby covenants and agrees to convey and assure to the
party of the second part, in fee simple clear of all en-
cumbrances whatever by a good and sufficient Warranty
that the following lot here or parcel of ground vizt.

Block Thirteen (13) in the Canal subdivision
of section (7) in Township (39) Thirty Nine, Range 11th,
fourteen.

And the said party of the second part hereby
covenants and agrees to pay the said party of the first
part the sum of Eight thousand dollars (\$8000) in
the manner following, Two thousand dollars Cash on
the delivery of these presents, Fifteen hundred dollars
in one year from the date hereof, Fifteen hundred dollars
in two years from the date hereof, Fifteen hundred
dollars in three years from the date hereof and Fifteen
hundred dollars in four years from the date hereof with
interest at six per Cent per annum on all sums remaining
unpaid at each general term of payment; and to pay all
taxes, assessments or impositions that may be legally levied
or imposed upon said lot; and in case of failure of the
said party of the second part to make either of the pay-
ments or perform any of the covenants on his part this Contract
shall be forfeited and determined and the party of the
second part shall forfeit all payments made by him.

on this Contract, and such payments shall be retained by the said party of the first part in full satisfaction & in liquidation of all damages by him sustained and shall have the right to receive and take possession. It is mutually agreed that all the Covenants and agreements herein contained shall extend to and be obligatory upon the heirs executors administrators and assigns of the respective parties. And whereas the said James M. Cochran is indebted to William Briggs in the sum of Six hundred dollars payable as follows to wit Three hundred dollars on the Twelfth (12th) of May A.D. 1864 and Three hundred dollars payable on the (12th) Twelfth of May A.D. 1865, with interest at six per Cent per annum, which said Six hundred dollars is due from said Cochran to said Briggs as part purchase money on the above described lease. Now it is agreed that if said Cochran should fail to pay to said Briggs either or both of said sums of money as the same become due, then the said Hart may pay the same to said Briggs and the payments so made to said Briggs shall be a payment to said Cochran, and apply in any of the above payments due from said Hart to said Cochran.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written And it is further agreed that a grace of sixty days shall be allowed on all payments before forfeiture is declared. J. M. Cochran (Seal)

Sealed, signed and delivered in presence of, Saml M. Hart (Seal)
Recorder in Book 68 of Deeds. Page 179

And the foregoing being all the evidence in this case and the Court being sufficiently advised of facts concerning the premises. It is now finally Ordered, adjudged and decreed that the Equity of the case is with the Complainant and that the said Defendant James M. Cochran ought to be and is stopped from claiming any right title or interest in and to the said Lot or Block Number Thirteen in the Canal Street subdivision of section seven (7) in Township Thirty nine North of range fourteen East of the fourth Meridian, situated in the County of Cook Indiana, his or through the said deed of trust from the said James M. Hart to the said J. Mason Parker, for the use of the said James M. Cochran, dated the twenty first day of February eighteen hundred and fifty four, in the Complainant's Bill mentioned as against the said Complainant.

And it is further Ordered, adjudged and decreed that the said James M. Cochran and the said J. Mason Parker, and all other persons claiming his through or under them, or either of them his and they are hereby perpetually enjoined and restrained from getting up any right or interest in or claim to the said Lot or Block Number Thirteen by means of the said Deed of Trust.

And it is further Ordered adjudged and decreed that the said Complainant recover against the said Defendant James M. Cochran his costs and charges by him about his suit in this behalf expended.

And thereon the said James M. Cochran, forgoes an Appeal to the Supreme Court, which is granted upon filing

his Bond with J. L. Barker as his surety in the sum of Five hundred dollars within Twenty days from this date Conditions according to Law.

+

And thereafter to wit on the twenty eighth day of February A. D. eighteen hundred and fifty nine there was filed in the Office of the Clerk of the said Court County Court of Common Pleas, a certain stipulation in said cause; which said stipulation is in the words and figures following that is to pay.

Thomas A. Harrow } Court County Court of Common
 Pleas.
James H. Cochran et al } In Chancery.

A complete record of this suit in Chancery between The Farmers Bank of Kentucky and others Complainants and Leab. J. Burdett and others Defendants having been given in evidence by the Complainant in this cause, since the said record being voluminous and much of it irrelevant, the parties agree that instead of the entire record the following statement shall be substituted in the record of this cause as the evidence given in that behalf by the Complainant instead of the complete record.

The Bill in said cause was filed by The Farmers Bank of Kentucky, Henry H. Burdett and James S. Burdett against Leab. J. Burdett, Edward J. Denton, Thomas A. Harrow, the Complainant in this suit, Asa Vail, Arthur H. Gort, Samuel M. Hart, a defendant in this suit, and

And the foregoing being all the evidence in said case and the Court being sufficiently advised of and concerning the premises. It is now finally Ordered, adjudged and decreed that the equity of the case is with the Complainant and that the said Defendant James W. Cochran ought to be and is stopped from claiming any right title or interest in and to the said Lot or Block Number Thirteen in the Canal ²Thamese subdivision of section seven (7) in Township Thirty nine North of range fourteen East of the principal Meridian, situated in the County of Cook aforesaid, by or through the said deed of trust from the said James W. Cook to the said J. Mason Parker, for the use of the said James W. Cochran, dated the twenty first day of February eighteen hundred and fifty four, in the Complainant's Bill mentioned as against the said Complainant.

And it is further Ordered, adjudged and decreed that the said James W. Cochran and the said J. Mason Parker, and all other persons claiming by or under them, or either of them, be and they are hereby perpetually enjoined and restrained from setting up any right or interest in or claim to the said Lot or Block Number Thirteen by means of the said Deed of Trust.

And it is further Ordered, adjudged and decreed that the said Complainant recover against the said Defendant James W. Cochran his costs and charges by him about his suit in this behalf expended.

And that on the part James W. Cochran, forgoes and Appears to the Supreme Court, which is granted upon filing

his Bond with J. L. Baker as his surety in the sum of Five hundred dollars within Twenty days from this date
Constrained according to law.

And thereafter to wit on the twenty eighth day of February A. D. eighteen hundred and fifty nine there was filed in the Office of the Clerk of the said Court County Court of Common Pleas, a certain stipulation in said cause; which said stipulation is in the words and figures following that is to pay.

Thomas A. Harrow
Esq.
Book County, West of Columbia
Treas.
James H. Cochran & Co
In Charge.

A complete record of the point in controversy between The Farmers Bank of Kentucky and other Complainants and Latih. J. Burdett and other Defendants having been given in evidence by the Complainant in this cause, and the said record being voluminous and much of it irrelevant, the parties agree that instead of the entire record the following platelaid photo be embodied in the record of this cause as the evidence given in that behalf by the Complainant instead of the complete record -

The Bill in point case was filed by the Farmers Bank of Kentucky, Henry H. Burdett and James S. Burden against Caleb S. Burdett, Edward A. Duniton, Thomas A. Harrow, the complainant in this suit, Alex. Vail, Andrew H. Goss, Samuel M. Hart, a defendant in this suit, and

William W. Rugh who were made defendants - An amendment to said Bill was filed November 28th 1844, in which the Defendant Cochran, was made a Defendant - the Bill and amendment got forth among other matters, that in April 1835 Henry W. Burdett and James W. Burdett filed a Bill in Chancery in the Superior Court of Cincinnati, Ohio, against said Burdett and others, among whom were the Farmers Bank of Kentucky, and said Thomas C. Harrow, which proceeding resulted in a Decree and a Transcript of that Decree was made an exhibit to the Bill filed in the cause in this jurisdiction just mentioned. The Complainants in this suit in Cincinnati alleged that they had obtained a judgment against said Burdett for \$2951⁴⁰/₁₀₀, in which execution he was returned "nulla tenet", and that the Farmers Bank of Kentucky had obtained a judgment against said said Burdett for \$3388⁴⁰/₁₀₀ and that said said Burdett had no property to satisfy the same. The object of said Bill was to reach certain equitable assets of the said said Burdett and among them, the indebtedness of Harrow to him as the holder by endorsement from Harrow of the Note of Harrow given for the lot in controversy in this suit. Harrow answered that Bill alleging in his answer that he had paid the Note due in 1835, and that he would be ready to pay the Note due in 1836 and 1844 at maturity. The injunction was granted in said Cause prohibiting Harrow from paying over the money to Burdett, and a decree was finally entered that the Note be surrendered to a payee, and collect for the benefit of the Complainants in that suit, and the Farmers Bank of Kentucky. The Note was brought in the Cook County

Board of Common Pleas for said Henry M. Burdick and
James S. Burdick and the Farmers Bank of Huron to
avail themselves of the benefit of the Circumstances by
foreclosing the Mortgage against Harrow in that suit.

It is testified that on the 23rd day of February 1884, he
sold to Thomas W. Harrow the land in controversy in this
suit, that as a part of the consideration therefor, he took from
Harrow his two promissory Notes of that date one for
\$2250 payable in two years and one for \$2100 payable
three years after date secured by Mortgage as mentioned in
the bill that prior to the commencement of said proceedings
in Circumstances he had issued said Notes to said Caleb S.
Burdick since which a significant he had had no interest in
them - He admits that as endorser of said Notes, he has
an interest in the payment of them to save himself from
any contingent liability therefor and he therefore recites in the
preamble of said Bill and prays that in the event of the
nonpayment of the said Notes by said Harrow the said
land might be sold and the proceeds thereof be applied to
the payment of said Notes to the parties who should
appear to be entitled and for such other relief as good
Conscience might require. A writ of writ of foreclosure was
returned in said cause against said Harrow on the 8th
day of February 1884 for the amount due on said two Notes
and for the foreclosure of the Mortgage given originally by
Harrow to Hart, and the lot in controversy ordered to be
sold, and on the day of March 1884, the said property
was sold under said decree, and was bid in by the Company
for the full amount of said debts and costs and the

same remains in full force.

(signed) Walter Haulfeld

Attys for Def.

Attorneys, Thomas Roberts

Attys for Comptlts.

x

Will hereafter to wit on the first day of March A.D. eighteen hundred and fifty nine the said Defendant Cochran filed in the Office of the Clerk of said Court his Appeal Bond in said cause; Which said Appeal Bond is in the words of figures following, to wit:

"Whereas We the undersigned Presenters That we James W. Cochran and Samuel J. Baker of the County of Cook and State of Illinois are held and jointly bound unto Thomas A. Harris of the County of Bourbon and State of Kentucky in the penal sum of Five hundred dollars, lawful money of the United States, for the payment of which well and truly to be made we find ourselves our heirs, executors & administrators, jointly, severally and jointly by their presents

Witness our hands and seals this 1st day of March 1859

The Condition of the above Obligation is such That whereas the said Thomas A. Harris did on the 22nd day of January 1859 in the Cook County Court of Common Pleas in and for the said County of Cook and State of Illinois and of the County of Cook State of Ill. 1859 procure a writ against the above James W. Cochran and James M. Baker in a certain cause in Chancery, then pending in said Court, between said parties

Francis Cook of suit here which Docket of said Court the said
James M. Cochran has prayed for and obtained an Order to
the Supreme Court of the State of Illinois. Now therefore if the
said James M. Cochran shall duly prosecute his said appeal
with effect and moreover pay the amount cleared and costs,
interest and damages rendered and to be rendered against
him in case the said decree shall be affirmed in the said
Supreme Court, then the above obligation to be and affirmed
to remain in full force and virtue

(supersede) James M. Cochran (Seal)

Taken and entered into before S. L. Baker (Seal)

for my Office in Chicago
and approved by me this
1st day of March 1869.

State of Illinois }
County of Cook } P.

I Walter Kimbale, Clerk of the Cook
County Court of Common Pleas, within and for the County
and State aforesaid Do hereby Certify the foregoing to be
a full true and correct Transcript of all papers now
on file in my Office, together with the Order or Decree
Entered of Record in said Court, in a certain suit therein

on the Chancery side thereof, wherein Thomas G. Harrison
is Complainant and Samuel W. Hart, James W. Cochran
and A. Mason Parker, are Defendants.

In testimony whereof I have hereunto set
my hand and affixed the Seal of said
Court at Chicago, in said County this
twenty fourth day of March A. D. 1859.

Walter Kimball, Clerk

Corrobo signed on behalf of Defend-
ant, James W. Cochran, Appellant.

The said Defendant, Cochran, now Appellant,
says that manifest errors have been committed,
to his injury, in the foregoing record, and signifies
the following: viz.

1. The Court erred in decreeing that the Defendant Cochran,
be estopped from claiming any right, title or interest in
and to the property in controversy, under the deed of trust
from Hart to Cochran.
2. The Court erred in decreeing that the Defendant, Coch-
ran and Parker be perpetually enjoined and restrained from
setting up any right or interest or claim in and to said
property under said trust deed.
3. The Court erred in adjudging costs & charges against
Defendant Cochran.

All which are in (17) full submitted.

Walter Kimball, Clerk
for Defendant.

And the said appellee comes by Goshin
Thomas & Roberts, his attorneys and
says that no error hath intervened
in the record and since affirmed
wherefore they pray that the same may
be affirmed

Goshin, Thomas &
Roberts, Attys for
Appellee.

195-

Jas. W. Cochran
imp. ci

Thos. A. Hanow

Reind

By order

Filed Apr. 19. 1859
L. Velas Ch.

Waller &
Caulfield etc

POSTAL TELEGRAPH-CABLE COMPANY IN CONNECTION WITH THE COMMERCIAL CABLE COMPANY.



NEW YORK

CLARENCE E. BACDAY, President,
J. D. STOTTEN, Secy.

CLARENCE H. MCKEY, President,
ALBERT ROSE, Secy.



TELEGRAM

129

The Postal Telegraph-Cable Company transmits and delivers this message subject to the terms and conditions printed on the back of this blank.

Received at Main Office, Cor. La Salle and Washington Streets, Chicago (Telephone, Main, 217-218-219-224).

BY 25 AM BRY V1277715 Collect

Springfield, Ills/April 17th

John E. Dalton,

Box 418 Reaper Block, Chicago, Ills/

Certified copy of bill in record in cochrane vs Harrow
will cost six fifty¢.

C/ Mignard

1134am

1134am



FORM 14.

POSTAL TELEGRAPH-CABLE COMPANY.

This Company transmits and delivers the within message subject to the following

TERMS AND CONDITIONS.

To guard against mistakes or delays, the sender of a message should order it **REPEATED**; that is, telegraphed back to the originating office for comparison. For this, one-half the regular rate is charged in addition. It is agreed between the sender of the message written on the face hereof and the Postal Telegraph-Cable Company, that said Company shall not be liable for mistake or delays in the transmission or delivery, or for non-delivery, of any telegraphic message, beyond the amount received for sending the same; nor for mistake or delays in the transmission or delivery, or for non-delivery, of any telegraphic message beyond fifty times the rate received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines, or for errors in cipher or decipher messages. And this Company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other Company when necessary to reach its destination.

Correctness in the transmission of messages at any point on the lines of the Company can be insured by contract in writing, stating agreed amount of risk, and payment of premium thereon, at the following rates, in addition to the usual charge for repeated messages, viz: one per cent. for any distance not exceeding 4,000 miles, and two per cent. for any greater distance.

No responsibility regarding messages attaches to this Company until the same are presented and accepted at one of its transmitting offices; and if a message is sent to such office by one of this Company's messengers, he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

This Company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the Company for transmission.

This is an **insurance** message and is delivered by request of the sender under the conditions named above. Recourse is guarded against only by repeating a message back to the sending station for comparison.

No employee of this Company is authorized to vary the foregoing.

WILLIAM H. BAKER,
V. P. and Gen'l Manager.

JOHN O. STEVENS,
Secretary.

CLARENCE H. MADEAT,
President.

11-13-16

ILLINOIS SUPREME COURT.

APRIL TERM, 1859.

TIMOTHY A. HARROW, APPELLANT.

vs.

JAMES W. COCHRAN, APPELLEE.

} *Appeal from Circuit*

} *Clerk, Pleas.*

APPELLEE'S BRIEF.

This appeal is presented to reverse a decree enjoining the sale of certain real estate under a deed of trust.

The question presented by the record is that of an equitable estoppel.

On the 23d of February, 1854, Harrow the plaintiff, purchased from Hart, one of the defendants, a lot in Chicago for \$12,000; paid one-fourth down, and gave his negotiable notes (which were passed away by Hart) for the residue, payable in one, two and three years. Hart held the lot by deed from Cochran, dated the 21st and recorded the 23d of February. At the time Cochran conveyed the land to Hart he took from him a deed of trust to the defendant Parker, to secure the payment of certain notes from Hart to Cochran, amounting to about \$2,000, dated in May following. The trust deed was recorded on the 24th of February. This is the deed enjoined.

Harrow's contract of purchase was consummated on the evening of the 23d of February, in Hart's room, in the Tremont House, in the presence of Cochran, when he paid Hart \$1,200, and the remainder of the down payment was made soon after. Hart's wife being at Cincinnati, the deed had to be sent there for her signature. Harrow living in Kentucky, and immediately departing thence, made his mortgage for the deferred payments, and left it with the notary-agent of Hart and Harrow; and on the 3d of March, Hart's deed was returned from Cincinnati, when that and Harrow's mortgage were placed on record.

The treaty between Hart and Harrow was pending some three or four days, during which time Hart repeatedly declared that his title was good and unincumbered. Cochran was aware of the treaty and was applied to at the instance of Harrow, for information concerning the state of the title, and was enquired of whether Hart's representations could be relied on. He endorsed Hart's character in the fullest terms; stated that Hart had a good title to the property, p. 46-7; and before Harrow closed his purchase encouraged him to buy, saying the property was worth more money than he was to pay for it. p. 47.

Cochran interposes the following grounds of defence:

1. He denies that he was applied to for information in reference to Hart or his title, or that he endorsed either, in any way.
2. He insists that Harrow had notice, actual or constructive, of his claim upon the land, at the time of the transaction.

The answer is not under oath.

1. On the first point the evidence in support of the bill is clear, explicit and uncontradicted. That frequent interviews were had with Cochran is plain. He admits two in his answer. One on the evening of the 22d, in the parlor of the Tremont House; the other on the evening of the 23d in Hart's room, when he says the sale was closed. (p. 37.) At the first of these he admits that the title was discussed, but asserts that it was *his* title, instead of Hart's that was the subject of conversation. He has no proof to sustain that assertion; while Smith swears *positively and circumstantially* that he said Hart's title was good. Smith testifies to other interviews, especially the one in his office.

2. Harrow had no constructive notice of Cochran's claim, for the reason that there was none at the time of the transaction. Thompson showed a perfect title in Hart, by deed, expressing full payment of the consideration. Cochran attempts to set up, not a law, nor even a general custom, but a private practice of his own as an excuse for withholding his deed from record. p. 28.

3. Harrow had no actual notice of Cochran's claim. There is no pretence that Harrow knew *personally* any thing of it. Smith examined the record on the 22d or 23d, and found Cochran's deed to Hart,

and no insurance. p. 43. On that and on their representations as he testifies, he relied wholly. It was all the information he had, *p. 57*

Cochran and Hart set up in their answer that the deed of trust was brought to Hart's room on the night the bargain was closed and "displayed on the table." There is no proof of this, though from the importance given to it by both, the deed was probably brought there. However, throughout the negotiations, was very tender-footed about the title. Nothing can be plainer than that he would not have bought knowing of such an incumbrance. Hart knew this. He was anxious to sell, and Cochran was desirous to help him. The deed of trust was kept from record, but was brought there under the pretence of exhibiting it. It was an anchor thrown to windward in case of trouble. Hart would be a competent witness to prove that fact. He was a lawyer and understood this. The use they have sought to make of the circumstance confirms the belief their conduct justifies. *See below*

The statement of Cochran that Hart had title to the lot was *absolutely false*. He and Smith guess that the time of the conversation about the title was the 22d; at that time the title was in Parker, and he could have maintained an action of ejectment for the land.

We are now to inquire whether this is an equitable estoppel.

"If a man having title to an estate, which is offered for sale, and, "knowing his title, stands by and encourages the sale, or does not forbear to bid it, and thereby another person is induced to purchase the estate "under the supposition that the title is good, the former so standing "by and being silent, will be bound by the sale; and neither he nor "his heirs will be at liberty to dispute the validity of the purchase. "So if a man should stand by and see another person as grantor execute a deed of conveyance of land belonging to himself, and, knowing the facts, should sign his name as a witness, he would in equity "be bound by the conveyance. So if a party having a title to an estate should stand by and allow an innocent purchaser to expend "money on the estate without giving him notice, he would not be "permitted by a Court of Equity to assert that title against such purchaser, at least not without fully indemnifying him for all his expensetures." Story's Eq. Jur. §. 282, and authorities cited in note; *Starr v. Barker*, 6 J. C. R. 163; *Woodell v. Van Rensselaer*, 1 J. C. R. 254.

Grant that he must "by his conduct or gross negligence influence the purchase," (Story's Eq. Jur. §. 286) yet he is chargeable with the natural consequences of his acts. The ground of the estoppel is the presumption that one whose rights are in jeopardy, will speak out. Standing by is knowledge under such circumstances that he ought to speak. In such a case silence will conclude even a married woman or an infant. He admits that he was present when the bargain was closed and the money paid, and that he gave no notice of his claim, and gives the very extraordinary reason why he did not think to mention it, that the original agreement by which Hart purchased from him was on record, which showed that Hart had bought on credit in part. But making a consideration of this extraordinary mental process, according to which he failed to think for so substantial a reason, it is quite evident that the reason for not thinking was present to his mind. Whether it will serve him as an apology for not having spoken while thus standing by, is the thing to be considered.

But there was more than mere standing by. There was the false statement that Hart's title was good, and that would estop him even if made in ignorance of his own rights. Story's Eq. Jur. §. 287, *Barnes v. McKay* 801, Ind. 7.

He may insist upon a difference between *title* and *incumbrance* in respect to the representations made.

We answer; 1. The statement was false, and being so, the supposed distinction, if it exists, is not available. He has no right to fall back upon an untruth for help. 2. The distinction does not exist in this case, for an unexplained statement that one has a good title is equivalent to one that the title is perfect and unincumbered. It has often been decided that a contract for a good title is tant, without any qualifying words is a contract for a perfect and unincumbered title (in *See* *Duke of St. Albans, v. Shere*, 1 H. Bl. 379. *Chase v. Robinson*, 2 J. R. 503. *Lawrence v. Parker*, 1 Mass. 191. 1 Blackf. 178, 1d. 379. 3 Blackf. 21, 7 Ind. 69. It must be without blench. *Reynolds v. Smith*, 8 Blackf. 394.

If this be so, how can truth and honesty be claimed for a representation that a vendor's title was good, and for an encouragement given to purchase the property, by one who himself held an incumbrance upon it, afterwards to be set up?

The question recurs, On what is Mr. Cochran to base his claim to priority? Will he rely on the recording acts? We think they have little to do with the case; but so far as they do affect it they favor the plaintiff. The record on the 23d of February showed a perfect and unincumbered title in Hart. Surely nothing can be claimed for constructive notice beyond what the records import. *Bederman v. Frost*, 18 Johns. 544. *Jackson v. Van Valkenburgh*, 8 Cow., 360. Further, a deed withheld from record is declared by the statute to be fraudulent. How then can the recording acts help him? Will he rely upon the fact that his trustees held a deed for the land? The uttered untruth that the title of Hart was good cuts off all hope in that quarter. All that is left, then, is some vague and undefined impression, that Harrow might have got, from nobody knows who, that real estate in Chicago was sometimes sold on credit, from which it is asked to charge him with notice that this particular tract was subject to some unextinguishable claim of Cochran, contrary to the record and the declarations of himself and Hart.

GOOKINS, THOMAS & ROBERTS,

& This, as noticed, assumes that one who enters the room of another may be guilty of the meanness of stealthily inspecting papers he may see lying on the table, whether open or not. The absurdity of such devices is manifest, when they are invoked for the purpose assigned; but the moral obliquity which conceals them is blind to their deformity at the time.

1881

Cochran

vs

Hanover

Appelles

Brief

Filed May 14.
1881