

No. 14318

Supreme Court of Illinois

Perkins

vs.

Conant

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 162.

1862

Perkins

vs

Quinn

1862

DePaul

Lyman Leach
vs.
Soren Perkins
Plaintiff in Error

April Term
1862

William Leach
Defendant in Error

Mr. Liland please
enter the above entitled cause
on the docket for the April -
Term and also find \$5. ~~value~~
for costs I do not want any
Writs issued as Mr. Photo -
will appear with us, we
will buy the Record when we
come down

Yours Truly
J. H. Maybourn

33 162
Loren Perkins

5
Mr Comant
Paris

Boone Ln.

Filed Off. N. 1862
L. Veland
Clk.

PAGE OF RECORD. ded and agreed that if default be made in the payment of said Note, either of principal or interest on the day whereon the same shall become due and payable, the whole of said principal sum by said note in this Mortgage mentioned, shall thereupon become immediately due and payable, and this Mortgage may be immediately foreclosed to pay the same, by the said party of the second part, his heirs, executors, administrators or assigns, after publishing a notice in a newspaper printed in the said County of Kane, twenty days before the day of such sale, may sell the said premises and all right and equity of redemption of the said party of the first part, their heirs and assigns therein, at Public Auction at Geneva, to the highest bidder for Cash, at the time mentioned in such notice. And the said party of the first part hereby specially covenants and agrees to and with said party of the second part to waive their right of equity and redemption, and further agree that they will neither assert or claim such right on a sale of the property mentioned herein by virtue of this Mortgage. And that the said party of the second part do make, execute and deliver to the purchaser or purchasers thereof a Deed or Deeds for the premises so sold, and out of the proceeds of such sale to pay all costs and expenses incurred in advertising and selling said premises, also the principal and interest due on said note, anything herein or in said note contained to the contrary notwithstanding.

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

Sealed and delivered in presence of H. } LOREN PERKINS, L. S.
B. Peirce. } LUCINDA M. PERKINS, L. S.

13 This Mortgage was acknowledged before Henry B. Peirce, Notary Public, March 1st, 1858, and filed for Record, March 6th, 1858.

The Plaintiff then offered a Note and Warrant of Attorney which were in the words and figures following, to wit :

\$1240.

GENEVA, March 1st, 1858.

One Year after date I promise to pay to the Order William Conant, One Thousand Two Hundred and Forty Dollars for value received, with interest at ten per cent after due.

LOREN PERKINS.

14 Know all men by these presents that whereas the subscriber is justly indebted to William Conant, upon a certain promissory note bearing even date herewith for the sum of one thousand two hundred and forty dollars; made payable to the said William Conant or order, and due one year after date. Now therefore, I do make, constitute and appoint L. Dearborn, or any Attorney of any Court of Record, to be my true and lawful Attorney for me and in my name, place and stead, to appear in any Court of Record, in term time or in vacation in any of the States or territories of the United States, at any time after the said Note may become due, or before the same becomes due, if the said William Conant or his assignees shall believe there is danger of losing said sum secured by said Note, waive service of process and confess judgment in favor of the said William Conant or his assignees upon said Note, for the above sum with interest. And in addition thereto, ten per cent on the amount due as liquidated damages for delay, if said note is not paid on the day it becomes due, together with all costs. Also the sum of twenty-five dollars as attorney fees to be added to the amount due on entering up judgment. And also to consent to immediate execution upon said judgment, hereby waiving all error in entering up said judgment and ratifying all that my said attorney may do, by intent hereof.

Witness my hand and seal this first day of March A. D. 1858.

LOREN PERKINS. L. S.

On the back of the said note was the following indorsement, to wit: satisfied by the sale of land, March 21st 1861.

15 The defendant objected to the said Mortgage and Note and Warrant of Attorney being read in evidence. Objection overruled and mortgage, note and warrant read in evidence and defendant excepted.

PAGE OF RECORD. Henry Hawkins being called and sworn, testified that he knew the parties, plaintiff and defendant. Heard a conversation between the parties on the twenty-fifth day of March last at the store of Conant, in Geneva. Perkins came in and said to Conant, I understand that you have sold that farm of mine. Conant replied that he had. Perkins asked him who bought it; Conant replied that Mr. Acres had. Perkins then asked him what it sold for; Conant replied \$1510. Perkins then said to Mr. Conant, it was one thousand dollars I had of you, was it not? Mr. Perkins then said he demanded the overplus, stating the amount to be \$510. Conant made no reply to the statement of Perkins that it was \$1000 he got of him. Mr. Acres lives here in Geneva. Witness knows the land described in the Mortgage Do you know what loan he, Perkins, referred to in this conversation? Question objected to. Objection overruled, and defendant excepted. I suppose I do. How do you know it? I have had a conversation with Mr. Conant in relation to the premises and the indebtedness. Witness is handed and looks at the Mortgage and

16 Note. I had a conversation with Mr. Conant at another time. I think that I have had two or three conversations with him in relation to this matter with Mr. Perkins. I cannot identify any particular time of conversation, but it was previous to the interview I have spoken of. Mr. Conant said he had a Mortgage on Mr. Perkins' farm. That it was about \$1500; that he had given time, all the time he could. There was a good deal said. I asked him if he did not feel as though he could pay back something to Mr. Perkins? He said that he could not. There was something said in relation to the farm being sold, and Mr. Conant giving him a year's time, if he could sell it for anything more he could do so. I am somewhat familiar with Mr. Perkins' affairs. Could not say that there was anything said as to the amount of the original loan. He said he told Mr. Perkins that if he would execute a deed of the 40 acres that he would give him one year to sell it, or redeem it, and thereby save the expense of selling it on the mortgage. Mr. Conant said the amount of his claim was about \$1500. Do not think anything was said as to who was to have the possession of the farm during the year. I went to see Mr. Conant at the request of Mr. Perkins. I had previously conversed with Mr. Perkins as to the amount of the previous loan. My object in going to see Mr. Conant was to see if he would not refund something to Mr. Perkins. There was something said about one thousand dollars and interest thereon, on the farm.

CROSS EXAMINED.

17 This was the time when Conant said he would take a deed and give a year to redeem. This was not a year before the sale; think it was in the neighborhood of four weeks before the sale. Perhaps I ought not to use the word refunded. My first conversation with Conant was within some three or four weeks before the demand. It was at the first conversation that Conant spoke of making a deed and giving a year. Do not know when this indebtedness accrued, nor when it was due.

DIRECT RESUMED.

Know the condition of Mr. Perkins.

State what was the pecuniary condition of the plaintiff at the time of the sale of the land. Objected to by defendant, and objection sustained. Plaintiff accepted.

18 Charles Updike being sworn testified. Resides on the place now owned by Mr. Conant, the one formerly owned by Mr. Perkins. I took possession under Mr. Conant, March 1861, about the 20th of the month, made the bargain partly in the evening previous, about 8 o'clock and moved in the following morning. The sun rose as we were going past the fair grounds, packed the goods on the morning before we started. "Why did you start so early?" Mr. Conant wanted that we should start early in the morning if we went there, so as to get possession before Mr. Perkins could.

CROSS EXAMINED.

He told me he wanted me to go early because Mr. Mayborne threatened to keep him out of possession for a year.

Hawkins recalled by Plaintiff.

State whether you had a conversation about the 20th of March 1861, with defendant in relation to adjustment of a thousand dollar loan from Conant to the plaintiff; "If Yea," state what the conversation was. "Objected to." Objection sustained.

State if you had a conversation with the defendant about the 20th of March 1861. If you did, state what the conversation was. "Objected to" by defendant. Objection overruled. Defendant excepted.

I did have a conversation with him near that time. He was talking about the demand against Mr. Perkins. In the course of the conversation I asked him if he would not be willing to take ten per cent on the money he had loaned to Mr. Perkins. He said he thought he could not do it. This was about the time plaintiff was trying to get out an injunction. He said he thought that he ought to make upon his money more than ten per cent. Think he stated how he could have made more.

CROSS EXAMINED.

19 I asked him if he had not rather have his ten per cent on his money than sell the place. He spoke of instances where he could have made 15 per cent on his money. This was before the sale. He said Perkins had applied for an injunction. I do not know what the injunction was for, but I suppose it was to prevent the sale of the place.

P. R. WRIGHT SWORN.

Was Master in Chancery in March 1861, in this County. Application was made to me for an injunction on the bill shown to me, (Bill shown to witness.) In this bill Loren Perkins was complainant, and William Conant was made defendant. Defendant appeared. Don't think I had filed my bond at the time, as master. But Judge Wilson was absent at the McHenry Court, and both parties agreed to waive any objection on account of my not having filed my bond. My recollection is, that Mr. Conant was there a part of the time. Mr. Plato appeared for Mr. Conant. I recollect Mr. Plato enquired if the complainant admitted that he had made no tender. He said if that was admitted he did not wish to put in any answer. I remember that there was some conversation on both sides. Can't recollect that there was ny distinct admission as to the amount loaned. After it was admitted that no tender had been made, the allegations in the bill were treated upon the argument of the motion for the injunction as true, and it was agreed to be so treated.

20 Bill was filed by Mr. Perkins, to get an injunction to restrain Mr. Conant from selling the lands. I refused to grant an injunction. This was upon the day of the sale. Property sold soon after I was informed.

CROSS EXAMINED.

Mr. Plato, for the defendant, offered to accept the amount of money claimed in the bill as the amount due. It was not paid.

DIRECT RESUMED.

Did not Mayborne state in reply to Mr. Plato, that he knew very well that my client, Perkins, was absent, and that we were not, as he knew then, prepared to make the tender; I think you did, or something to that effect.

MR. PLATO SWORN.

Cannot say that Mr. Conant was present at the time of the conversation spoken of. Cannot say that I talked with Conant as to the facts stated in the bill. Recollect that I enquired of him whether any tender had been made. My recollection is, that no admission was made except for the purpose of the hearing of the motion. Mr. Conant did not authorize me to make any admissions. What admissions I did make, I made as an attorney for the purpose of hearing a motion.

21

The plaintiff having filed his affidavit in the case under the Statute of 1861,

called on the defendant to testify as to the usury, who refused to be sworn and testify, and the plaintiff was sworn who testified:

23

Am the plaintiff in this suit, (mortgage and note shown to him.) The amount of money I received from Mr. Conant on this note and mortgage was \$1000, the balance was made up of twenty-four per cent interest, for one year. Never gave him any other mortgage, I owned no other farm.

Henry B. Peirce sworn.—It is Mr. Conant's signature to the deed, (handing witness deed,) know his hand writing. He acknowledged it before me. Deed from Conant to Roswell W. Acres. Deed offered in evidence, objected to by defendant, Objection overruled and excepted to. The deed was then read, which is in the words and figures following, to wit:

24

This Indenture made this twenty-first day of March, in the year of our Lord One Thousand Eight Hundred and Sixty-one, between William Conant of the County of Kane and State of Illinois, party of the first part, and Roswell W. Acres, in the County of Kane and State of Illinois, of the second part, witnesseth, that whereas Loren Perkins and Lucinda M. Perkins, his wife, of the County of Kane and State of Illinois, did, by a certain mortgage deed, dated the first day of March A. D. 1858, convey to the said party of the first part as mortgagee, all the premises hereinafter described, to secure the payment of a certain promissory judgment note in said mortgage deed particularly mentioned, and dated March 1st 1858, due one year after date for the sum of twelve hundred and forty dollars, with interest at ten per cent after due, and signed by said Loren Perkins. And whereas, it was expressly provided in said mortgage deed, that, in case default be made in the payment of said note according to the tenor and effect of the same, then the said party of the second part, his heirs, executors, administrators, or assigns, after publishing a notice in a newspaper, printed in the County of Kane, twenty days before the day of such sale, might sell the said premises, and all right and equity of redemption of the said party of the first part, their heirs and assigns therein, at Public Auction at Geneva to the highest bidder for cash, at the time mentioned in said notice. And also make, execute, and deliver to the purchaser or purchasers thereof, a deed or deeds for the premises so sold, which said mortgage deed is recorded in the Recorder's office, in

25

the County of Kane and State of Illinois, in Book 51, at page 257. And whereas, also, default hath been made in the payment of said note due as aforesaid, I the undersigned party of the first part, on the 28th day of February 1861, caused a notice to be published in the Kane County Advertiser, a weekly newspaper printed in Geneva, Kane County, State of Illinois, that said premises hereinafter described would, on the 21st day of March 1861, at ten o'clock in the forenoon of said day, be sold at public auction at the north door of the Court House, in said County and State aforesaid, to the highest bidder for cash, by virtue of the power and authority in me, in and by said mortgage deed vested, which said notice was printed for three weeks connectedly in said paper, commencing on the 28th day of February A. D. 1861, ending on the 21st day of March 1861. And whereas also, at the hour of ten said party of the first part, in the manner prescribed in and by said mortgage deed o'clock A. M. on the said 21st day of March, the said premises having been by the and at the place last aforesaid, in pursuance of said notice, offer for sale at Public Auction, to the highest bidder for cash. And the said party of the second part having been the highest and best bidder thereof, and having bid for the tract hereinafter named the sum of fifteen hundred and ten dollars (\$1510,) was duly declared the purchaser thereof. Now, therefore, in consideration of the premises, and of the

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sum of fifteen hundred and ten dollars, (\$1510,) so, as aforesaid bid for said premises, and to me in hand paid, the receipt whereof is hereby acknowledged. I, mortgagee, as aforesaid, do hereby remise, release, and quit claim to the said party of the second part, his heirs and assigns forever, all the right, title and interest, as well in law as in equity which I have acquired by virtue of the mortgage deed above mentioned, of, in and to all that certain tract, piece or parcel of land situated in the County of Kane and State of Illinois, and described as follows, to wit: The Southwest quarter of the Southwest quarter of Section No. five (5), Township No. thirty-nine (39), Range No. eight (8), East of the third principal meridian, containing forty acres (40), together with all and singular the tenements, hereditaments

and appurtenances thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and any and every part thereof, to have and to hold the same as fully and absolutely as the said party of the first part can, by virtue of the power and authority in him, in and by the said mortgage deed vested, convey the same unto the said party of the second part, his heirs and assigns forever.

In witness whereof the party of the first part hath hereunto set his hand and seal, the day and year first above written.

WILLIAM CONANT.

27 This deed was acknowledged before Henry B. Peirce, Notary Public, on the 21st day of March 1861. And was filed for record on the 21st day of March 1861.

Here the plaintiff rested.

28 The defendant then called Roswell W. Acres, who being sworn testified that the deed shown him was the deed I got from Mr. Conant, on the sale of the lands. I did not pay any money (this testimony objected to by the plaintiff. Objection overruled, and plaintiff excepted) to Mr. Conant. Mr. Conant was selling a piece of land under a sale of some kind, and I bid it off, paid him no money and no property. I gave him a deed of the same land. This is the deed. The deed produced and dated March 21st 1861. Defendant offered the deed in evidence. Objected to. Objection overruled and excepted to by plaintiff, which deed was in the words and figures following, to wit:

29 This Indenture made this twenty-first day of March, in the year of our Lord one thousand eight hundred and sixty-one, between Roswell Acres and Juliett his wife party of the first part, and William Conant of the same place, party of the second part, witnesseth that the said party of the first part, for, and in consideration of the sum of fifteen hundred and ten dollars, to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have remised, released, conveyed and quit claimed, and by these presents do remise, release, convey and quit claim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim and demand which the said party of the first part have in and to the following described lot or parcel of land, situated, lying and being in the County of Kane and State of Illinois to wit: The Southwest quarter of the Southwest quarter of Section No. five (5), Township No. thirty-nine (39), Range No. eight (8), East of the third principal meridian, containing forty (40) acres, to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest and claim whatsoever, of the said party of the first part, either in law or equity, to the only proper use benefit and behoof of the said party of the second part, his heirs and assigns forever.

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

Sealed, signed and delivered in presence of

R. W. ACRES, L. S.
JULIETT ACRES, L. S.

30 This was acknowledged before H. B. Pierce, Notary Public, on the 21st day of March A. D. 1861, and filed for record on the same day.

This deed is the only consideration that passed from Mr. Conant for the purchase, I bought it at the request of Mr. Conant. The land was offered and sold by Mr. Conant. The understanding was that I was to redeed to him. I bid for him, because he could not bid for himself. (All the above evidence objected to by the plaintiff at the time it was given). Objection overruled, and plaintiff excepted.

CROSS EXAMINED.

I bid \$1510, because Mr. Conant said that was the amount due him, and he ask-

PAGE OF RECORD. ed me to bid that sum. I did not see the mortgage deed at the time nor did he read any mortgage, but I supposed it was being sold on Conant's mortgage.

31

"Here the defendant rested."

The foregoing is all the evidence offered by either party on the trial of the above cause.

ERRORS ASSIGNED.

1st. The Court erred in not allowing the plaintiff to show his pecuniary condition at the time of the sale of land by the Defendant.

2nd. The Court erred in allowing the Defendant to show, by witness Acres, the consideration which he paid for the land at the time he purchased it.

3rd. The Court erred in rendering judgment for the Defendant, but should have rendered judgment for the Plaintiff.

4th. The Court erred in overruling the Plaintiff's motion for a new trial.

5th. The judgment rendered by the Court is against the law and the evidence in the case.

6th. The said Court erred in rendering judgment for the defendant, when by the laws of the land the said judgment ought to have been for the Plaintiff in error.

J. H. MAYBORNE,
Attorney for the Plaintiff.

162
In the Supreme Court

Loren Perkins

"vs"

William Conant

Abstract of Records

Filed April 29, 1862

L. Seland

Clk.

Deft's Briefs

not filed

United States of America }
State of Illinois }
Kane County }

Pleas before the Honorable Isaac J. Wilson
son Judge of the Twenty Eighth Judicial
Circuit of the State of Illinois, and
Judge of the Circuit Court of
County, in said State of Illinois, at a regular
Term of said Court begun and hold
the Court House in Geneva, in said County
on the Third day of February in the year
of our Lord one thousand eight hundred
and sixty two, and of the Independence of the
United States the Eighty Eighth

Present Honorable

Isaac J. Wilson Judge

Charles J. Metzger State At

De Marcus Clark Sheriff

Attest

Thomas L. Moore

Clerk.

Be it remembered that heretofore, to wit; on the 3rd day of
May A.D. 1861, there was issued out of the office of the clerk of said Court
under the seal of said Court, a Summons, which is in the words
following, to wit:

State of Illinois }
Kane County, }

The People of the State of Illinois to the
Sheriff of said County, Greeting: We
mand you that you summon William

Conant if he shall be found in your County, personally to be and appear
before the Circuit Court of said Kane County, on the first day of the next
Term thereof, to be holden at the Court House, in Geneva, in said Kane
County, on the Third Monday of May instant, to answer and
Perkins in a plea of Trespass on the case upon the promise to the
damage of said plaintiff as he says in the sum of Eight hundred Dollars

United States of America }
State of Illinois Kane County }

Please before the honorable Isaac S. Wilson
son Judge of the Twenty Eighth Judicial
Circuit of the State of Illinois, and Presiding
Judge of the Circuit Court of Kane
County, in said State of Illinois, at a regular
Term of said Court begun and holden at
the Court House in Geneva, in said County
on the Third day of February in the year
of our Lord one thousand eight hundred
and sixty two, and of the Independence of the
United States the Eighty Eighth

Present Honorable

Isaac S. Wilson Judge
Charles J. Metzger State Atty
Dr Marcus Clark Sheriff

Attest

Thomas M. Moore

Clerk.

Be it remembered that heretofore, to wit; on the 3rd day of
May A.D. 1861, there was issued out of the office of the clerk of said Court
under the seal of said Court, a Summons, which is in the words and figures
following, to wit:

State of Illinois }
Kane County, }

The People of the State of Illinois to the
Sheriff of said County, Greeting: We
command you that you summon William
Conant if he shall be found in your County, personally to be and appear
before the Circuit Court of said Kane County, on the first day of the next
Term thereof, to be holden at the Court House, in Geneva, in said Kane
County, on the Third Monday of May instant, to answer and satisfy
Perkins in a plea of Trespass on the case upon the promise to do
damage of said plaintiff as he says in the sum of Eight Dollars.

2
And have you there this writ, with an endorsement in
what manner you shall have executed the same.

L. S.

Witness, Thomas L. Moore, Clerk of our said Court
and the seal thereof, at Geneva, in said County, this
3rd day of May, A.D. 1861

T. L. Moore Clerk

Which summons is endorsed as follows, to wit;

Personally served this writ May 6th 1861 By reading the same
William Bonant

D. Marcus Clark

Sheriff Kane

By J. H. Whipple Deputy

Filed May 6th 1861

J. L. Home Clerk

And afterwards, to wit: on the 7th day of May A.D. 1861 there was
filed in the office of the Clerk of said Court, a tax which is in the writ
and figures following to wit:

State of Illinois }
Kane County }
Kane County }
Kane County Circuit Court
Of the May Term for 1861

Loren Perkins plaintiff in this suit by J. H.

Waybome his Attorney, complains of William Bonant defendant, in a
of trespass on the case upon promises. For that, whereas the said defendant
on the first day of May in the year of our Lords one thousand eight hun-
dred and Sixty one at Geneva in said County of Kane and State
of Illinois, was indebted to the said plaintiff in the sum of Eight hun-
dred Dollars for so much money before that time collected had and re-
ceived on the sale, of the following described property, to wit: (The South
of Section Number Five in Township Number Thirty Nine, Range
Number Eight, East of the Third Principal Meridian) made on the 21st day of
March 1861, which said sale of the said land was made by the said Defen-
ant as Mortgagee by virtue of a certain Mortgage made and executed
by the said plaintiff and Lucinda M. his wife to the said Defendant

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3
dated the First day of March 1858 and recorded in the Recorder's Office of the County of Kane and State of Illinois on the sixth day of March A. D. 1858 to secure the payment of a certain sum of money then and there borrowed by the said plaintiff of the said Defendant, to wit the sum of one thousand dollars and that said premises were sold on said Mortgage by the said defendant to one Roswell W. Acres for a large sum of money, the sum of fifteen hundred and ten dollars on the said 21st day of March 1861, and the said plaintiff avers that the said Acres did then and there pay to the said Defendant the said sum of money as bid by him for the said premises, to wit the said sum of Fifteen Hundred ^{and Ten} Dollars, and then and there took and received a deed therefor purporting to convey to him all the right, title and equity of redemption of the said plaintiff in said premises which said deed was made and executed by the said defendant and which said sum of money so taken and received by the said defendant of the said Acres on the sale of the said lands and premises as aforesaid exceeds the amount then legally owing to and then due the said defendant on the said sum of money lent by him to the said plaintiff and to secure the payment of which the said Mortgage was made executed and given as aforesaid, and that such excess amounted to a large sum of money, to wit: the sum of Eight Hundred Dollars and being so indebted to the said Plaintiff he the said defendant in consideration thereof, afterwards, to wit: on the first day of May A. D. 1861, at Geneva, in Kane County and State of Illinois undertook and then and there faithfully promised the said plaintiff well and truly pay unto the said plaintiff the said sum of Eight Hundred Dollars when he the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit: on the second day of May A. D. 1861, at Geneva in the County of Kane and State of Illinois was indebted to the said plaintiff in the sum of (\$800) Eight Hundred Dollars for goods then and there sold by the said plaintiff to the said defendant at his request; and in the sum of Eight Hundred Dollars for materials then and there done, and material for the same, provided by the said plaintiff for the said defendant, at his request, and in the sum of Eight Hundred

Dollars for money then and there lent by the plaintiff to the said defendant at his request; and in the sum of Eight Hundred Dollars for money then and there paid by the plaintiff for the use of the said defendant at his request; and in the sum of Eight Hundred Dollars for money then and there received by the defendant for the use of the plaintiff; and in the sum of Eight Hundred Dollars for interest then due from the said defendant to the said plaintiff for the loan and forbearance of larger sums of money before and by the said plaintiff loaned and advanced to said defendant at his request; and in the sum of Eight Hundred Dollars for money to be due from the said defendant to the said plaintiff upon account then and there stated between them

And in consideration of the said indebtedness the said defendant then and there promised the said plaintiff to pay him the several — money aforesaid upon request

Nevertheless, the said defendant although often requested to do so with; on the second day of May A.D. 1861, and often times since with; at Geneva, in Rane County and State of Illinois, has not paid the said several sums of money above mentioned for any part either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff, the said defendant has hitherto altogether refused and still does refuse, to the damage of the said plaintiff of Eight Hundred dollars and therefore the said plaintiff brings suit &c

J. W. Maybome
Atty for Plff.

Copy of Account declared upon.

For	Soods	\$	800.00
"	Work & Materials	"	800.00
"	Money lent	"	800.00
"	Money paid	"	800.00
"	Money received	"	800.00
"	Interest due	"	800.00

5-

Prab on Account

800.00

J. W. Maybome
Atty of Plff

Which Narr is endorsed as follows, to wit:

Filed May 7. 1861

D. G. Moore

clerk.

And afterwards, to wit; on the 30th day of May 1861, the
was filed in the office of the clerk of said Court, a plea, which is in the
words and figures following, to wit;

Soren Perkins

or

William Comant

vs
Rane Circuit

May Term 1861

And the said Deft by and
his Atty comes and defends etc and says he de...
certake and promise in manner & form as the said...
has thereof complained and of this he puts himself upon
the County etc

Plato

for Deft

Which plea is endorsed as follows, to wit:

Filed May 30- 1861

D. G. Moore

clerk.

And afterwards, to wit; on the 8th day of February
A. D. 1862, the same being one of the days of the February Term...
of said Court, the following among other proceedings was had and
entered of record in said Court, to wit;

Soren Perkins

or

William Comant

vs
Spumpet

This day comes the plaintiff by...

7584

Some his Attorney and the defendant by Plato his Attorney
also comes waive a Jury and submit this cause to the Court
for trial after hearing a part of the evidence, a further hearing
is postponed until Monday next.

And afterwards writ: on the 5th day of March
AD 1862. the same being one of the days of the
February Term of said Court, the following,
among other proceedings was had and entered
of Record in said Court. writ:

Loren Putnam

v

William Corant

Assumpsit

This day again came the parties by their
respective attorneys, and this cause again com-
ing on to be heard, after hearing the balance of
the evidence, the Court being now fully satisfied
find the issue in favor of the defendant;
And thence the plaintiff, by Mayborn his
attorney, move for a new trial, which motion
is overruled by the Court, and a judgment is
entered herein in favor of the defendant.
To which ruling of the Court, the plaintiff
by his attorney excepts.

It is therefore considered by the Court
that the defendant recover of the plaintiff, his
costs by him herein expended and that he have
execution therefor.

7

And afterwards, to wit: on the 24th day of March there was filed in the office of the Clerk of said Court, a Bill of Exceptions which in the words and figures following, to wit:

Kane County Circuit Court	
Soren Perkins	} Of the February Term of said Court for 1862
as William Bonamb	

It is remembered that on the eight day of February 1862 it being one of the days of the said February Term of the Kane Circuit Court for 1862 this cause came on for trial jury having been waived by both parties the case was submitted to the Court for trial on the issue made in the case, & the following declaration and pleas

State of Illinois	} ss. Kane County Circuit Court
Kane County	
	Of the May Term for 1861
	Soren Perkins plaintiff in error

by J. H. Maybome his Attorney, complains of William Bonamb defendants in a - of trespass on the case upon promises, In that whereas the said defendants on the first day of May in the year of our Lord one thousand eight hundred and sixty one at Geneva in the County of Kane and State of Illinois, was indebted to the said plaintiff in the sum of eight hundred dollars for so much money before that time collected had and received on the sale of the following described property (to wit: The South West quarter of the South West quarter of Section number Five in Township Number Eight, East of the third principal meridian) made on the 21st day of March 1861, which said sale of the said land was made by the said defendants as mortgagee by virtue of a certain mortgage by virtue of a certain mortgage deed executed by the said plaintiff and Lucinda M. his wife, to the said defendants and dated the first day of March 1858 and recorded in the Records Office of the County of Kane and State of Illinois

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And afterwards, to wit: on the 24th day of March there was filed in the office of the Clerk of said Court, a Bill of Exceptions which in the words and figures following, to wit:

Kane County Circuit Court	
Soren Perkins	} Of the February Term of said Court for 1862
as William Donah	

It is remembered that on the eight day of February 1862 is being one of the days of the said February Term of the Kane Circuit Court for 1862 this cause came on for trial jury having been waived by both parties the case was submitted to the Court for trial on the issue made in the case, & the following declaration and pleas

State of Illinois	} ss. Kane County Circuit Court
Kane County	
	Of the May Term for 1861
	Soren Perkins plaintiff in error

by J. H. Maybome his Attorney, complains of William Donah defendants in a - of trespass on the case upon promises, In that whereas the said defendants on the first day of May in the year of our Lord one thousand eight hundred and sixty one at Geneva in the County of Kane and State of Illinois, was indebted to the said plaintiff in the sum of eight hundred dollars for so much money before that time collected had and received on the sale of the following described property (to wit: The South West quarter of the South West quarter of Section number Five in Township Number Eight, East of the third principal meridian) made on the 21st day of March 1861, which said sale of the said land was made by the said defendants as mortgagee by virtue of a certain mortgage by virtue of a certain mortgage of all any executed by the said plaintiff and Lucinda M. his wife to the said defendants and dated the first day of March 1858 and recorded in the Records Office of the County of Kane and State of Illinois

on the sixth day of March A. D. 1858 to secure a certain sum of money then and there borrowed by the said plaintiff of the said defendants, to wit: the sum of one thousand dollars and that said premises were sold on said mortgage by the said defendant to one Roswell M. Acres for a large sum of money, to wit: the sum of fifteen hundred and ten dollars on the said 21st of March 1861, and the said plaintiff avers that the said Acres did then and there pay to the said defendant the said sum of money so bid by him for the said premises, to wit: the said sum of fifteen hundred and ten dollars, and then and there took and received a deed therefor purporting to convey to him all the right title and equity of redemption of the said plaintiff in said premises, which said deed was made and executed by the said defendant and which said sum of money so taken and received by the said defendant of the said Acres on the sale of the said land and premises as aforesaid exceeds the amount then legally owing to and then due to the said defendant on the said sum of money lent by him to the said plaintiff and to secure the payments of which the said mortgage was made, executed and given as aforesaid, and that such excess amounts to a large sum of money, to wit: the sum of eight hundred dollars and being so indebted to the said plaintiff by the said defendant in consideration thereof afterwards, to wit: on the first day of May A. D. 1861, at Geneva in Kane County and State of Illinois undertook and then and there faithfully promised to pay the said plaintiff well and truly to pay unto the said plaintiff the said sum of eight hundred dollars, when by the said defendant should be thereunto afterwards requested.

And Whereas, also, the said defendant afterwards, to wit: on the second day of May A. D. 1861, at Geneva in the County of Kane and state of Illinois was indebted to the said plaintiff in the sum of (\$800) eight hundred dollars for goods then and there sold by the said Plaintiff to the said defendant at his request

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and in the sum of eight hundred for work then and there done, and material for the same, provided by plaintiff for the said defendants, at his request; and in the sum of eight hundred dollars for money then and there lent by the Plaintiff to the said defendants at his request; and in the sum of eight hundred dollars for money then and there paid by the plaintiff for the use of the said defendants at his request; and in the sum of eight hundred dollars for money then and there received by the defendants for the use of the plaintiff; and in the sum of eight hundred dollars for interest then due from the said defendants to the said plaintiff for the loan and forbearance of larger sums of money before then by the said plaintiff loaned and advanced to said defendants at his request; and in the sum of eight hundred dollars for money found to be due from the said defendants to the said plaintiff upon accounts then and there stated between them.

And in consideration of the said indebtedness the said defendants then and there promised the said plaintiff to pay the several sums of money aforesaid upon request.

Nevertheless, the said defendants although often requested to pay; on the second day of May A. D. 1861, and often times since, at General in Kane County and State of Illinois, has not yet paid the said several sums of money above mentioned nor either of them or any part thereof to the said plaintiff but to pay pay the same or any part thereof to the said plaintiff the said defendants has hitherto altogether refused and still does refuse, the damage of the plaintiff of eight hundred dollars and therefore the said plaintiff brings suit on

J. W. Mayhew
Atty for Plaintiff

Copy of account declared upon	
For Goods	\$ 800.00
" Work + Materials	" 800.00

" Money lent	" 800.00
" Money paid	" 800.00
" Money received	" 800.00
" Interest due	" 800.00
" Bal. on account	" 800.00

J. W. Mayborne
Atty for Plff.

Which is endorsed,

Filed May 7 - 1861

D. L. Moore. Clerk.

Loren Perkins
vs
Wm Bonant

Kane Circuit
May Term 1861

Def^d by Plato his Atty comes and defends r.c and says he did not undertake and promise in manner and form as the said plaintiff has thereof complained and of this he puts himself upon the country to Plato
for Def^d

Which is endorsed

Filed May 30 - 1861

D. L. Moore Clerk.

The plaintiff in order to prove and maintain the issue found on his part offers in evidence the following mortgage note warrant of Attorney, to wit: This Indenture made this first day of March in the year of our Lord one thousand eight hundred and fifty eight Between Loren Perkins and Lucinda M. his wife Geneva Kane County Illinois party of the first part and William Bonant of the same place party of the second part, Whereas the said party of the first part is justly indebted to the said party of the second part in the sum of one thousand two hundred and forty

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dollar secured to be paid by one promissory judgment note of even date herewith executed by said Perkins and payable to the said Bonaub for said sum one year from date with interest at ten per cent after due Now therefore this Indenture Witnesseth that the said party of the first part for the better securing the payments of the money aforesaid with interest thereon according to the tenor and effects of the said judgment note above mentioned, and also in consideration of the further sum of one dollar to them in hand paid by the said party of the second part at the delivery of these presents the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part his heirs and assigns forever all the following described lots pieces of land situated in the County of Kane and State of Illinois, to wit: The South West quarter of the South West quarter of Section No Five of Township No Thirty nine (39) Range No Eight East of the third principal Meridian containing forty acres. To have & to hold the same together with all and singular the tenements hereditaments privileges and appurtenances therunto in anywise appertaining and also all the estate interest and claim whatsoever in law as well as in equity which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part his heirs and assigns & to their heirs forever for their proper use benefit and behoof. Provided always, and these presents are upon this express condition that if the said party of the first part his heirs, executors or administrators shall well and truly pay or cause to be paid to the said party of the second part his heirs, executors administrators or assigns the aforesaid sum of money with the interest thereon at the time and in the manner specified in the above mentioned judgment note according to the true intent and meaning thereof then and in that case these presents and everything herein expressed shall be absolutely null and void. But if it is further from

died and agreed that if default be made in the payments
 said note either of principal — on the day whereon the same
 shall become due and payable the whole of said principal
 by said note in this Mortgage mentioned shall thereupon become im-
 mediately due and payable and this Mortgage may be immedi-
 ately foreclosed to pay the same by the said party of the second part
 heirs, executors administrators or assigns after publishing a notice
 in a newspaper printed in the said County of Kane Twenty days be-
 fore the day of such sale may sell the said premises and all
 and equity of redemption of the said party of the first part their heirs
 and assigns therein at Public Auction at Geneva to the highest
 bidder for cash at the time mentioned in such notice, and the
 said party of the first part hereby specially covenants and agrees
 to and with said party of the second part to waive their rights
 equity and redemption and further agree that they will neither
 assert or claim such rights on a sale of the property mentioned
 in by virtue of this Mortgage — And that the said party of the
 second part to make, execute and deliver to the purchaser or purchas-
 ers thereof a Deed or deeds for the premises so sold and out of the
 proceeds of such sale to pay all costs and expenses incurred in adver-
 tising and selling said premises also the principal and interest due
 on said note any thing herein or in said note contained to the
 contrary notwithstanding

In Witness Whereof the party of the first part hereunto set
 their hands and seal the day and year first above written

Sealed and delivered in presence of } Loren Perkins
 of Mr. B. Peirce } Lucinda M. Perkins

State of Illinois } Henry B. Peirce a Notary Public in
 Kane County } for the Geneva in said County of Kane
 State of aforesaid do certify that Loren Perkins and Lucinda
 M. his wife who are personally known to me as the same person
 whose names are subscribed to the within Deed appeared before me

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this day in person acknowledged that they executed and delivered the said instruments of writing as their free and voluntary act for the uses and purposes therein set forth. And the said Lucinda M. wife of the said Loren Perkins having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of the said instruments of writing having been to me fully made known and explained to her acknowledged that she had freely and voluntarily executed the same & relinquished her own and all other rights title and interests in and to the lands and tenements therein contained without compulsion of her said husband, and that she does not wish to retract the same.

L.S.

Given under my hand and Notarial seal this
day of March A. D. 1858.

Henry B. Peirce
Notary Public

Filed for record on this 6th day of March A. D. 1858. at 5:00
P. M. and duly recorded in Book 51. at page 257.
P. R. Knight Clerk & Ex officio Recorder

Copy of Note and Demand of Attorney.

1340 Given March 1st 1858.

One year after date I promise to pay to the order
of William Conant One thousand Two Hundred
& forty dollars for value received, with interest
at ten per cent after due.

Loren Perkins

Know all men by these presents, that whereas
the subscriber is justly indebted to William Conant
upon a certain promissory note bearing even date
herewith for the sum of one thousand two hundred
and forty dollars made payable to the said
William Conant or order and due one year after

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date, now therefore, I do make, constitute and
appoint L Deaton my true and lawful attorney
of any Court of Record to be my true and
lawful attorney for me and in my name
place and stead to appear in any Court of Re-
cord, in term time, or in vacation in any of the
States or territories of the United States, at any
time after the said note may become due, or
before the same becomes due of the said
William Corant or his assignees shall believe
there is danger of losing the said sum secured
by said note, waive service of process and con-
fess judgment in favor of the said William
Corant or his assignees upon said note for
the above sum with interest, and in addition
thereto, ten percent on the amount due or
liquidated damages for delay, if said note is
not paid on the day it becomes due, together
with all costs, Also the sum of twenty five
dollars as attorney fees to be added to the am-
ount due on entering up judgment, and
also to consent to immediate execution upon
said judgment, hereby waiving all error in
entering up said judgment and ratifying
all that my said attorney may do, by virtue
hereof.

Witness my hand and seal, this first
day of March A D 1858.

Given Pursuant L D
"Endorsement on the back of said note."
Satisfied by sale of land March 31st 1861.

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The defendant objected to the said Mortgage & Note & Warrant of Attorney being read in evidence, objection overruled and Mortgage Note and Warrant read in evidence, and defendant accepted.

Henry Hawkins being called and sworn testified that he knew the parties, Plaintiff and defendant, heard a conversation between the parties on the 25th day of March last, at the store of Corant in Geneva. Perkins came in and said to Corant, I understand that you have sold that farm of mine. Corant replied that he had. Perkins asked him who bought it, Corant replied that Mr Acer had. Perkins then asked him what it sold for? Corant replied \$1510. Perkins then said to Mr Corant, It was one thousand dollars, I believe, that I had of you, was it not? Mr Perkins then said he demanded the overplus, stating the amount to be \$510.

Corant made no reply to the statement of Perkins, that it was from, he got of him. Mr Acer, lives here in Geneva. Witness knows the land described in the Mortgage. Do you know what loan, he, Perkins, referred to, in this conversation? Question objected to. Objection overruled, and defendant accepted. I suppose I do. How do you know it? I have had a conversation with Mr Corant in relation to the premises and the indebtedness. Witness is handed and looks at the

Mortgage and note. I had a conversation with Mr Corant at an other time, I think that I have had two or three conversations with him in relation to his matter with Mr Perkins. I cannot identify any particular time of conversation, but it was previous to the interview I have spoken of. Mr Corant said he had a mortgage on Mr Perkins farm - that it was about \$1500 that he had given him all the time he could. There was a good deal said. I asked him if he did not feel as though he could pay back something to Mr Perkins? He said that he could not. There was something said in relation to the farm being sold, and Mr Corant giving him a year time if he could sell it for anything more he could do so. I am somewhat familiar with Mr Perkins's affairs. Could not say that there was anything said as to the amount of the original loan. He said he told Mr Perkins that if he would accept a deed of the 110 acres, that he would give him one year to sell it, or redeem it, and thereby save the expense of selling it on the mortgage. Mr Corant said the amount of his loan was about \$1500, do not think anything was said as to who was to have the possession of the farm during the year.

I went to see Mr Corant at the request of Mr Perkins. I had previously conversed with Perkins as to the amount of the previous loan. My object in going to see Mr Corant was to see if Mr Corant would not refund something to Mr Perkins.

There was something said about one thousand

17 dollars and interest thereon - the farm.

Cross Examined

This was the time when Corant said he would take a deed, and give a year to redeem. This was not a year before the sale - think it was in the neighborhood of four weeks before the sale.

Perhaps I ought not to use the word refund.

My first conversation with Corant, was within some three or four weeks before the demand.

It was at the first conversation that Corant spoke of making a deed and giving a year. Do not know when this indebtedness accrued, nor when it was due.

Direct resumed.

Know the condition of Mr Perkins.

State what was the pecuniary ~~consideration~~ condition of Mr Perkins the Plaintiff at the time of the sale of land? objected to by defendant and objection sustained. Plaintiff excepted

Charles Updike, being sworn testified, resides on the place now owned by Mr Corant. the one formerly owned by Mr Perkins.

I took possession under Mr Corant. March 1861, about the 20th of the month. Made the bargain partly in the evening previous, about 8 O'clock, and moved in the following morning.

The sun rose as we were going past the fair grounds: packed the goods on the morning before we started. Why did you start so early? Mr Corant wanted that we should, start early in

the morning if we went there, so as to get possession before Mr Perkins could.

Cross Examined

He told me - wanted me to go early because Mr Mayton threatened to keep him out of possession for a year.

As witness recalled by Plaintiff
State whether you had a conversation about the 20th of March '61. with defendant in relation to adjustment of a thousand dollars loan from Comant to the plaintiff; if yes, state what that conversation was. Objected to:
Objection sustained.

State if you had a conversation with the defendant about the 20th day of March '61. If you - state what that conversation was. Objected to -
Objection sustained by defendant, objection overruled, debt accepted.

I did have a conversation with him near that time: He was talking about the demand against Mr Perkins. In the course of the conversation, I asked him if he would not be willing to take ten percent on the money he had loaned to Mr Perkins. He said he thought he could not do it. This was about the time plaintiff was trying to get out an injunction. He said he thought that he ought to make up on his money some two percent. This he stated how he could have made more.

Cross Examined

I asked him if he had not rather have his ten percent on his money than sell the place.

He spoke of instances where he could have made 15 percent on his money. This was for the sale. He said Perkins had applied for an injunction. I do not know what the injunction was for, but I supposed it was to ~~stop~~ prevent the sale of the place.

J. R. Wright, Sworn

Was Master in Chancery in March 1861, in this County. Application was made to me for an injunction on the bill shown to me, (Bill shown to witness) in this bill, Leon Perkins was ~~Plaintiff~~ Complainant, and William Conant, was made defendant, Defendant appeared. Don't think I had filed my ~~bill~~ bond, at the time, as Master. But Judge Wilson was absent, at the Mt. Vernon Court, and both parties agreed to waive any objection on account of my not having filed my bond. My recollection is, that Mr Conant was there a part of the time. Mr Plato appeared for Mr Conant. I recollect that Mr Plato ~~was~~ Enquired of the complainant admitted that he had made no tender, He said if that was admitted he did not wish to put in any answer. I remember that there was some conversation on both sides ~~but~~ can't recollect that there was any distinct admission as to the amount loaned. After it was admitted that no tender had been made, the allegations in the bill were ~~well~~ ^{treated} upon the argument of the Master for the injunction as true, and it was agreed to be so treated. Bill was filed by Mr Perkins, to get an injunction

to restrain Mr Conant from selling the lands
I refused to grant an injunction. this was
upon the day of the sale - property sold
som after as I was informed.

Cross Examined

Mr Plato, for the defendant, offered to ac-
cept the amount of money claimed in the
bill as the amount due. It was not paid.

Direct resumed:

Did not Maybom state in reply to Mr
Plato that he knew very well that my client
Putkins was absent and that we were not, as he
knew them, prepared to make the tender? I think
you did, or something to that effect

Mr Plato sworn:

Cannot say that Mr Conant was present
at the time of the conversation spoken of: Can't
say, that I talked with Conant as to the facts set
ted in the bill. Recollect that I inquired of him
whether any tender had been made. My recol-
lection is, that no admission was made except
for the purpose of the hearing of the motion. Mr
Conant did not authorize me to make any ad-
missions. What admissions I did make, I made
as an attorney for the purpose of hearing a mo-
tion.

The Plaintiff then read the following af-
fidavit

Kanaw Lee Court

Loren Perkins } Of the February Term of
 v } the said Court for 1862.
 William Conant } In action of trespass on the
 case upon promises.

State of Illinois }
 Kanaw County } Loren Perkins, the above
 named plaintiff, being first duly sworn,
 doth depose and say on oath, that this suit
 is brought by him against the above named
 defendant to recover and collect of and from
 him, the said defendant, the sum of five
 hundred dollars, which he, the said plain-
 tiff claims that the said defendant has re-
 ceived of one Roswell ^W Acres, more than what
 justly belongs to him, on the sale of the South
 West quarter of the South West quarter of Sec-
 tion number five, in Township No 39. Range 8
 East of the third P.M. made on the 21 day of
 March 1861. which said sale was made by the
 said defendant as Mortgagee by virtue of a mor-
 gage certain Mortgage made and executed by the
 affiant and Lucinda his wife, and bears date
 the first day of March 1858. to secure a cer-
 tain sum of money loaned by the said de-
 fendant to the affiant.

And this affiant further saith, that the said
 Mortgage was given as it expresses on its face, to
 secure the payment of the sum of One thousand
 two hundred and forty dollars, to be paid in
 one year from date, of said mortgage according
 to the tenor and effect of a certain note bearing

even date with said Mortgage, with interest at ten percent after due.

And this affiant further saith, that the actual sum of money, received by and loaned to this affiant, by said defendant, was the sum of one thousand dollars only, and not the sum of one thousand two hundred and forty dollars, as expressed and mentioned in said note, and Mortgage. the said defendant asking and requiring, the sum of Two Hundred and forty dollars for the use or interest in the said sum of one thousand dollars, actually loaned for one year, at the rate of twenty four per cent. interest per annum, and that he knows of no witness, by whom he can prove the fact that the said defendant only actually loaned to him the sum of one thousand dollars, and not the sum of one thousand, two hundred and forty dollars, and that the sum of two hundred and forty dollars mentioned in said note and Mortgage, was made up, and composed of that amount of interest money, demanded by the said defendant for the use or loan of the said one thousand dollars actually lent, by him to this affiant for one year, and no other or different sum or consideration whatever, and that this affiant knows of no other witness by whom he can prove these facts, except by the testimony of the parties to this suit, and that the proving of the above facts are material and necessary to be proved in order for him to sustain this action.

Levin Perkins

Sworn and subscribed to
before me this 5th day of
March February 1862. J.

J. C. Moore

Clerk

And called on William Corant, the defendant
to testify as to the amount of money actually loaned
and interest received. Objected to by defendant,
objection overruled, and defendant accepted.

Defendant refused to testify.

Plaintiff Sworn: I am the plaintiff in
this suit (mortgage and note shown to him).
The amount of money I received from Mr
Corant on this note and mortgage, was \$1000. the bal-
ance was made up of twenty four percent
interest for one year. never gave him any
other mortgage, I owned no other farm.

Amy Pierce sworn: It is Mr Corant's
signature to this deed, handing witness deed.
Know his hand-writing: He acknowledged it
before me - deed from Corant to Roswell H.
Acers. deed offered in evidence - objected to by
defendant, objection overruled and accepted to.
The deed was then read, which is in the words
figures following to wit:

This Indenture made this twenty first
day of March, in the year of our Lord one thousand
and eight hundred and sixty one. Between Wil-
liam Corant of the County of Hamilton and State
of Illinois party of the first part, and Roswell

It Acces in the County of Nau and State of
 Illinois of the second part Hereinseth. that
 whereas Loren Perkins, and Lucinda M. Per
 kins his wife of the County of Nau and State
 of Illinois, did, by a certain Mortgage deed, da-
 ted the first day of March A D 1858. convey
 the said party of the first part, a Mortgage and
 the premises hereinafter described, to secure the
 payment of a certain promissory judgment note
 in said Mortgage deed particularly mentioned
 and dated March 1st 1858. due one year after
 date for the sum of one thousand two hundred
 twelve hundred and forty dollars, with interest
 at ten percent after due, and signed by said Loren
 Perkins. And whereas, it was expressly provided
 in said Mortgage deed, that in case default
 be made in the payment of said note, according
 to the term and effect of the same, then the said
 party of the second part, his heirs, executors, ad-
 ministrators, or assigns, after publishing a no-
 tice in a newspaper, printed in the County
 of Nau, twenty days before the day of such
 sale, might sell the said premises, and all
 right and equity of redemption of the said
 party of the first part, their heirs and assigns
 therein, at public auction at Geneva to the high-
 est bidder for cash, at the time mentioned in
 such notice, And also, make, execute and deli-
 ver to the purchaser or purchasers, thereof
 a deed or deeds for the premises so sold, which
 said Mortgage deed is recited, in the

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Recorder office, in the County of Kaw and State
 of Illinois, in Book 51. at page 257. And whereas,
 also default hath been made in the payment of
 said note, due as aforesaid, I, the undersigned,
 party of the first part, on the 28th day of Febru-
 ary 1861. caused a notice to be published in the
 Kaw County Advertiser, a Weekly Newspaper
 printed in Geneva, Kaw County, State of Illi-
 nois, that said premises, hereinafter described, would
 on the 21st day of March 1861, at ten o'clock in
 the forenoon of said day, be sold at public auc-
 tion at the North door of the Court House, in said
 Kaw County and State aforesaid, to the highest
 bidder for cash, by virtue of the power and authori-
 ty in me, in and by said Mortgage-deed vested,
 which said notice was printed for three weeks con-
 tinuously in said paper, commencing on the 28th
 day of February A D 1861. ending on the 21st
 day of March 1861. And whereas also, at the
 hour of ten o'clock A.M. on the said 21st day of Mar-
 ch A D 1861, the said premises having been by the
 said party of the first part, in the manner pre-
 scribed in and by said Mortgage-deed, and at
 the place last aforesaid, in pursuance of said
 notice, offer for sale at public auction, to the
 best bidder for cash, and the said party of the
 second part having been the highest and best bidder
 therefor, and having bid for the tract hereinafter
 named the sum of fifteen hundred and two dol-
 lars \$1570. was duly declared the purchaser thereof.
 Now therefore, in consideration of the prem-
 ises, and of the sum of fifteen hundred and

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Sealed and delivered in presence of.

State of Illinois

Kane County J. A. Henry P. Peircs a Notary Public in Geneva in said County, in the State aforesaid, do hereby certify that William Conant who is personally known to me as the same person whose name is subscribed, to the foregoing mortgage and, appeared before me this day in person and acknowledged, that he signed, sealed and delivered the said instrument of writing as his free and voluntary act, for the use and purposes therein set forth.

Given under my hand and notarial seal this 31st day of March 1861. in the year of our Lord one thousand eight hundred and sixty one.

A. P. Peircs.

Notary Public

This Instrument was filed for Record on the 31st day of March A. D. 1861 at the hour of 7 o'clock P. M. and duly recorded in Book 66. of deeds page 463.

J. C. Moore, Clerk of Circuit Court and Officer Recorder

Here the plaintiff rested.

The defendant then called Rowell H. R. who being sworn testified, that the deed shown him was the deed he got from Mr. Conant, on the sale of the lands. He did not pay any money, (this testimony objected to by the plaintiff, objection overruled and plaintiff accepted,) to Mr. Conant. Mr. Conant was selling a piece of land under a

sale of some kind, and I bid it off - paid him
no money, and no property. I gave him a
deed of the said land. This is the deed.
The deed produced, & dated March 21. 1861.
Defendant offered the deed in evidence; objec-
ed to: objection overruled & accepted to be read
aloud, which deed was in the words and figures
following to wit:

This Indenture made this twenty first
day of March, in the year of our Lord one thousand
and eight hundred and sixty one, Between Ros-
well H. Allen and Juliett his wife, party of the first
part, and William Conant of the same place, party
of the second part. Witnesseth that the said
party of the first part, for, and in consideration of
the sum of fifteen hundred and two dollars, to the
said party of the first part in hand paid, by the
said party of the second part, the receipt whereof
is hereby expressed and acknowledged, have con-
veyed, released, conveyed and quit-claimed, and
by these presents do release, convey and quit-
claim, unto the said party of the second part, his
heirs and assigns forever, all the right, title, in-
terest, claim and demand, which the said party
of the first part have in and to, the following de-
scribed lot, or parcel of land, situated, lying and
being in the County of Hans, and State of Illi-
ois, to wit: The South West Quarter of the South
West Quarter of Section Two (2) Township No
thirty nine (39), Range No Eight (8), East of the
third principal Meridian, containing forty acres.

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To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining; and all the estate, right, title, interest and claim whatsoever of the said party of the first part, either in law, or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

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

Sealed, signed and } R. W. Allen }
delivered in presence of } Juliett Allen }

State of Indiana }
Harrison County } P. J. Henry P. Peirce, Notary Public
in and for the said County, in the State aforesaid do hereby certify that Roswell W. Allen, who is personally known to me to be the real person whose name is subscribed to the above deed, appeared before me this day in person and acknowledged that he executed and delivered the said deed as his free and voluntary act, for the use and purposes therein set forth.

And the said Juliett Allen, wife of the said Roswell W. Allen, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of said deed, having been by me made known and fully explained to her, acknowledged that she had free, and

voluntarily executed the same, and 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 Notaries seal, this 21st day of March in the year of our Lord one thousand eight hundred and sixty one.

A B Pierce L.S.

Filed for Record March 21st 1861, at 7 o'clock P.M. and recorded in Book 66, page 465.

T B Moore

Recorder

This deed is the only consideration that passed from Mr. Corant for the purchase. I bought it at the request of Mr. Corant. The land was offered and sold by Mr. Corant. The understanding was, that I was to succeed to him. I bid for him, because he could not bid for himself. All the above witnesses objected to by plaintiff at the time it was given, objections overruled, and plaintiff accepted.

Oras examined.

I bid \$1510 because Mr. Corant said that was the amount due him, and he asked me to bid that sum. I did not see the mortgage-deed at the time, nor did he read any mortgage. But I supposed it was being paid.

on Comaunt's Mortgage. Here the defendant rested.

The foregoing is all the evidence offered by either party on the trial of the above cause, and the Court, after hearing the argument of Counsel for the parties, and being fully advised in the premises, did then and under judgment for the said defendant, to which finding and rendering judgment for the defendant, the said Plaintiff, did by his Counsel at the time, then and there accept, and then and there made his motion for a new trial in the case, which said motion for a new trial was then and there overruled, and refused by the said Court; to which ruling and refusal of the Court, to grant a new trial in the case, the Plaintiff, at the time, by his Counsel, then and there accepted. And the Plaintiff then and there accepted to the finding of the Court, and rendering judgment for the said Plaintiff, and then and there presented this, his bill of exceptions in this cause to the Court, and prayed that the same may be sealed and signed, and made part of the record in this cause, which was then and there done.

Isaac P. Wilson Esq.

State of Illinois
 Hancock County J. A. Thomas & Moore
 Clerk of the Circuit Court, in and for
 said County in the State of aforesaid,
 certify the foregoing to be true and correct
 copies, of the original papers, orders of Court
 and bill of Exceptions, filed and entered
 of Record, in a cause lately pending and
 determined in said Court, wherein Lewis
 Perkins was plaintiff, and William Conant
 was defendant.

Thomas & Moore,

Clerk of said Court, and the undersigned
 thereof at Geneva in said County
 this 10th day of April A.D. 1862

Thomas & Moore
 Clerk

Clerks fee for Record \$12.35

Loren Perkins vs William. Leonard
In the Supreme Court of the State of Illinois, Third ground division. Error to Kane County circuit court. And now comes the said Loren Perkins, by his attorney and says that in the record of the said proceedings and in the rendition of the said judgment manifest error hath intervened to his prejudice in this "to wit"

- 1st The Court erred in not allowing the plaintiff to show his pecuniary condition at the time of the sale of land, by the defendant
- 2nd The Court erred in allowing the defendant to show by witness Acres the consideration which he paid for the land at the time he purchased it
- 3rd The Court erred in rendering judgment for the defendant, but should have rendered judgment for the plaintiff
- 4th The Court erred in overruling the plaintiff's motion for a new trial
- 5th The judgment rendered by the Court is against the law and the evidence in the case
- 6th The said Court erred in rendering judgment

-ment for the defendant, when by the laws
of the land, the said judgment ought to
have been for the plaintiff in error.

And this the said plaintiff is ready
to verify by the said records, wherefore
he prays judgment of Record " &c "

J. H. Mayborne
Attorney for the plaintiff
in Error

And now comes the said defendant by Plato ^q/Smith
his attorney and says there is no error in the record
of said proceedings and in the rendition of said judgment
as aforesaid and this he is ready to verify &c

Plato ^q/Smith
Attorney for the
defendant in Error

53-162
Loren Perkins
7
William Conant
Recd

Apr 12. 33

Recd

William Conant

21

Loren Perkins

Filed Apr. 29. 1862
L. Iceland
Ck.