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No. _____

Supreme Court of Illinois

Moore et al.

vs.

Titman.

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STATE OF ILLINOIS,

1864
SUPREME COURT,

THIRD GRAND DIVISION.

Moore vs. Wilson
No.

87-48

J. W. Middleton & Co., Stationers, 196 Lake St.
Reported

1864
1864

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1417

SUPREME COURT OF ILLINOIS.

Third Grand Division.

APRIL TERM, A. D. 1864.

JOSHUA J. MOORE, et al, PLAINTIFFS IN ERROR. }

vs.
GEORGE TITMAN, DEFENDANT IN ERROR. }

PLAINTIFF'S BRIEF.

Errors.

1. The Court erred in rendering its decree upon the evidence produced.
2. The evidence does not sustain the decree of the Court.

The decree recites that the case was heard upon the "original Bill, answer, replication, and exhibits, on file herein," excluding the presumption that any other evidence was offered or heard.

Abstract, page 4.

The record shows that the Mortgage deed, the personal bond of Moore to Titman for five thousand dollars, and the certificates upon the Mortgage deed were the *only exhibits or proof* filed in the cause, by complainant.

See Record, page 20 and 26.

The abstract is deficient in not fully stating this part of the record, and the Court are respectfully requested to examine the record on file in this cause at p. 20 & 26.

The record therefore shows conclusively that the note described in the Mortgage was never filed, or offered in evidence in the court below, nor was its absence accounted for.

The personal bond of Moore in the sum of five thousand dollars, conditioned for payment of twenty-five hundred dollars was no necessary, legal or relevant evidence for defendant in error, and could in no event dispense with the production of the note.—

1. Because it was not mentioned, or contained or described in the Mortgage.
2. Was in a different sum and payable in different manner. The note was payable with current rate of exchange, &c.
3. Was no part of Mortgage or Mortgage record.
4. Its endorsement of itself to another would not be a transfer of the Mortgage.
5. The endorsement of the note would have transferred the Mortgage to the endorsee.

The general principal that the party seeking to enforce a contract or note at law, must produce the same on trial or account for its loss or absence, needs no argument to sustain, or authority to fortify it. He is bound to make out his case before putting the Defendant upon his defence.

Equally unquestioned is the proposition that the note secured by the Mortgage is the principal, and the Mortgage deed the incident. The mere transfer of the note transfers the Mortgage *ipso facto*. The Mortgage follows the debt as its incident or shadow only—no authorities are necessary to support this proposition.

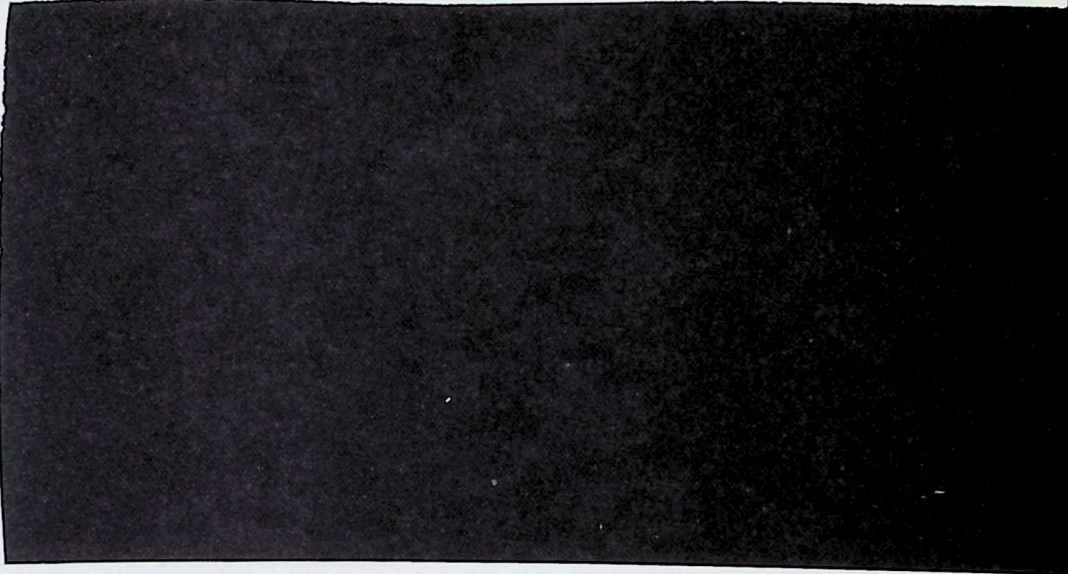
There was no sufficient evidence upon which to predicate the decree, because without the note, or evidence of its loss, or account of its absence, there was *prima facie* no mortgage—nothing, but an accident or ~~shadow~~ ^{show}, without substance.

The endorsee holding the note held the right to foreclose, which must be in itself exclusive, there being but one note, and the right to one satisfaction only.

There could not be two foreclosures upon the same premises, for different parties upon the same mortgage and indebtedness.

Should this decree not be reversed, the time of redemption having expired, the endorsee can sue the note at law, and enforce collection out of other property, and the foreclosure offers no protection or defence to the plaintiff in error.

If the foreclosure, without offering the note or accounting for its absence could be sustained, it would not only be an anomaly in principle and practice, upsetting the legal order of procedure in Court, compelling defendant to make his defence before the plaintiff had made out his case, but would tend to legalize wrong, multiply litigation, encourage rascality and unsettle established principles.



The bond filed was a mere cumulative security, and not mentioned in mortgage and its production did not relieve the want of the note—a payment endorsed upon the note would not appear upon the bond. A transfer of the note would carry with it the mortgage without affecting the bond, while a transfer of the bond without the note would not affect the note and mortgage. It was necessarily a cumulative and collateral security only.

The Court below therefore erred in rendering the decree upon the evidence, and the evidence does not sustain the decree.

But the Court erred in appointing the solicitor of the defendant in error to execute the decree.

White vs. Haffaker, 27 Ill. Report, 349.

That case was tried and decided at the Jan. Term 1862, and the decree below in that case was reversed because the solicitor was appointed special master to execute the decree.

We have relied upon that decision as sound law, in harmony as it is with the statute, and we can add nothing to the conclusive reasoning of the Court in that case. The trial below in this case was had when stump tail currency had unsettled all values, and when rebellion had disturbed all relations and upset all pecuniary calculations, and when corn was scarcely worth hauling to the next town or depot for market, and when other crops had failed, and when the payment by a farmer of a large debt due a most relentless and vindictive creditor, who knew not mercy, and to whom the farm of the Plaintiff, worth at least four times the debt, was a most covetable possession, and the Plaintiff could not make arrangements to redeem his property. Was it singular that he should rely upon a very recent unqualified decision of the supreme court, which promised relief from utter ruin?

It was not upon his suggestion that the creditor's solicitor was appointed. He had nothing to do with the appointment, no power over it. In fact, the solicitor who drew the decree, appointed himself, and the matter of his appointment was not even considered by the Court. In practice, the Court neither makes or examines a decree of foreclosure in ordinary cases.

The record shows, affirmatively, that no evidence was offered but the exhibits Record page 20 and 26.

There can be no presumption that any evidence of disability of the regular master existed, or any reason why the regular master, whose business it was to make the sale, should not make the sale, and execute the decree.

It is not like the case of Farnsworth vs. Strassler, 12 Ill. Rep. 485.

It may be competent for this court to presume that sufficient reasons exist for the appointment of special master in ordinary cases when the record is silent and shows nothing to the contrary, but that is not this case. The record and decree relates all the evidence offered, and no such presumption can arise in this case, but is expressly excluded by the record.

That was not a case where the special master was the solicitor of the complainant, but the court in that case say, "it was the business properly pertaining to the resident master of the county," and it is fairly inferable that if it had appeared by the record that no evidence was offered upon the subject, and no reasons existed, the objection would have been sustained. In that case the Sheriff was appointed, probably under section 46 of the chancery act.

That statute confers upon the court power to appoint special master only when "there shall be no master in chancery competent to act."

The court will not presume there is no master in chancery, and thus repeal the law, but only presume there was proof of the fact when nothing appears to the contrary in the record.

This amounts nearly to a distinction without a difference, but saves the court from the imputation of exercising legislative functions; but the court will not, it is believed, extend the precedent beyond its logical effect.

But this case is also distinguishable from that in another particular. This case was tried below in Peoria County, and the decree was to be executed in Fulton County, the lands being there. Would the Court presume without proof that there was no regular master in Chancery in Fulton County; or that any of the disabilities enumerated in the chancery act (Section 51) existed. Was it competent for the court in Peoria to appoint a special master for Fulton County over the head of the regular master?

"The several Circuit Courts of this State shall have power to appoint in each County, a master in Chancery, &c.

Chancery Act, sec. 48.

The appointing power is in the local court, and not elsewhere, and this is the only provision for the appointment of the regular master.

Section 51 of the same act, provides only for the appointment of special master when the regular master is incompetent to act. Can the court exercise any function in derogation of the statute or the power conferred thereby. Is there an indefinite power in the court of chancery "lying about loose" outside of the statute, which, like the spiritual construction of the Jewish Talmud, may mean as the text reads or exactly oppsite, to suit the exigency. If there be any presumption in the case, the most obvious presumption is, in the absence of all proof, that there was a regular ~~special~~ master in Fulton County, whose business it was, by statute, to make this sale. There is no legal presumption in favor of the exceptional, or in any regular system of ratiocination. All presumptions in law, as in other things, are that the ordinary general current of things is continuous, and the exception must be proven to overcome the force of the presumption. Any other system of reasoning must upset all authority, and all precedent, and all order in law or elsewhere in the business of life.

But to return to the other branch of the enquiry.

The special officer in this case was the solicitor of the defendant below.

If he had been the regular master it was imperative upon the court to appoint a special master, or violate the statute. It cannot therefore be competent for the court to appoint a special officer to exercise a function which, if he was the regular officer, he was incompetent to exercise. This proposition needs no argument. The unqualified decision in the case *White vs. Haffaker*, before cited, in the 27th Ill. Rep. page 349, settles this beyond controversy, and it is impossible to controvert, upon principle, any part of the reasoning of the court upon that point in the case. It stands by itself, correcting the error of the court below, not the error of the party, and is in harmony with the statute and the policy of the law. We are aware that the authority of the case last cited is somewhat diluted by the decision in the case of *Dow vs. Seely*, 29 Ill. Rep. 495, but we respectfully insist that it is not decided in that case that there shall be proof made by plaintiff, that the special master, John J. Weed, was the solicitor, John J. Weed.

1. Because there can be no such proof offered in this court, and the court will not require proof it would exclude if offered.
2. Because no logical mind can read the record without the spontaneous conclusion that the solicitor and special master are identical. The same name, the same term of court, and in the same case and at the same place.

This Court has decided in one case, that in an action of debt upon a judgment recovered in another state, and sued here in favor of the same parties against parties of the same name, the court would presume the defendants here sued, were the identical parties sued in another state, and that no proof of identity was required of plaintiffs. In other words, the court would presume identity of person from similarity of names until the contrary was proven. It is believed that the correctness of that decision has never been doubted, and it is difficult to see how a different rule could be practicable.

If the court had no legal authority to appoint the solicitor special officer to execute the decree, the error was in making the decree and not in the subsequent proceedings, and the officer being incompetent to act, it follows that his proceedings are illegal and void as if done without appointment.

The plaintiff assigns for error the *erroneous appointment* of the special commissioner, not the *act* of the master. If the error assigned was the act of the master, in his proceedings of sale, then the decision in the case of Dow vs. Seely would be in point, and perhaps fatal to the assignment of error.

The plaintiff's assignment of error reaching only the original decree, it is difficult to see why he may not prosecute that question in this court by writ of error at any time within the five years given by the statute for instituting proceedings in error. If he have five years in which to prosecute his writ of error, we submit, that it follows, that the statute is a "strong delusion" tending to mislead and misleading—unless he may have the benefit of the error in the Court below, which he seeks to reverse.

No judicial construction can debar him of his statute right to the writ of error if he does not delay beyond five years in its prosecution; but the right to prosecute in error is a delusion, worse than a "dead sea apple," if the relief is taken away by the unfavorable construction of the Court upon some want of action upon his part. These proceedings within statute limits, seeks to correct the *error of the court*, not the party. We therefore respectfully insist that the decree below should be reversed for this, as for the other errors assigned.

JOHNSON & HOPKINS,

Sols. for Plaintiffs in Error.

State of ⁸⁷Illinois
Supreme Court
April Term A.D. 1864
Joshua J. Moore and
Plffs in Error

^{vs}
George Titman
Plffs Brief

Filed May 3, 1864
L. L. Lander

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

To the Sheriff of Sangamon County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment ^{of} ~~of~~ a plea which was in the Circuit Court of Peoria County, before the Judge thereof, between

George Titman, Complainant,

~~plaintiff~~, and Joshua J. Moore & Amos A. Moore

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

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

George Titman

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

George Titman

notice, together with this writ.

Witness, The Hon. Richard H. Walker Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 11th day of January in the year of our Lord One Thousand Eight Hundred and Sixty-four.

L. Seland

Clerk of the Supreme Court.



87 48

Joshua J. Moore et al,

No.

vs.

George Titman

SCIRE FACIAS.

FILED. Jan 16. A. D. 1864

Shelton Clerk.

Executed this writ
on this 14th day of January
A. D. 1864 by reading the
same to the within named
George Titman

Shff fees \$1.60 paid
by Plaintiff

Milton Thiers Sheriff
of Sangamon County Ill



SUPREME COURT.

State of Illinois.

Third Grand Division.

APRIL TERM, A. D. 1864.

JOSHUA J. MOORE, et. ux,
vs.
GEORGE TITMAN.

} Error to Peoria.

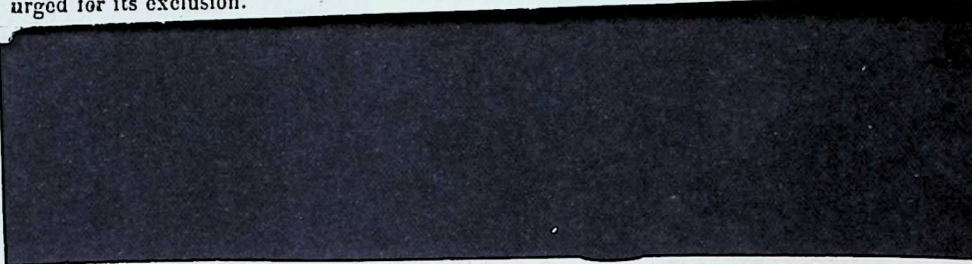
BRIEF AND ARGUMENT FOR DEFENDANT.

The printed abstract, filed in this Court by the plaintiffs, does not present a full synopsis of the record in this case. It does not show that a true copy of the mortgage foreclosed by the decree of the Court below, was exhibited with the original bill, marked "Exhibit B," nor is there an abstract of that exhibit made. The purport of the mortgage, however, is made to appear, by the abstract of the allegations of the bill, where it is fully described.

In the abstract, also, of pages 25 and 26 of the transcript, there seems to be a sly effort to mislead the Court, by mixing up the record so as to make it appear, at first sight, that the Court below heard the case while the defendants, there, were under rule to answer the Supplemental Bill which had been filed.

There is no argument needed, to show that the first and second errors, assigned in this Court by the plaintiffs, are without any foundation. The record shows that the mortgage was duly executed, acknowledged, and recorded—and was before the Court below at the hearing,—as was also the instrument the mortgage was given to secure—while the decree is for a less sum than the amount then due. All that those assignments can affect, is to raise the technical objection that the obligation which the mortgage was executed to secure the payment of, is denominated, both in the bill and mortgage, "a promissory note," when in fact it is a bond. But it is submitted that this objection cannot now avail the plaintiffs. The proper time for them to have interposed it would have been at the hearing. It will not be heard in this Court for the first time. "When evidence varying the case made by the bill, is received without objection by the defendants, all objection thereto will be deemed to have been waived, and the Court will decree upon such evidence, unless it would operate as a surprise upon the defendant."—Hatcher v. Hatcher, 1 McMullen Ch.R. 311.

The rule that the obligations and proof must correspond, in order to entitle the complainant to recover, can have no bearing in this case. The contract made by the bond, is plainly and succinctly described in the bill, with such necessary and convenient certainty as to the essential circumstances of time, place, manner, subject, amount, and other incidents, that the plaintiffs were distinctly informed of the nature of the case they were called on to meet. If the bond filed in the Court below, and produced at the hearing of the cause, had created a different obligation than that made by the allegation of the bill—other than in its mere name or nomination—the case would probably have been different; but the bond itself shows it be the identical obligation referred to in the bill, *by every condition in it*, and by a direct reference to the mortgage on its face. Its introduction as evidence, could by no possibility have operated as a surprise, on account of its variance from the instrument described in the bill,—the only ground that could at any time have been urged for its exclusion.



The point raised by the third assignment, is *res judicata*. In *Dow v. Seely*, — 29 Ill. 495—this Court say: "The master named in the decree to execute it, is of the same name as the complainant's solicitor. We know nothing beyond this, whether these names indicate the same person; but, assuming that they are, we think the defendant should have made some move or objection, either in this Court or the Court below, ~~that is appropriate instead of waiting till the~~ property has been sold, to enable him to determine whether it is a good sale or a bad one. He has no right to speculate on the chances in that way. After acquiescing by his silence, till the decree was executed, it is now too late to object to the fitness of the officer appointed to execute it."

But this is a stronger case than the one above cited. The decree of foreclosure has not only been executed, by a sale of the mortgaged premises, but the time of redemption from such sale had expired and a deed ^{had been} executed by the commissioner to the defendant as purchaser, long before this case was brought to this Court, or any other move was made, as fully appears by the record—and it might also be added—although it is *d'hors* the record—and the defendant has been in possession of the premises for more than a year—the plaintiffs would be remediless if the case was reversed, as the defendant is the holder of the fee in the land, and is in possession, he could retain it in virtue of the mortgage. *Whiting v. Bank of the U.S.*, 13, Peters page 15.

Though the proceedings in the Court below may not have been, in all things, technically correct, it cannot be shown that any injustice was thereby done to the plaintiffs by the decree.

The decree ought to be affirmed.

ROSS, TIPTON, & WINTER.
For Defendant in Error.

(Please turn over)

SUPREME COURT OF ILLINOIS.

Third Grand Division.

APRIL TERM, A. D. 1864.

JOSHUA J. MOORE, *et. al.* }
 vs. }
GEORGE TITMAN. }

ABSTRACT OF THE RECORD

Page
Record

2 In the Circuit Court in and for the County of Fulton, to the September Term thereof, A. D. 1860. George Titman exhibited his bill in chancery to foreclose a certain mortgage, executed the thirteenth day of August, 1858, by Joshua J. 6 & 7 Moore, and Ann A. Moore, his wife, to said George Titman, upon the following real estate in said County of Fulton, to wit: North East quarter of section seven, Township seven North, Range four East of the fourth principal meridian, with the hereditaments and appurtenances, with covenants of general warranty, conditional for the payment of one promisory note of the said Joshua J Moore to said George Titman, for the sum of three thousand dollars, of same date of said mortgage, and payable the first day of April, 1860, with interest at ten per cent., payable the first of April of each year.

9 & 10 Also, a certain other mortgage executed the fourteenth day of August, A. D., 1858, by the said Joshua J. Moore, and Ann A. Moore, his wife, to the said George Titman, upon the following real estate in said Fulton Co., to wit: The South West quarter of section eight, in Township seven North, Range four East of the fourth principal meridian, with the hereditaments and appurtenances, with covenants of general warranty, conditional for the payment of one certain promisory note, of the said Joshua J. Moore to the said Geore Titman, for the sum of twenty-five hundred dollars, of even date with said mortgage, payable April first, 1860, with ten per cent. interest, payable on the first day of April of each year, both of which mortgages were duly acknowledged.

8 & 11 Upon which summons was issued to the sheriff of Fulton County, on the thirteenth day of of July, A. D. 1860, which was returned served on the eighth 12 day of September 1860; and on the twenty-fourth day of September, 1860, the 1 & 12 petition of said Joshua J. Moore for a change of venue in said cause, whereupon the venue was changed to Peoria Co., and at the November Term, 1860, of said 13 & 14 Circuit Court of Peoria Co., said defendants filed their answers as follows, to wit:

The answer of the said Joshua J. Moore, answering as well for himself as for his said wife, Ann A. Moore, to the said complainant's bill of complaint.

This respondent now and at all times hereafter, saving and reserving to the said defendants all manner of right of exception to the manifold errors, uncertainties and insufficiencies of said bill for answer thereto, or so much thereof as this respondent is advised it is necessary or material to answer unto, answering says:

That each and every of the charges, statements and allegations in said bill is and are untrue, and this respondent says expressly, that he has well and truly paid and satisfied to the said complainant each and every part of the said supposed indebtedness mentioned in said bill, and the said supposed promissory notes and mortgages mentioned in said bill should be delivered up to this respondent to be cancelled, and especially this respondent says, that he paid to said complainant on or about the tenth day of April, A. D. 1860, the sum of three thousand seven hundred and fifty-eight dollars and sixty-two cents, (3,758.62,) and that since the commencement of said suit, he has paid to said complainant the residue of said supposed indebtedness. All of which this respondent will aver, maintain and prove, whensoever and wheresoever this Honorable Court shall direct.

And now having fully answered this bill, this respondent asks to be discharged herefrom with the said defendant's costs herein most wrongfully sustained.

JOSHUA J. MOORE,

Per MANNING & MERRIMAN, his Solicitors.

14 To which a replication was filed on the 28th day of November, 1860, as
follows, to wit: George Titman vs. Joshua J. Moore, and Ann Moore, in chan-
15 cery. And the said complainant for replication to the answer of said defendants
says, that each and all the allegations of the said defendant's answer are untrue,
and that he will maintain and prove each and every the allegations of his said
bill, as this Honorable Court shall direct.

GEORGE TITMAN,

By JOHN J. WEED, his Solicitor.

15 And on the 23rd day of April, A. D. 1861, the said George Titman filed his
supplemental bill in said cause, stating the filing of said original bill, also the notes
16 and mortgages mentioned in said original bill, and describing the said mortgaged
17 & 18 premises, and stating the conditions of said mortgages, and asking that said
copies of said mortgages marked "A" and "B," attached to original bill as
exhibits, be taken as a part of the supplemental bill, and reciting the issue and
service of summons upon said original bill, and a change of venue from said
Fulton to said Peoria County, the filing of said answer, to original bill, and the
replication thereto, and then alleging as follows:

18 Your orator would further show unto your Honor that since the foregoing
proceedings were had in said cause, the said mortgage and bond for the payment
of the sum of three thousand dollars, as described in your orator's original bill on
file herein has become due and payable, so that both the mortgages described in

said original bill, are now wholly due and unpaid. And your orator further shows unto your Honor, that the time for the payment of said several sums of money, specified in said bonds and mortgages, as set out in your orator's original bill, has long since elapsed, and that the same are now due and payable according to the tenor and effect thereof; yet the said Joshua J. Moore has not paid the said several sums of money, or any, or either of them, or any part thereof, in accordance with the conditions and terms of said bonds and mortgages, or otherwise; but to pay the same, or any part thereof, the said Joshua J. Moore has wholly neglected and refused, and still does neglect and refuse, whereby the conditional estate vested in your orator by virtue of said mortgages, has become absolute, and the estate of the said Joshua J. Moore therein has become forfeited.

19 And now inasmuch as your orator is without adequate remedy by the strict rules of the Common Law, he prays that the said Joshua J. Moore and Ann A. Moore, may be made parties defendant to this his supplemental bill, and that summons in Chancery may issue against said defendants, commanding them to appear and answer this, the supplemental bill of your orator; the oath of said defendants hereto, being hereby expressly waived, and that upon proof being made of the allegations set forth in the original bill of your orator as well as this his supplemental bill, that the equity of redemption of said defendants, in said premises be barred and forever foreclosed, and that your Honor will order said defendants to pay such sum of money as may be found to be due upon said mortgages, within some short time, to be fixed by your Honor, and that in default thereof, your Honor will order a decree that the said real estate described in said mortgages may be sold, to satisfy your orator's said debt, together with the interest and costs that may have accrued thereon; and that your Honor will grant unto your orator such other and further relief in the premises as to your Honor shall appear consistent with equity and good conscience, and as in duty bound your orator will ever pray, &c.

GEORGE TITMAN,

Ross, Woolfolk & Tipton, and John J. Weed,

Solicitors for Complainant.

25 And on the seventh day of May, A. D. 1861, the said complainant, by J. J. Wead, his attorney, came and dismissed his supplemental bill.

20 & 21 And on the ninth day of May, A. D. 1861, the said complainant filed in said court the mortgage aforesaid, marked "D," and a certain bond of Joshua J. 23 Moore to George Titman, dated the 14th day of August, 1858, conditioned for the payment of said Titman of two thousand five hundred dollars, payable the first day of April 1860, with ten per cent. interest, payable the first day of April annually.

25 On the nineteenth day of November 1860, the defendant was ruled by the said 26 court to answer to the said action by Thursday next; and on the tenth day of

May A.D. 1861, the said court made its order, judgment and decree in said cause, as follows, to wit: Friday, May tenth, A. D. 1861, George Titman vs. Joshua J. Moore and Ann A. Moore. Bill to foreclose Mortgage.

This day came again the said complainant, by his solicitor, as well as the said defendants, by their solicitors, Manning & Merriman, and the said complainants having at a former day of the present term of this court, dismissed his supplemental bill on file herein, and also so much of his original bill as relates to a mortgage described therein, as due and payable on the first day of April, A. D. 1861, and this cause now coming on to be heard upon the original bill, answer, replication and exhibits on file herein, the court having heard the evidences, doth find that each and all the allegations contained in said complainant's bill are true in manner and form as therein alleged, and that the said defendant, Joshua J. Moore and Ann A. Moore, his wife, did on the 13th day of August, A. D. 1858, make, execute and deliver, to the complainant, a deed of Mortgage for the real estate described in complainant's bill, to wit:

The South-west quarter of section number eight, in township number seven North of the base line, of range number four, East of the fourth principal meridian, in the County of Fulton, and State of Illinois, containing one hundred and sixty acres of land, more or less, which said mortgage was executed by the said defendants to the said complainant, to secure the payment of the sum of two thousand five hundred dollars, which the said Joshua J. Moore then owed to the said complainant, which said mortgage was duly recorded in the Recorder's Office of Fulton County, aforesaid, in Book No. 46, on page 214, on the seventeenth day of August, A. D. 1858. And it further appearing to the court that the said defendants, and each of them, have wholly failed to comply with the conditions of said mortgage, and have wholly neglected to pay the said complainant, the sum of money specified in said mortgage, or any part thereof, and that there now remains due and unpaid from said defendants to said complainant, upon said mortgage, the sum of three thousand one hundred and sixty-seven dollars and ²⁷ forty-six cents. It is therefore ordered, adjudged and decreed by the court, that the said defendants pay to the said complainant, within ten days from the date hereof, the sum of three thousand one hundred and sixty-seven dollars and ²⁸ forty-six cents, together with the costs of this proceeding, and that in default thereof that the said real estate hereinbefore described be sold to pay the same, and that John J. Weed, Esq., be appointed a special commissioner to sell said real estate; and that said real estate be sold at the door of the Court House, in Lewistown, in the County of Fulton, and State of Illinois, and that said commissioner give four weeks notice of said sale, by publication of notice thereof, in some public newspaper printed and published in the County of Fulton aforesaid, which notice shall contain a description of the said real estate, as well as the time, place, and terms of such sale; and that said commissioner sell the said real estate to the highest

and best bidder therefor, in cash, and that out of the proceeds of such sale, the said commissioner first pay the costs of this proceeding, and that he next pay to said complainant the said sum of three thousand one hundred and sixty-seven dollars and forty-six cents, together with six per cent. interest thereon, from the date of this decree, and that he pay the balance accruing from such sale to the said defendants, or to their heirs and assigns.

And it is further ordered that said commissioner make, execute and deliver, to such purchaser or purchasers of real estate, at such sale, a certificate of purchase for said real estate, which said certificate of purchase shall entitle the purchaser or purchasers, their heirs or assigns, to a deed for said premises, unless the same be sooner redeemed according to law; and if said premises be not redeemed according to law, that said commissioner make, execute and deliver, to the legal holder of such certificate of purchase, a deed of conveyance for said land.

And it is further ordered that upon the execution of such deed of conveyance, by the said commissioner, to such purchaser or purchasers of said real estate, that the said defendants, their heirs or assigns, and all persons holding possession of the above described real estate, from or through them, surrender up the peaceable possession of said premises, and every part thereof, to the said purchaser or purchasers, their heirs or assigns, together with all the title papers relating to said real estate in their possession or control, and that they, the said defendants, their heirs and assigns, be forever barred and foreclosed of all equity of redemption in said premises, and that said commissioner report his proceedings herein, to the next term of this court, and that this cause be continued.

29 And on the 12th day of October, A. D. 1861, the said John J. Wead, special commissioner, filed his report in said court, showing that on the twelfth day of July, A. D. 1861, at the Court House in Lewistown, he made sale of said
30 South-west quarter of section number eight, township number seven North of the base line, of Range number four East of the fourth principal meridian, to said George Titman, for three thousand two hundred eighty dollars and eleven cents, being the highest and best bid, and executed to him a certificate of purchase therefor, which report is signed John J. Wead, special commissioner, and which
31 said report, on the said twelfth day of October, A. D. 1861, approved and confirmed by the said court, and on the twelfth day of December, A. D. 1862, the said court entered another order and decree, confirmatory of the said report of the said John J. Wead, special commissioner; and on the said twelfth day of
31 & 32 December, A. D. 1862, the said special commissioner filed his further report, as follows, to wit: In the Circuit Court of Peoria County, Illinois, to the December term, A. D. 1862. George Titman vs. Joshua J. Moore and Ann A. Moore. In Chancery, to foreclose mortgage. The undersigned, special commissioner in the above entitled cause, begs leave to report that the real estate described in the order of sale herein, not having been redeemed of the sale thereof, heretofore (to

wit on the 12th day of July, 1861,) made by said special commissioner, he, said commissioner, did on the 12th day of November, A. D. 1862, make, execute and deliver, to the said George Titman, the purchaser thereof, and the legal holder of the certificate of purchase therefor, a good and sufficient deed of conveyance of said real estate, to wit: The South-west quarter of eight, in township seven North of range four East of the 4th principal meridian, in the County of Fulton, and State of Illinois. All of which is respectfully submitted.

JOHN J. WEAD, Special Commissioner.

33 Certificate of Clerk and Revenue stamp.

ASSIGNMENT OF ERRORS.

- 1st. The Court erred in rendering its decree upon the evidences produced.
- 2d. The evidence does not sustain the decree of the Court.
- 3d. The Court erred in appointing the Plaintiff's Solicitor a special master to sell the mortgaged premises.

State of Illinois
Supreme Court.
April Term A.D. 1864
" "
Joshua J. Moore
vs
George Titman

Abstract.

North of range four East of the 1st principal meridian, in the County of Tipton,
and State of Illinois. All of which is respectively surveyed
the evidence of purchase therefore a tax and assessment of eight in township seven
delivered to the said George Titman the 1st day of July 1863, and the legal holder of
commissioner did on the 1st day of November 1863 make return and
win on the 1st day of July 1864, making said special commissioner, the said

22 Certificate of Clerk and Revenue stamp.

JOHN J. HEAD, Special Commissioner.

ASSIGNMENT OF ERRORS.

23. The evidence does not sustain the decree of the Court.
24. The Court erred in appointing the Plaintiff's Solicitor a special master to
sell the mortgaged premises.
25. The Court erred in rendering its decree upon the evidence produced.

Filed April 20 1864
H. Leland
Clerk

1
Pleas before the Circuit Court, within and for the County of Peoria, in the State of Illinois, on the 10th day of May, in the year of Our Lord, One thousand eight hundred and sixty one.

Be it remembered, that heretofore, to wit: On the 10th day of November in the year of our Lord, One thousand eight hundred and sixty, there was filed in the office of the clerk of the Circuit Court of Peoria County, in the State of Illinois. a Transcript from the Circuit Court of Fulton County, in said State of Illinois, together with the following papers, which are in words and figures following, to wit:

Transcript

Pleas at the Court House in Lewistown before the Hon. John S. Bailey Judge of the Fifth Judicial Circuit of the State of Illinois.

At a Circuit Court begun and held at the Court House in Lewistown County of Fulton and State of Illinois on Monday the 24th day of September A D 1860. Present Hon. John S. Bailey Judge. The following proceeding was had on the first day of said term of the Court.

George Titman

vs.

Joshua J. Moore et al

Enclosure

On this day the defendants herein came by their Solicitors and entered their Motion herein for a change of venue, which Motion is sustained by the Court and the venue hereof changed to Peoria County, And it is ordered by the Court that the clerk of this Court make and certify the record herein and transmit the same together with the papers to the clerk of

the Circuit Court of the County of Peoria in the State of Illinois

State of Illinois
Fulton County

I Edward Sayre Clerk of the Circuit Court within and for the County aforesaid do hereby - that the foregoing is a true and complete copy of all the proceedings of Court in the case therein named as the same appears of record in my office, And that the papers transmitted herewith and numbered 1. 2. 3 are all the Original papers filed herein during the progress of this suit.



In testimony whereof I hereunto subscribe my name and affix my Seal of Office at Leavittown this 8th day of November A D 1860

Edw Sayre Clk

Bill

State of Illinois
County of Fulton

In Circuit Court September Term A.D. 1860

George Titman
vs.

Joshua J Moore
Ann A Moore

In Chancery
Foreclosure

To the Hon John S. Bailey Judge of said Court in Chancery sitting:

Humbly Complaining unto your Honor, your Orator George Titman of the County of Warren and State of New Jersey, would respectfully represent, that heretofore to wit: on the thirteenth day of August in the year of our Lord One

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Thousand eight hundred and fifty eight one Joshua J Moore of the County of Fulton and State of Illinois was justly indebted to your Orator in the just and full sum of Three Thousand Dollars, for which the said Moore executed unto your Orator his certain promissory note payable the first day of April A.D. 1860. with interest at the rate of ten per cent per annum payable annually, at some Banking House in the city of New York with current rate of Exchange.

And your Orator further showing would state to your Honor that on the same thirteenth day of August in the year aforesaid the said Joshua J Moore together with his wife Ann A Moore made, executed and delivered unto your Orator a Deed of Mortgage for the purpose of securing the payment of the said sum of money in said note specified, on the following Real Estate to wit: The North East quarter of Section Seven in Township Seven North of Range Four East of the Fourth Principal Meridian in Fulton County State of Illinois, Conditioned as follows, to wit: That if the said party of the first part shall well and truly pay or cause to be paid to the said party of the second part his heirs or assigns the just and full sum of Three Thousand Dollars according to the tenor and effect of a certain promissory Note bearing even date with the said mortgage, and due April the first A.D. 1861. with the interest thereon at the time and in the manner specified in the said note, then the said mortgage to be void - else to remain in full force and virtue. which said mortgage was duly acknowledged and recorded as will appear by reference to a copy of the same which is herunto appended marked "A" and which your Orator asks may be made and taken as a part of this his Bill. And your Orator would further show unto your honor,

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that afterwards, to wit: on the fourteenth day of August in the year
 of our Lord One Thousand Eight Hundred and Fifty Eight aforesaid
 the said Joshua J. Moore, being further indebted unto your orator
 in the further sum of Two Thousand Five Hundred Dollars, He
 the said Moore on the day and year last aforesaid executed ^{other} his
 certain promissory note to your orator for the payment of the said sum
 of money last aforesaid on the first day of April A.D. 1860, with
 interest at the rate of ten per cent per annum payable annually ~~and~~
~~both~~ and both interest and principal payable by draft with
 current rate of exchange in the city of New York, And the
 said Joshua J. Moore together with his wife Ann A. Moore,
 on the same fourteenth day of August A.D. 1858. aforesaid, made,
 executed and delivered unto your orator a Deed of Mortgage on
 the following described premises situated lying and being in the
 County of Fulton and State of Illinois, to wit: The South
 West quarter of Section No Eight in Township Seven North
 Range Four East of the fourth principal Meridian containing
 one hundred and sixty acres of land more or less - Conditioned
 as follows, to wit: Provided nevertheless that if the said party
 of the first part his heirs Executors or administrators shall well and
 truly pay to the said party of the second part his heirs exee-
 cutors administrators or assigns the just and full sum of Two Thou-
 sand Five Hundred Dollars with the interest thereon, together
 with the current rate of exchange according to the tenor and
 effect of a certain promissory note bearing even date with said
 mortgage, then said Deed of Mortgage to be void else to remain
 in full force and effect, which said Deed of Mortgage was duly
 acknowledged and recorded a copy of which is hereto annexed marked
 "B" and which your orator asks may be made a part of
 this his said Bill.

5 And your orator further stating unto your Honor would represent that the time for the payment of the monies specified in the said notes and mortgages as herein before set out has long since elapsed, and that the same are now due and payable according to the tenor and effect thereof. Yet the said Joshua J. Moore nor any one for him has paid said sums of money due and payable by the terms of said notes either in New York City or elsewhere but to pay the same or any part thereof has entirely and wholly neglected and refused, and still does neglect and refuse whereby the Conditional Estate of the said Joshua J. Moore in said premises described in the said mortgage aforesaid has been forfeited.

Inasmuch, therefore as your orator is remediless by the strict rules of the Common law he prays the aid and assistance of this Honorable Court where matters of this kind are purely cognizable; to the end therefore that the said Joshua J. Moore and Ann A. Moore may be made parties defendant to this Bill, your orator prays that summons in Chancery may issue commanding them to appear and plead to this Bill - said answer under oath being hereby expressly waived - or in default thereof that their equity of redemption in said premises be barred and forever foreclosed, and that a sale of said premises be decreed to satisfy your orator's said debts interest and costs, and for such other and further relief as the Equities of this case may demand, and as to your Honor may seem fit and meet in equity and good conscience, as in duty bound your orator will ever pray.

Respectfully
 R. H. H. & S. J. T. S.

Solely for
 Compt.

George Titman

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State of Illinois
County of Fulton

We do hereby enter ourselves security for
costs in above cause and acknowledge ourselves bound to pay
or cause to be paid all costs that may accrue in this action
either to the opposite party or to any of the officers of this court
in pursuance of the laws of this State

July 29th 1860

Robt. Woolfolk & Tipton

Approved by me at my office

this 30th day of July A.D. 1860

Edw. Sayre clk.

Exhibit A

This Indenture made this thirteenth day of August, in the
year of Our Lord One thousand Eight hundred and fifty eight
between Joshua J. Moore and Ann A. Moore his wife of the
County of Fulton and State of Illinois of the first part and
George Titman of the County of Warren and State of New Jersey
of the second part witnesseth that the said party of the first
part for and in consideration of the sum of Three Thousand Dollars
paid by the said party of the second part the receipt of which
is hereby acknowledged, do by these presents Grant Bargain and
sell unto the said party of the second part his heirs and assigns
that certain tract or parcel of land situated in the County of
Fulton and State of Illinois, and known as the North East
Quarter of Section Seven in Township Seven North Range Four
East of the fourth principal meridian containing One hundred
and Sixty acres be the same more or less together with all and
singular the hereditaments and appurtenances therunto belonging

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or in any wise appertaining. To have and to hold the
said Premises as above described with the appurtenances unto
the said Party of the second Part his heirs and assigns forever
and the said Party of the first Part for himself his heirs execu-
tors and administrators does hereby Covenant to and with the
said Party of the second Part and his heirs and assigns,
that he is well seized of the Premises above conveyed as of a
good and and indefeasible Estate in fee simple and has
good right to sell and Convey the same in manner and form as
aforesaid that they are free from all incumbrance and that
the above bargained Premises in the quiet and peaceable pos-
session of the said Party of the second Part and his heirs
and assigns against the Claims of all Persons whatsoever he
will forever Warrant and defend. Provided Nevertheless
that if the said Party of the first Part or his heirs Executors
or administrators shall well and truly pay to the said Party of
the second Part or to his heirs Executors or administrators &
assigns the just and full sum of Three Thousand Dollars ac-
cording to the tenor of one certain Promissory note bearing even
date herewith due April the first One thousand eight hundred
and sixty and payable by draft at some Banking House in
the city of New York with cur. rate Exchange. ~~and with interest~~
and with interest at ten per cent per annum payable on the first
day of April in each and every year. till the principal be
paid said interest also payable in New York Then this Deed
as also a certain note bearing even date with this indenture
given by the said Party of the first Part to the said Party of the
second Part Conditioned to pay the said sum of money at
the times aforesaid shall be void otherwise to remain in full
force and virtue. In Testimony whereof the said Joshua

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J Moore and Ann A Moore have hereunto set their hands
And seals the day and year first above written
Signed sealed and } Joshua J. Moore Seal
delivered in presence of } Ann A. Moore Seal
S. N. Breed }

State of Illinois
Tulsa County

I Sands A Breed a Notary Public
for Canton and for said County do certify that on
this day appeared before me Joshua J. Moore and Ann
A. Moore whose names appear subscribed to the foregoing
deed of Conveyance and who are personally known to
me to be the identical persons whose names are sub-
scribed to said deed as having executed the same, and
acknowledged that they had executed the same as their
voluntary act and deed for the uses and purposes
therein expressed and Ann A Moore wife of the said
Joshua J. Moore having been by me made acquainted with
the contents of said deed and having been by me exam-
ined separate and apart from her said husband acknowl-
edged that she had executed the same and relinquished
her dower to the premises therein conveyed voluntarily freely
and without any compulsion of her said husband.

Given under my hand and seal at Canton
this fourteenth day of August Eighteen Hundred
and fifty eight. Sands A. Breed

Notary Public for Canton
Illinois

31815

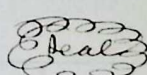
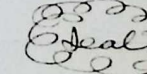
Exhibit B.

This Indenture made this fourteenth day of August in the year of our Lord One thousand eight hundred and fifty eight between Joshua J. Moore and Ann A. Moore his wife of the County of Fulton & State of Illinois of the first part and George Titman of the County of Warren and State of New Jersey of the second part, Witnesseth that the said party of the first part for and in consideration of the sum of Two thousand five hundred dollars paid by the said party of the second part the receipt of which is hereby acknowledged do by these presents, Grant Bargain and sell unto the said party of the second part & his heirs and assigns that certain tract or parcel of land situated in the County of Fulton and State of Illinois and known and designated as the South West quarter of Section No. Eight in Township Seven North of Range Four East of the Fourth Principal Meridian containing one hundred & sixty acres be the same more or less. Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, To have and to hold the said premises as above described with the appurtenances, unto the said party of the second part and his heirs and assigns forever. And the said party of the first part for himself & his heirs executors and administrators, does hereby covenant to and with the said party of the second part and his heirs and assigns that he is well seized of the premises above conveyed as of a good and indefeasible estate in fee simple and has good right to sell and convey the same in manner & form as aforesaid; that they are free from all incumbrance and that the above bargained premises in the quiet and

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peaceable possession of the said party of the second part
 & his heirs or assigns against the claims of all persons whom-
 soever he will forever warrant and defend. Provided
 Nevertheless that if the said party of the first part or his heirs
 executors administrators shall well and truly pay to the said
 party of the second part his heirs executors administrators
 or assigns, the just and full sum of Two Thousand Five
 Hundred Dollars according to the tenor of one certain promiss-
 ory note bearing even date hereof and due April the first One
 thousand Eight Hundred and Sixty payable by draft on some
 Banking house in the city of New York with current rate of
 exchange - with interest at ten per cent payable in the city
 of New York the first day of April annually, the interest also
 payable in New York in like manner as the principal.

Then this deed as also one certain note bearing even date with
 this indenture given by the said party of the first part, to the
 said party of the second part, conditioned to pay the said
 sum of money at the time aforesaid shall be void - otherwise
 to remain in full force and virtue. In testimony whereof the
 said Joshua J. Moore and Ann A. Moore have hereunto
 set their hands and seals the day and year first above written
 Signed sealed and delivered 
 in the presence of 
 S. N. Breed 

Joshua J. Moore 
 Ann A. Moore 

State of Illinois
 Fulton County

J. Sands & Breed a Notary Public for
 Canton for said County do certify that on this day appeared

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before me Joshua J. Moore and Ann A. Moore whose names appear subscribed to the foregoing deed of conveyance and who are personally known to me to be the identical persons whose names are subscribed to said deed as having executed the same, ^{and acknowledged that they had executed the same,} as their voluntary act and deed for the uses and purposes therein expressed. and Ann A. Moore wife of the said Joshua J. Moore having been by me made acquainted with the contents of the said deed and being by me examined separate and apart from her husband acknowledged that she had executed the same and relinquished her dower to the premises therein conveyed voluntarily, freely and with any compulsion of her said husband.

A circular notary seal with the initials 'J.S.' in the center, surrounded by a decorative border.

Given under my hand and seal at Canton
this Fourteenth day of August Eighteen
hundred and fifty eight.

Sands N. Breed

Notary Public for Canton Illinois

Recorded August 17th 1858

Summons.

State of Illinois
Tipton County, ss.

The People of the State of Illinois

To the Sheriff of said County, Greeting:

We command you to summon Joshua J. Moore and Ann A. Moore if found in your County, personally to be and appear before the Circuit Court in and for the said County of Tipton, on the first day of the next term thereof, to be held at the Court house in Lewisport, on the Fourth Monday in the month of September to answer to a certain Bill of Complaint filed in our said Circuit Court on the Chancery side thereof.

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against them by George Titman, and have you then and there this writ, and make return thereon in what manner you executed the same.

Edw Sayre

Witness Edward Sayre, Clerk of our said Circuit Court at Leicestown, this 30 day of July A.D. 1860.

Edw Sayre Clerk

Sheriff return
on the foregoing
Summons.

State of Illinois
Fulton County ss.

I do hereby certify that I have served by reading and delivering a copy of the within Summons to Joshua J Moore & Ann A Moore this 8 day of September 1860

D. J. Maggoner Sheriff

affiant.

State of Illinois County of Fulton ss.

George Titman

vs.

Joshua J Moore

Circuit Court September Term 1860
In Chancery Bill to Foreclose

Joshua J Moore defendant in the above entitled cause being duly sworn according to law deposes and says that he believes that he cannot have a fair and impartial trial in said cause in this court, owing to the prejudice existing in the mind of the Judge thereof against him the said defendant, and that it would jeopardize the rights of this affiant to submit to a trial before him. Whereupon affiant prays a change of venue to some Circuit in the State of Illinois where the causes herein complained of do not exist.

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Joshua J. Moore

Sworn to and Subscribed
before me this 24 day of
September 1860.
Edw. Sayre clk

And afterwards, to wit: on the 21st day of November A.D. 1860.
there was filed in the Circuit Court of said Peoria County
in said State an Answer of Joshua J. Moore as follows, to wit:

Answer.

State of Illinois }

County of Peoria }

George Titman

Complainant

vs.

Joshua J. Moore

Ann A. Moore Defendants

Peoria Circuit Court November Term A.D. 1860

The answer of the said Joshua J. Moore
answering as well for himself as for his said wife Ann A. Moore
to the said Complainant's bill of Complaint. This respondent
now and at all times hereafter saving and reserving to the
said defendants all manner of right of exception to the
manifest errors uncertainties and insufficiencies of said
bill for answer thereto, or so much thereof as this respondent
is advised it is necessary or material to answer unto, answer-
ing says That each and every of the Charges Statements
and allegations in said bill is and are untrue: And
this respondent says expressly that he has well and truly
paid and satisfied to the said Complainant each and
every part of the said supposed indebtedness mentioned

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in said bill, and that the said supposed promissory notes and mortgages mentioned in said bill should be delivered up to this respondent to be cancelled: And especially this respondent says that he paid to said Complainant on or about the tenth day of April A.D. 1860. the sum of Three thousand seven hundred and fifty eight dollars and sixty two cents (\$3758.62) and that since the commencement of said suit he has paid to said Complainant the residue of said supposed indebtedness. All of which this respondent will aver maintain and prove whenever and wheresoever this Honorable Court shall direct. And now having fully answered this bill this respondent asks to be discharged herefrom with the said defendants ^{costs} herein most wrongfully sustained

Joshua J Moore
 Jn Manning & Merriam
 his solicitors

And afterwards, to wit: on the 28th day of November A.D. 1860 there was filed in the Circuit Court of said Peoria County in said State a Replication in words and figures as follows, to wit:

Replication	State of Illinois	3	p. In the Circuit Court of said County To the November Term 1860
	County of Peoria	3	
	George Titman		
	vs.		In Chancery.
	Joshua J Moore		
	Ann Moore		

And the said Complainant for Replication

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to the answer of the said Defendants, says that each and all the allegations of the said Defendants answer, are untrue and that he will maintain and prove each and every the allegations of his said Bill as this Honorable Court shall direct

George Titman

By John J. Meed }
his Solicitor }

And afterwards, to wit: on the 23^d day of April A.D. 1861. there was filed in the Circuit Court of said Peoria County, in said State a Supplemental Bill in words and figures as follows, to wit:

Supplemental Bill

State of Illinois }
County of Peoria } s.

In the Circuit Court of said County & State to the May Term A.D. 1861.

To the Honorable Oliver N. Powell Judge of the Sixteenth Judicial Circuit in Chancery sitting.

Humbly complaining unto your Honor. Your Orator George Titman of the County of Warren, in the State of New Jersey, (by way of Supplement to his Original Bill on file herein) respectfully sheweth - That on the 30th day of July. A.D. 1860. Your Orator filed in the Office of the clerk of the Circuit Court of Fulton County, Illinois, his Bill of Complaint against Joshua J. Moore and Ann A. Moore his wife, both of said County of Fulton and State of Illinois, setting forth in substance, that the said Joshua J. Moore, heretofore, to wit: on the 13th day of August A.D. 1858. was indebted to your Orator in the sum of Three Thousand Dollars for the payment of which, the said Joshua J. Moore had

Executed his Promissory note, bond or writing obligatory,
 payable on the 1st day of April A.D. 1860 with interest
 thereon, at the rate of ten per cent per annum - And that
 to secure the payment of the sum of money mentioned in said
 Bond or instrument of writing the said Joshua J. Moore, and
 Ann A. Moore, Executed and delivered to your Orator, a
 deed of Mortgage upon the following Real Estate to wit:
 The North East Quarter of Section Seven (7) in Township
 Seven North of Range Four (4) East of the Fourth Princi-
 pal meridian in the county of Fulton and State of Illinois
 Conditioned as follows, to wit: That if the said party of
 the first part (meaning thereby the said Joshua J. and
 Ann A. Moore) shall well and truly pay or cause to be paid
 to the said party of the second part (meaning thereby your
 Orator) his heirs or assigns, the said sum of Three Thousand
 Dollars as specified in said Mortgage on or before the 1st day
 of April 1861. with the interest thereon at the time and in the
 manner specified therein, then said Mortgage and the estate
 thereby created to be void, otherwise to be and remain in
 full force and effect. - And it was further, alleged in said
 original Bill, that afterwards and on the 14th day of
 August A.D. 1858. The said Joshua J. Moore was further in-
 debted to your orator in the further sum of Two thousand Five
 Hundred Dollars, to be paid to your Orator on or before the first
 day of April 1860. according to the tenor and Effect of a
 certain Promissory note, bond or writing obligatory, Executed
 by said Joshua J. Moore, to your Orator. And that to
 secure the payment of the said sum of money therein specified
 the said Joshua J. Moore and Ann A. Moore for the better
 securing the payment of the said last mentioned sum of money.

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made executed and delivered to your orator their Mortgage Deed, upon the following described Real Estate, to wit: The South West Quarter of Section No Eight (8) in Township Seven (7) North of Range Four (4) East of the fourth principal meridian in the County of Fulton, and State of Illinois, which said Mortgage was conditioned as follows, to wit: That if the said Joshua J. Moore and Ann A. Moore should well and truly pay or cause to be paid to your orator the said sum of Two Thousand Five Hundred Dollars, according to the tenor and effect of said promissory note, bond or writing obligatory, then that the said Mortgage, should be void else to be and remain in full force virtue and effect - both of which said Mortgages are truly copied in your orator's Original Bill on file herein, and respectively marked Exhibits "A" & "B", and your orator asks that they may be made a part of this Bill - your orator further sheweth that upon the filing of his said Original Bill, herein, a summons issued from the said Circuit Court of Fulton County Illinois, commanding the said Joshua J. Moore and Ann A. Moore, to appear at the September Term of said Court A.D. 1860. which said summons was duly served on said Joshua J. and Ann A. Moore, on the 8th day of September A.D. 1860. And that afterwards at said Term of said last mentioned Court the said Joshua J. Moore prayed a change of Venue, from said County of Fulton to some other Judicial Circuit, and that in accordance with the prayer of the said Joshua J. Moore, the said Cause was sent by change of Venue from said County of Fulton to the County of Peoria - And your orator would further show unto your Honor. That afterwards at the November Term of the Circuit Court of Peoria County aforesaid

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A.D. 1860. the said Joshua J. Moore answering for and on behalf of himself and the said Ann A. Moore denied the allegations of your Orator Original Bill, and avowed that they had fully paid and discharged the sums of money mentioned in said Mortgages, as described in his said Original Bill - and that after the filing of said answer by said Joshua J. Moore, and Ann A. Moore your orator filed herein his replication to said answer of said Joshua J. and Ann A. Moore, denying the truth of each and every allegation contained in said answer. Your Orator would further show unto your Honor, that since the foregoing proceedings were had in said Cause, that the said mortgage and Bond for the payment of the said sum of Three Thousand Dollars, as described in your Orator's Original Bill on file herein has become due and payable so that both of the mortgages described in said original bill are now both wholly due and unpaid - And your Orator, unto your Honor further sheweth - that the time for the payment of said several sums of money specified in said Bonds and Mortgages as set in your Orator's Original Bill has long since elapsed and that the same are now due and payable, according to the tenor and effect thereof - Yet the said Joshua J. Moore, hath not paid the said several sums of money or any or either of them or any part thereof, in accordance with the terms and conditions of said bonds and mortgage or otherwise, but to pay the same or any part thereof the said Joshua J. Moore has wholly neglected and refused and still does neglect and refuse, whereby the Conditional Estate vested in your Orator, by virtue of said Mortgages has become absolute, and the estate of the said Joshua J. Moore therein has become

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forfeited. And now inasmuch as your orator is without
 adequate remedy by the strict rules of the common law,
 he prays that the said Joshua J. Moore and Ann A. Moore
 may be made parties defendant to this his supplemental Bill,
 and that summons in Chancery may issue, against the
 said Defendants, commanding them to appear and answer
 this the Supplemental Bill of your Orator. The answer
 of said defendants hereto, being hereby expressly waived,
 and that upon proof being made of the allegations set forth
 in the Original Bill of your Orator as well as in this
 his supplemental Bill, that the equity of redemption of said
 Defendants in said premises be barred and forever foreclosed.
 and that your Orator will order said Defendants to pay
 such sums of money as may be found to be due, upon
 said mortgages within some short time to be fixed your
 Honor, and that in default thereof your Honor will order
 and decree, that the said Real Estate described in said
 mortgages may be sold to satisfy your Orators said debt
 together with the interest and costs that may have accrued
 thereon. And that your Honor will grant unto your orator
 such other and further relief in the premises as to your
 Honor shall. Consistent with Equity and good Con-
 science and as in duty bound your Orator will ever pray &c.
 Ross Woolfolk & Tipton }
 & John J. Reed Solrs }
 for Complainant }

George Titman

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George Titman
vs.Supplemental BillJoshua J Moore
Ann A Moore

Clerk of the Circuit Court of Peoria County will issue Summons in the above case returnable to the May Term of said Court and directed to the Sheriff of Fulton County to execute.

John J. Reed

Solr for Compl't.

And afterwards, to wit: on the 9th day of May, A.D. 1861. there was filed in the Circuit Court of said Peoria County, in said State, a Mortgage, which, with the certificates thereto attached and also a bond filed in said Court on the same day, are in the words and figures as follows, ~~to wit~~: and are all the exhibits filed in said cause, to wit:-

Mortgage

This Indenture, made this Fourteenth day of August, in the year of Our Lord One Thousand Eight Hundred and fifty eight. Between Joshua J Moore & Ann A Moore his wife of the County of Fulton & State of Illinois of the first part, and George Titman of the County of Warren and State of New Jersey of the second part, Witnesseth, That the said party of the first part, for and in consideration of the sum of Two Thousand Five Hundred Dollars paid by the said party of the second part, The Receipt of which is hereby acknowledged, do by these Presents Grant, Bargain and Sell, unto the said party of the second part & his

2/

Heirs and assigns, that certain tract or parcel of Land, situated in the County of Fulton and State of Illinois and known and designated as the South West Quarter of Section No eight in Township Seven North Range Four East of the Fourth (principal) meridian, containing One Hundred and sixty acres be the same more or less.

Together with all and singular the hereditaments and appurtenances, therunto belonging or in any wise appertaining To Have and to Hold the said premises as above described with the appurtenances, unto the said party of the second part, & his heirs and assigns Forever. And the said party of the first part for himself and his heirs, executors and administrators, does hereby Covenant to and with the said party of the second part & his heirs and assigns that he is well seized of the premises above conveyed as of a good and indefeasible estate in Fee Simple, and has good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrance and that the above bargained premises, in the quiet and peaceable possession of the said party of the second part & his heirs and assigns, Against the claim of all persons whomsoever. He Will Forever Warrant and Defend.

Provided Nevertheless, That if the said party of the first part or his heirs, executors or administrators shall well and truly pay to the said party of the second part, & his heirs executors, administrators or assigns the just and full sum of Two Thousand Five Hundred dollars. according to the tenor of one certain promissory note bearing even date hereof and due April the first One thousand eight hundred and sixty payable by draft on some banking house in the city of New York with current rate of exchange, with interest

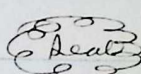
22 at ten per cent payable on the first day of April annually
and the interest also payable in New York in like manner as the
Principal. Then this deed as also one certain Note, bearing
even date with this indenture, given by the said party of the
first part, to the said party of the second part, Conditioned
to pay the said sum of Money at the time aforesaid, shall
be void; otherwise to remain in full force and virtue.

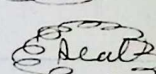
In Testimony whereof, the said Joshua J. Moore and
Ann A. Moore have hereunto set their hands and seals the
day and year first above written.

Signed sealed and delivered

in presence of

S. N. Breed

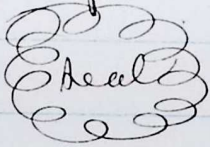
Joshua J. Moore 

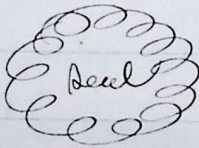
Ann A. Moore 

State of Illinois

Fullen County I ss. I, Sands N. Breed, a Notary Public
for Canton and for said County, do certify. That on this day
appeared before me Joshua J. Moore & Ann A. Moore whose
names appear subscribed to the foregoing deed of conveyance
and who are personally known to me to be the identical persons
whose names are subscribed to said deed as having executed
the same, and acknowledged that they had executed the
same as their voluntary act and deed, for the uses and
purposes therein expressed. And Ann A. Moore wife of the
said Joshua J. Moore having been by me made acquainted
with the contents of the said, deed, and being by me
examined separate and apart from her husband, acknowl-
edged that she had executed the same, and relinquished
her dower to the premises therein conveyed, voluntarily, freely
and without ^{any} compulsion of her said husband. Given

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under my hand and seal at Canton this fourteenth
day of August Eighteen hundred and fifty eight
 Sands N. Reed Notary Public
for Canton Illinois

State of Illinois }
Tulton County } Records office Leavittown August 17th 1858
I hereby certify that the annexed instrument was this day
duly recorded on the land records of said County, in Vol
46 p. 214. No. 31815  Edw Sayre
Clerk Circuit Court and Recorder
Tulton County

State of Illinois }
Tulton County }
I Edward Sayre Clerk of the Circuit
Court and Ex Officio Recorder for the County aforesaid
that there is no other than the within Mortgage of Record
on the Tract of land named therein remaining uncanceled
 Witness my hand and seal of Office at
Leavittown this 18 August 1858.
Edw Sayre clk

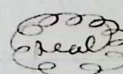
Bond

Know all men by these presents, that I, Joshua J. Moore
of the City of Canton in the County of Tulton and State
of Illinois am held and firmly bound unto George Titman
of Bridgville in the County of Warren and State of New Jersey
in the sum of Five Thousand Dollars, Good and lawful

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money of the United States to be paid to the said George Titman, his Executors administrators and assigns, to which payment well and truly to be made I bind myself my heirs Executors and administrators and every of them firmly by these presents, sealed with my seal the fourteenth day of August in the year of our Lord one Thousand eight Hundred and fifty Eight. The Condition of this Obligation is such that if the above bounden Joshua J. Moore his heirs Executors and administrators or either of them shall well and truly pay or cause to be paid, unto the said George Titman his Executors, administrators or assigns, the just and full sum of Two thousand Five hundred dollars, lawful money aforesaid with interest thereon at the yearly rate of ten per cent for the same, by draft on some solvent Bank in the city of New York sent to the said George Titman his Executors administrators or assigns the interest to be paid on the first day of April next and annually thereafter, the principal to be paid on the first day of April in the year of our Lord one Thousand eight Hundred and sixty as will more fully appear by reference to the mortgage bearing even date without fraud or further delay, then this obligation to be void and of none effect

Signed and sealed in presence of 3
W. D. Root

Joshua J. Moore 

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Proceedings in Chancery before the Circuit Court, begun and held at the Court House in the city and County of Peoria, in the State of Illinois, on the third Monday in the month of November, in the year of our Lord one thousand eight hundred and sixty, it being the nineteenth day of said month. Present the Honorable Elisha N. Powell Judge of the 16th Judicial Circuit in said State, John Dryner Sheriff and Enoch P. Sloan, Clerk, to wit:

Monday November 19th A.D. 1860.

George Titman

vs.

Foreclosure of Mortgage

Joshua J. Moore & al

This day came Complainant by attorney and on motion defendant is ruled to answer this action by Thursday next.

Proceedings in Chancery before the Circuit Court, at a term thereof begun and held at the Court House in the city and County of Peoria, Illinois, on the first Monday of May in the year of our Lord one thousand eight hundred and sixty one, it being the sixth day of said month, Present the Honorable Elisha N. Powell Judge of the 16th Judicial Circuit in said State, James Stewart Sheriff and Enoch P. Sloan, Clerk to wit:

Tuesday May 7th A.D. 1861.

George Titman

vs.

Foreclosure

Joshua J. Moore & al

This day came Complainant by J. J. Mead his attorney and dismissed his Supplemental Bill.

Friday May 10. 11. A.D. 1861.

George Titman

vs.

Bill to foreclose Mortgage

Joshua J. Moore &

Ann A. Moore

This day came again the said Complainant by his Solicitor, as well as the said defendants by their Solicitors Manning & Merriman, and the said Complainant having at a former day of the present term of this Court dismissed his supplemental bill on file herein, and also so much of his original bill as relates to a mortgage described therein as due and payable on the first day of April A.D. 1861. = and this cause now coming on to be heard upon the Original bill, answer, replication and exhibits on file herein = the Court having heard the evidence doth find that each and all the allegations contained in said Complainant's bill are true in manner and form as therein alleged = And that the said defendant Joshua J. Moore and Ann A. Moore his wife did on the 13th day of August A.D. 1858, make execute and deliver to the said Complainant a deed of mortgage, for the Real Estate described in Complainant's bill, to wit: The South West quarter of Section No eight (8) in Township No seven (7) North of the base line of Range No. Four (4) East of the 4th Principal Meridian, in the County of Fulton and State of Illinois, containing one hundred and sixty acres of land more or less which said mortgage was executed by the said defendants to the said Complainant to secure the payment of the sum of Two Thousand Five Hundred dollars, which the said Joshua J. Moore then owed to the said Complainant, which said mortgage was duly recorded in the Records office of

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Stulton County aforesaid in "Book No. 46. on page 214, on the 17th day of August A.D. 1858 - And it further appearing to the Court that the said defendants and each of them, have wholly failed to comply with the conditions of said mortgage and have wholly neglected to pay the said Complainant the sum of money specified in said mortgage, or any part thereof, and that there now remains due and unpaid from ~~from~~ said defendants to said Complainant upon said mortgage the sum of three thousand one hundred and sixty seven dollars and forty six cents (\$ 3167.46) It is therefore ordered adjudged and decreed by the Court that the said defendants pay to the said Complainant within ten days from the date hereof, the said sum of Three Thousand, One hundred and sixty seven dollars and forty six cents (\$ 3167.46) together with the costs of this proceeding, and that in default thereof, that the said real estate herein before described, be sold to pay the same; and that John J. Mead Esq. be appointed a Special Commissioner to sell said Real Estate, and that said Real Estate be sold at the door of the Court house in Leavittown in the County of Stulton and State of Illinois, and that said Commissioner give four weeks notice of said sale by publication of notice thereof in some public Newspaper printed and published in the County of Stulton aforesaid, which notice shall contain a description of the said real estate as well as the time, place and terms of such sale; And that said Commissioner sell said real estate, to the highest and best bidder therefor in cash, and that out of the proceeds of such sale the said Commissioner first pay the costs of this proceeding, and that he next pay to the said

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Complainant the said sum of Three Thousand One Hundred and Sixty Seven dollars and forty six cents (\$3167.46) together with six per cent interest thereon from the date of this decree - and that he pay the balance accruing from such sale, to the said defendants or to their heirs and assigns - And it is further ordered that said Commissioner make execute and deliver to the purchaser or purchasers of said real estate at such sale, a certificate of purchase for said real estate, which said certificate of purchase shall entitle the purchaser or purchasers their heirs or assigns to a deed for said premises unless the same be sooner redeemed according to law - And if said premises be not redeemed according to law that said Commissioner make execute and deliver to the legal holder of such certificate of purchase a deed of conveyance for said land - And it is further ordered that upon the execution of such deed of conveyance by said Commissioner to such purchaser or purchasers of said real estate, that the said defendants their heirs or assigns and all persons holding possession of the above described real estate from or through them, surrender up the peaceable possession of said premises and every part thereof to the said purchaser or purchasers, their heirs or assigns, together with all the title papers relating to said Real Estate, in their possession or control and that they the said defendants their heirs and assigns be forever barred and foreclosed from all equity of redemption in said premises and that said Commissioner report his proceedings herein to the next term of this court and that this Cause be continued.

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Proceedings in Chancery at a term of the Circuit Court begun and held at the Court House in the City and County of Peoria in the State of Illinois, On the first Monday in the Month of October in the year of our Lord One Thousand Eight Hundred and sixty one, it being the seventh day of said month; Present the Honorable Amos S. Merriman Judge of the 16th Judicial Circuit in said State, James Stewart, Sheriff and Orin F. Sloan Clerk, to wit:

Saturday October 12th A.D. 1861.

George Titman

vs

Foreclosure

Joshua J. Moore &
Ann A. Moore.

This day came the Special Commissioner appointed herein to make sale of the real estate mentioned in the decree in this cause, and filed herein his report in the words and figures following, to wit:

"In the Circuit Court of Peoria County, Illinois,
To the October Term A.D. 1861.

George Titman

vs.

In Chancery to Foreclose Mortgage

Joshua J. Moore
Ann A. Moore

The undersigned Special Commissioner in the above entitled cause begs leave to report, that after having given the notice required by the decree herein, he did on the 12th day of July A.D. 1861, at the front door of the Court House in the town of Peoristown in the County of Fulton and State aforesaid between the hours of 10. O'clock A.M. and 4. O'clock P.M. of said day. offer for sale, the real estate

mentioned in the decree on file in said cause, to wit:
 The South West quarter of Section No. Eight (8) in Township
 No Seven (7) North of the base line of Range No Four (4)
 East of the 4th Principal Meridian in the County of Fulton
 aforesaid - and that at said sale, the said George Titman
 bid and offered, for said Real Estate the sum of Three
 Thousand Two hundred and eighty dollars and eleven cents
 (\$3280.11) and that being the highest and best bid for said
 real estate, the same was stricken off and sold to the
 said George Titman - and the undersigned further reports
 that he then and there made executed and delivered to
 the said George Titman a Certificate of Purchase for said
 real estate in conformity with the decree herein and in
 accordance with the statute in such cases made and
 provided - and that out of the proceeds of said sale he
 paid the costs of this proceeding - and that the Purchaser of
 said real estate at said sale, being the mortgage thereof,
 and the Complainant in said cause, paid no money to
 the undersigned except a sum sufficient to discharge the costs
 of this proceeding - all which is respectfully submitted,

John J. Weed Special Commissioner"

which report having been examined by the Court is in all
 things approved - and ordered to be recorded, and the
 said Commissioners fee, of sixty dollars for making said
 sale, is allowed.

Proceedings in Chancery at a term of the circuit court
 begun and held at the Court House in the City and
 County of Deoria in the State of Illinois, on the first Monday

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in the Month of December, in the year of our Lord one thousand eight hundred and sixty two, it being the first day of said Month, Present the Honorable Amos S. Merriam Judge of the 16th Judicial Circuit in said State John A. J. Murray Sheriff, and Ersek P. Sloan clerk, to wit:

Friday December 12th A.D. 1862.
George Titman

vs Foreclosure
Joshua J. Moore & al

And now on this day this cause coming on again to be heard upon the report of John J. Weed Esq. Special Commissioner in this cause of his acts and doings as such Special Commissioner under and by virtue of the Original decree in this cause and the Court having diligently inspected said report does find that each and every act of the said Commissioner is in all respects confirmatory to said Original Decree and that each and every act of the said Commissioner is strictly according to law, the Court does hereby conform in all respects each and every act of said Commissioner as such in this Cause.

And on the said 12th day of December A.D. 1862, on the day of the proceedings last aforesaid in said Circuit Court of Peoria County, there was filed in said Court a report of the Special Commissioner in the foregoing cause, which is in words and figures following, to wit:

"In the Circuit Court of Peoria County Illinois
To the December Term A.D. 1862.

George Titman

vs.

In Chy. To Foreclose Mortgage.

Joshua J. Moore &
Ann A. Moore

The undersigned Special Commissioner in the above entitled Cause, begs leave to report that the Real Estate described in the Order of Sale herein, not having been redeemed ~~from~~ the sale thereof, heretofore (to wit on the 12th day of July 1861) Made by said Special Commissioner, He said Commissioner did on the 24th day of November A.D. 1862, make execute and deliver to the said George Titman the purchaser thereof, and the legal holder of the Certificate of purchase therefor, a good and sufficient Deed of Conveyance of said real estate, To wit, The South West quarter of Eight in Township Seven North of Range Four East of the 4th Principal Meridian in the County of Tullon and State of Illinois - All which is respectfully submitted

John J. Weed

Special Commissioner



State of Illinois
 Peoria County 1883.

I. Enock P. Sloan, Clerk of the
 Circuit Court, within and for said County, do hereby
 certify, that the foregoing is a true and complete copy
 of all the papers filed in the cause wherein George
 Bitman was Complainant and Joshua J. Moore and Ann
 A. Moore were Defendants, and of the proceedings of said
 Court appertaining thereto as the same appears on file
 and of record in my office.

Given under my hand, and the Seal
 of said Court at Peoria, this 2nd day
 of June, in the year of our Lord one thou
 sand eight Hundred and sixty three.

Enock P. Sloan Clerk
 J. W. Newton Esq.

Assignment of Errors

1 The error in rendering the
 decree upon the evidence produced

2 The evidence does not
 sustain the decree of the Court

3 The error in
 appointing the complainant as
 licitor a Special Commissioner to
 sell the mortgaged premises

Johnson & Hopkins

for off in error

comes the said defendant
by atty and says there is no
issue in the proceedings re-
cost and final decree in
this case and that the same
ought to be affirmed with costs

J. L. Hunter

Att for Def't.

87 48
Joshua J. Moore stal.
is.

George Titman
Recd & Encl

Filed Jan'y. 11. 1864.
L. Seland
Ch.

Fees \$8.00

Consent to raise of the same