

No. **12150**

Supreme Court of Illinois

Williams

vs.

Bishop

71641  7

70.  
J. R. Williams  
vs. E. Bonier  
Alfred E. Bishop  
et al

70

12150

1854



Bill of Exceptions.

In the Boone Circuit Court

Almer E Bishop & al

vs  
Joseph R Williams

} Fuginee Issue

Be it remembered that on the  
18<sup>th</sup> day of April 1854 at the April Term of  
this Court on the trial of this issue before  
the Jury - The Plaintiffs read in Evidence  
the depositions of Samuel L Keith and  
Stephen Covey as follows to wit:



The deposition of Samuel L Keith of the County of  
Boone and State of Illinois a witness of lawful age  
produced sworn and examined upon his corporal  
Oath on the 13<sup>th</sup> day of August in the year of our  
Lord One thousand Eight hundred and fifty three at  
the Office of the Clerk of the Circuit Court of Boone County  
and State of Illinois in the town of Belvidere in  
the said County by me Fayette B Hamilton Clerk  
Said Circuit Court in a certain suit and matter  
in controversy now pending and undetermined  
in said Circuit Court wherein Almer E Bishop  
Ashley E Bishop Joel D Bishop Dighton E Bishop  
Rosetta A Bishop minors now sue by their next  
friend Emeline R Bishop Herman R Mead &  
Genette M Mead his wife & Emeline R Bishop  
widow and administratrix of Asaemus D Bishop  
deceased against Joseph R Williams in behalf  
of the said Complainants the said Complainants  
appearing by their Counsel William F Briggs  
and the Defendant by his Counsel Stephen A  
Hulbur — and this deposition taken by consent

The Samuel L Keith being first  
duly sworn by me as a witness in the said Cause  
previous to the Commencement of his Examination to  
testify the truth as well on the part of the plaintiff  
as the defendant in relation to the matters in  
controversy between the said plaintiff and  
defendant so far as he should be interrogated  
testified and deposed as follows:

1<sup>st</sup> Interrogatory

State whether or not on or about  
the 19<sup>th</sup> day of February 1850 — you were



acquainted with Anselmus D Bishop and the  
said Defendant Joseph R Williams —

Answer to 1<sup>st</sup> Interrogatory . — I was —  
Second Interrogatory

Did you have a conversation with  
said Williams in the year 1850 — about his  
giving letting or paying said Bishop any  
money if so state the time when and the  
conversation that occurred in the words if you  
can now remember if not the substance — " — "

Answer to Second Interrogatory —

I did have a conversation of such a nature just  
before he went to California — Mr Williams said  
that Bishop wanted some money to go to  
California with, that he was going to buy some  
property from him — he described the property —  
think it was the houses on the right hand side  
of Mechanic Street. said he was going to give  
Mr Bishop \$400, a 300 dollars, that he was  
to take clear deed of the property and if  
Mr Bishop came back in two years and  
wanted the property and gave him \$800. he was  
~~to redeem~~ to Redeem to him: I told him I did  
not think that would work — that a court of  
Equity would rip it up — he said he had taken  
good advice about it: from something then  
said I good impression that they were then  
drawing up the papers he then left me  
and shortly returned saying that it would  
do. that it was all straight he said he  
bought the property out and out —  
1<sup>st</sup> cross interrogatory

Did Williams say in  
this conversation that he had bought the



property or that he was going to buy —  
Answer to 1<sup>st</sup> cross interrogatory —

He said he was going to buy —  
2<sup>nd</sup> cross interrogatory.

Did William say that Bishop  
wanted the money to go to California or to  
Redeem his property in Ogden's Addition?  
Answer to Second cross interrogatory —

My recollection is not distinct as  
to that matter but my impression is that  
it was to go to California with —

Samuel Keith  
J. B. Hamilton Clerk of the Circuit Court  
for said County do hereby certify that previous  
to the commencement of the Examination of  
the said Samuel Keith as a witness to  
the said suit — between the said Almet & Bishop  
Noel N Bishop Highton & Bishop and others  
Complainants and Joseph R Williams  
Defendant. he was duly sworn by me  
as said Clerk to testify in relation to the matters  
in controversy between the said Almet & Bishop  
and others Complainants and the said Joseph R  
Williams — defendant. so far as he should be  
interrogated concerning the same. that the said  
Deposition was taken at my Office in Belvidere  
in the County of Boone and State of Illinois on the  
Thirteenth day of August AD 1853 — and that  
after said Deposition was taken by me as aforesaid  
the interrogatories and answers thereto as  
written down were read over to said Witness  
and that thereupon the same was  
signed and sworn to by the said



Respect Samuel L Keith before me on the  
day and year last aforesaid.

J. B. Hamlin

clerk  
H



Almet E Bishop, Ashley &  
 Bishop Noel & Bishop  
 Dexter E Bishop  
 Minors, widow Luc & their  
 next friend Emeline M Bishop  
 & Herman B Mead and  
 Jennette M Mead & Emeline  
 M Bishop, Widow W. W. W. W. W.  
 of Erasmus & Bishop deceased  
 Joseph B Williams

Boone Cin Court

Ind Chancery

Bill

Deposition of Stephen Covey a  
 Witness produced, sworn & examined  
 as a witness in said cause on the  
 16<sup>th</sup> day of December A.D. 1838 —  
 Complainants appearing by W. J.  
 Briggs their Solicitor & deposed by H. W. W.

Interrogatories propounded to said  
 Stephen Covey a witness sworn & examined  
 as aforesaid and his answers thereto as follows



Ques 1<sup>st</sup> Did you know Erasmus D Bishop & Joseph R Williams in the year 1830 ————

Ans &

Ans. 1. I did know them both in that year ————

Ques 2: Did you have any conversation with Deft about money obtained by the said AD Bishop from him and the terms & purposes for, or upon which he had obtained it. if so what was said in such conversation and when and where did it occur and who was present beside yourself and said Williams ————

Deft's 6

Ans - 2 - I had a conversation with Williams - in the first place we had a good deal of talk about Bishop going away to California and whether he would come back or not = Williams said he had got two houses & lots for security for money which he had let him Bishop have - don't recollect the amount of money which he had let him Bishop have - don't recollect the amount of money that Williams states he had let Bishop have: Williams said that Bishop was to have them back again if Bishop came back again and paid him a certain amount of money which amount I do not now recollect - Williams said he did not think he would be back to redeem them - Williams in this conversation stated how much he had let Bishop have, and also how much Bishop was to pay him for the land when he came back but I do not recollect the amounts - It runs in my mind that the sum he ~~left~~ let him have was four hundred dollars - and the sum



Which he was to repay him Eight hundred dollars — but don't know certain — his Conversation Occured in the Depts. Williams Grocery in Belvidere in the fall of 1850 — there were quite a number present at this Conversation but don't recollect who they were —

Ques - 1<sup>st</sup> When was your attention first called to this Conversation after it took place —

Ans - 1<sup>st</sup> I don't know exactly — have conversed about it several times with different persons — does not recollect ever having it called to my mind until after said Conversation by Williams that is I never talked with any one about until after that time — — —

Ques 2 Have you any distinct Recollections of the words used by Williams in this Conversation or do you merely give your impressions of the Conversation

Ans - 2 The words which I have sworn to Williams used I have stated the same exactly as he used them as high as I can recollect — And I think I can recollect right — I have no learning

Ques - 3 Did Williams in this Conversation say any thing about Security — — —

Ans - 3 He said had Security enough I think for the money



Do you recollect whether Mr Williams Clerk  
Milton D Davis was present at the time  
of this conversation.

Ans —

I cannot answer as to the name but a  
young man, who I have seen behind the counter  
in Williams's Store was in and out during the  
conversation. I have had conversation with  
Mr Williams at other times in the Store on  
this subject

Stephen <sup>his</sup> Leovey  
marked  
Subscribed & sworn to ~~see~~ before me  
this 16<sup>th</sup> day of December A.D. 1853

J. S. Genwilliger  
Master in Chy.

Also the Bond in the words &  
figures following to wit.



Cofy Bond referred to in annexed bill of Complaints

Know all men by these presents that I Joseph R Williams of the County of Boone and State of Illinois am held and firmly & bound unto Aramus D Bishop of the same County in the penal sum of Sixteen hundred dollars to which payment well and truly to be made to the said Aramus D Bishop his heirs and assigns - I do hereby bind myself my heirs administrators and assigns firmly by these presents. Sealed with my seal and dated at Belvidere this Nineteenth day of February AD 1830 —

The condition of this Obligation is Such that whereas the said Aramus D Bishop has this day contracted to and with the above bounden Joseph R Williams to purchase the following lands to wit: Lots One and two in Block three in J W Lewis's Addition to Belvidere lying and being on Mechanic Street and to pay for the same to the said Williams the sum of Eight hundred dollars two years from the date hereof - Now then if the said Aramus D Bishop his heirs assigns or legal Representatives shall on the 1<sup>st</sup> day of February AD 1832 - pay or cause to be paid to the said Joseph R Williams his heirs assigns or legal Representatives the full and just sum of Eight hundred dollars - and upon such payment being made the said Joseph R Williams his heirs Executors or administrators shall convey the lands hereinbefore described by sufficient deed of Warranty free and clear from incumbrances unto the said Aramus D



Bishop his heirs assigns or legal Representatives  
there and in that case this Obligation to  
be void or else remain in full force and  
virtue

Witness my hand and seal this 6th day of February 1831  
J R Williams

Signed sealed & delivered in presence of \_\_\_\_\_

The Words "As before" being first stricken out. —

Filed for record February 6<sup>th</sup> 1831

at 10. O'clock P.M.

Recorded Feby 7<sup>th</sup> AD 1831 - LD J. Olney Recorder



And produced the following witnesses  
Ralph D Rix who being duly sworn says

I know the property in controversy  
the corner lot and house was worth  
in the month of February 1850 - Three  
hundred and fifty dollars, and the  
other one three hundred dollars -

They are on the corner of Mechanic  
and Pearl Streets ~~one~~ <sup>each</sup> on the corner  
and the other fronting on Mechanic  
street and joining the corner one  
They would each have rented since that  
time at one dollar per week -

Cross Examined -

I think the property  
would have sold in cash for that  
money. I considered it worth that  
as an investment -

and Cornelius Conwell, being sworn says

I know the property in controversy  
in February 1850 - the corner lot was  
worth four hundred and fifty dollars  
and the other worth three hundred  
and fifty - and they have been renting  
since at one dollar per week each -

And here the Complainant also introduced &  
read the deposition of Daniel T Olney which  
is in the words & figures following viz;



In the Borne Circuit Court  
Ames & Bishop et al.

No. Joseph R. Williams } Bill to Redeem  
State of Illinois  
County of Boone }

Daniel J. Alney a witness on the part of the  
Complainants in this Cause being duly sworn  
doth depose and say - that the deed in the bill  
in this Cause mentioned was drawn up by  
Herakiah Ripley who has since died; that  
it is a printed blank - that said Ripley  
filled up the blank in the certificate of  
the Acknowledgment that this deponent being a  
Justice of the peace took the same to Bishop's  
house to be acknowledged by him & his  
wife - and after taking the Acknowledgment  
he left the deed with said Bishop - that he  
thinks the certificate of Acknowledgment is  
dated of the day it was taken -

Subscribed & Sworn to before me } D. J. Alney  
this 2<sup>nd</sup> day of December }

Nov 1853 -

J. S. Demilliger

Master in Chancery



In the Borne Circuit Court  
In Chancery

Emeline B Bishop }  
et al }

vs  
Joseph B Williams }

Bill to Redeem

Pursuant to an order of  
this honorable Court —  
heretofore made in this

cause — referring this cause to me to take proofs  
and Report herein — do respectfully certify &  
Report that I caused Stephen Covey to appear before  
me — who being first duly sworn deposed as appears  
in the deposition, hereto annexed — I have also  
taken the deposition of Daniel J. Cluey who  
was sworn by me as a witness in said — which  
deposition is hereto appended and made  
a part of this my report —

Masters fees \$15.00

Attorney J. B. Wilson

Judge

All of which is respectfully  
Submitted

J. S. Fennellizer

Master in Chancery

Complainant's Rest. —

The Defendants ~~thereat~~ introduced & read  
the deed as follows to wit



This indenture made the fifteenth day of February  
in the year One thousand Eight hundred & Eighty  
Between Arasmus D Bishop & Emmeline K Bishop  
his wife of the County of Boone and state of Illinois  
parties of the first part and Joseph B Williams of  
the same place County party of the second part

Witnesseth that the said parties of the first part  
in consideration of the sum of four hundred dollars  
to him duly paid before the delivery hereof have  
granted bargained and sold and by these presents  
do grant bargain sell and convey to the said party of  
the second part his heirs and assigns forever all the  
following described lots pieces or parcels of land  
to wit: Lots One (1) and two (2) in Block No  
three (3) in J W Crosby's Addition to Belvidere  
in the County of Boone and State aforesaid  
lying and being on Mechanic Street in said  
town of Belvidere.

With the appurtenances and all the Estate title and  
interest of the said parties of the first part therein,  
and the said parties of the first part do hereby Covenant  
and agree with the said party of the second part that  
at the time of the delivery hereof the said parties  
of the first part are the lawful owners of the premises  
above granted and seised thereof in fee simple  
absolute that they will warrant and defend  
the above granted premises in the quiet and  
peaceable possession of the said party of the second  
part his heirs and assigns forever; and that they  
are free from all incumbrances Whatsoever

Ligned Sealed & Delivered in presence }  
of A J Olney }

Arasmus D Bishop  
Emmeline K Bishop



State of Illinois, I Daniel J. Allen, a Justice of the Peace in  
Boone County and for the said County in the State aforesaid  
do hereby certify that Aramus D Bishop  
and Emeline D Bishop his wife personally known  
to me as the same persons whose names are  
subscribed to the above deed appeared before me  
this day in person and acknowledged that they  
signed sealed and delivered the said instrument  
of writing as their free and voluntary act and  
for the uses and purposes therein set forth.  
And the said Emeline D wife of the said  
Aramus D Bishop having been by me Examined  
separate and apart and out of the hearing of her  
husband and the contents and meaning of the  
said instrument of writing having been by  
me fully made known and explained to her  
she acknowledged that she had free and  
voluntarily executed the same & Relinquished  
her dower to the lands and tenements therein  
mentioned without Compulsion of her said  
husband and that she does not wish to  
retract the same — Given under my  
hand and seal this 15<sup>th</sup> day of February A D  
1830 —

D J Allen   
Justice of Peace

On the back of which deed <sup>and</sup> the following endorsements  
in words & figures as follows to wit:

Filed for record February 19<sup>th</sup> 1830 at 11 o'clock A M  
and Recorded in Book 44 of deeds page 313. and  
duly Examined. — N W Rice Recorder  
by Wm Hamilton depy  
Boone County Ills —

Also the Deposition of Orlandus Curtis as follows to wit



Joseph R. Williams }  
do } Bill  
Arasimus D. Bishop }

Deposition of Orlando Lunt's a  
Witness produced Sworn and Examined by me as a  
Witness in the above Cause the 21<sup>st</sup> day of December  
A.D. 1853

Ques 1<sup>st</sup> Did you know Arasimus D. Bishop in February  
A.D. 1830 —

Ans 1<sup>st</sup> I did

Ques 2<sup>nd</sup> Do you know the two houses & lots mentioned  
in the Bill filed in this Cause & did you  
them in 1830 & if so what was their  
then Cash Value —

Ans 2<sup>nd</sup> I think the property was worth five hundred dollars at  
that time; although it was offered in the market  
at that time although for a less amount by  
Bishop, property was selling lower that year  
than I have known it to sell for the last six  
or seven years —

Ques 3<sup>rd</sup> Do you know of said Bishop offering to sell  
that property about that time, & if so to whom  
and for what amount? —

Ans 3<sup>rd</sup> He offered to sell it to me at one time  
for four hundred and fifty dollars and  
at another time he asked me what I  
would give him for it — and at the same



time asked me if I would give him four hundred dollars — he was very anxious to sell. he said he had got to sell it to raise some money. These conversations and offers were from the first to the middle of February Ad 1850 —

Q<sup>ues</sup> 4<sup>th</sup> Do you know from whom Bishop got money to go to California, if so state from whom

Ans 4<sup>th</sup> He got money from me, that is he said he got it for that purpose some time from the middle to the last of February 1850 —

### Cross interrogatories —

Interrogatory 1<sup>st</sup> What did you consider the two lots <sup>that</sup> you live on without the buildings worth at that time. —

Ans - 1<sup>st</sup> I considered them worth three hundred dollars

Q<sup>ues</sup> 2<sup>nd</sup> What did it cost to build the two Buildings on the lots mentioned in said Bill —

Ans 2<sup>nd</sup> I should think they cost when they were built about four hundred & fifty dollars

### Direct Ex<sup>am</sup> Renewed

Q<sup>ues</sup> Do you know when those houses were built and what was their condition in the February 1850 —



Ans - I think they were built in the Summer of 1843 or  
in the fall of 1844 - the Condition was as good  
as any Oak Lumber house unpainted  
would bear that age —

### Cross Ex. Renewed

Objected to

But What Security did you take for the refraining men of  
the money you let Bishop leave —

Ans - I took a deed of premises and gave him back  
a bond —

What did Bishop say if anything about the  
privilege of Redeeming the premises in the  
Conversations you have testified about in the  
Interrogatories of Compliment —

At one time he said nothing - I think this  
~~was~~ was when he offered me the place for four  
hundred and fifty dollars - he then offered  
them to me Absolutely - at another time he  
said to me - he wished that I would raise  
him four hundred dollars on the lots and  
that he would bind himself to give Eight  
hundred for them within two years - he frequently  
talked about selling these lots at that time  
with out saying anything about redemption  
he offered to sell them for four hundred  
dollars and bind himself to take  
them back and pay Eight hundred in two years  
He offered to sell any of his property at rates  
that would correspond with money at 4 per



cent a month - what I mean by this is that a man's  
investment - should be worth 4 per cent a month -  
If the Bishop had a piece of property that was worth  
Six hundred dollars - at the end of a year he  
would sell it for four hundred dollars cash -  
Olancho lentist -



Also the Deposition of Stephen A  
Hurlbut as follows To Wit.

Deposition of John Sumner and  
Stephen A Hurlbut witnesses

procured. Sworn and Examined by consent of the parties  
herein on the facts of the Complainant  
Joseph B Williams taken before me my  
Office in Belvidere — on the 10<sup>th</sup> day of December  
A.D. 1853 —

Interrogatory 1<sup>st</sup> Was you acquainted with Joseph B Williams  
and Erasmus D Bishop in the month of  
February A.D. 1850 —

Ans 1<sup>st</sup> I was acquainted with both of them in that  
month — " —

Int- 2<sup>nd</sup> Did you about that time have any conversation with  
said Bishop in regard to his sale or conveyance  
of the lots mentioned in this bill, to the Complainant  
if so state what he said — " —

Ans Int 2<sup>nd</sup> There was a difficulty about the title to certain  
lots between me and Defendant Bishop in  
Ogden's Addition to Belvidere. I had a bond

objected to —



for a deed from Bishop - & said Bishop was disposing  
of his property to ~~start~~ start for California & myself  
and others proposed to Enjoin Bishop from disposing  
of his property until - Our title should be made  
right - said Bishop being behind hand in his  
payments to Ogden from whom he derived title  
This conversation ~~was~~ was sometime from 1<sup>st</sup>  
to 13<sup>th</sup> of March AD 1830 - said Bishop told  
me that he had sold the property described  
in the Bill to Complainant for four hundred  
dollars and had got the money in his pocket  
and was going to Chicago on the 13<sup>th</sup> of March  
to pay up Ogden -

### Cross Interrogatories

Ans 1<sup>st</sup> Was there anything said in this conversation about  
what kind of a conveyance he had given to  
Complainant? -

Ans 1<sup>st</sup> There was not, the Expression was that he  
had sold it and got the money in his pocket -  
subscribed & sworn to before me } John Larrie  
this 10<sup>th</sup> day of December 1830 }  
J. J. Fenwiller }  
Attorney in Chancery }

Interrogatories proposed to S. A. Hulbert & his  
answers thereto are of the -

Interrogatories<sup>2<sup>nd</sup></sup> Were you acquainted with the parties Complainant & Defendants  
in this suit, in the month of February AD 1830 -



Ans 1<sup>st</sup> <sup>int</sup>: I was acquainted with the parties at that time and had been acquainted with them sometime before then and since ———

Ans 2<sup>nd</sup> Were you present at the Execution of a Bond Executed by said Joseph B Williams to said Assessor JO Bishop bearing date February 19<sup>th</sup> 1830 — and now produced by defendant and shown to you

Ans 2<sup>nd</sup> — About the 19<sup>th</sup> day of February 1830 I was called upon by the parties to draw the Bond shown to me, and which I now identify as the same. I had a conversation with both of them as to the object of the paper before it was drawn. It was agreed by both parties that the defendant Bishop had before that time sold to said Assessor Williams the lots described in this Bond & had received his pay therefor in the sum of four hundred dollars — Bishop stated to me at that time, as I had understood before from him, that that money was to be used for the payment of my indebtedness from said Bishop to Wm B Ogden upon certain lands in Ogden's Addition to Belvidere which lands said Bishop had contracted to sell to John Lammie — Wm B Mills, David B Estell, & others. These parties Lammie Mills & others had employed me to counsel Bishop to perfect his title — I had prepared a bill in the matter & had frequent conversations with Bishop on the subject as well as correspondence with Mr Ogden — Bishop stated to me that he had raised the



Money by sale of this property to Williams to save the forfeiture of Ogden's bond to him. when I was called upon to draw the bond in this case —

I expressly enquired of Bishop and of Williams then both together whether the object of the bond was to secure money loaned or not —

Bishop said that there was no loan of money in the transaction that he had sold the property for less than he thought it would be worth — that he was going to California and hoped to do well — and that he would be willing if he had the money in the course of two years to buy the property back at eight hundred dollars believing as he said that the property would be worth that amount in that period — I then read the bond in the form in which it appears and it was executed by J. R. Williams on the 19<sup>th</sup> day of February AD 1830 — & delivered to said Bishop

### Cross interrogatories

Ans<sup>r</sup> - 1<sup>st</sup> Had Bishop and Williams from what you understood at the time made their bargain whatever it was about the transfer of this land to Williams by Bishop before they came to you — and came to you to have the papers made out to carry that bargain out? — " — "

Ans<sup>r</sup> to 2<sup>d</sup>: From what I understood at the time the bargain for the sale of the land to Williams had been concluded before and the money received — the conversation with me was principally



about the Bond - that I have spoken of & the purchase  
by Bishop of this land to be paid for in two years  
both parties at that time spoke of the sale to  
Williams as a thing before that time completed  
and ended —

S A Hurlbut

Subscribed & sworn to before me  
this 10<sup>th</sup> day of Decr AD 1853

J S Derrilliger  
Master in Chy

State of Illinois, J. James S Derrilliger Master in  
Boone County, Chancery of the Boone County

Circuit Court do hereby certify  
that previous to the commencement of the  
Examination of the said John Leavie &  
Samuel L Keith as witnesses in said suit  
they were duly sworn by me to testify the truth  
in relation to the matters in controversy between  
said Joseph B Williams Complainant and Asamus  
D Bishop Defendant so far as they should be interrogated  
concerning the same and that said depositions  
were taken at my Office in Belvidere on the  
10<sup>th</sup> day of Decr AD 1853 - And that after said  
depositions were taken by me as aforesaid  
the interrogatories and answers thereto as  
written down were read over to said witnesses  
respectively who thereupon signed & were sworn  
to by said Leavie & Hurlbut before me  
on the day & year last aforesaid

J S Derrilliger  
Master in Chy



<sup>44</sup>  
The defendant also produced James Serwilliger  
who been

The defendant also produced James  
Serwilliger who being duly sworn says

I knew Amos Al Bishop about  
three months before he went to California  
which was in the spring of 1850 he said  
to me he wanted to go to California and  
offered to sell me the two lots for six  
hundred dollars — after that he offered  
them to me for ~~\$500~~ \$550 then for \$500  
and I think for \$450 — but I do not recollect  
whether the last offer was \$100 or  
\$50 — more than I understood he got from  
Williams —

Cross Examined

He said he was going California — I thought  
they were cheap at six hundred dollars —

They would each rent for one dollar  
a week — at a forced sale they would  
not have brought more than he offered  
them for



William H Gilman Esq

I know lots. Bishop offered them to me shortly before he went to California for \$430. Without any condition he wanted to sell them to me - but I told him I did not want to buy.

I would not put money into property to rent



John Lawrie - Brown -

I knew Bishop - I was one of those who had bought lots from him in Ogden's Addition - I met him in the street - he was very snappish and said to me. I need not trouble myself as he had sold them two houses to the Defendant Williams - and had got the money in his pocket to pay off the claims on the lots I and others had got from him - this occurred some time - but I can't say how long before the 15<sup>th</sup> day of March 1850 & and was about all that was said -

and here the defence rested - And this being all the evidence given in the cause - Plaintiff asked the following instructions which were given by the Court

And here the defendants rested.

And this being all the evidence given in the cause The plaintiff asked the following instructions in writing which were given by the Court



## For Plaintiff

No. 1.

given

The jury are instructed that if they believe from the Evidence that the deed to Williams was intended as a security for the four hundred dollars — and not an absolute sale and that the land was to be conveyed to Bishop upon the payment of eight hundred dollars — two years thereafter then they should find for the Plaintiff

No. 2.

given

That the fact that the plaintiffs did not put the Bond upon record at the time — it was given Executed or that they did not tender to Williams any money at the expiration of the two years does not necessarily Establish that the sale was an absolute one.

No. 3.

given

The jury are instructed that if they believe from the evidence that the transaction between Bishop and Williams was an advance of money — and that the said deed and Bond were Executed to cover an Usurious loan they should find for the plaintiff



No 4.

given

That if they believe from the evidence that the Bond and deed were delivered at the same time or that when the deed was delivered it was understood or agreed that the Bond was to be Executed and that the Bond was Executed in pursuance of such an agreement then the Bond and deed are to be construed as forming one transaction and the bond declares the deed to be in the nature of a mortgage

No 5.

given

The Jury are instructed that if they believe from the evidence that at the time the deed was Executed or delivered to Williams it was agreed or understood by Williams that the bond was to be Executed then this is a circumstance which the Jury should consider and from which they may infer that the conveyance was made as security for the advance of the Four hundred dollars

No 6.

given

If the Jury believe from the evidence that the property in controversy was at a fair valuation worth a much larger sum than \$400 - on the 15 - or 19 - of February A.D. 1850 then this is a circumstance to be considered in connection with the other evidence as forming favoring the claim of Plaintiffs that the transaction was a loan of money

To the giving of which instructions the said defendant by his Council then & there excepted



And the defendant asked the following instructions in writing which were also given by the Court to wit

For Defendant

The Court is ~~instructed~~ <sup>requested</sup> to instruct the Jury —

1<sup>st</sup>,

given

That unless they believe from the Evidence that the transaction between Arasimus D Bishop and Defendant relative to the land in dispute was in fact at time of making the same a loan of money and a security given for such loan and was so intended by the parties at the time - they should find for the Defendant

2<sup>nd</sup>,

given

That to change the absolute Deed given by Bishop to Williams into a mortgage or security for money loaned the Jury must believe from the Evidence that there was at the time of making said Deed a contract between the parties for the lending on one side and the borrowing on the other of a sum of money - with an agreement that payment at a future day should be made the Deed and that these facts must appear to the Jury from the Evidence.

Over —



For Defendant

I.

given

That in the absence of any proof as to the time of delivery of a deed - there arises a presumption of law that the deed was delivered at the time of its date. —

(Note these instructions were excepted to by PPs)



Almet E Bishop, Et al  
vs  
Joseph B Williams

Motion for New Trial

Defendant prays New Trial  
And assigns for reasons

1<sup>st</sup> That the verdict is contrary to the weight  
of Evidence

2<sup>nd</sup>. That the Court misdirected the Jury as  
to the Law

3<sup>rd</sup> On account of newly discovered Evidence

Humbert  
for Deft

He also files the Affidavits of himself  
Harry J Doalittle & Stephen A Humbert  
which are in words & figures following that  
is to say

[12150-172A]

And the jury having retired under  
the Charge of a Sworn officer of the Court  
to Consider of their verdict, afterwards on  
the ~~month~~ 19<sup>th</sup> day of April 1854 being one  
of the days of said Term Come into Court & for  
their verdict say we find the issue joined  
herein for the plaintiff And thereupon  
the Defendant files his motion for a new  
Trial, And files his motion & the reasons  
therefor as follows

[12150-172A]



Joseph B Williams } Motion for new Trial  
 Ads }  
 Alfred E Bishop Et al }

Joseph B Williams being duly sworn says that the facts sworn to by H J Doolittle in his affidavit he has examined did not come to the knowledge of this Defendant in any way or within the knowledge of said Witness Harry J Doolittle until after the close of the trial in this cause - nor was he in any manner aware that the knowledge of the same was in said Doolittle. That he is informed they are material and important in this cause. That the transactions between this Defendant and said Bishop are of some years standing as appears by the papers in this cause and that this Defendant had no recollection until reminded by said Doolittle of the fact of his being present -

That the transaction of delivering of the deed took place in the store of this Defendant and that he did not nor could remember who was present of those that were going in & out. That he did not suppose at the time that there could be any question as to the matter and did not think of changing his mind. Memory with the names of any persons who might have been present. and has not made any inquiry of Mr Doolittle as to any facts within his knowledge in the matter for these reasons  
 sworn & subscribed this

22<sup>nd</sup> April 1834

J B Williams

W B Hamlin Clerk



Stephen A Hulbur being duly sworn says  
that he is and has been Counsel for Mr Williams  
in this cause - that in preparing this case he once  
asked Harry J Doolittle the Defendant in the  
affidavit hereto annexed as to what he knew  
about the matter if any thing and that said  
Doolittle did not at that time inform said  
Hulbur of any of the facts aforesaid nor was  
this Defendant aware until after the verdict  
pronounced that he did know any thing  
material to this case nor had he any reason  
to suppose it from any information derived from  
his client or any one else - That this Defendant  
has prepared the testimony herein and had sole  
charge of the case and is satisfied that if  
Mr Williams had been in any way advised  
of the knowledge possessed by said Doolittle  
he would have informed him -

Shewn & Subscribed )  
(this 22<sup>nd</sup> April 1854)

Stephen A Hulbur

G B Hamlin

Reluct



Joseph R Williams } motion for new trial  
 Ads }  
 Almer E Bishop & al. }

Harry J. Doolittle of the County of Boone being duly sworn deposes that he was well acquainted with Arasmus D Bishop and Joseph R Williams in the month of February A.D. 1830 —

That he was present at the delivery of the Deed of 13<sup>th</sup> February 1830 of the lots in this case that he saw the said Arasmus D Williams Bishop deliver the said Deed to said Williams but can not say on what day — and saw him receive the money \$325. and a due bill for \$75 — that some days after said delivery said Bishop came to the store of said Williams and a conversation occurred between them as to the giving of a Bond to recover recovery the premises — which conversation resulted in the making Execution and delivery of said Bond — being the one made by Mr Hulbut — that he was present at the time of the delivery of said Bond to said Bishop — and that at that time the Deed was produced by Williams and was in his possession and had been for some days previous —

That he recollects that an interval of several days elapsed between the delivery of the Deed and the making of the Bond —

That at the time of the conversation aforesaid between Bishop and Williams — Bishop stated that he wanted to buy the property back or to have the privilege of buying it back



if he wished and was fortunate. This conversation was on the day that the Bond was made out and before said Bond was made —

And this deponent further says that more than once he has heard Ad Bishop when inquired of both before and after <sup>date of the</sup> the bond as to whether the trade was a sale or whether Williams had loaned him money — say that it was a fair sale of property and that the privilege of repurchase set out in the bond was a subsequent transaction — That this deponent never communicated his knowledge of these facts to said Williams nor to his counsel until after the testimony in this case was closed and the case in the hands of the Jury — When he heard in conversation what <sup>was</sup> ~~he~~ supposed to be the points in the case upon which the decision would turn and then stated what he knew about it! —

Given to & Subscribed this  
22<sup>nd</sup> April Ad 1854

W B Franklin

Clerk

H J Doolittle

And the Complainant files the stipulation of the parties as follows to wit.



Boone Circuit Court  
Almer & Bishop & al

vs  
Joseph R Williams

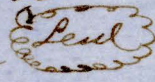
} Motion application  
for a Rehearing

It is admitted that the witness  
H Doolittle mentioned in the affidavits  
filed in support of this motion was  
produced before the master by the defendants  
as a witness was conversed with by Mr. Hurlbert  
and withdrawn without being examined  
that he is the brother in law of said  
Williams and has been during the  
pendency of this suit for a part of the  
time and until recently in partnership  
in business with said defendants.

Hurlbert  
deft atty. -



And now on this 22<sup>nd</sup> day of April being  
one of the days of this April Term Came on  
to be heard the motion for a new Trial in  
this Cause and the Court being fully advised  
in the premises Overrule and deny the same  
to which the defendant by his Counsel Excepts  
and tenders this his bill of Exceptions to be  
signed and sealed by the Judge of this  
Court under the Statute and it is done  
accordingly. This 22<sup>nd</sup> day of April Ad  
1834 - the parties Agreeing that the bill  
of Exceptions may be signed at any time  
within twenty days after the Close of the  
term - & filed as of the term

Isaac S. Wilson  
Judge 

His honor is requested to Sign & Seal the  
above bill of Exceptions

S. A. Hulbur

for self  
W. J. B. nices  
for Plaintiff



Copy

Record

In the circuit court of Boone County }  
Alfred E Bishop, Wiley C Bishop } In Chancery  
Noel D Bishop, Lighton E Bishop }  
minors who sue by their next friends }  
Emmeline K Bishop & Herman }  
R Mead & Leannette M Mead }  
& Emmeline K Bishop widow and }  
Administratrix of Asaemus D } Bill  
Bishop - deceased }  
vs }  
Joseph R Williams }

I do hereby Enter myself  
Security for costs and acknowledge myself  
bound to pay or cause to be paid all costs  
that may accrue herein and legally devolve  
upon said minors to pay in this cause -  
Dated Belvidere April 4<sup>th</sup> 1853 -

Witness my hand & Seal

Emmeline K Bishop



State of Illinois  
Boone County } The People of the State of  
                                Illinois to the Sheriff of said  
                                County — Greeting

We Command you that you Summon  
Joseph R Williams if he shall be found in  
your County personally to be and appear  
before the Circuit Court of said County on  
the first day of the next term thereof to be  
holden at the Court house in Belvidere  
in said County on the third Monday in  
April next next to answer unto the  
Matters & things contained in a certain  
Bill filed against him in said Court  
on the Chancery side thereof by Almes  
E Bishop Ashley C Bishop Noel D Bishop  
Wrighton E Bishop Minors who sue by  
their next friend Emeline K Bishop &  
Herman R Mead & Leannette M Mead  
and Emeline K Bishop widow and  
Administratrix of Arasmus D Bishop  
deceased — and to stand to abide by  
and perform the order of the Court in the  
premises — and have you then and  
there this writ with an endorsement  
thereon in what manner you shall  
have Executed the same —

Witness



P  
Fayette B Hamlin Clerk of our  
Said Court and the seal thereof at  
Belvidere aforesaid this 4<sup>th</sup> day  
of April A.D. 1853 -

Fayette B Hamlin  
Clerk of the Circuit Court.



State of Illinois  
County of Boone

To the Hon. Isaac H. Wilson  
Judge of the thirteenth Judicial  
Circuit of the State of Illinois  
at the Boone Circuit Court  
in Chancery sitting

Your Orators Almer E. Bishop, Ashley E. Bishop,  
Noel H. Bishop, Highton E. Bishop and Rosetta A. Bishop  
who are minors and sue by their next friends Emmeline  
K. Bishop and Herman R. Mead and Leannette M.  
Mead his wife: and Emmeline K. Bishop Widow  
and administratrix of Erasmus H. Bishop deceased  
humbly complaining show unto your honor that  
in the fore part of the month of February in the  
year of our Lord One thousand Eight hundred and  
fifty - the said Erasmus H. Bishop then in life  
being desirous of leaving Belvidere in said County  
of Boone for California with the intention of  
remaining there for a short time & then returning  
to his family, whom he designed leaving at his  
then place of residence in Belvidere - and  
being in great want of money to enable him to  
procure a proper outfit for and defray other  
Expenses incident to such a journey and having  
then several pieces or tracts of valuable real Estate  
in Belvidere which he could not sell for money  
in hand but at very great sacrifices. applied



Among other persons to Joseph R Williams a defendant  
in this bill of Complaint for a loan of four hundred  
dollars to be repaid as soon as the said Arasmus  
D Bishop could raise it from his Exertions in  
California —

And your Orators further show unto your honor  
that as they are informed and verily believe, after  
several propositions and much ~~see~~ negotiation  
the said Arasmus D Bishop and said Williams agreed  
between them, that said Williams should advance  
to the said Arasmus D Bishop the sum of Four  
hundred dollars, that the said Bishop should  
have two years within which to repay it, with  
Four hundred ~~dollars~~ more for the use thereof  
for that time — and that to secure the repayments  
thereof and of said sum of Four hundred dollars  
for the use thereof amounting in all to the ~~sum~~ sum  
of Eight hundred dollars, said Arasmus D Bishop  
should Execute to the said Williams a deed of the  
lands and premises hereinafter described and that  
the said Williams should give back to said  
Arasmus D Bishop a bond agreeing to recover said  
lands to said Bishop on the 19<sup>th</sup> day of February 1852  
upon his paying said Williams said sum of  
Eight hundred dollars on that day —

And your Orators further show unto your honor  
that as they are informed and verily believe the  
said Arasmus D Bishop, being then seized in fee  
of the lands and premises hereinafter described  
and the said Caroline R Bishop his wife  
shortly after <sup>the</sup> making said agreement, and in  
pursuance thereof made and Executed a deed  
bearing date the fifteenth day of February A.D. 1850



Conveying lots One and two in Block No. three (3) in  
J. W. Crosby's addition to Belvidere lying and being  
on mechanic Street and situate in the County  
of Boone aforesaid, to the said Joseph R. Williams  
in fee simple absolute with the usual covenants of  
Warranty and Seizin in consideration of the sum  
of Four hundred dollars thereby recited to have been  
paid by said Williams to them. That the said deed  
was duly acknowledged by the grantors therein  
named before Daniel McClure then a Justice of  
the Peace in and for said County who states in his  
Certificate of such acknowledgment that the same  
was acknowledged on the day the said deed bears date  
but your Orators state as they are informed and verily  
believe the said deed was retained by said Erasmus  
W. Bishop in his own possession and not delivered  
by him to said Williams or to anyone for his  
use, until the Nineteenth day of February Eighteen  
hundred and fifty or about that day, and at or about  
the time of the delivery of the bond hereinafter  
mentioned, and the delivery of said bond and said  
Deed being intended by the parties thereto to be  
simultaneous acts, each taking effect upon and  
not until the delivery of the other. —

And your Orators further show unto your  
Honor that as they are informed and believe in  
further pursuance of said Agreement the said  
Williams on or about the said Nineteenth day of  
February A.D. 1850 made Executed and delivered  
unto the said Erasmus W. Bishop his certain bond  
or writing Obligatory bearing date the day and year  
last aforesaid in the penal sum of Sixteen  
hundred dollars Conditioned for the conveyance of



Said Lots of land to said Arasmus D Bishop his heirs and assigns - upon the payment by him or them to said Williams - Two years from the date thereof of the sum of Eight hundred dollars as by reference to said Bond now in the possession of your Orators ready to be produced and proved as this Court shall direct and a copy of which is herewith attached and made a part of this bill of Complaint reference being thereunto had will more fully and at large appear -

And your Orators further show unto your Honor that as they are informed and verily believe in further pursuance of said Agreement at the time of making and delivering said Bond and Conveyance - Said Arasmus D Bishop received from said Williams the said sum of four hundred dollars

And your Orators further show unto your Honor that as they are informed and believe said Deed was filed for record in the Recorder's Office of said County on the 19<sup>th</sup> day of February 1850 - at and Entered in Book. H. of Deeds on pages 313. - And the said bond was also filed for record in said Office on the Sixth day of February 1851 at - and Entered in Book. H. of Mortgages on page 300, as by reference to the records of said Office will more fully & at large appear.

And your Orators further show unto your Honor that as they are advised by Counsel and verily believe the said Deed and the said bond taken in connection with each other and with the previous Agreement of the parties for the loan of money to be repaid: constituted but a mortgage of said lands and premises by said Bishop to said



William. and that the said William thereby Acquired  
Simply & merely the rights of a mortgagee to said  
Lands and no other or more Extensive Estate  
or interest therein - And that the mere lapse  
of time since then has as yet not changed the  
rights of the parties under those Conveyances

And your Orators further shew unto  
your honor that a few days after the making of  
said Papers the said Arasmus D Bishop left  
his family and place of residence aforesaid and  
set out upon his journey to California and that  
while on his way there, as your Orators are inform-  
ed, and verily believe he departed this life intestate  
leaving the said Emmeline D Bishop his widow  
and Alvert D Bishop Jeannette M Mead - then  
Jeannette M Bishop unmarried - ~~Arthur~~ Ashley C  
Bishop - Noel D Bishop - Dighton C Bishop and  
Rosetta A Bishop aforesaid and Saret C Bishop

his children and heirs at law then  
surviving - that as near as your Orators can  
ascertain the said Arasmus D Bishop departed  
this life sometime in the month of September  
in the year One thousand Eight hundred and  
fifty - On the plains in the now territory of  
Utah - That inquiries have been made and  
Every means taken in the power of your Orators to  
find him if living. but that since that time  
your Orators have not been able to ascertain any  
intelligence of a certain and Reliable Character  
in regard to him, other than that he died at  
the time and place your Orators have above  
stated -

And your Orators further shew unto your



honor, that on the twenty fourth day of August 1837  
the said Sarah E Bishop being then in the third year  
of her age, departed this life - and leaving the  
said other children of the said Arasmus D Bishop  
Complainants in this bill of Complaint & the said  
Emmeline N Bishop her heirs at law - and that  
since the said Arasmus D Bishop went to California  
as aforesaid the said Jeanette hath intermarried with  
the said Herman B Mead -

And your Orators further shew unto  
your honor that the said Williams at or about the  
time said Arasmus D Bishop started for California  
as aforesaid - went into the possession of  
said premises and has since that time to the  
present received and is now receiving the Rents  
thereof - that there are on said lots two houses  
which have been constantly rented since that  
time each for the sum of one dollar per week.  
That said Williams has suffered said premises  
to become dilapidated and out of repair, and  
has not kept the same in as good order and  
condition as they were at the time he took  
possession thereof, reasonable wear and tear  
excepted, and that he has taken away and  
removed therefrom several valuable fruit trees  
growing and being thereon, at the time he took  
possession of said lands - and that said houses  
have deteriorated in value in consequence  
of repairs thereto having been neglected when they  
ought to have been done - and when said  
Williams was in the ~~possession~~ of rents  
sufficient to have made the same - over one hundred  
& fifty dollars - That at the time of making



Said conveyance. Said Houses and the fences on  
and about said lots were in good repair - and the  
said lots of land with the buildings thereon were  
then worth Eight hundred dollars -

And your Orators further shew unto your  
honor that on the day of 4<sup>th</sup> / 1853  
Letters of Administration upon the Estate goods  
 chattels and credits which were of the said Aramus  
 D Bishop at the time of his death were granted  
by the County Court of said Boone County sitting  
in Probate to your Oratrix the said Emmeline K Bishop  
who hath given bond and taken the oath required  
by law and Entered upon the discharge of her  
duties as such Administratrix - as by the letters  
of Administration now in the possession of your  
Oratrix and the Records of said County Court  
reference being thereto had will more fully and at  
large appear -

And your Orators further shew unto your  
honor, and so charge the facts to be according to  
the best knowledge information and belief of your  
Orators, that the said Agreement of the said  
Aramus D Bishop with the said Joseph R Williams  
for the loan and borrowing of said sum of four hundred  
dollars from ~~his~~ him to be repaid two years thereafter  
with a like sum of Four hundred dollars more  
for the use thereof as aforesaid was Usurious and contrary  
to the form of the Statute in such case made and  
provided - And the said parties thereto did thereby  
agree to reserve and take a greater rate of interest  
for the loan of said sum of Four hundred dollars  
for the space of two years than was allowed by law  
the rate of interest by such contract reserved and  
agreed to be paid being at and after the rate of fifty



percent per annum and that as they are advised by  
counsel and verily believe the said deed so made  
by said Arasimus D Bishop and his wife to the said  
Williams and the said bond by him executed to  
the said Bishop as aforesaid but amounted to a  
Mortgage of the said lands and premises to  
secure the repayment of the said sum of  
Four hundred dollars and the said illegal  
interest agreed to be paid for the use thereof being  
a like sum of four hundred dollars additional  
thereto amounting in the whole to the sum of  
Eight hundred dollars and did not and do not  
convey the absolute fee to the said Williams.

And that your Orators in their respective rights  
of heirs at law, and as the widow of said Arasimus  
D Bishop are now and have been since the  
death of said Bishop respectively Seised in fee  
of: & entitled to & have in; said lands and  
premises. Subject to the lien of the said Williams  
under said agreement deed and bond as a  
Mortgage in possession of the lands & premises  
mortgaged to him for such sum of money as  
may yet justly be his due on account of the  
said Loan so made by him as aforesaid —

And your Orators further shew unto your  
Honor that as they are informed and verily  
believe the said Joseph R Williams on the twenty  
second day of December, One thousand Eight  
hundred and fifty two filed in the Office of the  
Clerk of this Court his bill of Complaint on the  
Chancery side of this Court against the said  
Arasimus D Bishop. Stating among other things  
that said Arasimus D Bishop sold said lots of



Land to said Williams for the sum of Four hundred dollars paid to him in cash by said Williams and that the said Aramus D Bishop & Emmeline & his wife for the sole purpose of conveying the same to him made Executed and delivered to the said Joseph B Williams on the 15<sup>th</sup> day of February 1830. a Deed Conveying the lots of land in this bill of Complaint mentioned which was duly Acknowledged and Recorded the 19<sup>th</sup> day of February Ad/1830 - That said Williams immediately entered into the possession of said lands and premises and has held the same and received the rents issues and profits thereof under said Deed -

That some days after making said Sale the payment of the purchase money and Execution of said Deed Aramus D Bishop requested of said Williams the privilege of Repurchasing said premises at any time within two years at the price of Eight hundred dollars to which said Williams agreed and thereupon made the bond in this bill set out, and a copy of which is filed with said bill and which was recorded on the 5<sup>th</sup> day of February 1831 - That neither said Bishop nor any for him has said anything under the provisions of said bond whereby the same had become null and void - And the said Williams entitled to have hold and enjoy the said lands free and discharged from any lien or incumbrance by virtue thereof that the said bond appearing upon the records of said Recorders Office casts a cloud upon his title and prevents an advantageous Sale thereof - And that he would have applied to said Aramus D Bishop to cancel and satisfy said bond but that owing to the absence of said Bishop and the want of any reliable information as to his exact place



And your Orators further Show unto your honor that on the twenty fifth day of march in the year four Score. One thousand Eight hundred and fifty three they caused to be tendered to the said Joseph R. Williams the sum of One hundred and Sixty One dollars in gold coin and presented to him for Execution a deed which is herewith filed marked ~~Exhibit A~~ Exhibit "B" and made a part of this bill of Complaints that the said Williams did then and there absolutely refuse to accept the said sum of money and execute said deed, and that afterwards your Orators offered to pay the said Williams the sum of two hundred dollars if he would execute said deed and release his rights to said premises under said deed and bond to your Orators — with which Reasonable request of your Orators the said Williams did then and there absolutely refuse to comply and did absolutely refuse to treat with your Orators at all on the subject unless your Orators would produce from said Arasmus D Bishop Authority to cancel said ~~Bond~~ Bond: Which Authority your Orators charge that they are utterly unable to procure and the request therefor is a mere pretext under which said Williams is seeking to delay and harass your Orators in the premises

And your Orators further Show unto your honor that as they are informed and verily believe the said sum of One hundred and Sixty One dollars (which they have deposited in the hands of the person making the tender on their behalf to said Williams as aforesaid for him upon his executing said deed and which they bring into Court to abide the Order of the Court) amounts with the rent of said premises received by said Williams making



Annual rent to the said sum of Two hundred dollars and interest thereon at the rate of six per cent and taking into the consideration the deterioration in value of said premises by dilapidation and want of repairs, permission waste and the removal therefrom of said fruit trees.

And your Orators further shew unto your honor that some fit and proper person should be appointed by this court Receiver to receive the rents and profits accruing out of said lands & premises until the further order of ~~the~~<sup>the</sup> Court and the said Williams enjoined from the further collection of the same. And your Orators further shew unto your honor that being so entitled to the Equity of redemption of the said lands & premises as aforesaid they made said application and tendered said money to said Williams for the purpose of redeeming the same and with the hope to prevent useless litigation and as a further concession to what they believe unjust demands and claims offered to pay said sum of two hundred dollars as aforesaid. and they well hoped that said Williams would have complied with such their reasonable requests —

But now so it is may it please your honor the said Williams combining and confederating with divers persons whose names are unknown to your Orators, but whom when discovered your Orators pray may be made parties defendants to this bill with proper and apt words to charge them — how to injure and oppress, vex and harass your Orators in the premises sometimes



And your Orators further Show unto your honor that on the twenty-ninth day of March in the year of our Lord. One thousand Eight hundred and fifty three they caused to be tendered to the said Joseph R. Williams the sum of One hundred and Sixty One dollars in gold coin and presented to him for Execution a deed which is herewith filed marked ~~Exhibit A~~ Exhibit "B" and made a part of this bill of Complaints that the said Williams did then and there absolutely refuse to accept the said sum of money and execute said deed, and that afterwards your Orators offered to pay the said Williams the sum of two hundred dollars if he would execute said deed and release his rights to said premises under said deed and bond to your Orators — with which reasonable request of your Orators the said Williams did then and there absolutely refuse to comply and did absolutely refuse to treat with your Orators at all on the subject unless your Orators would produce from said Archibald D. Bishop Authority to cancel said ~~Bond~~ Bond: Which Authority your Orators charge that they are utterly unable to procure and the request therefor is a mere pretext under which said Williams is seeking to delay and harass your Orators in the premises.

And your Orators further Show unto your honor that as they are informed and verily believe the said sum of One hundred and Sixty One dollars (which they have deposited in the hands of the person making the tender on their behalf to said Williams as aforesaid for him upon his executing said deed and which they bring into Court to abide the Order of the Court) amounts with the rest of said premises received by said Williams making



Annual rent to the said sum of Two hundred dollars and interest thereon at the rate of Six per cent and taking into the consideration the deterioration in value of said premises by dilapidation and want of repairs, permission waste and the removal therefrom of said fruit trees.

And your Orators further shew unto your honor that some fit and proper person should be appointed by this court Receiver to receive the rents and profits accruing out of said lands & premises until the further order of ~~the~~ <sup>the</sup> Court and the said Williams enjoined from the further collection of the same. And your Orators further shew unto your honor that being so entitled to the Equity of redemption of the said lands & premises as aforesaid they made said application and tendered said money to said Williams for the purpose of redeeming the same and with the hope to prevent useless litigation and as a further concession to what they believe unjust demands and claims offered to pay said sum of two hundred dollars as aforesaid. and they well hoped that said Williams would have complied with such their reasonable requests —

But now so it is may it please your honor the said Williams combining and confederating with divers persons whose names are unknown to your Orators, but whom when discovered your Orators pray may be made parties defendant to this bill with proper and apt words to charge them — how to injure and oppress, vex and harass your Orators in the premises. Sometimes



gives out and pretends that the said Aramund  
Bishop agreed to sell and he agreed to buy from  
him as an absolute purchase the said lots of  
Land for the said sum of four hundred dollars  
as the consideration price or purchase money  
therefor - without any agreement or under-  
standing between them, nor any treaty or proposals  
made or accepted as or before the delivery of said  
Deed and the receipt of said four hundred  
dollars. for time for the repayment of said sum  
of money and the Redemption of said land).

To the contrary whereof your Orators charge  
that as they are informed and verily believe  
the said sum of money was paid and received  
as a loan to secure the repayment of which  
said lots of Land were conveyed by Deed  
absolute on the face of it with an agreement  
understood by the parties before and at the time  
that if the said sum were repaid with a like  
sum in addition in two years from that  
date then the lands were to be recovered to the  
said Bishop, and that to reduce such agreement  
to writing the said bond was made -

And sometimes gives out and pretends that  
said deed was executed and delivered to him on the  
15<sup>th</sup> day of February 1850 - and that said bond  
was not made and delivered until the 19<sup>th</sup> day  
of February 1850 - and in pursuance of another  
& separate & distinct agreement afterwards made

To the contrary whereof your Orators  
charge that as they are informed and believe  
if said Bond was made and delivered after the  
Execution and delivery of said Deed, it was so



done in pursuance of an agreement well understood and agreed upon by the parties when and before said deed was delivered that such a bond should be given —

And sometimes gives out and pretends that the said deed was acknowledged and delivered on the day the same bears date and that afterwards and without any understanding agreement or proposal previous to or at the time of so making said deed to that effect he agreed with said Bishop on the 19<sup>th</sup> day of February 1830 for a Resale to him of said lands for the sum of Eight hundred dollars to be paid in two years from that date, and that said bond was made out solely to carry into effect such subsequent resale to said Bishop and as an Evidence of such agreement.

To the contrary whereof your Orators charge that as they are informed and verily believe although said deed bears date the 15<sup>th</sup> day of February AD 1830, and the Acknowledgement thereof is dated the same day yet the said Bishop did not deliver the same — nor receive said sum of four hundred dollars, until the 19<sup>th</sup> day of February 1830 — and then with the Express understanding and agreement both before and at the time that he received said sum of four hundred dollars as a loan to be repaid — and was to have the right to redeem the said lands at the Expiration of Two years upon the payment of four hundred dollars in addition thereto for the use thereof.

And the said Williams acting upon the



above pretences has filed the said bill of Complaint  
and is thereby seeking to obtain a decree against  
the said Erasmus D Bishop to set aside and  
cancel said Bond for the want of an answer  
under oath from said Bishop thereto —

Thereby seeking to invalidate the clear right  
of your Orators to redeem said lands and to  
Harass and prejudice the same by an apparently  
clear title against said Bishop the ancestor of  
your Orator —

All which actings and doings neglects  
pretences and refusals are contrary to Equity  
and good Conscience and tend to the manifest  
wrong injury and prejudice of your Orators  
the Complainants in this bill of Complaint in  
the premises —

In tender consideration whereof and  
for as much as your Orators are remediless in the  
premises or and after the strict rules of the  
Common law and can only have relief in a  
Court of Chancery where matters of this sort  
are properly cognizable and relivable —

To the end therefore that the said Joseph R  
Williams may true full and perfect answer  
make to all and singular the matters and  
things in this bill alleged and that without  
Oath which is hereby waived —

And that an account may <sup>also</sup> be taken of what  
is due for principal and interest on the said  
Moneys so loaned by the said Joseph R Williams  
to the said Erasmus D Bishop — and that an  
account may also be taken of what hath become due  
or ought to be paid from or by said Williams



for or in respect of the rents and Occupation of the premises so held and Occupied by him as aforesaid and also of the waste done or suffered by him on said premises and in case it shall appear that the said Rents and profits and waste done or suffered by said Defendant to said premises Exceed the amount of said principal sum and interest then that the said Defendant may be directed to pay the excess - your Orators being ready and willing and hereby offering to pay under the order of this Court to the said Defendants what if any thing shall on the balance of said accounts appear to remain due to said Defendant on account of said mortgage - and that the said defendant may Surrender the said mortgaged premises and convey the same to your Orators according to their respective rights by descent from said

Arasmus D Bishop - free and clear of all incumbrances done by him or any person claiming under him by good & sufficient deed

And that said deed by said Arasmus D Bishop and his wife to said Joseph R Williams - and the said bond from said Williams to said Bishop - may be declared by this Court to have been and to be a conveyance of said lands and premises therein described by said Bishop & wife to said Williams on mortgage to secure the Repayment of said sum of four hundred dollars and interest - and that upon payment of said sum of money and interest the said deed and the said bond be declared to cease and be no longer



of any force or validity — And in the meantime  
and until the further order of the Court the said  
Williams be restrained by the process of this Court  
from collecting or receiving rents and profits  
from said premises and the further prosecution  
of said Suit — and such injunction be made  
perpetual — " — And that a receiver may  
be appointed to take charge of and receive  
the rents issues and profits of said Real Estate



And for such other and further relief in the  
premises as shall be agreeable to Equity and  
Good Conscience —

May it please your Honor to grant  
your Orator process of summons out of and  
under the seal of this Court against the  
said Williams commanding him to appear  
before this Court on the first day of the April  
Term A.D. 1853 — and to abide by and perform  
the Order and Decree of the Court in the  
premises —

And also process of injunction  
enjoining and restraining said defendant  
as herein above prayed for —

And your Orator will  
Ever pray &c —

Almer E Bishop

Ashley L Bishop

Moel H Bishop

Dighton E Bishop

Emuelin H Bishop

by their next friend

Emuelin H Bishop

H B Mead

J M Mead

Muller & Bragg  
Sols & of Counsel



State of Illinois / On this fourth day of April A.D. 1853  
County of Boone / Came in person before me  
Emmelina N Bishop who

being by me duly sworn did depose and  
say that she had heard read the foregoing  
bill of Complaint and knows the contents  
thereof and that the same is true of her  
own knowledge - Except as to the matters  
therein stated to be on information & belief  
and as to those she believes the same to be  
true.

Frederick B Hamlin

Justice of the Peace



Know all men by these presents that I  
Joseph R Williams of the county of Boone  
and state of Illinois am held & firmly  
bound unto Arasmus D Bishop of the  
said County in the penal sum of sixty hundred  
dollars to which payment well & truly to be  
made to the said Arasmus D Bishop his  
heirs & assigns. I do further hereby bind my  
self my heirs administrators & assigns firmly  
by these presents sealed with my seal and  
dated at Belvidere this nineteenth day  
of February A D 1850 The condition of this  
obligation is such that whereas the said  
Arasmus D Bishop has this day con-  
tracted to & with the above bounden Joseph  
R Williams to purchase the following  
lands to wit Lots one & two in H. W. Crosby's  
addition to Belvidere lying & being on  
Mechanic street and to <sup>pay</sup> for the same to the  
said Williams. The sum of eight hundred  
dollars two years from the date hereof  
Now if the said Arasmus D Bishop  
his heirs assigns or legal Representatives  
shall on the nineteenth day of February  
A D 1852 pay or cause to be paid to the  
said Joseph Williams his heirs assigns  
or legal Representatives the full & just sum  
of eight hundred <sup>dollars</sup> and upon such pay-  
ment being made the said Joseph  
R Williams his heirs executors or admin-  
istrators shall convey <sup>the land heretofore</sup> clear from incum-  
brances described by sufficient Recd of Warranty  
free & clear from incumbrances unto the  
said Arasmus D Bishop his heirs assigns



or legal Representatives then & in that case  
this obligation to be void or else to remain  
in full force & virtue

J. R. Williams 

Filed for Record Feb 6<sup>th</sup> 1851  
at 10 o'clock P.M.

Recorded Feb 7. 1851 D. T. Olney Recorder

<sup>1081</sup>  
Borne Circuit Court

J. R. Williams

vs  
A. S. Williams

Copy of Borne

Filed Dec 22<sup>d</sup> 1832

J. B. Williams  
Clerk



This indenture made the twenty ninth  
day of March in the year One thousand Eight  
hundred and fifty ~~four~~ three Between Joseph B  
Williams and \_\_\_\_\_ his wife of  
Belviden Boone County Illinois Parties of the  
first part. And Jeannette M Mead, Albert C  
Bishop Ashley C Bishop Noel D Bishop Rosetta  
A Bishop Wighton & Bishop of the children &  
heirs at law of Arasimus D Bishop deceased  
and Emmeline D Bishop widow of said  
Arasimus D \_\_\_\_\_ of the same place Parties  
of the second part — Witnesseth: that the  
said party of the first part for and in consid-  
eration of four hundred dollars, \$400.- in  
hand paid by the said parties of the second  
(the receipt whereof is hereby acknowledged)  
and the said parties of the second part forever  
released and discharged (therefrom) have  
granted bargained sold remised released  
Aliened and confirmed and by these presents  
do grant bargain sell remise release alien  
and confirm unto the said parties of the  
second part and to their heirs & assigns  
forever all the following described lot piece  
a parcel of land situated in the County of  
Boone and State of Illinois and known  
and described as follows to wit:  
Lots One and two in Block three in T. W.



Crosbys addition to Belvidere lying & being  
on Mechanic Street — " —

This deed being made under and in pursuance  
of a bond for the conveyance thereof to said Aramus &  
Bishop signed by said Joseph R. Williams and  
Recorded in Book. 21. of mortgages on pages. 900,  
in the Recorders Office of said county — being dated  
Feby 19-1850- and intending by this conveyance  
to vest in the parties of the second part hereto  
the same Estate & interest in said lands as  
would have descended to them upon the  
death of said Aramus & Bishop had said  
lands been conveyed to him during his  
life time under said bond — " —

Together with all and singular the hereditaments  
and appurtenances therunto belonging or in  
anywise appertaining; and the reversion and  
reversions remainder and remainders rents  
issues and profits thereof: and all the Estate  
right title interest claim or demand whatsoever  
of the said parties of the first part either in  
Law or Equity of in and to the said premises  
above bargained, <sup>premises</sup> and described with the  
hereditaments and appurtenances: To  
have and To hold the said premises above  
bargained and described with the  
appurtenances unto the said party of the second  
part their heirs & assigns forever as above  
herein provided and not otherwise or  
different — " And the said Joseph R.  
Williams part of the first part for himself  
and his heirs Executors and administrators  
doth Covenant grant bargain & agree to



and with the said parties of the second part their  
heirs and assigns then at the time of the  
en sealing and delivery of these presents they  
he is well seized of the premises above  
conveyed or of a good sure perfect absolute  
and indefeasible Estate of inheritance in  
law in fee simple and has good right  
full power and lawful authority to grant  
bargain sell and convey the same in  
manner and form aforesaid and that  
the same are free and clear from all  
former and other grants bargains  
sales liens taxes assessments and circum-  
stances of what kind or nature soever —  
and the above bargained premises in  
the quiet and peaceable possession  
of the said parties of the second part their heirs  
and assigns against all and every person or  
persons lawfully claiming or to claim the  
whole or any part thereof the said party of  
the first part shall and will warrant and  
forever defend —

In witness whereof the said parties of the first part  
have hereunto set their hands & seals the day &  
year first above written — — —

Signed sealed & Delivered in presence of — — —  
State of Illinois  
County of I

in and for the County and  
State aforesaid do hereby certify that  
personally known  
to me as the same person whose name is  
subscribed to the above last appeared before



me this day in person and acknowledged that  
Executed and delivered the said deed  
as free and voluntary act and for the  
uses and purposes therein set forth. —  
And the said

wife of the said  
having been by me Examined Separately apart  
and out of the hearing of her husband and  
the contents and meaning of the said deed  
having been by me fully made known  
and Explained to her Acknowledged that  
she had freely and voluntarily Executed  
the same and relinquished her right of  
dower to the lands and tenements therein  
mentioned without Compulsion of her  
said husband and that she does not  
wish to retract the same. —

Given under my hand and Seal  
this                      day of                      in the year  
of our Lord One thousand Eight  
hundred and Fifty —



Almer E Bishop & al }  
 Joseph R Williams } Answer of Defendant  
 Joseph R Williams

And this Defendant now, at all times  
 hereafter saving and reserving all and all  
 manner of benefit and Excemption to the  
 manifold Errors ~~in Consideration~~ inconsistencies  
 and Omissions in Complainants Said Bill of  
 Complaint contained - for answer nevertheless  
 to the Said Bill or to so much thereof as he is  
 advised it is material and necessary for  
 him to answer unto - Answering Says -

That Marcus D Bishop on the 13<sup>th</sup>  
 day of February 1850 - did make Execute and  
 deliver to this Defendant a Deed in fee  
 Simple under the hands and seals of  
 himself said Bishop and his wife one of  
 these Complainants bearing date the day and  
 year aforesaid of the lots of Land described  
 in said Bill for the price of \$400 - cash  
 then paid to him by this Defendant. -

That said Deed was duly Acknowledged  
 on said 13<sup>th</sup> February by said Marcus D Bishop  
 and Emeline his wife who also renounced  
 her right of Dower of in and to the premises before  
 Daniel F. Olney. One of the Justices of the Peace  
 of said County - and was admitted to record  
 in the Recorders Office of the County of Boone on the  
 19<sup>th</sup> day of February 1850 - And Recorded in Book  
 H of Deeds page 313 - as in and by said Deed  
 and the Certificate thereon will more fully



appear. That this Defendant immediately upon the making and delivery of said Deed that is to say upon the 13<sup>th</sup> February 1850 entered into possession of said premises and has since held and now holds the same under said Deed That some days after said Contract for Sale of said lots was completed by payment of said sum of \$400.00 & by Execution and delivery of said Deed - The said Thomas A Bishop bargained with this Defendant for the privilege of buying back said premises at any time within two years and agreed with this Defendant that he Bishop should have the ~~afforeaid~~ Refusal of said Land at the price of Eight hundred Dollars to be paid to said William at any time within two years from date of said new Agreement -

That this Defendant consented to hold said Land for the said time of two years subject to said Agreement in case said Bishop should choose to pay said sum of money and for the purpose of inducing said Contract delivered to said Bishop the Bond in said Bill set forth -

That this Agreement was wholly unconnected with the former Contract for sale and purchase of said Land which first contract was completed on the 13<sup>th</sup> February AD 1850 and the contract for the refusal of said Land at \$800. was made the 19<sup>th</sup> February 1850 -

That on the said 19<sup>th</sup> February 1850 the said Bishop stated to this Defendant



That he believed the lots sold by him to Defendants would within the Expiration of two years be worth the Sum of Eight Hundred and that if he succeeded in California he would be willing to pay said Sum for said lots

And this Defendant further answering says that the Contract of 13<sup>th</sup> February was an Absolute purchase and Sale of said Lots without any reservation understanding a Condition whatever — and that the price of \$400 — was all that could at that time have been obtained for said property in cash either at public or private Sale and that said Bishop had tried to dispose of said property to other persons before that time at prices about the same and had been unable to do so —

That after the making and delivery of said Bond that is to say about the last of March 1850 — said Asa D Bishop departed for California without putting said bond in the records of said County and that the same was not put upon record until the 5<sup>th</sup> day of February 1851 —

That said Asa D Bishop has not returned to this State from California

That about nine months after the Expiration of the two years limited in said Bond that is to say on the 22<sup>nd</sup> December 1852 this Defendant filed his bill in the Boone & Lewis Court to cancel said Bond and clear his title



talk Contract Agreement or understanding in  
any manner or form, Open or Secret that  
the transaction between said Bishop and  
this Defendant was or was to be deemed a  
loan or Contract for loan or advancement of  
Money to be repaid at a future time with  
interest or any thing Except an absolute  
Sale of property by Bishop made on the  
15<sup>th</sup> day of February 1830 - and a Subsequent  
and distinct Contract by this defendant  
to hold said property for two years subject  
to the right of Bishop to purchase the  
same if he chose at the sum named  
in said Bond -

And this Defendant denying all and  
any all manner of unlawful Confederacy &  
further answers not - without this charging  
matter or thing in said Bill alleged & not  
herein and hereby sufficiently confessed and  
avoided or traversed and denied is true  
in manner and form &c. and prays  
to be hence dismissed ~~not~~ with his  
reasonable Costs in this behalf  
Wrongfully Sustained

Joseph P Williams

Hulbur  
Depts Atty }



Albert E Bishop  
Et al

W  
Joseph B Williams

and now come the  
Complainants By Bunge's their Sols  
& say that the matters and things in  
their said Bill of Complaint contained  
are true and that the matters set  
forth in by way of Defence in the  
Answer of said Bishop are untrue  
and this they are ready to verify and  
prove when and where &c

Bunge's Complainants Sols



In the Circuit Court of Boone  
County of April term A.D. 1854.

State of Illinois  
County of Boone J<sup>r</sup> Almer E Bishop Ashley E Bishop  
Noel D Bishop Dighton E Bishop  
and Rosetta A Bishop minors who sue by  
their next friend Emmeline K Bishop and  
Herman R Mead and Jeanette M Mead  
his wife & Emmeline K Bishop Widow and  
Administratrix of Arasmus D Bishop  
deceased. Plaintiffs in this suit by  
Fuller & Briggs their Attorneys come and  
Complain of Joseph R Williams who enters  
his appearance &c of a plea of trespass on the  
case upon promises —

For that whereas heretofore to wit  
on the first day of November A.D. 1853. at  
Belvidere in the County aforesaid a  
certain discourse was had and moved of  
concerning certain lots of land situate  
in said County and known and described  
as follows viz: Lots Numbers One and  
Two in Block Number Three in F W  
Grosbys Addition to Belvidere lying and  
being on Mechanic Street — and of and  
concerning a certain Deed bearing date  
the 13<sup>th</sup> day of February A.D. 1850 made and  
executed by Arasmus D Bishop and  
Emmeline K Bishop to said Joseph R  
Williams — conveying said lands and  
to him — and of & concerning a certain Bond  
bearing date the 19<sup>th</sup> day of February A.D. 1850 —



Made and Executed by said Williams to said  
Arasmus D Bishop. touching said land and  
which the said Defendant asserted and  
affirmed was an absolute conveyance to him  
in fee of said lands. and not by way of  
mortgage to secure the repayment of  
money by said Arasmus D Bishop to said  
Williams — And in that discourse a  
certain question then and there arose that  
is to say whether the said Deed and Bond  
were an absolute conveyance of said land  
with an agreement to reconvey according  
to the terms of said Bond — and was given  
and Received as a mortgage to secure the  
Repayment of money — And upon that  
discourse the said Plaintiffs asserted and  
maintained affirmed that the said Deed  
and Bond were given and received by way  
of mortgage. to secure the repayment of  
money — And not as an absolute conveyance  
of land with an agreement to reconvey. the  
contrary whereof the said Defendant then  
and there asserted and affirmed. thereupon  
afterwards — to wit: on the day and year first  
Count mentioned at the place aforesaid in  
consideration that the said Plaintiffs at the  
special instance and request of the said  
Defendant had then and there paid to the  
said Defendant the sum of twenty dollars  
he the said defendant undertook and  
then and there faithfully promised the  
said Plaintiffs to pay them the sum of  
forty dollars if the said Deed or bond



were not given as an absolute conveyance but by way of mortgage to secure the repayment of Money—and the said Plaintiffs in fact say—that the said deed and Bond were given not as an absolute conveyance of Land but by way of Mortgage thereof to secure the repayment of money to wit: at the place aforesaid. Whereof the said Defendant to wit on the day & year and at the place aforesaid had notice:—  
Whereby the said Defendant then and there became liable to pay and ought to have paid to the said Plaintiffs the said sum of forty dollars ———— " ————

And the said Defendant by Atwood his attorney comes and defends the wrong and injury wherein & says that the said Plaintiffs ought not to have and maintain their aforesaid action thereof against him because he says that though true it is that the said discourse was had and moved by and between the said Plaintiffs & the said Defendant wherein the said question did arise as aforesaid, and that he the said Defendant did undertake and promise in manner and form as the said Plaintiffs have above thereof in that behalf alleged —

Nevertheless for plea in this behalf the said Defendant saith that the said deed and Bond were not given by way of mortgage to secure the repayment of money but as an



Absolute conveyance and not in manner  
and form ~~as~~ as the said Plaintiffs have  
above thereof in their behalf alleged —  
And of this ~~that~~ the said Defendant  
puts himself upon the Country &  
the Plaintiffs As the like &c

S A H. Miller  
for Deft  
Fuller & Bunge  
for Plffs



Alvert E Bishop Ashley C  
 Bishop Noel D Bishop  
 Dexter E Bishop  
 Minors who are by them  
 Next friends Emeline K Bishop  
 & Herman R Mead & Bennett  
 W Mead & Emeline K Bishop  
 Widow & Administrator of  
 Erasmus D Bishop deceased  
 vs  
 Joseph R Williams

Barre Circuit Court

In Chancery

Bill to Redeem

And now on this day of  
 April A.D. 1834 being one of the days of the present  
 April term of this court come the Complainants by  
 their Counsel Fuller & Bungee - and the defendant  
 by his Counsel S A Ambler also comes -  
 And the court having had under advisement the  
 motion for a new trial of the Feigned issue  
 awarded in this cause - and being now  
 fully advised thereon overrule & deny the same  
 to which decision of the court the said defendant  
 by his Counsel <sup>thru</sup> ~~thru~~ <sup>thru</sup> ~~thru~~ excepted -

And now this cause is brought on for  
 a final hearing - on the Bill answer and  
 Replication proofs & Exhibits in the cause  
 and the verdict of the jury upon the feigned  
 issue awarded herein -

And it appearing to the court that the  
 said jury upon said Feigned Issue found the  
 same for the said Complainants And that  
 the deed dated the fifteenth day of February  
 A.D. One thousand eight hundred & fifty  
 made by said Erasmus D Bishop to said



Joseph R. Williams, and the bond dated the  
Nineteenth day of the same month in the  
year last aforesaid set forth and described  
in the Bill of Complaint in this cause  
were made by way of mortgage of the  
lands and premises therein described by the  
said Bishop to the said Williams to  
secure the repayment of money advanced by  
said Williams to said Bishop. —

And it further appearing to the Court that the  
said Joseph R. Williams lent and advanced  
to the said Asa W. Bishop the sum of  
four hundred dollars at the date of said bond  
and that the rents of said premises have  
been at the rate of two dollars per week  
since the possession of the same was taken by  
said Williams, and by consent of Counsel,  
it further appearing that the said Williams  
has been in the occupation of said premises  
receiving rents at the rate aforesaid from  
the first day of March Eighteen hundred  
and fifty to the present time —

That he has paid for taxes assessed on  
said premises the sum of twenty three dollars  
and Eighteen cents — and for repairs  
thereon the sum of ten dollars — and for  
cismen — againer fire thereon the sum  
of Six dollars — — —

It is therefore Ordered, adjudged and  
decreed by the Court that the said Need and  
Bond in the said Bill of Complaint  
described were law and contrived by the



by the parties thereto with the intention of covering up a loan of money made by said Williams to said Arasmus D Bishop and the agreement to repay the same with a rate of interest beyond that allowed by law to be taken and reserved for the loan of money—

That the said deed and bond are hereby established and declared to have been and to be a conveyance from the said Arasmus D Bishop to the said Williams of the lands in the same described and otherwise known as follows—Lots One (1) and two (2) in Block Number three (3) in J. W. Leach's addition to Belvidere in the County of Boone and State of Illinois lying and being on mechanic street in said town of Belvidere —

In mortgage to secure the repayment of four hundred dollars above mentioned at the expiration of two years from the 1<sup>st</sup> day of February A.D. 1850—aforesaid with the legal interest that accrued thereon after said last mentioned date —

That the complainants in this suit who are the minor heirs & administrators of said Arasmus D Bishop as stated in the above entitled bill of this cause are entitled to Redeem said premises from said Williams and to have an account of the rents & profits received by said Williams from said premises the said Williams being allowed for taxes— assessed— repairs done and insurance premiums paid for insurance on the premises



And the Court having made the Computation taking the items as herein above recited as appearing from the Evidence in this Cause do find Adjudge and decree that there is now due said Williams the sum of Sixty Eight dollars and fifty three Cents in the premises —

And it further appearing to the Court that there is now paid into Court by the Complainants in this Cause and subject to the order of the Court herein as stated in the said Bill the sum of One hundred and Sixty One dollars and which by the consent of parties has been put out at interest to be paid over as this Court may direct on the final hearing of this Cause — — —

It is therefore further ordered Adjudged and decreed by the Court that the said sum of One hundred and Sixty One dollars with the interest that may have accrued thereon be paid in to the Clerk of this Court within forty days from the date of this decree — and that out of said moneys the sum of Sixty Eight dollars and fifty three ~~to~~ Cents with interest thereon at the rate of ten per centum per annum from this date until paid in to the Clerk be paid over to said Williams or to his Solicitor at the Expiration of said forty days by the Clerk of this Court upon application therefor and that the balance of said sum of One hundred and Sixty One dollars with the interest be paid over by



Said Clerk to Said Complainants or their Solicitors —

That the said Williams Execute a deed of Release releasing to the said Complainants in this cause all the interest Estate or title of in and to said lots of land which was acquired by or vested in him under and by virtue of said Deed from said Arasimus D Bishop to him — that such Deed be so Executed by him at the Expiration of forty days from the date of this decree and upon the receipt by the Clerk of Sixty Eight dollars and fifty three cents and interest for his use — and in case of his failure neglect or refusal to make such deed then that William J. Burge be and he is hereby appointed a commissioner for and on behalf of said Williams to make Execute deliver and duly acknowledge such Deed after the Expiration of said forty days from the date of this decree upon the production to him of a certificate of the Clerk of this Court of the payment to him for the use of said Williams of the sum of money and interest last above mentioned —

And such deed when so Executed by said Williams or by said Commissioner for him is hereby declared to be a full and complete discharge and release of all rights Estates & interests of the said Williams in said Lands under said Deed and bond and to operate as an effectual bar to all claims and demands both at law and in Equity that he may at any time set up thereto adverse to the rights of the Complainants in this cause —



And it is further ordered that upon the Expiration of said forty days if the payment to the said Williams of the sum of money and interest last above mentioned or his Solicitor or to the Clerk of this Court for the use of said Williams of the sum of money and interest last above mentioned. And upon the production of a certified copy of this decree - the deed that may be made hereunder and the receipt of said Williams or his Solicitor therefor or the certificate of the Clerk of this Court that the said sum of money and interest has been paid into him for the use of said Williams under this decree, then that the said Williams and all persons who since the commencement of this suit have come into possession of said premises under him forthwith quit and Surrender to the said Complainants the quiet and peaceable possession of said lands and premises with their appurtenances

And in consideration that the said Complainants have paid said money into Court, as above stated it is ordered that each party pay the costs made by him herein to be taxed.

To all of which rulings <sup>and</sup> decisions of the Court the defendant enters his exceptions - And he prays an appeal from the decisions and decree of this Court herein to the Supreme Court - and it is allowed to him upon his filing an appeal bond in the penal sum of Five hundred dollars



Conditioned as the law directs with either  
William H Gilman or Harry J. Shorlitt  
as his security therein such bond to be filed  
with the clerk of this court within forty days  
from the date hereof —

By consent of parties they are allowed to  
the 13<sup>th</sup> day of May next to settle the bill  
of exceptions in this cause and file the  
same — unless the time for such  
purposes should further be extended by  
the Judge of this Court — to have the same  
effect as if filed now here in open court —

Isaac S. Wilson



State of Illinois  
County of Boone Know all men by these presents  
that we Joseph R Williams  
and Henry J Woodliffe are held and firmly  
bound unto Albert E Bishop Asahey C  
Bishop Noel H Bishop - Lightson E Bishop  
Minors by their next friend Emmeline R.  
Bishop in the penal sum of Five hundred  
Dollars to which payment well and truly  
to be made we do hereby bind ourselves  
our heirs Executors and Administrators  
firmly by these presents - Sealed with our  
Seals and Dated at Belvidere this Ninth day  
of ~~March~~ May A.D. 1854 -

The Condition of this Obligation is Such  
that Whereas the above named Obligees -  
Complainants in a Bill in Equity in the  
Boone Circuit Court against the above bound  
Joseph R Williams for the redemption did at  
the April term of Boone Circuit Court by the  
Judgment and Consideration of Said  
Court obtain a Decree against Said  
Joseph R Williams for the redemption  
of certain lands in Said Decree set forth  
from which Said Decree the Said Joseph  
R Williams has prayed an appeal to the  
Supreme Court of this State which has  
been allowed on his filing bond by the 15<sup>th</sup>  
May - with William H Gilman or Henry J  
Woodliffe as surety - Now therefore if  
the said Joseph R Williams shall pay  
the Judgment Costs interest & damages  
in case Said Decree shall be affirmed



and shall also duly prosecute his said appeal  
then this Bond to be void or else remain  
in full force and effect ———"  
In presence of ——— J R Williams  
H J Hoolittle

State of Illinois  
Boone County

I Fayette B Hamlin  
Clerk of the Circuit  
Court in and for the County  
of Boone, do hereby certify that the  
 foregoing contains a correct Transcript  
of the Bill of Exceptions, ~~proceeds~~  
Record in the Cause of Almon  
Bishop & others vs. Joseph B  
Williams, now remaining in the  
office of said Circuit Clerk —

In Witness Whereof I have  
hereunto set my hand & the  
Seal of said Court this 10th  
day of June A.D. 1854

Fayette B Hamlin

Clerk Circuit Court



Joseph R Williams } Supreme Court  
 " }  
 Alcest E Phillips Tal } June Term 1854  
 Appeal.

And the said appellant Joseph R Williams  
 comes & says that in the record and proceedings aforesaid in this  
 court below, there is manifest error to wit

- 1<sup>st</sup>. The court erred, in taking the verdict of the jury into consid-  
~~eration~~ <sup>er</sup> upon the final hearing of said cause, when there was  
 order of said court ordering said issue -
- 2<sup>d</sup>. The court erred in not ordering a new trial of said fixed issue  
 for the reasons then & there assigned by said appellant.
- 3<sup>d</sup>. The court erred, in deciding that the complainants were  
 entitled to any relief whatever, and in rendering a decree  
 for said complainants.
4. The court erred in declaring the Bond & deed in the  
 said bill mentioned to be a mortgage.

And the said appellant for the <sup>& for other error apparent on the face of record</sup> errors aforesaid, prays  
 that the decree aforesaid, may be reversed, annulled  
 and held for naught, and that he may be restored  
 to all things which he has lost by such decree to  
 Blackwell & McKnight  
 for appellant.



20  
Supreme Court

Joseph R. Williams  
Appellant

Appelant  
vs  
Respondent

Admiral E. Bishop  
Et al

Filed June 14 1854

L. Leland Clerk

Shelton &  
Attorneys

17.5.520



The affidavit of ~~Bishop~~ Doolittle

That he was present at the delivery of the deed, but does not know where -

The fact of delivery is admitted by the Phadings, he can't know the day

Saw money paid \$325. cash note 75 - \$400  
No dispute as to fact of payment -

Now if he was present & saw these things done he either did or did not hear what the parties said about. If he did not, he should have so stated in his affidavit. If he did he ought to have given what they said, at least so far as to show that nothing was said about a loan, or the money was a loan, or that from what was said the terms of the bargain whatever they might be were settled upon & this was only carrying them <sup>out</sup> of the singular things connected with this singular witness not the least is that he should know the contents of a deed without examining it, or hearing the parties say what it was, & know what money & note was given for & not hear what the parties say about it

The gist of this case is what took place at & before the deed was delivered, what the parties said & did, from which their intent is to be drawn & yet this witness withholds all his knowledge on the subject -

as to all other facts in the case his evidence <sup>would be</sup> ~~is~~ entirely cumulative



Then as to the question of newly discovered evidence,

This witness was produced before the master, his attention called to the case a relation of Williams, in partnership in business with him, is it to be supposed for a single instant that he did not know the facts he now knows all about or that his attention not called to them, on the contrary the counsel probes the witness privately & when he finds that on the whole case he may not make for him withdraws him from examination. now his relations to the party calling him are sufficient reasons why we should not put him on the stand again than the benefit of a cross examination.

Given at the time of the ex<sup>h</sup> before the master 10 to 20. Decr/53 before the cause was heard at the Decr Special Term this witness <sup>forgot so much</sup> ~~knew nothing~~ about this case how comes it that 3 months afterwards he knows ~~as~~ <sup>so</sup> much about it - or the matter comes so fresh to his recollection, no excuse or reason is assigned for it - Neither is there any excuse assigned for his answer to the counsel that he knew nothing about the case, at another time.

It does seem to us as though this was <sup>not to all that the witness knows but</sup> ~~an~~ an affidavit swearing to just facts enough to get a new trial, so that the party may have another chance for his case.



asto whether a mortgage or not

6 Gilk & Johnsons Rep 280-

2d J. March 114

This case was before the court below  
three times once on the trial before  
him. Then on the trial before the jury  
and then on the motion for a new  
trial, which from the grounds taken  
carried the investigation over the whole  
case. Thus there were three  
hearings & one decision by the court  
after all these hearings in favor  
of the complainant.

8 Vesey 535- Note that the whole of  
this case the court express a very  
strong opinion as to the facts in  
the case.



2 f. Marsh 114  
6 Gil & Johns 278



The awarding of a pigoussin is  
sustained by the charge used in the  
Text books. / Smiths chancery p 75

and a case in / Randolph ~~251~~ 251 -  
Knibb 24? is Dixon's 24? rules that the ques-  
tion as to whether a conditional sale or a  
mortgage should have been sent to a jury  
/ Williams on Mort. 65

7 English Chancery Reports - Top. paging 36 -  
remarks upon House of Lords ~~seem~~ sitting  
aside the finding of a jury & sending it to the  
master -

There was no exception taken to this course

The case of 22 W 536 -

We are allowed in this state by law to use  
depositions, if the court wishes. it seems to  
be produced in person, ~~perhaps~~ a direction to that  
effect should be made -

counsel our Sept was by himself.

as to 3<sup>d</sup> Point

If the app<sup>ts</sup> rests solely on the ground that  
the verdict given by the jury was against weight  
of evidence, Judge intimates on the whole not  
dissatisfied with verdict it will not be disturbed

2 Daniels praec 1307-8-

8 Eng Chan. Rep top pag 33,



2 M + C. 4 - (4.?, Chy Rep. t.p. 43) - was a case  
of trial of title to real estate, court say they will  
not confine party to one single trial when  
the law allows him many -

4 M + C. (18. Eng Chy Rep. 448.) in remarks  
of court on page 455 -



The instructions in this case are to be taken & read together

- 1 The jury are instructed that if they believe from the evidence that the deed to Williams was intended as a security for the four hundred dollars and not an absolute sale, and that the land was to be reconveyed to Bishop upon the payment of eight hundred dollars two years thereafter - then they should find for the plaintiff -
- 2 That the fact that the Plaintiff did not put the bond upon record at the time, it was executed or that they did not tender to Williams any money at the expiration of <sup>the</sup> two years does not necessarily establish that the sale was an absolute one
- 3 The jury are instructed that if they believe from the evidence that the transaction between Bishop & Williams was an advance of money, and that the said deed and bond were executed to cover an usurious loan, they should find for the Plaintiff -
- 4 That if they believe from the evidence that the bond and deed were delivered at the same time or that when the deed was delivered, it was understood or agreed that the bond was to be executed, and that the bond was executed in pursuance of such an agreement then the bond and deed are to



be construed as forming one transaction -  
and the bond declares the deed to be in the  
nature of a mortgage

5 The jury are instructed that if they  
believe from the evidence that at the time  
the deed was executed or delivered to Williams  
it was agreed or understood by Williams that  
the bond was to be executed then that is a  
circumstance which the jury should con-  
sider and from which they may infer  
that the conveyance was made as a security  
for the advance of the four hundred dollars

6 If the jury believe from the evidence  
that the property in controversy was at a fair  
valuation worth a much larger price  
than \$400 - on the 15<sup>th</sup> or 19<sup>th</sup> Feby 1850 -  
then this is a circumstance to be consid-  
ered in connection with the other evidence as  
favoring the claim of Plaintiff that the  
transaction was a loan of money

#### For Defendant.

1 That unless they believe from the evidence  
that the transaction between Aramius D. Bishop  
and defendant relates to the land in dispute  
was in fact at time of making the same a  
loan of money and a security given for such  
loan, and was so intended by the parties  
at the time, they should find for the defendant

2 That to change the absolute deed given  
by Bishop to Williams into a mortgage or



security for money loaned the jury must believe from the evidence that there was at the time of making said deed a contract between the parties for the lending on one side and the borrowing on the other of a sum of money with an agreement that payment at a future day should set aside the deed, and that these facts must appear to the jury from the evidence.

- 3 That in the absence of any proof as to the time of delivery of a deed there arises a presumption of law that the deed was delivered at the time of its date —

The law as given to the jury in the 4 & 5 of Opp's Instructions & 1 & 2 of Surpurgants is fairly stated by the court and the jury could not have been misled by them. Verbal inaccuracies may occur in them, but the jury from the issue & from the instructions must have understood that the question whether a loan of money secured by the real estate, or a sale with the right to repurchase was submitted to them upon all the facts present in the case.



William

Bishop

Prin

104 with my other camp in road off  
high a distance of 1000 ft. + mountain 999 ft  
then some 100 ft. + some 100 ft. + some  
some 100 ft. + some 100 ft. + some  
with my other camp in road off  
high a distance of 1000 ft. + mountain 999 ft  
then some 100 ft. + some 100 ft. + some  
some 100 ft. + some 100 ft. + some

with my other camp in road off  
high a distance of 1000 ft. + mountain 999 ft  
then some 100 ft. + some 100 ft. + some  
some 100 ft. + some 100 ft. + some

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some 100 ft. + some 100 ft. + some

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high a distance of 1000 ft. + mountain 999 ft  
then some 100 ft. + some 100 ft. + some  
some 100 ft. + some 100 ft. + some



In the Supreme Court

Joseph P. Williams  
Appellant

vs  
Almut E. Bishop et al  
Appellees

appeal from Room

It is stipulated in this case, to avoid alleging discrimination of the Record that at the Second Special Term A.D. 1853 - This cause was heard upon proofs exhibited & before the Hon Isaac G. Wilson Judge & fully argued & submitted to the court that the court thereupon of his own motion awarded a figured issue to try ~~that~~ question as to whether the bond & bond in question were a mortgage or a conditional sale, & in pursuance of that order the figured issue sent up in the record was made up & tried before him & that the Record and proceedings of the Sec. Special Term are not contained in the Transcript in this cause, no exception being at the time taken to sending the question to a jury by either party.

Attest  
Atty of Record for  
Appellant  
W. J. Bourges  
for appellees -



Williams }  
vs }  
Bishop }

Stipulations



Joseph H Williams

or

Albert E Bishop Adl

Supreme Court Ottawa

Term, Term 1854.

II The instructions No 1. & 3.5 on the part of the plff in the foregone  
issue were incorrect

1. The first instruction, directs the jury, that if the deed was not an  
absolute sale, and that the land was to be reconveyed to Bishop upon  
the payment of \$800 two years thereafter, then they should find for  
the plff -

The deed and bond do not make an absolute, and  
unconditional sale in every sense of the words. - The sale was  
absolute in one sense, but in another and the more popular  
sense of the words, the sale was not absolute, because there was  
connected therewith the right of repurchase according to the terms  
of the bond. - From the fourth and fifth instructions it

is evident that the jury, were given to understand that in  
order to make an absolute sale, it must be one to which  
there were no conditions either precedent or subsequent  
attached. - A condition subsequent does not constitute  
an absolute sale a mortgage, unless such was the intention  
of the parties. -

1 Hilliard on Mort <sup>64.</sup> 69. & cases cited

8 Paige 243 ✓

4 Brax 197 ✓

5 McE 306 ✓

2 B & Brath 274

19 Wood 578 ✓

McDonald & Gaston 1 Indell 226

7 Cranch 218

5 Gill & Jones 75 ✓

6 " " 282 ✓

2 Idw Ch 138

~~4 N No 130~~

~~4 Davis 493~~

1 R & M 506



2. The fourth instruction, directs the jury, that if they find that the deed and bond were both executed at the same time, then the deed & the bond are to be construed as forming one transaction and that with such construction the bond as a matter of law declares the deed to be in the nature of a mortgage - from the face of the two instruments themselves -

This instruction was erroneous, because the legal construction of the two instruments does not necessarily constitute a mortgage -

3. The fifth instruction, directed the jury, that if they should find, that when the deed was executed or delivered, it was agreed or understood by Williams, that the bond was to be executed, that such agreement or understanding was a circumstance from which the jury might infer that the transaction was a mortgage -

If Williams agreed to execute a bond securing to <sup>English</sup> ~~Williams~~, the right to repurchase the property, no inference can be drawn from such agreement, <sup>then</sup> that Bishop was to have the right to repurchase -



II. The verdict was against the evidence, and upon that ground  
them ought to have been a new trial granted.

1. There can be no doubt of the power of the Court to order a new  
trial in such cases -

2 Daniels, Ch Pr 1307.

1 Aub 210 -

2. The depositions of Saul S. North, Stephen A. Hurlbut, John  
Laurie, clearly show that the transaction was an absolute sale,  
and then nothing but the vague indefinite recollection of  
Stephen Covey to the contrary, whose testimony when closely  
examined, shows that he <sup>would have</sup> understood it the same way  
if he had understood what William said upon  
the subject -

3. There is no such disproportion value of the property  
and the price paid, as to lead the Court to presume  
it was a mortgage - The value all the  
witnesses agree was not much if any thing over  
the price paid -

Ralph Ellis 650

Courtesy, Cull 800

Orlando Carter 500

450 or 400 offered to him

James S. Knollys 400 to 600 - offered to him for 450

Wm H. Gilman 450

offered to him for 450.



III. The evidence of Doolittle clearly establishes a new fact in the case, tending conclusively to establish the issue on the part of Williams - The witness Olney testified that deed was acknowledged Feb 15. 1850. but it did not appear when it was delivered, nor what took place at that time from any evidence on either side.

It now appears from the affidavit of Doolittle that the bond for a repurchase was executed after the delivery of the deed, upon the request of Parker and not in pursuance of any understanding at the time the deed was executed.

This evidence was material to the issue, and not cumulative - Neither was there any want of diligence on the part of Williams in not obtaining his testimony.

Waller & Co. v. Grover  
Grover & Waller 20 Cma 305



IV. The order directing a perpet issue, should also have limited the manner of trial of such issue with reference to the admission of testimony taken in the Chancery court.

2 Daniell, Ch P 1286, 1296, 1299, 1302

2. When the evidence is all before the court, it is the duty of the court to decide the case, and not read the depositions of the witnesses to be read to a jury -- The object of a perpet trial is on account of the peculiar advantages of that mode of trial

2 Daniell, Ch P 1292, 1301, 1303.

*Thursell v. Mason* 3 Paige 453.

*Paul v. Paul* 2 Houghland 525

3. From the manner in which the issue was awarded and tried, there ought to have been a new trial, or the verdict should have not have had any weight

4. Improperly awarding a perpet issue is a just ground of appeal

2 Daniell, Ch P 1289

3. Paige 457, 601

22 Wend 526

Harp Eog 67.

5. The will grant a new trial not only in cases where the verdict is against evidence, but it will nicely balance the evidence, and if <sup>on which</sup> not satisfactory, it will order a new trial

2 Daniell, Ch P 1307

1 Amb 210 323

2 Mo & C 42

11 Mo & Craig 449

2 Mo & Keene 353

8 Wm 536.

2 Daniell, Ch P 1302 in note



6. The decree of the court should have found the facts; the finding of the jury is only evidence, and from it like all other evidence, the court must find the facts.

D. Daniels Ch. 1346

7. The court may and its duty is, if the evidence warrants it, to render a decree against the verdict on the issue, without ordering a further trial.

D. Daniels Ch. 1346.



Chief  
Sol R Williams  
Hewitt Co. Bishop Ark