

No. 13385

Supreme Court of Illinois

Mooers

vs.

Carpenter

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 112,

Maders
vs
Carpenter

Deposited

3385

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

JAMES M. MOOERS, Plaintiff in Error.

vs.

SARAH CARPENTER, TO THE USE OF G. W.
SOUTHWICK, Defendant in Error.

James K. Edsall, of counsel for Defendant in error presents the following Brief of Points and Authorities.

This was a proceeding by *scire facias* to foreclose a mortgage, to which plaintiff in error plead as follows: 1st *non est factum*, 2d, *nul tiel record*; 3d, Payment and 4th and 5th Pleas of usury. Demurrers were sustained by the court below to said 4th and 5th pleas, which is now assigned for error.

I. The proceeding by *scire facias*, is in contemplation of law, always based upon a record. This doctrine, together with the consequences flowing from it, is not alone applicable to the common law writ of *sci. fa.* For example, a recognizance taken before a magistrate, and by him certified to the circuit court, upon which a *sci. fa.* issues, is regarded as a record in the strict legal sense; and oyer cannot be had of it (*Slater et al v. People* 21 Ill., 29); it is regarded as absolute verity—truth itself, and it cannot be averred against. *People v. Watkins* 19 Ill., 119.

The same principle is held applicable to *sci. fa.* on a mortgage. *White v. Watkins* 23 Ill., 470; *Hall v. Byrne* 1 Scam. 140.

If this is the correct doctrine—if “no averment can be made against the record” in a proceeding by *sci. fa.*, the conclusion is inevitable, that the defence of usury cannot be interposed. The recital in the record (the mortgage) is that “the party of the first part is justly indebted to the said party of the second part in the sum of eight hundred dollars” etc. The defendant (below) cannot deny that this was so at the time of the execution of the mortgage. When the mortgage has been duly acknowledged and recorded, and the last instalment has become due, no defence can be interposed except such as show the mortgage never to have been a valid lien upon the land, or that it has been released or discharged.—*White v. Watkins* 23 Ill., 482; *Woodbury v. Manlove* 14 Ill., 216. It is held that neither utter want, nor failure of consideration are embraced within this class of defences (*Ibid*); and *a fortiori*, a plea of usury cannot be regarded as showing that the mortgage was never a valid lien upon the land. Our usury law does not make the contract void.

The plea of usury cannot be interposed as a defence in a *sci. fa.* at common law, even when it is brought upon a judgment entered by confession. *Blyd. Law of Usury* 112, *Middleton v. Hill*, 2 Croke Eliz. 588, *Cock v. Jones*, Cowper 727.

and a defence that cannot be interposed to a common law *sci. fa.*, cannot, unless expressly authorized by statute, be plead to *sci. fa.* on a mortgage. *White v. Watkins* 23 Ill., 482.

II. The proceeding by *sci. fa.* to foreclose a mortgage, is a special proceeding *in rem*, and not an *action*, in a legal sense. *Menard v. Marks*, 1 Scam. 25. *Hall v. Byrne*, Ibid, 140. *Woodbury v. Manlove*, 14 Ill., 216, and for this reason it is held that the statute forbidding the bringing of an *action* against an administrator until after the expiration of one year after taking out letters of administration, does not prohibit the commencement of a proceeding by a *sci. fa.* to foreclose a mortgage within that time. *Menard v. Marks* 1 Scam. 25.— So a plea of set off is not allowable in this proceeding, for the reason that the statute providing that “in any action brought upon any contract or agreement, either express or implied,” this defence might be interposed, did not include a proceeding by *sci. fa.* *Woodbury v. Manlove* 14 Ill., 216, and the same with reference to the statute conferring the right to plead want or failure of consideration, which provides that “in any action” this defence may be plead.

Our statute relative to the defence of usury prescribes, that: “Whenever in any *action* brought on any contract or assurance for the payment of money or other thing, it shall appear to the court before which such *action* shall be tried, by the pleading on the case” that usurious interest shall have been reserved, discounted or taken, the plaintiff shall forfeit, &c. Sec. 4 ch. 54, 1 Pur. Stat. 638. And the language of Section 7 of same chapter is as follows: “In the trial of any *action* wherein it shall appear by the pleadings, that the fact of usury shall be put in issue it shall be lawful for the debtor, the creditor being alive, to become a witness” etc.

We insist then that these statutes do not confer the right to set up the defence of usury, in this special proceeding, which is held not to be an action.

III. But it may be insisted that the statute of 1857, so modified the usury law of 1845, in repealing all provisions in the latter imposing penalties, &c, that a plea setting up that a contract entered into while the statute of 1845 was in force, more than legal interest was reserved, or taken, and claiming an abatement of the usurious excess, is rather in the nature of a plea showing a partial want or failure of consideration, than a plea of usury. Be this as it may, it cannot avail the plaintiff in error, inasmuch as it is well settled that neither a failure nor want of consideration can be plead in this proceeding.

IV. Were it competent to a mortgagor to plead usury in this proceeding, the demurrer in this case was properly sustained.

1. In usurious contracts made prior to the passage of the act approved January 31, 1857, where suit is brought subsequently

to that time (as in the present case) the excess of legal interest only is abated. In *Nichols v. Stewart et al* 21 Ill. 106, the Court remarks that "There is in fact no penalty attached to an usurious contract under our statute as we have already decided. It merely modifies the contract, so that if the defendant shall insist upon it, no matter what the terms of the contract may be, he shall only be bound to pay the *principal sum and legal interest*." It should be observed that this language was used with reference to a note made October 4, 1856, drawing interest at the rate of two per cent. per month, upon which suit was instituted subsequently to January 31, 1857, and is therefore an authority directly in point on the case at bar. But as to usurious contracts made subsequently to that date, the whole of the interest is forfeited. *Sufford v. Vail* 22, Ill. 327.

2. A plea which professes to answer more of the count or declaration than, to which, it is in fact a good answer, is bad upon general demurrer. 1 Chit. Pl. 523, *Nichols v. Stewart* 21 Ill. 106, *Moir v. Harrington* 22 Ill. 40, *Marsh v. Bennett* Ibid 313. Therefore:

3. The 4th Plea is defective inasmuch as it commences as an answer to \$400, part and parcel &c., and concludes as a defence to the entire cause of action; while the body of the plea (if its averments sufficiently show anything) would only show that the defendant (below) was entitled to have abated from the face of the note the excess of legal interest, amounting to \$280. But we insist that this plea is also defective as a plea of usury in this: that it does not show what the consideration of the note in question was—nor by whom, nor to whom, nor when, nor where, any money was "actually loaned," and is altogether indefinite and uncertain in its allegations. Blyd. Law of Usury, 110.

4. The 5th plea commences as an answer to the whole cause of action as follows: "And for a further plea in this behalf the said defendant says *actio non* because he says" &c., and proceeds to set up matter, which, if true and it was competent to plead it, would only show a defence to the excess of legal interest included in the note, viz \$280; and concludes by praying judgment as to the sum of \$400.

V. The issue formed on the plea of *nul tiel record* was properly tried by the court, *Steph. Pl.* 101; 2 Bl. Com. 330; yet if this were not so, there is no error in the present case, inasmuch as the record shows, that all the issues were submitted to the jury, who found a general verdict for the plaintiff (below); and in addition to that, the court also found the issue upon the plea of *nul tiel record* for the plaintiff.

77 112

SUPREME COURT,

JAMES M. MOOERS,
Plaintiff in Error,

vs.

SARAH CARPENTER, to use, etc,
Defendant in Error.

B R I E F .

Filed Apr. 18. 1861
A. Deland
Clk

JAMES K. EDSALL,
Att'y for Def't in Error.

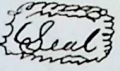
Know All Men by these presents. That James M. Moores as principal and Eli. B. Baker And Harvey Morgan as Security, are held and firmly bound unto Sarah Carpenter, to the use of Gilbert W Southwick, in the penal sum of Two Thousand dollars good and lawful money of the United States, for the payment of which well and truly to be made the said James M. Moores, Eli B. Baker And Harvey Morgan bind themselves their heirs executors And Administrators, jointly, severally and firmly by these presents. ~ ~ ~ ~ ~
Witness Our Hands and Seals this sixteenth day of August AD 1860 ~

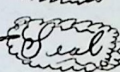
The Condition of the above obligation is such That whereas the above named Sarah Carpenter, to the use of Gilbert W. Southwick, did, at the February Term of the Circuit Court of Lee County, held in and for the County of Lee in the State of Illinois AD 1860, recover a judgement against the above bounden James M Moores for the sum of nine hundred and seven dollars and seven Cents, to reverse which said judgement the said James M. Moores has sued out a writ of error from the Supreme Court, within and for the third Grand division of said State which writ of Error is made a Supersedeas, Now if the said James M. Moores, shall duly prosecute said Writ of Error, and pay, or cause to be paid, the Amount of said judgement, and all judgements, Costs, interest and damages which the said Supreme Court shall adjudge against him

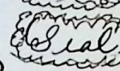
said James M. Moors. And abide the order
and judgement of said Supreme Court in this
behalf. then this obligation is to be void; other-
wise to remain in full force and effect.

Witness

W W Hutton

James M. Moors 

J. B. Baker 

Harvey Morgan 

112
James M. Mooers
23

Sarah Carpenter
for the nurses

Supd Bond

Filed August 16. 1860
L. Leland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County Lec Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit — Court of Lec — County, before the Judge thereof, between Sarah Carpenter who sues for the —
case of Gilbert W. Southwick. —

plaintiff, and James M. Mooers —

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid defendant —

as we are informed by his —
complainant..... and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of August in the Year of Our Lord One Thousand Eight Hundred and Sixty.....

Clerk of the Supreme Court.

James M. Moores

No.

VS.

Sarah Carpenter

WRIT OF ERROR.

*This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.*

L. Leland

Clerk.

J. B. Rice Deputy

FILED

August 16 A. D. 1860

L. Leland

Clerk.

State of Illinois, Supreme Court
of the Third Judicial Division

James M. Moars

vs

Joseph Carpenter &
the use of Gilbert M
Southwick

Error to be

William W. Hroton being first
duly sworn deposes and says
that he is well acquainted with
the pecuniary circumstances of
Horney Morgan and Elias B. Boker
who are offered as security on
the supersedeas bond in this case
that they are each worth at least
the sum of two thousand dollars
over and above their just debts.

Subscribed & sworn to W. W. Hroton
before me this 16th day of }
August. A.D. 1860 }
J. D. Coaton

112

James M. Moore

vs

David Co & partner

Deeds &c

affidavit for bond

Filed August 26, 1860

L. Leland
clerk

Supreme Court of the State of Illinois
Third Grand Division April Term 1861.

James M. Movers. Plff in Error. }

^{vs}
Sarah Carpenter to the use of }
G. W. Southwick Deft in Error }

To Messrs Keaton & Goodwin.
Attys for Plff in Error.

Please to
take notice; that the Defendant in error has
entered her appearance in this cause and
intends to have the said cause proceed to
a hearing at the above mentioned term of
said Court.
Dated March 19th 1861.

James K. Edsall.
Atty for Deft in Error.

We do hereby admit and accept service of
the above notice on the Plaintiff in error
this 19th day of March 1861.

W. Keaton & Goodwin
Attys for Plff in Error.

112

James M. Mowers

vs
Sarah Carpenter to use

Notice

Filed April 15, 1861
L. Leland
Clerk

J. H. Edrall
Atty for Def in error

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

JAMES M. MOORES

vs.

SARAH CARPENTER, TO THE USE OF
GILBERT W. SOUTHWICK.

} *Error to Lee County.*

ABSTRACT OF RECORD.

1 This was a proceeding by *scire facias* commenced of the November Term of the Lee County Circuit Court, for the year A. D. 1858, to foreclose a Mortgage made by the Plaintiff in Error to the Defendant in Error, to secure the payment of a promissory note of eight hundred dollars made by plaintiff to defendant in error. The note made and bearing date November twenty-third, A. D. 1852, and the mortgage given to secure it bearing date March the twenty-eighth, 1853. The note payable in five years from date.

10 In this case the defendant below pleaded the two following among other pleas to wit:

12 4. And for further plea in this behalf as to four hundred dollars, part and parcel of the sum of eight hundred dollars in said writ and declaration mentioned, said defendant says *actio non*, because he says that in the note in writing and mortgage deed in said writ mentioned is taken, received, and secured to the said plaintiff above the rate of six dollars in the hundred per annum for the forbearance of the sum of four hundred dollars, actually loaned, for the period of five years, that is to say, the sum of four hundred dollars, part of the sum of eight hundred dollars for the period of five years, contrary to the form of the statute in such case made and provided, and this he is ready to verify, wherefore he prays judgment, &c.

13 5. And for further plea in this behalf, said defendant says *actio non*, because he says that said promissory note and mortgage in said *scire facias* mentioned, was given for the loan and forbearance of the sum of four hundred dollars, money actually loaned

13 on the day of the date of said note and mortgage, and that the remaining sum of four hundred dollars in the said note mentioned, being included in the said note, for and as interest and usury for the loan of the said first mentioned sum for the term of five years, being at a greater rate of interest than was then and there allowed by law, to wit: for and at the rate of twenty per centum per annum for the whole term, which said note and mortgage had to run, to wit: for the term of five years, contrary the Statute in such case made and provided; and this the defendant is ready to verify, wherefore he prays judgment the said *scire facias* as to the said sum of four hundred dollars, part and parcel of the sum of eight hundred dollars therein demanded.

14 To which plea the said plaintiff filed a general demurrer and which demurrer was sustained by the court below, and a judgment rendered for the plaintiff for the full amount of said note
15 of eight hundred dollars mentioned in said *scire facias*, with interest and costs.

29 There are several errors assigned in this case, the only ones relied upon being the question of usury presented in said pleas, and that the court erred in holding that said pleas of usury could not be plead to an action by *scire facias* upon a mortgage.

HEATON & GOODWIN,

For Plaintiff in Error.

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SUPREME COURT OF ILLINOIS :

APRIL TERM, 1861.

JAMES M. MOORES

vs.

SARAH CARPENTER, TO USE OF GIL-
BER W. SOUTHWICK.

ABSTRACT.

HEATON & GOODWIN,

Attorney for Plaintiff in Error.

Filed Apr 17. 1861

A. Deland
Clk

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

JAMES M. MOOERS, Plaintiff in Error,

vs.

SARAH CARPENTER, TO THE USE OF G. W.
SOUTHWICK, Defendant in Error.

James K. Edsall, of counsel for Defendant in error presents the following Brief of Points and Authorities.

This was a proceeding by *scire facias* to foreclose a mortgage, to which plaintiff in error plead as follows: 1st *non est factum*, 2d, *nul tici record*; 3d, Payment and 4th and 5th Pleas of usury. Demurrers were sustained by the court below to said 4th and 5th pleas, which is now assigned for error.

I. The proceeding by *scire facias*, is in contemplation of law, always based upon a record. This doctrine, together with the consequences flowing from it, is not alone applicable to the common law writ of *sci. fa.* For example, a recognizance taken before a magistrate, and by him certified to the circuit court, upon which a *sci. fa.* issues, is regarded as a record in the strict legal sense; and oyer cannot be had of it (*Slater et al v. People* 21 Ill., 29); it is regarded as absolute verity—truth itself, and it cannot be averred against. *People v. Watkins* 19 Ill., 119.

The same principle is held applicable to *sci. fa.* on a mortgage. *White v. Watkins* 23 Ill., 482; *W. M. Hall v. Byrne* 1 Scam. 140.

If this is the correct doctrine—if “no averment can be made against the record” in a proceeding by *sci. fa.*, the conclusion is inevitable, that the defence of usury cannot be interposed. The recital in the record (the mortgage) is that “the party of the first part is justly indebted to the said party of the second part in the sum of eight hundred dollars” etc. The defendant (below) cannot deny that this was so at the time of the execution of the mortgage. When the mortgage has been duly acknowledged and recorded, and the last instalment has become due, no defence can be interposed except such as show the mortgage never to have been a valid lien upon the land, or that it has been released or discharged.—*White v. Watkins* 23 Ill., 482; *Woodbury v. Manlove* 14 Ill., 216. It is held that neither utter want, nor failure of consideration are embraced within this class of defences (*Ibid*); and *a fortiori*, a plea of usury cannot be regarded as showing that the mortgage was never a valid lien upon the land. Our usury law does not make the contract void.

The plea of usury cannot be interposed as a defence in a *sci. fa.* at common law, even when it is brought upon a judgment entered by confession. *Blyd. Law of Usury* 112, *Middleton v. Hill*, 2 Croke Eliz. 588, *Cock v. Jones*, Cowper 727.

and a defence that cannot be interposed to a common law *sci. fa.*, cannot, unless expressly authorized by statute, be plead to *sci. fa.* on a mortgage. *White v. Watkins* 23 Ill., 482.

II. The proceeding by *sci. fa.* to foreclose a mortgage, is a special proceeding *in rem*, and not an *action*, in a legal sense. *Menard v. Marks*, 1 Scam. 25. *Hall v. Byrne*, Ibid, 140. *Woodbury v. Manlove*, 14 Ill., 216, and for this reason it is held that the statute forbidding the bringing of an *action* against an administrator until after the expiration of one year after taking out letters of administration, does not prohibit the commencement of a proceeding by a *sci. fa.* to foreclose a mortgage within that time. *Menard v. Marks* 1 Scam. 25.— So a plea of set off is not allowable in this proceeding, for the reason that the statute providing that “in any action brought upon any contract or agreement, either express or implied,” this defence might be interposed, did not include a proceeding by *sci. fa.* *Woodbury v. Manlove* 14 Ill., 216, and the same with reference to the statute conferring the right to plead want or failure of consideration, which provides that “in any action” this defence may be plead.

Our statute relative to the defence of usury prescribes, that: “Whenever in any *action* brought on any contract or assurance for the payment of money or other thing, it shall appear to the court before which such *action* shall be tried, by the pleading on the case” that usurious interest shall have been reserved, discounted or taken, the plaintiff shall forfeit, &c. Sec. 4 ch. 54, 1 Pur. Stat. 638. And the language of Section 7 of same chapter is as follows: “In the trial of any *action* wherein it shall appear by the pleadings, that the fact of usury shall be put in issue it shall be lawful for the debtor, the creditor being alive, to become a witness” etc.

We insist then that these statutes do not confer the right to set up the defence of usury, in this special proceeding, which is held not to be an action.

III. But it may be insisted that the statute of 1857, so modified the usury law of 1845, in repealing all provisions in the latter imposing penalties, &c, that a plea setting up that a contract entered into while the statute of 1845 was in force, more than legal interest was reserved, or taken, and claiming an abatement of the usurious excess, is rather in the nature of a plea showing a partial want or failure of consideration, than a plea of usury. Be this as it may, it cannot avail the plaintiff in error, inasmuch as it is well settled that neither a failure nor want of consideration can be plead in this proceeding.

IV. Were it competent to a mortgagor to plead usury in this proceeding, the demurrer in this case was properly sustained.

1. In usurious contracts made prior to the passage of the act approved January 31, 1857, where suit is brought subsequently

to that time (as in the present case) the excess of legal interest only is abated. In *Nichols v. Stewart et al* 21 Ill. 106, the Court remarks that "There is in fact no penalty attached to an usurious contract under our statute as we have already decided. It merely modifies the contract, so that if the defendant shall insist upon it, no matter what the terms of the contract may be, he shall only be bound to pay the *principal sum and legal interest*." It should be observed that this language was used with reference to a note made October 4, 1856, drawing interest at the rate of two per cent. per month, upon which suit was instituted subsequently to January 31, 1857, and is therefore an authority directly in point on the case at bar. But as to usurious contracts made subsequently to that date, the whole of the interest is forfeited. *Sifford v. Vail* 22, Ill. 327.

2. A plea which professes to answer more of the count or declaration than, to which, it is in fact a good answer, is bad upon general demurrer. 1 Chit. Pl. 523, *Nichols v. Stewart* 21 Ill. 106, *Moir v. Harrington* 22 Ill. 40, *Marsh v. Bennett* Ibid 313. Therefore:

3. The 4th Plea is defective inasmuch as it commences as an answer to \$400, part and parcel &c., and concludes as a defence to the entire cause of action; while the body of the plea (if its averments sufficiently show anything) would only show that the defendant (below) was entitled to have abated from the face of the note the excess of legal interest, amounting to \$280. But we insist that this plea is also defective as a plea of usury in this: that it does not show what the consideration of the note in question was—nor by whom, nor to whom, nor when, nor where, any money was "actually loaned," and is altogether indefinite and uncertain in its allegations. Blyd. Law of Usury, 110.

4. The 5th plea commences as an answer to the whole cause of action as follows: "And for a further plea in this behalf the said defendant says *actio non* because he says" &c., and proceeds to set up matter, which, if true and it was competent to plead it, would only show a defence to the excess of legal interest included in the note, viz \$280; and concludes by praying judgment as to the sum of \$400.

V. The issue formed on the plea of *nul tiel record* was properly tried by the court, *Steph.* Pl. 101; 2 Bl. Com. 330; yet if this were not so, there is no error in the present case, inasmuch as the record shows, that all the issues were submitted to the jury, who found a general verdict for the plaintiff (below); and in addition to that, the court also found the issue upon the plea of *nul tiel record* for the plaintiff.

77 112

SUPREME COURT,

JAMES M. MOOERS,
Plaintiff in Error,

vs.

SARAH CARPENTER, to use, etc,
Defendant in Error.

B R I E F .

Filed Apr 18, 1861
A. Edsall
Clerk

JAMES K. EDSALL,
Att'y for Def't in Error.

United States of America.

State of Illinois }
Lee County } Sect.

In the Lee County
Circuit Court.

Pleas in the Lee County Circuit Court of the 22nd
Judicial Circuit of the State of Illinois his Honor
John V. Eustace Judge of said Circuit, presiding

In the matter of

Sarah Carpenter to the
use of Gilbert W. Southwick

vs
James M. Moors

} Scire Facias to
foreclose Mortgage

The following is the Precipe & Security for
Costs on file in this Cause

State of Illinois }
Lee County } ss

Of the November Term
A.D. 1858, of the Lee County Circuit Court.

" Sarah Carpenter to the
 use of Gilbert W. Southwick }
 " James M. Mooers } Scire Facias
 to foreclose Mortgage

The Clerk of said Court
 will please issue writ of Scire Facias to foreclose
 the Mortgage filed herewith against said James M.
 Mooers & in favor of said Sarah Carpenter to the
 use of said Southwick directed to the Sheriff of Lee
 County returnable to said Term of said Court

Dated Oct. 1st 1858

James R. Edsall
 Atty for Plff

Same

"

Same

} I do hereby enter my
 self securities for Costs in this
 proceeding & acknowledge myself
 bound to pay or cause to be paid all Costs which
 may accrue to the opposite party herein or to any
 of the officers of this Court in pursuance of the laws
 of this State

Dated Oct. 1st 1858 } G. W. Southwick

} By Jas. R. Edsall "
 Atty

(Endorsed)

"Filed Oct. 1st 1858

Geo. E. Haskell Clerk

per Joseph Ball De"

The following is the writ of Sci. Fa. on file in this cause

~~~~~

" State of Illinois  
Lee County } ss

The People of the State of Illinois  
to the Sheriff of said Lee County Greeting:

Whereas,  
Sarah Carpenter by James K. Edsall her  
Attorney hath this day filed in the Clerk's office of our  
Circuit Court within and for the County of Lee aforesaid, a certain  
deed of Mortgage in words & figures following, that is to say:

"This Indenture Made this Twenty eighth day  
of March in the year of our Lord one thousand eight hundred and  
fifty three; between James M. Moores of the County of Lee  
of the first part and Sarah Carpenter of the County of De Kalb  
and State of Illinois party hereto of the Second part,  
Whereas the said party of the first part is justly indebted  
to the said party of the Second part in the sum of Eight hundred  
Dollars secured to be paid by the said Moores One  
promissory Note dated the Twenty third day of November  
A.D. Eighteen hundred and fifty two, (A.D. 1852) for said  
amount and due in five years after its date -



Now therefore this Indenture Witnesseth, That  
 the said party of the first part for the better securing the  
 payment of the money aforesaid according to the tenor and  
 effect of the said promissory Note above mentioned - And also  
 in Consideration of the further sum of One dollar to him in hand  
 paid by the said party of the Second part at the delivery of these  
 presents the receipt whereof is hereby acknowledged has granted  
 bargained sold and conveyed and by these presents does grant  
 bargain sell and convey unto the said party of the Second part  
 his heirs and assigns forever all the following described tract  
 of Land situated in the County of Lee and State of Illinois,  
 to wit:- The West Half of the North West quarter of  
 Section Number (25) Twenty five in Township Number (22)  
 Twenty two, North of Range Number (9) nine East, Contain-  
 ing (80) Eighty acres - and also a certain other Tract adjoining  
 said Eighty acre tract in the West and Containing (16.20)  
 Sixteen acres and Twenty hundredths - And being the same here-  
 tofore Conveyed by One Josiah Moores to one Josiah E. Moores  
 and by him to the said James M. Moores - Do Have  
 And Do Hold the same together with all and singular  
 the tenements, hereditaments privileges and appurtenances there-  
 unto belonging or in any wise appertaining; and also all the estate  
 interest and claim whatsoever in law as well as in equity which the  
 said party of the first part has in and to the premises hereby convey-  
 ed unto the said party of the Second part his heirs and assigns  
 and to their only 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 executor or administrators shall well and truly pay or  
 cause to be paid to the said party of Second part her heirs



5 " Executor, administrator or assigns the aforesaid sum of money  
" with such interest thereon at the time and in the manner specified  
" in the above mentioned note according to the true intent and  
" meaning thereof that then and in that case these presents  
" and every thing herein expressed shall be absolutely null,  
" and void - In Witness whereof the party of the first part  
" has hereunto set my hand and seal the day & year first  
" above written "

" Done in presence of  
" John B. Eustace "

} " James M. Moores   
" 

Which said Mortgage deed was duly acknowledged by  
the said James M. Moores on the day of the date thereof,  
as more fully appears by the Certificate of acknowledgment  
made thereon in the words & figures following that is to say: -

" State of Illinois

" Lee County } ss" I, John B. Eustace a Justice  
" of the Peace in and for said County  
" in the State aforesaid do hereby Certify that James M. Moores  
" 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 uses and pur-  
" poses therein set forth. Given under my hand and Seal  
" this Twenty eighth day of March in the year of our Lord one  
" thousand eight hundred and fifty three "

" John B. Eustace " J. P. 

And which said Mortgage deed was also duly filed for Record



& Recorded in the Recorder's Office in and for said County of Lee on the said day of the date thereof, as more fully appears by the Record yet remaining in said Recorder's Office in said Lee County & the Certificate of the Recorder of said Lee County indorsed upon said Mortgage deed in the words & figures following to wit: -

" State of Illinois }  
 " Lee County } " Filed for Record March 28<sup>th</sup>  
 " 1853 at 3 o'clock P.M. and Recorded in Book 6. of "Mortgages"  
 " page 439 & 440 - J. S. Boardman Jr."  
 "Recorder"

And Whereas it appears that the last instalment of the whole amount of money in said Mortgage deed mentioned has long since become due and payable by the said James M. Moores to the Sarah Carpenter according to the terms of said Mortgage deed & promissory Note therein mentioned & referred to -

And Whereas by virtue of said Mortgage deed & the Condition therein contained & according to the tenor & effect of the promissory Note in said Condition recited it appears that the said James M. Moores is indebted upon the said Mortgage deed to the said Sarah Carpenter in the sum of Eight-hundred Dollars (\$800) together with interest thereon at the rate of six per centum from the time when said Note became due and payable according to the tenor & effect thereof & by force of the Statute in such case made and provided & the said James M. Moores has wholly failed to pay the same or any part thereof unto the said Sarah Carpenter according to the tenor & effect of the said Mortgage deed & the Note therein recited although often requested so to do -

And Whereas the said Sarah Carpenter by James K. Edwards



7 her said Attorney hath also filed in our said Court Clerk's Office a precept directing a Writ of Scire Facias to be issued upon said Mortgage deed against the said James M. Mooers & in favor of said Sarah Carpenter to the use of Gilbert W. Southwick directed to the Sheriff of Lee County returnable to the next term of our said Circuit Court We therefore Command you that you Summon the said James M. Mooers, if to be found in your County, personally to be & appear in & before our Circuit Court, within & for said County of Lee on the first day of the next Term thereof to be holden at the Court House in Dixon on the Second Monday of November next - And then & there shew cause if any he have why Judgment should not be rendered against him in favor of said Sarah Carpenter, to the use of Gilbert W. Southwick upon the Mortgage deed aforesaid for the said sum of Eight Hundred Dollars with interest thereon as aforesaid which appears to be due & owing to her from said Mooers by virtue of said Mortgage & the Condition therein contained And have you then & there this writ & endorsement thereon the manner in which you shall have executed the same

Witness George E. Haskell Clerk of the Circuit Court in and for said Lee County at the seal thereof at Dixon this 1<sup>st</sup> of October A.D. 1858



George E. Haskell Clerk  
per Joseph Ball D.C.



P

Served the within by reading the same to and in  
hearing of James M. Mooers Oct. 24/58

Service .50

Ozias Wheeler Sheriff

Travel .25

By E. A. Snow Deputy

Retn .10

Recd mrfce of Plaintiff Attorney

.85

O. Wheeler

(Endorsed)

Filed Nov 9<sup>th</sup> 1858

J. S. Boardman Clerk "

---

The following is the Mortgage and Note upon which  
this suit was brought.

---

" This Indenture Made this Twenty eighth  
day of March in the year of our Lord one thousand eight hun-  
dred and fifty three, Between James M. Mooers of the  
the County of Lee of the first part and Sarah Carpenter  
of the County of DeKalb and State of Illinois party heads  
of the Second part - Whereas the said party of the first  
part is Justly in debt to the said party of the Second part  
in the sum of Eight Hundred Dollars secured to be paid  
by the said Mooers one promissory Note dated the Twenty third



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day of November A.D. Eighteen hundred and fifty two  
 (A.D. 1852) for said Amount, and due in five years after its  
 date Now therefore this Indenture Witnesseth, that  
 the said party of the first part for the better securing the  
 payment of the money advanced according to the tenor and  
 effect of the said promissory Note above mentioned. And also in  
 Consideration of the further sum of One dollar to him in hand  
 paid by the said party of the Second part at the delivery of these  
 presents the receipt whereof is hereby acknowledged has granted  
 bargained, sold, conveyed and by these presents does grant,  
 bargain sell and Convey unto the said party of the Second  
 part his heirs and assigns forever All the following described  
 tract of land, situated in the County of Lee and State of Illinois  
 to wit: The West half of the North West quarter  
 of Section Number (25) Twenty five, in Township Number  
 (22) Twenty two North of Range Number (9) Nine East,  
 Containing (80) ~~acres~~ Eighty acres - And also a certain other  
 tract adjoining said Eighty acre tract on the West; and  
 Containing (16.20) Sixteen acres and Twenty hundredths  
 And being the same heretofore Conveyed by one Josiah  
 Moores to one Josiah E. Moores, and by him to the  
 said James M. Moores - To Have and To Hold  
 the same together with all and singular the tenements heredita-  
 ment, privileges and appurtenances therunto belonging or in any  
 wise appertaining, and also all the estate interest and claim  
 whatsoever in law as well as in equity which the said party of  
 the first part has in and to the premises hereby conveyed  
 unto the said party of the Second part his heirs and assigns  
 and to their only proper use benefit and behoof - Provided  
 Always and these presents are upon this express condi-  
 tion that if the said party of the first part his heirs executors



or administrator shall well and truly pay or cause to be paid to the said party of the second part his heirs executor, administrator or assigns the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above mentioned note according to the true intent and meaning thereof that then, and in that case these presents and everything herein expressed, shall be absolutely null and void.

In witness whereof The party of the first part has hereunto set my and seal the day and year first above written.

John V. Eustace

James M. Moores

LS

LS

State of Illinois

Lee County } ss

I, John V. Eustace a Justice of the Peace in and for said County

in the State aforesaid do hereby Certify that James M. Moores 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 uses and purposes therein set forth. Given under my hand and seal this Twenty eighth day of March in the year of our Lord one thousand eight hundred and fifty three

John V. Eustace J. P. Seal

(Certificate on Mortgage)

State of Illinois

Lee County }

Filed for Record March 28<sup>th</sup> 1853 at 3 O'Clock P. M. and recorded in Book C. of Mortgages page 439 & 440

J. S. Boardman Jr. Recorder



(Endorse) "Filed Oct. 1<sup>st</sup> 1858

Geo. E. Haskell Clerk for Joseph Bates & Co.

" Five years after date I promise to pay Sarah  
Carpenter or order the sum of Eight Hundred Dollars  
for value received,

Given November 23<sup>d</sup> 1852.

James M. Moors "

The following are the Pleas, Demurrers & Verdict  
on file in this Cause.

" State of Illinois }  
Lee County } ss

In the Lee Co. Circuit  
Court.

November Term 1858

Sarah Carpenter who sues to  
use G. M. Southwick

"  
James M. Moors"

} 246



1. And the sd defendant Comes & defends &c.  
when &c. and says Actio non - because he says that  
the Mortgage deed in said writ of Scire Facias men-  
tioned is not his deed - and thereof he puts himself  
upon the Country

2 And for a further plea in this behalf sd defendant  
says Actio non - because he says that he, sd defen-  
dant hath paid the said sum of Eight hundred Dollars  
in said Mortgage deed specified to the plaintiff - to wit -  
At the County of Lee aforesaid, this he is ready to verify  
wherefore prays Judgment &c.

3 And for a further plea in this behalf sd defendant  
says Actio non, because he says that there is not any  
Record of the said supposed Mortgage deed in said writ  
mentioned in manner & form &c. and this sd defendant is  
ready to verify - Wherefore he prays Judgment &c.

4. And for a further plea in this behalf as to four  
hundred Dollars, part & parcel of the sum of Eight  
hundred Dollars in said writ & declaration mentioned,  
said defendant says Actio non, because he says,  
that by the note in writing & Mortgage deed in said  
writ mentioned, is taken, reserved & secured to said  
Plaintiff above the rate of six Dollars in the hundred per  
annum for the forbearance of the sum of Four hundred  
Dollars actually loaned for the period of Five years -  
that is to say the sum of Four hundred Dollars for the  
forbearance of the said sum of Four hundred Dollars, part  
of the said sum of eight hundred Dollars for the period



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of five years, contrary to the form of the Statute in such case made & provided - And this he is ready to verify  
Whereupon he prays Judgment &c.

- 5 And for further plea in this behalf said defendant says *Actio<sup>on</sup>* because he says That said promissory note & Mortgage in said Scire Facias mentioned was given for the loan & forbearance of the sum of Four hundred Dollars money actually loaned on the day of the date of said note & Mortgage & that the remaining sum of four hundred Dollars in said note mentioned being included in said note for & as interest & usury for the loan of said first mentioned sum for the term of five years being a greater rate of interest than was then & there allowed by law, to wit. for and at the rate of Twenty per centum per annum for the whole term which said note & Mortgage had to run to wit for the term of five years contrary to the statute in such case made and provided, & this the said defendant is ready to verify, wherefore he prays Judgment of said Scire Facias as to the said sum of four hundred Dollars part & parcel of the said sum of Eight hundred Dollars therein demanded -

Heaton & Altman

Atty for deft "

Enclosed

" Filed Nov. 20<sup>th</sup> 1858

J. S. Boardman Clerk "



The following is the Replication & Demurrer on file in this Cause

" November Term A.D. 1858  
 Ill County Circuit Court.

Sarah Carpenter who  
 was to the use of B. W. Southwick }  
 v  
James M. Mooers }

And now comes the said Plaintiff  
 by James R. Edsall her Attorney & as to the first Plea  
 of said defendant & whereof he puts himself upon the  
 Country - with the line -

And as to the plea of said defend-  
 ant by him thirdly above pleaded the plaintiff says that  
 there is a Recd of the said Mortgage deed in said writ  
 mentioned in manner & form &c & prays that the same  
 or evidence thereof may be presented to & received & inspected  
 by the Court &c & that day be given for that purpose &c.

And as to the Pleas of said defendant by him  
 secondly - fourthly & fifthly above pleaded, the plaintiff  
 says the same & each of them & the matter & thing therein  
 & in each of them contained as therein stated & set forth  
 is & are insufficient in law to prevent said Sarah Carpenter  
 from having and recovering judgment for the said amount  
 & in manner & form as is above thereof demanded in said  
 writ of Scire Facias &c &c. & this she is ready to verify  
 &c. Wherefore she prays judgment &c.



15 And for cause of demurrer to said Plea of said  
defendant secondly, above pleaded the said Sarah Carpenter  
for assigns as follows - That said 2<sup>nd</sup> Plea concludes to  
the Country. - Whereas the same should conclude with  
a verification "

Jas. K. Edsall

Atty for Plff -

Endured

" Filed Nov. 22 1858 - J. S. Boardman Clerk "

At a Regular Term of the Lee County Circuit  
Court of the 22<sup>nd</sup> Judicial District Circuit of the State  
of Illinois begun and holden on the Second Monday of  
November A.D. 1858, at the Court House in Dixon in said  
County

Present.

Hon. John V. Eustace Judge

George E. Haskins Clerk

per Joseph Ball D. C

Ozias Wheeler Sheriff

Be it Remembered That on this 29<sup>th</sup> day of Novem-  
ber 1858, the same being one of the regular days of said  
November Term, the following entry was made as appears  
to us of Record

" Sarah Carpenter to the use  
of Gilbert W. Southworth

246

" James M. Moore

} Scire Facias

} to enforce Mortgage

On this day Comes



the Plaintiff by Edsall her Attorney, and the defendant by Heald and Alton his Attorneys and now the Answer to the fourth and fifth plea herein is sustained."

The following is the Replication to 2<sup>nd</sup> Plea & Verdict on file in this Cause.

See County Circuit Court. May Term A.D. 1859  
 Sarah Carpenter & the  
 use of Gilbert W Southwick }  
 " } Replication to 2<sup>nd</sup> Plea  
 James Moses - }

And the said Plaintiff as to the Plea of said defendant secondly above pleaded says. precludi non because he says - that the said defendant had not at the said time when ~~he~~ shall not paid said plaintiff the sum of Eight hundred dollars or any part thereof in manner & form as said defendant hath above thereof in said 2<sup>nd</sup> Plea alleged & of this the plaintiff puts herself upon the Country &c.

Ja<sup>s</sup> H Edsall

Atty for P<sup>l</sup>ff

(Endorsed) Filed May 3<sup>rd</sup> 1859

J. S. Boardman Clerk

"Verdict" We the undersigned Jurors find for the Plaintiff, and the amount due Nine Hundred and Seven Dollars  $7\frac{1}{2}$ .  
 Abraham Marison Freeman, Horace Stevens, A. C. Owen Daniel M Harris, Patrick Hogan, Peter Potter, Philip H. Kaper M. R. Barney E. W. Aytele John Phelps W<sup>m</sup> C. Brust, Joseph Hough



17

Endorsed, Dated Feb. 16<sup>th</sup> 1860

J. S. Boardman Clerk

And afterwards to wit. At a regular Term of the said Lee County Circuit Court at the February Term thereof - On the 15<sup>th</sup> day of said February A.D. 1860 the same being one of the regular days in said February Term  
Present

Now John B. Eustace Judge  
Robert L. Burchell State Attorney  
Isaac S. Boardman Clerk  
Gertie Harding Sheriff

The following proceedings were had as appears to us of Record in said Cause.

Sarah Carpenter who sues to  
the use of Gilbert W. Southwick

50

James M. Mooers

} Scire Facias to  
procure a Mortgage

Now on this day comes the Plaintiff by Edsall her Attorney & also comes the defendant by Healin & Goodwin his Attorney, also come a jury of good and lawful men to wit. George Abstell, Leffer Potter, Isaac Stearns, Julian R. Barnes, Philip B. Hapser - Joseph Huff - D. M. Harris, Abraham Morrison, John Rice Patrick Hogan William L. Bred and A. C. Owen who were duly elected tried and sworn well and truly, to



try the matters & things in Controversy between the respective parties and the hour of adjournment having arrived the Court directed the Jury to separate, and after due Charge to assemble & meet the Court promptly, at nine o'clock to morrow morning;

---

And afterwards to wit. At a regular Term of said Court at said Delmar Term 1860, on the 16<sup>th</sup> day of said Delmar, AD 1860 the same being one of the regular days in said Delmar Term. The following proceedings were had as appears to us of Record in said Cause

" Sarah Carpenter who sues  
to the use of Gilbert W. Southwick

50

James M. Moores

} Scire Facias  
} to foreclose a Mortgage

On this day again came the said parties by their respective Counsel. Also came the Jury heretofore empanelled in this behalf and thereupon the trial proceed, and the Jury having heard the evidence and the Argument of Counsel retire to consider of their verdict and afterwards



19

on this day came the said Jury into Court and return a verdict that they find for the plaintiff and the amount due to the Plaintiff to be (\$ 907.07) Nine Hundred and seven Dollars and seven Cents, And the Court now finds issue on Plea of Nul tiel record for the Plaintiff and thereupon, Comes the defendant and enters his motion for a new trial - "

And afterwards to wit - At a regular Term of said Court at said Delmar, Term Asl 1860 on the 18<sup>th</sup> day of Delmar - the same being one of the regular days in said Delmar Term the following proceedings were had as appears to us of Record in this Cause

50

" Sarah Carpenter who  
 owes to the use of Gilbert W Southwick }  
 James M. Moors } Scire Facias  
 to enforce a  
 Mortgage



On this day again Came the said parties by  
their respective Counsel and the defendants motion for a  
new trial coming up to be heard is now by the Court  
overruled

---



21

And afterwards, to wit. At a regular Term of said Court at said Delmar, Term thereof on the 27<sup>th</sup> day of said Delmar, A.D. 1860, the same being one of the regular days in said Delmar, Term the following proceedings were had as appear to us of Record in said cause.

Sarah Carpenter, who  
sues to the use of Gilbert W.  
Southwick

50

James M. Moores

Scire Facias to  
Recover a Mortgage

On this day again comes the said parties by their respective Counsel and thereupon the Court proceeded to render judgment upon the verdict. It is considered and adjudged by the Court that the Plaintiffs have and recover of the defendant against the Mortgaged premises described in this Scire Facias, the sum of Nine Hundred and Seven Dollars and seven Cents the amount so found due upon the Mortgage herein, together with her costs and charges in this behalf of sustained and it is further ordered that the said Mortgaged premises to wit. The West half of the North West quarter of Section Number (25) Twenty five in Township Twenty two (22) North of Range Number Nine East, Containing (80) Eighty acres, and also a Certain other tract adjoining said Eighty (80) acres tract on the West, and Containing (16.20) Sixteen acres



and twenty hundredths, and being the same heretofore conveyed by One Josiah Moores to One Josiah E. Moores and by him to the said James M. "Moores" be sold to satisfy the said sum of Nine Hundred and Seven Dollars and Seven Cents as found due upon said Note & Mortgage together with the Costs of this suit. And that a Special Writ of Execution issue to the Sheriff of Lee County, Commanding him to sell the said described premises to satisfy this judgment."

---

The following is the Execution issued out of this Court which is in the words & figures to wit: ~

" State of Illinois  
Lee County } ss

The People of the State of Illinois  
to the Sheriff of said County Greeting: ~ We command  
you that out of the following described Lands & Tenements to wit:  
The West half of the North West quarter of Section Number Twenty  
five (25) in Township number 22 North of Range Number Nine (9)  
East Containing Eighty acres, and also another certain tract adjoin  
ing said Eighty acres tract on the West and Containing (16.20) sixteen  
acres & twenty hundredths and being the same heretofore conveyed by  
one Josiah Moores to one Josiah E. Moores & by him to the said



23

James M. Moores Defendant in your County, you cause to  
be made the sum of Nine Hundred and seven dollars and seven  
cents which Sarah Carpenter who sued to the use of Gilbert W.  
Southwick Plaintiff lately in the Circuit of said County of Lee  
at a term thereof begun and held at Dixon on the second Mon-  
day of February A.D. 1860 to wit, on the day of  
the date hereof to wit. February 27<sup>th</sup> A.D. 1860 of said Term  
recovered against James M. Moores, defendant and which  
by the said Court was adjudged to the said Plaintiff for the  
Amount found due and owing to the said Plaintiff from  
said defendant in a certain promissory Note & deed of Mort-  
gage - And also the further sum of Ten (\$10<sup>00</sup>/100) dollars  
and Twenty cents which were adjudged to the said Plaintiff  
for Costs and Charges in that behalf expended whereof the said  
defendant does stand convicted as appears to us of Record  
And have you these moneys ready to render to the said  
Plaintiff for damages, debt and Costs aforesaid, and make  
return of this Writ with an endorsement thereon in what  
manner you shall have executed the same in ninety  
days from the date hereof

Witness Isaac S. Boardman, Clerk of our said  
Court and the seal thereof at the City of Dixon in said County  
of Lee this 28<sup>th</sup> day of May, A.D. 1860

(Circuit Court)  
Seal

Isaac S. Boardman Clerk  
per Joseph Ball D.C.

State of Illinois

Lee County of February Term A.D. 1860 in  
the matter of



24

Sarah Carpenter to the  
use of Gilbert W. Southwick

James M. Moors

1860. 3 Continuances, 60. \$ for cost 10 - writ of Sci. Wa. 200 -  
 Ord Sust. Dem 20 - Ord call June 20 - - - - } 3. 10  
 Alty & appearance 25 - 4 Docketing 40 Swearing 2 witnesses 10  
 Filing 6 papers 30 call June 15 - } 1. 15  
 Ord for judgment 20 - Entering judgment 25 Docketing J. 10  
 order for execution 20 - } . 75  
 Ex'n and filing 45 Docketing Ex'n 10 Copy Bill cost 20 -  
 Entering Sheriff's Return 10 Entering Satisfaction 15. Ord for sale 20 } 1. 20  
 Making and Entering Costs 30. Certificate and seal 35. Ord for  
 costs 20 - Ent. Bond 10 Ord ora mo for new trial 20 } 1. 15  
 Sheriff's Fees paid by Plaintiff 85<sup>00</sup> Jury fees 300 - } 3. 85  
 Total \$ 11. 20

I, Isaac S. Boardman Clerk of the Circuit Court of  
 Lee County do certify that the above is a true Copy from the Book  
 of Plaintiff's costs - Given under my hand and seal of said Court  
 Isaac S. Boardman Clerk  
 per Joseph D. Ball D.C.

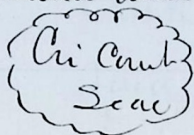
Defendant's Costs in the within entitled suit  
 1860 Docket Fees 2. 50  
 Alty's Def't & appearance 25. Filing 2 papers 10 -  
 Copy Bill Costs 20. Entering Sheriff's Return 10 - } 65  
 Making and entering Costs 30 Ent mo new trial 20 & 15 } 65  
 \$ 3. 70

(On Costs of Transcript See outside Cover)



25-

I, Isaac S. Boardman Clerk of the Lee County Circuit Court, do hereby Certify that the foregoing is a true copy from my Dec book of Defendants Costs in the within entitled suit  
Witness my hand and the seal of said Court



Isaac S. Boardman Clerk  
per Joseph Ball D.C.

State of Illinois }  
Lee County } ss

The people of the State of Illinois  
to the Sheriff of said - County - We Command you,  
that the above or within Dec Bill, amounting to Three dollars  
and seventy cents you cause to be levied of the goods and Chattels  
land and tenements of James M. Moores in your County, accord-  
ing to the Statute in such case made and provided - And make  
return of this writ, within ninety days, as the law directs, with  
with an endorsement hereon in what manner you shall have  
executed the same -

Witness Isaac S. Boardman Clerk of the  
said Circuit Court and the seal thereof at his office in the City  
of Dixon in said County this 28<sup>th</sup> day of May A.D. 1860



Isaac S. Boardman Clerk  
per Joseph Ball D.C.

Received this Execution this 28<sup>th</sup> day of May A.D. 1860.  
at - O'Clock and - minutes - M.

Lester Harding Sheriff



(Endorsed)

February 5. 1860  
Execution on Judgment Confessed

Lee Co. Circuit Court. Dec Book 6 page 530  
 Whole No. 50 Pl. Va No. 471

Sarah Carpenter to the  
 use of G. W. Southwick

<sup>n</sup>  
James M. Moore

|                 |              |
|-----------------|--------------|
| Damages - - -   | \$ 907. 07   |
| Costs Plaintiff | 11. 20       |
| - Defendants    | <u>3. 70</u> |
|                 | 14. 90       |

Judgment February 27<sup>th</sup> 1860

This writ issued May 28 1860

Collect interest at six per cent per annum from above  
 mentioned date of judgment



State of Illinois }  
Lee County } ss

I. Isaac S. Boardman

Clerk of the Circuit Court of the  
said Court of Lee do hereby Certify  
that the foregoing is a true, perfect  
and complete Copy of all the proceed-  
ings of Record in the above entitled cause

in this Court & of all the papers appertaining to the same

In witness whereof I have hereunto  
set my hand and the Seal of said Circuit Court this  
23<sup>d</sup> day of June A.D. 1860.

I. S. Boardman Clerk.

Let a supersedeas issue  
Bond Two Thousand dollars  
Harry Morgan & Elias B. Baker  
Sureties

J. D. Eaton



And now comes the said James M. Provers  
by Heaton & Goodwin his Attorneys and  
says that: in the Record and proceedings  
aforesaid and also in the judgment aforesaid  
there is manifest Error in this,  
That the Court Erred in sustaining the  
plaintiffs' Demurrer to defendants fourth  
plea.

That the Court Erred in sustaining the  
plaintiffs' demurrer to defendants fifth  
plea.

That the Court Erred in rendering judge-  
ment for the plaintiff on his demurrer  
to defendants fourth and fifth pleas.

That the Court Erred in not submitting the  
issue formed, on defendants third plea,  
to the jury.

That the Court Erred in submitting a  
part of the issues of fact to a jury and  
trying a part himself without Consent  
of parties.

That the Court Erred in not granting  
the defendants motion for a new trial.

That the Court Erred in giving judge-  
ment for the plaintiff.

Heaton & Goodwin  
Appellants Attys



Supreme Court, State of  
Illinois April Term  
Ad. 1861

James M. Mowers  
Defendant in error

Sarah Carpenter, who  
sued to the use of the  
Deft in error

And now comes the  
said Sarah Carpenter Deft  
dunt in error ~~by~~ James H.  
Edwell her attorney & says  
that there is no error in the  
record & proceedings of the  
said in error & for  
as the said Plaintiff in  
error ~~but~~ above stated  
in that behalf alleged  
and this the said Defendant  
in error is ready to verify &c  
where she goes &c

James H. Edwell  
Atty for Deft in error

Found in error

Filed March 14, 1861

L. Leland Clerk  
per the Court



112.

Record,

Sarah Carpenter  
to the use of Gilbert W. Southwick

"

James M. Moors

Filed August 16, 1860.  
L. Deland  
Clerk

Fees for Transcript. \$7. 75