


14361

No. \_\_\_\_\_

Supreme Court of Illinois

Timmer  MAN

---

vs.

Phelps.

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71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 23

1861

*Summerman*  
*vs*

*Phelps*

1862

*Preferred*

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1862.

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JOHN TIMMERMAN *et al.* }  
                  *vs.*                }     *Error to McHenry County.*  
GEORGE W. PHELPS.         }

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10    The only service of process upon the defendants to the bill was as follows:

“I have duly served the within on the within named John Timmerman, David C. Wagner, and Elizabeth Timmerman, by reading the same to them in their presence and hearing, and by delivering to each of them a true copy of the same, this 24th day of May, 1858.

W. C. STODARD,  
*Deputy Sheriff.*”

11    There was no appearance by defendants.

The decree was rendered by default.

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ERRORS ASSIGNED.

1st. The Court erred in rendering the decree without proper service of process upon defendants.

2d. There was no proper service of process.

## POINTS AND AUTHORITIES.

The return of service is wholly insufficient. The service could only be made by a Sheriff, or by the Coroner in some particular cases where it affirmatively appears that the Sheriff cannot act.

*Deitch vs. Edwards*, 1 Scam. 127.

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The reason of the rule is obvious. The Court is presumed to know who the Sheriff of the County is, but it is not presumed to know who are deputy Sheriff's.

*Thompson vs. Haskell*, 21 Ill. 215.

GLOVER, COOK & CAMPBELL,  
*For Plaintiff in Error.*

23

Sumner  
vs  
Phelps

Tolice Ap. 23. 1862  
J Leland  
Clerk

Supreme Court - Apr. 7. 1861 -  
No 33 -

Zimmerman vs Phelps

T. Lyle Dickey being sworn on  
oath says that he is informed & believes  
that the return of the officer on the original  
summons in the cause below - is not  
a full statement of the material facts  
which should be returned & that <sup>att'y for</sup> the  
defendant in this cause - expects to  
apply to the Circuit Court at its next term  
to amend the record in this respect -  
& expects that the same will be  
amended before the next term of  
this Court - Defendant Phelps asks  
for a certiorari to the Clerk of  
the Circuit Court to Certify up  
so much of the record as may  
be amended -

T. Lyle Dickey

Subscribed & sworn before me  
this 1<sup>st</sup> day of May A.D. 1861

L. Leland CLK  
J. B. King Deputy

69 23

Timmerman

<sup>25</sup>  
Phelps

---

Officer

Filed May 1st 1861  
L. Leland  
per

Know all Men by these Presents, That John Timmerman  
and David C. Wagner  
as principal, and Henry A. Mix  
as security, are held and firmly bound  
unto George W. Phelps

in the penal sum of Six thousand  
good and lawful money of the United States, for the payment of which, well and truly  
to be made, the said John Timmerman David C. Wagner  
and Henry A. Mix  
bind themselves, their heirs, executors and administrators,  
jointly, severally and firmly by these Presents.

Witness, our hands & seals

this 29<sup>th</sup> day of August - A. D. 1860

The Condition of the above Obligation is such, That, whereas the above named  
George W. Phelps

did, at the June Term of the Circuit Court,  
held in and for the County of Cole in the  
State of Illinois, A. D. 1859 recover a judgment against the above bounden John  
Timmerman & David C. Wagner for the sum of  
Five thousand five hundred & twenty dollars  
& sixty seven cents

for the sum of

to reverse which said judgment, the  
said John Timmerman & David C. Wagner

have 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 John Timmerman & David C. Wagner

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said  
judgment, and all judgments, costs, interest and damages which the said Supreme Court  
shall adjudge against them

and abide the order and judgment of said Su-  
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full  
force and effect.

John Timmerman [SEAL.]  
by his attorney in fact  
George P. Jacobs [SEAL.]

David C. Wagner [SEAL.]  
by his attorney in fact  
George P. Jacobs [SEAL.]

Henry A. Mix [SEAL.]  
by his attorney in fact  
George P. Jacobs [SEAL.]

Know all Men by these Presents, That We John Timmerman Elizabeth Timmerman David C. Wagner and Henry A. May all of the County of Ogle and State of Illinois

have made, constituted and appointed, and BY THESE PRESENTS do make, constitute and appoint George P. Jacobs of said County & State true and lawful attorney for us and in our name place and stead to make execute and deliver any bond or bonds that our said attorney may deem for our interest to be executed in any cause and in any Court in the State of Illinois in which we or any member of us are parties or in any suit in the said State may become necessary

[Large decorative flourishes and scribbles]

giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute shall lawfully do or cause to be done by virtue thereof.

In Witness Whereof, We have hereunto set our hand, and seal, the Tenth day of August One Thousand Eight Hundred and Sixty

SEALED AND DELIVERED IN PRESENCE OF

John Timmerman [Seal]

Elizabeth Timmerman [Seal]

D. C. Wagner [Seal]

H. A. May [Seal]

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Power of Attorney.

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John Sumner and

vs

George W. Phelps

~~1860~~

1860

Filed Aug. 27 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 of Ogle Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Ogle County, before the Judge thereof, between George W. Phelps

plaintiff, and John Timmerman, Elizabeth Timmerman and David C. Wagner

defendants, it is said manifest error hath intervened, to the injury of the aforesaid John Timmerman and David C. Wagner

as we are informed by their complaints 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 27<sup>th</sup> day of August in the Year of Our Lord One Thousand Eight Hundred and Sixty

L. Leland

Clerk of the Supreme Court.  
J. S. Smith

*John Zimmerman et al*

No.

vs.

*George W Phelps*

**WRIT OF ERROR.**

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

*L. Leland*

*J. B. Rice* <sup>Clerk.</sup> *Deputy*

FILED *August 29* A. D. 1860

*L. Leland*

*Clerk.*



STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1862.

---

JOHN TIMMERMAN *et al.* }  
*vs.* } *Error to McHenry County.*  
GEORGE W. PHELPS. }

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1 This was a suit in chancery to foreclose a Mortgage. Bill filed December 12th, 1857, by George W. Phelps against John Timmerman, David C. Wagner, and Elizabeth Timmerman.

10 The only service of process upon the defendants to the bill was as follows:

"I have duly served the within on the within named John Timmerman, David C. Wagner, and Elizabeth Timmerman, by reading the same to them in their presence and hearing, and by delivering to each of them a true copy of the same, this 24th day of May, 1858.

W. C. STODARD,  
*Deputy Sheriff.*"

11 There was no appearance by defendants.

The decree was rendered by default.

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ERRORS ASSIGNED.

1st. The Court erred in rendering the decree without proper service of process upon defendants.

2d. There was no proper service of process.

## POINTS AND AUTHORITIES.

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The reason of the rule is obvious. The Court is presumed to know who the Sheriff of the County is, but it is not presumed to know who are deputy Sheriff's.

*Thompson vs. Haskell*, 21 Ill. 215.

GLOVER, COOK & CAMPBELL,  
*For Plaintiff in Error.*



STATE OF ILLINOIS, SUPREME COURT,  
THIRD GRAND DIVISION.

APRIL TERM, 1882.

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*Thompson vs. Haskell*, 21 Ill. 215.

GLOVER, COOK & CAMPBELL,  
*For Plaintiff in Error.*

Tennison man

Philips  
Abstracts  
or  
Points

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

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JOHN TIMMERMAN, *et al.* }  
                                  *vs.* }  
GEO. W. PHELPS.                  }

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## BRIEF OF DEFENDANT IN ERROR.

On page 11 of the record it is recited in the order taking the bill for confessed, that it appeared to the Court that the defendants were duly served with process of summons herein; and by the 26th section of the act entitled Sheriffs and Coroners, Purple's Stat., 1124, it is provided that in no case shall the death of a sheriff take away or suspend the powers of the deputy sheriff; but said deputy may do all acts and things which he could have done had the sheriff remained in full life, until his powers be suspended by the appointment of a principal sheriff. In relation to courts of general jurisdiction, the rule is, that everything shall be presumed to have been done which was necessary to support its adjudication. In case of the death of his principal, the deputy must necessarily make the return in his own name, because there is no principal whose name he can use. The only question then is, whether it is necessary to presume in the record the evidence upon which the Court based its opinion. This fact actually was adjudicated in this case, and evidence of the death of the sheriff was introduced on the question whether there should be a rule for an answer and a default. The record does not show it, it is true, but is it not to be intended in support of the adjudication that the fact of the sheriff's death was brought to the knowledge of the Court? The sheriff is the officer of the Court, and may not the Court take judicial notice that its officer is dead? If the Court is presumed to know its own

*See 3 Gilman 578.*

*presume*

sheriff, as stated in the 21 Ill., 215, why not know its own deputy sheriff, whose appointment by the sheriff is entered of record, (Purple's Stat., 1120,) and that the case has happened which makes it necessary for the deputy to use his own name, because he has no principal whose name he can use? If the record contained the words, "and it appears to the Court that the sheriff was dead when the summons in the case was made, it is therefore considered that there has been due service of process in this cause," would it not be held that there was jurisdiction of the person of the defendant? Is it absolutely necessary that the return of the deputy should contain a statement of the reason why he did not use the name of his principal? Suppose the order of the Court contained the recital that John Doe being examined as a witness, his evidence is satisfactory proof of the death of the sheriff, and therefore it is considered that there has been due service, &c. ? *service*

In short, if the death of the sheriff might have been proved by oral evidence in support of the return of the deputy sheriff, or the Court could know its own officer judicially, then the adjudication that there was due service of process must stand. We are aware that it has been decided in the 1st Scam., 127, on the authority of a case cited from Breese, that a return like that in the case at bar is bad. No authorities are cited to sustain the case cited in Breese, and no reason is given for the decision except that the deputy ought to act in the name of the principal. The Court did not perhaps think there might be a deputy sheriff when there was no sheriff. If the idea had occurred, perhaps the decision would have been different. It does not appear in the case in 1st of Scam., nor in that in Breese, that the Court had adjudicated that service had been duly made. The principle of the case in 21 of Illinois is in conflict with that in 1st Scam. and in Breese, and practically overrules them. If it does not, it comes so near it that consistency would seem to require the Court to go the rest of the way.

The return of the officer should undoubtedly show that he has done all the necessary acts to make a service; that he read the summons to defendant, and when he did it, &c.; but it cannot be necessary that the return by a sheriff should show that he was duly elected and qualified. Nor ought it to be held necessary, when the service is by a deputy sheriff in his own name, that the return should show that he was a deputy who acted in his own name because he had no principal. If Judge Eustace knew judicially his own sheriff when living, he ought also judicially to know he was dead; and if so, he knew by the records of his Court that his deputy sheriff was an officer of the Court competent to serve its process.

Suppose the return had been signed A. B., late Sheriff of Ogle county, by C. D., his Deputy Sheriff him surviving; or that "I, A. B., the deputy of C. D., late Sheriff and now deceased, do certify that I served the within writ by, &c.," was the form of the return, would it have been good? and if so, would there have been anything stated except that which a Court already was presumed to know, as it knew James A. Dick was its sheriff without Dick having mentioned the fact in his return? This Court did not know that Dick was sheriff of Cass county.

If it was satisfied that the Court below knew whether it was so or not, so it ought to be content with the opinion of the Court below that this summons was duly executed by a deputy sheriff.

If this decree must be reversed, we see no substantial reason why the cause should not be remanded in order to have an alias summons issued and served, or why it should not be remanded in order that the return might be amended. The last reason, however, is of no practical use in this case, because the deputy sheriff is dead. The case in the 1st of Scammon does not seem to be reasonable either on this subject or in relation to the sufficiency of the return.

LELAND & BLANCHARD,  
*For Defendant in Error.*

23

Immerman

is

Phelps

Pring

Filed Apr 23, 1842

J. L. Loomis

clerk

STATE OF ILLINOIS, SUPREME COURT,  
THIRD GRAND DIVISION.

APRIL TERM, 1862.

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JOHN TIMMERMAN *et al.* }  
                  *vs.*                }     *Error to McHenry County.*  
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*Costs vs. Rose*, 17 Ill. 276.

*Boylard vs. Boyland*, 18 Ill. 215. 557

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*Thompson vs. Haskell*, 21 Ill. 215.

GLOVER, COOK & CAMPBELL,  
*For Plaintiff in Error.*

9- 23 - 12

Trimmerman

Phelps

Abstracts & Proofs

Filed April 23. 1867

L. Leland  
Clerk

TO THE PUBLIC  
I HEREBY CERTIFY  
THAT THE ABOVE NAMED  
WORKS OF ART BY  
THE SAID AUTHOR  
HAVE BEEN DEPOSITED  
IN MY OFFICE  
IN ACCORDANCE  
WITH THE ACT  
IN THAT RESPECT  
PASSED MARCH 3<sup>d</sup> 1877  
IN WITNESS WHEREOF  
I HAVE HEREUNTO  
SET MY HAND AND  
SEAL THIS 23<sup>d</sup> DAY  
OF APRIL 1867  
L. LELAND  
CLERK

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

JOHN TIMMERMAN, *et al.* }  
*vs.* }  
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3 Gil 578

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In short, if the death of the sheriff might have been proved by oral evidence in support of the return of the deputy sheriff, or the Court could know its own officer judicially, then the adjudication that there was due service of process must stand. We are aware that it has been decided in the 1st Scam., 127, on the authority of a case cited from Breese, that a return like that in the case at bar is bad. No authorities are cited to sustain the case cited in Breese, and no reason is given for the decision except that the deputy ought to act in the name of the principal. The Court did not perhaps think there might be a deputy sheriff when there was no sheriff. If the idea had occurred, perhaps the decision would have been different. It does not appear in the case in 1st of Scam., nor in that in Breese, that the Court had adjudicated that service had been duly made. The principle of the case in 21 of Illinois is in conflict with that in 1st Scam. and in Breese, and practically overrules them. If it does not, it comes so near it that consistency would seem to require the Court to go the rest of the way.

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Suppose the return had been signed A. B., late Sheriff of Ogle county, by C. D., his Deputy Sheriff him surviving; or that "I, A. B., the deputy of C. D., late Sheriff and now deceased, do certify that I served the within writ by, &c.," was the form of the return, would it have been good? and if so, would there have been anything stated except that which a Court already was presumed to know, as it knew James A. Dick was its sheriff without Dick having mentioned the fact in his return? This Court did not know that Dick was sheriff of Cass county.

If it was satisfied that the Court below knew whether it was so or not, so it ought to be content with the opinion of the Court below that this summons was duly executed by a deputy sheriff.

If this decree must be reversed, we see no substantial reason why the cause should not be remanded in order to have an alias summons issued and served, or why it should not be remanded in order that the return might be amended. The last reason, however, is of no practical use in this case, because the deputy sheriff is dead. The case in the 1st of Scammon does not seem to be reasonable either on this subject or in relation to the sufficiency of the return.

LELAND & BLANCHARD,  
*For Defendant in Error.*

23

Simmons

as

Phelps

Brief of Jeff in Error

Filed Apr 23, 1862

J. Seland

clerk

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

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*vs.* }  
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3 Bill 5-78

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If it was satisfied that the Court below knew whether it was so or not, so it ought to be content with the opinion of the Court below that this summons was duly executed by a deputy sheriff.

If this decree must be reversed, we see no substantial reason why the cause should not be remanded in order to have an alias summons issued and served, or why it should not be remanded in order that the return might be amended. The last reason, however, is of no practical use in this case, because the deputy sheriff is dead. The case in the 1st of Scammon does not seem to be reasonable either on this subject or in relation to the sufficiency of the return.

LELAND & BLANCHARD,  
*For Defendant in Error.*

Immerman

vs

Phelro

Brief

Filed April 23, 1862

J. L. Leane

Clerk

1  
State of Illinois }  
Ogle County }  
}

Pleas in the Honorable the  
Circuit Court of Ogle County Illinois

George W. Phelps  
John Zimmerman  
David Le Wagner  
Elizabeth Zimmerman

And the said plaintiff files  
his bill in the Ogle Circuit Court which is in the words & figures  
State of Illinois } following to wit: In the Circuit Court of  
Ogle County ss } said County of the June Term AD 1858  
County of Ogle }

To the Honorable John V. Eustace  
Presiding Judge of the Judicial Circuit  
of the State of Illinois in chancery sitting

Your Orator George W. Phelps  
of the City of Austin <sup>in the</sup> State of Texas humbly  
complains and sheweth unto your Honor  
that heretofore to wit on the Twenty  
First day of November in the year of  
Our Lord One thousand Eight hundred  
and fifty-three of said Ogle County  
one John Zimmerman and David  
Le Wagner of said Ogle County made  
and signed their certain five promis-  
sory Notes and delivered the same  
unto one Joseph Wagner in the words  
and figures following to wit

\$1000.00

Oregon November 21<sup>st</sup> 1853  
On or before the first day of April  
AD 1854 I promise to pay Joseph  
Wagner or Order one thousand dollars  
for Value Received

John Zimmerman  
D Le Wagner

2

\$1000.00

Oregon November 21<sup>st</sup> 1853

On or before the first day of April A D 1855  
I promise to pay Joseph Wagner or order One thousand  
dollars with interest at six per cent from April 1<sup>st</sup>  
1854 for Value received

John Zimmerman  
D. le Wagner

\$1000.00.

Oregon November 21<sup>st</sup> 1853

On or before the first day of April A D 1856  
we or either of us promise to pay Joseph Wagner  
or Order the sum of One thousand dollars for  
Value received with Interest at six per cent from  
April 1<sup>st</sup> A D 1854.

John Zimmerman  
D. le Wagner

\$1000.00

Oregon November 21<sup>st</sup> 1853

On or before the first day of April A D 1857 we or  
either of us promise to pay Joseph Wagner or order the  
sum of One thousand Dollars with interest from the first  
day of April 1854 for Value received

John Zimmerman  
D. le Wagner

\$0500.00

Oregon November 21<sup>st</sup> 1853

On Or before the first day of April  
1858 we or either of us promise to pay Joseph Wagner  
or Order the sum of Five hundred dollars with interest  
from the first day of April A D 1854 for Value received

John Zimmerman  
D le Wagner

And your Orator further shews unto your Honor that on the day of the date of the promissory notes aforesaid in order to secure the payment of the same the said John Zimmerman and David le Wagner together with Elizabeth Zimmerman wife of the said John Zimmerman signed sealed and delivered unto the said Joseph Wagner their certain deed of Mortgage in the words and figures following to wit

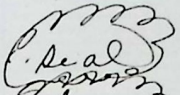
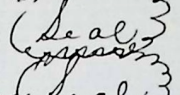
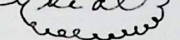
This indenture made this Twenty first day of November in the year of Our Lord One thousand Eight hundred and <sup>23</sup>~~thirteen~~ between David le Wagner & John Zimmerman & Elizabeth his Wife of the County of Ogle State of Illinois of the first part and Joseph Wagner of the County and State aforesaid of the second part Witnesseth that the said party of the first part for and in consideration of the sum of Twenty five dollars to them in hand paid the receipt whereof is hereby acknowledged. have granted bargain sold ~~and~~ conveyed and confirmed and do hereby grant bargain sell convey and confirm unto the said party of the second part and to his heirs and assigns forever all those tracts or parcels of Land situate and being in the County of Ogle and State of Illinois and known and described as follows viz. The North West quarter of Section Eighteen Town Twenty four Range Ten East also the South West quarter of Section Eighteen Town Twenty four Range Ten East Also the North West quarter of Section Twentieth (19) Township Twenty four Range Ten East containing in all four hundred and seventy five acres and forty six hundredths of an acre. Together with all and singular the appurtenances therunto belonging or in anywise appertaining To have and to hold the above described premises unto the said party

4

of the second part <sup>and to</sup> his heirs and assigns forever and the said parties of the first part for them selves and their heirs executors and administrators do covenant and agree to and with the said party of the second part his heirs and assigns that they are well sig'd of the premises above conveyed as of a good and indefeasible estate in the Law in fee simple and that the said premises are clear of all incumbrances whatsoever and the said party of the first part the aforesaid premises unto the said party of the second part and his heirs and assigns ~~against~~ against the claim or claims of all and every person whomsoever do and shall warrant and forever defend by these presented

Provide always that if the said party of the first part or their heirs executors or administrators shall well and truly pay or cause to be paid to the party of the second part his heirs or assigns the sum of four thousand five hundred dollars and interest thereon according to the tenor and effect of five certain promissory Notes bearing even date herewith and executed by the said David Le Wagner and John Zimmerman to wit one for the sum of one thousand dollars payable April 1<sup>st</sup> 1854 one for the sum of one thousand dollars payable April first 1855 one for the sum of one thousand dollars payable April first 1856 one for the sum of one thousand dollars payable April first 1857 & one for the sum of <sup>one thousand</sup> ~~one thousand~~ dollars payable ~~on the~~ April first 1858 then these premises shall be null and void any thing therein contained to the contrary notwithstanding. In witness whereof the said the said parties of the first part have hereunto set their hands and seals on the day and year first above written

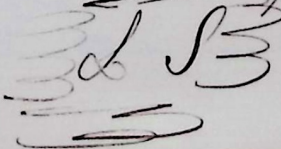
Signed sealed and delivered in the presence of  
John M. Hinkle

D. L. Wagner   
 John Timmerman   
 Elizabeth Timmerman 

And your Orator further shows that the said Mortgage was duly acknowledged and recorded as appears by the certificate of acknowledgement thereon endorsed by the Officer who took said acknowledgement and by the certificate of the Recorder of said Ogle county thereon endorsed which certificates are in the words and figures following to wit

State of Illinois }  
 Ogle County }  
 I, John W. Heikel, clerk of the County Court in and for said county in the State of aforesaid do hereby certify that David L. Wagner & John Timmerman personally known to me as the same persons whose names are subscribed to the above deed appeared before me this day in person and acknowledged that they signed sealed and delivered the said instrument of writing as their free and voluntary act And the said Elizabeth Timmerman wife of the said John Timmerman having been by me examined separate and apart and out of the hearing of her said husband and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her she acknowledged that she had freely and voluntarily executed the same and relinquished her right of dower to the lands and tenements therein mentioned without compulsion of her husband and that she does not wish to retract the same

Given under my hand and seal of County Court  
 this 26<sup>th</sup> day of November A.D. 1853



John W. Heikel  
 Clerk of the County Court

6 State of Illinois } Records  
Cape County } Office

Filed for Record Nov. 26<sup>th</sup> 1853  
at 6 O'clock P.M. Recorded in Book of Mortgages  
Page 256 & Examined

R. B. Light  
Recorder


And your Orator further shews unto your Honor that  
on or about the thirtieth day of March in the year  
of Our Lord One thousand Eight hundred and  
fifty seven the said Joseph Wagner assigned each  
and all of the said five promissory notes for and in  
consideration of a certain sum of money then paid  
by your Orator unto the said Joseph Wagner unto  
your Orator by indorsements thereon in writing under  
his hand in the words following to wit

"With out recours" Joseph Wagner, and that  
the said Joseph Wagner at the same time for  
the same consideration sold assigned and transferred  
the mortgage aforesaid unto your Orator by an indorse-  
ment thereon in writing under his hand duly acknowledged  
which indorsement and acknowledgement is in the words  
and figures following to wit

For Value received of Joseph  
Wagner do hereby sell assign transfer and set over to  
George W. Phelps all my right title interest claim and  
demand of or and to the within Indenture of Mortgage  
and do hereby authorize and empower the said Phelps  
to foreclose the same in my name or otherwise as the  
Law shall permit Witness my hand and seal  
this 30<sup>th</sup> day of March A.D. 1854

Witness

David S. Prude

Joseph Wagner 

State of Illinois }  
Cyle County ss }

I David S. Pride Justice of the Peace  
in and for said County do hereby certify that Joseph  
Wagoner personally known to me as the same person  
whose name is subscribed to to the foregoing assign-  
-ment appeared before me the day in person and  
acknowledged that he signed sealed & delivered  
the said instrument of writing as his free &  
voluntary act for the uses and purposes therein  
set forth

Witness my hand and seal this 30<sup>th</sup> day March  
1857 David S. Pride J.P. Seal

And that the said Joseph Wagoner then  
and there delivered the said five promissory  
notes and the <sup>said</sup> deed of Mortgage so assigned unto  
your Orator by means whereof and by the assign-  
-ments and endorsement aforesaid aforesaid  
the said five promissory notes and the said Indenture  
of Mortgage became due and payable unto your Orator

And your Orator further shews  
unto your Honor that there is now due and owing  
unto your Orator from and by the said John Timmer-  
man and David le Wagner upon the said five  
promissory notes so secured as aforesaid by the  
deed of Mortgage aforesaid at this date the just and  
full sum of four thousand three hundred and  
ninety two dollars and seventy four cents which  
the said John Timmerman and David le  
Wagner have utterly failed neglected and re-  
-fused and still do fail neglect and refuse to  
pay unto your Orator

Wherefore your Orator prays  
that the Peoples writ of Subpoena may issue

8 From the Chancery side of this Honorable court  
under the seal thereof and in due form of  
law directed to the said John Zimmerman  
David le Wagner and Elizabeth Zimmerman  
and that they be summoned and required  
each and every of them personally to be and appear  
before this Honorable court on the first day of the  
next term thereof to be begun and holden at Oregon in  
said Oga County on the first Monday of June  
next then and there to answer this your Orators  
bill of complaint that by the order of this  
Honorable court then and there to be made an account  
be taken of the amount which shall then be due and  
owing for principal and interest from the said John  
Zimmerman and David le Wagner unto your  
Orator upon the notes and mortgages aforesaid and  
that the said John Zimmerman and David le  
Wagner be required by further order of this court  
to pay unto your Orator upon a short day to be  
appointed and mentioned by the court the sum  
of money which shall be so found to be due and  
owing unto your Orator and that in case of  
default in said payment the said John  
Zimmerman David le Wagner and Elizabeth  
Zimmerman be forever foreclosed and barred  
from all right and equity of redemption  
of the premises mentioned in the mortgage  
aforesaid saving and excepting the right of  
redemption provided by law and that this  
Honorable court appoint a commissioner to sell  
the land and premises mentioned in said deed  
of mortgage should default be made in the pay-  
ment of the money aforesaid and that the  
said commissioner be authorized and empowered  
to convey the premises aforesaid unto  
the purchaser or purchasers thereof after the

9

time of the redemption thereof provided by Law shall have expired and of and from the proceeds of such sale to pay unto your Orator the amount due and owing here upon the notes and Mortgage aforesaid or which shall be found due thereon as aforesaid together with all his reasonable costs and charges in this behalf and for such further relief as to Equity and good conscience may seem right and proper

George W. Phelps

May 7<sup>th</sup> 1858  
Miles B Light  
Complacent Solicitor

Bond for costs

State of Illinois }  
County of Ogle }  
}

In the circuit court of said  
County of the June Term  
AD 1858

George W. Phelps

\_\_\_\_\_

vs  
John Yoninirmace

\_\_\_\_\_

In Chancery

David Le Wagner &

\_\_\_\_\_

Bill to fore close Mortgage

Elizabeth Leinerman

\_\_\_\_\_

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the Officers of this court in pursuance of the Laws of this State

Dated this 7<sup>th</sup> day of  
May AD 1858

Miles B Light

"Filed May 8 1858"  
"G. W. Smith Clerk"

## Summons

State of Illinois }  
 Ogle County ss }

The people of the State of Illinois  
 to the Sheriff of said County Greeting We command  
 you to summon John Zimmerman David Le  
 Wagner and Elizabeth Zimmerman if they  
 shall be found in your County personally  
 to be and appear before our Circuit Court on  
 the first day of the next term thereof to be  
 begun and holden at the Court House in Oregon  
 in said County on the first Monday in the  
 month of June next to answer to a certain  
 Bill of Complaint filed in our said Court  
 on the Chancery side thereof against them  
 by George W. Phelps and further to do and  
 receive what our said Court shall then and  
 there consider in that behalf and this they  
 shall in no wise omit hereof fail and have  
 you then and there this writ with an endorse-  
 ment thereon of the manner in which you may execute  
 the same

Witness My Hand Clerk of said Court  
 and the Seal thereof at Oregon this 8<sup>th</sup> day of  
 May A.D. 1858

M. W. Smith, Clerk

for  
 Seal }  
 Case }

On the Back of which summons was the following  
 indorsement-

I have duly served the within on the within  
 named John Zimmerman and David Le Wagner and  
 Elizabeth Zimmerman by reading the same to them  
 in their presence and hearing and by delivering  
 to each of them a true copy of the same

11 This 24<sup>th</sup> day of May 1858

W. C. Stoddard

Deputy Sheriff

Said summons was filed upon the bail as follows

Filed June 8, 1858

W. M. Smith clk

By W. C. Stoddard

Orders of court in the above cause at the June Term of the Ogle County Circuit Court June 9<sup>th</sup>, 1858

George W. Phelps

vs

John Zimmerman  
David Le Wagner &

Bill to foreclose

And now on this day comes the said complainant by Miles B. Light his solicitor and it appearing to the court that the defendants have been duly served with process of summons herein on motion of the said complainant it is ordered that a rule be entered herein upon the said defendants to answer the said complainant's Bill of complaint by said Monday next and in default of such answer the matters at issue in said complainant's Bill of complaint contained To be Taken as confessed as to the said Defendants

Order of court June 14<sup>th</sup> 1858

George W. Phelps

vs

John Zimmerman  
David Le Wagner &  
Elizabeth Zimmerman

Foreclosure = And now on

this day again comes the said complainant by Mr Light his solicitor and the said Defendants are three times solemnly called and came not nor any one for them but make default and it appearing that the said defendants have failed to plead herein

12

it is ordered that ~~that~~ the matters and things in the said Complainants Bill contained be taken as confessed as to them whereupon on motion of ~~the~~ said complainant it is ordered that this cause be referred to the Master in chancery to take and report the proof herein

Report of the Master in chancery

State of Missouri  
Cape County

In the Circuit Court of said  
County June Term 1858

George W Phelps

vs  
John Zimmerman  
David Le Wagner  
Elizabeth Zimmerman

In chancery

To the Hon John V Easton  
presiding Judge of the 22<sup>d</sup> judicial circuit  
in chancery sitting

I the undersigned Master  
in chancery of said county to whom was referred  
the above entitled cause to take and report the  
evidence herein respectfully report that I have  
been attended at my office by Miles B Light Esq  
Solicitor for complainant who produced before  
me four promissory notes made by John  
Zimmerman & D. Le Wagner dated the 21<sup>st</sup>  
day of November 1853 for the sum of one

13

Thousand Dollars each payable to Joseph Wagner or order on or before the first day of April 1854 1855 1856 and 1857 ~~and~~ <sup>and</sup> respectively endorsed by Joseph Wagner also a promissory note Dated November 21<sup>st</sup> 1853 made by John Zimmerman & D le Wagner for the sum of Five Hundred dollars payable to Joseph Wagner or order before the 1<sup>st</sup> day of April 1858 and orsed by Joseph Wagner

Said Solicitor for the complainant further produced before me a deed of mortgage bearing even date with the said promissory notes duly executed acknowledged and recorded by which said. Mortgage. David. le Wagner John, Zimmerman & Elizabeth Zimmerman his wife mortgaged to the said Joseph Wagner in fee to secure the payment of the ~~payment of the~~ <sup>of the</sup> said promissory notes the following described Lands situate in the County of Ogle and State of Illinois to wit

The North West quarter of Section 18 and the South West quarter of Section Eighteen and the North West Quarter of Section Nineteen all in town twenty four. Range ten East containing Four Hundred and Seventy five acres and <sup>46</sup>/<sub>100</sub> of an acre which mortgage was duly assigned by the said Joseph Wagner to the complainant by an assignment Endorsed on said mortgage under the

14)

under the hand and seal of the said Joseph Wagner dated the 30<sup>th</sup> day of March A.D. 1857 and duly acknowledged on the same day before David S. Priden a Justice of the Peace of said Ogle County all of which from the said Notes hereto annexed and marked "A" "B" "C" "D" and "E" respectively and from the said Mortgage hereto annexed with the assignment and the acknowledgment thereof endorsed thereon and marked

"F" will fully appear I further find from computation that the amount now due and unpaid upon said promissory notes and Mortgage is Four thousand five hundred and twenty dollars and sixty seven cents all of which is respectfully submitted

Joseph Sears  
Master in Chancery  
Ogle County  
Illinois

And the said Report was filed as follows

"Filed June 18 1858"

"W. W. Smith clk."

"C"

15

\$1000.00

Oregon November 21<sup>st</sup> 1853  
 " On or before the first day of April AD 1854  
 " I promise to pay Joseph Wagner or Order  
 " one thousand dollars for Value Received  
 John Zimmerman  
 J. C. Wagner

Endorsed on Back "Without recourse" Joseph Wagner  
 " Recd on the within note the interest up to April 1<sup>st</sup> 1855  
 " Rec April 1<sup>st</sup> 1855 One hundred Joseph Wagner  
 " and forty dollars on the within no  
 " Recd the interest on Joseph Wagner  
 " the within note up to April 1-1856 Joseph Wagner  
 " Recd on the within note April 1-1856 Three hundred  
 " and twenty dollars," Joseph Wagner

Filed March 12 1858 WMSmith, clk

"B"

\$1000.00

Oregon November 21<sup>st</sup> 1853  
 " On Or before the first day of April AD 1854  
 " I promise to pay Joseph Wagner or order one  
 " thousand dollars with interest at six per  
 " from April 1<sup>st</sup> 1854 for Value received  
 John Zimmerman  
 J. C. Wagner

Endorsed on Back "Without Recourse" Joseph Wagner  
 Rec the interest on the within note up to April  
 1<sup>st</sup> 1855 Joseph Wagner Recd the Interest on the within  
 note up to April 1-1856 Joseph Wagner

Filed March 12 1858 Filed March 12 1858  
 W. W. Smith clk, W. W. Smith

"C"

16

\$1000.00

Oregon November 21<sup>st</sup> 1853

On or before the first-day of April AD 1856 we or either of us promise to pay Joseph Wagner or Order the sum of One Thousand dollars for Value received with interest at six per cent from April 1<sup>st</sup> AD 1854

John Zimmerman  
D. Le Wagner

Endorsed on Back "Without recours Joseph Wagner"  
"Rec the interest on the within note up to April 1<sup>st</sup> 1855 Joseph Wagner"

Received the interest on the within note up to April 1-1856 Joseph Wagner  
Filed March 12 1858 M W Smith ckr

"D"

\$1000.00

Oregon November 21<sup>st</sup> 1853

On or before the first day of April 1854 we or either of use promise to pay Joseph Wagner or Order the sum of One Thousand Dollars with interest from the first day of April 1854 for Value received

John Zimmerman  
D. Le Wagner

Endorsed on Back "Without recours" Joseph Wagner"  
"Rec the interest on the within note up to April 1-1855 Joseph Wagner"  
"Received the interest on the within note up to April 1-1856 Joseph Wagner"  
"Filed March 12 1858"

"E"

Oregon November 21<sup>st</sup> 1853

"On Or before the first day of April 1858  
" We or Either of us promise to pay Joseph  
" Wagner or Order the sum of <sup>24</sup> one hundred  
" dollars with Interest from the first day of  
" April AD 1854 for value received

" John Zimmerman,  
" D. C. Wagner,

Ever endorsed on Back

"Without recourse," Joseph Wagner,

"Rec the interest on the within note to April,

" 1<sup>st</sup> 1855 Joseph Wagner."

"Received the Interest on the within note up,

" to April 1-1856 Joseph Wagner"

18

This Indenture, Made this Twenty first day of November in the year of our Lord One Thousand Eight Hundred and Fifty Three

BETWEEN David le Wagner, John Zimmerman & Elizabeth his wife of the County of Ogle and Joseph Wagner of the County of Ogle State of Illinois of the first part and the County of Ogle State of Illinois of the second part.

WITNESSETH, that the said party of the first part, for and in consideration of the sum of Seventy Five Dollars, to them in hand paid the receipt whereof is hereby acknowledged, ha ve granted, bargained, sold, conveyed and confirmed, and do hereby grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns, Forever, all those tracts or parcel of Land, situate and being in the

County of Ogle and State of Illinois and known and described as follows, viz: The North West quarter of Section Eighteen Town Twenty four Range Ten East Also the south West quarter of Section Eighteen Town Twenty four Range Ten East Also the North West quarter of Section Nineteen (19) Township Twenty four Range Ten East containing in all four hundred and seventy five acres and forty six hundredths of an acre

Together with all and singular the appurtenances therunto belonging, or in any wise appertaining:

TO HAVE AND TO HOLD the above described premises unto the said party of the second part, and to his heirs and assigns forever; and the said party of the first part for themselves and their heirs, executors, and administrators, do covenant and agree, to and with the said party of the second part, his heirs and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible inheritance in the law in fee simple, and that the said premises are clear of all incumbrances whatsoever,

And the said party of the first part the aforesaid premises, unto the said party of the second part, and his heirs and assigns, against the claim or claims of all and every person whomsoever, do and will warrant and forever defend by these presents.

Provided Always, that if the said party of the first part, or their heirs, executors or administrators shall well and truly pay or cause to be paid to the party of the second part his

heirs or assigns the sum of Four thousand five hundred dollars and interest thereon ~~thereon~~ according to the tenor and effect of five certain promissory notes bearing even date herewith and executed by the said David le Wagner and John Zimmerman to wit: one for the sum of one thousand dollars payable April first 1855 one for the sum of one thousand dollars payable April first 1856 one for the sum of one thousand dollars payable April first 1857 & one for the sum of five hundred dollars payable April first 1858

then these presents shall be NULL & VOID, anything herein contained to the contrary notwithstanding. IN WITNESS WHEREOF, the said party of the first part ha ve hereunto set their hands and seals on the day and year first above written.

SIGNED, SEALED AND DELIVERED IN PRESENCE OF John M Hinkle

D. le Wagner John Zimmerman Elizabeth Zimmerman

STATE OF ILLINOIS, Ogle COUNTY. } ss. I,

John M Hinkle Clerk of the County Court in and for said County, in the State aforesaid, do hereby certify, that David le Wagner & John Zimmerman

personally known to me as the same person whose name subscribed to the above Deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act And the said Elizabeth Zimmerman wife of the said John Zimmerman having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, she acknowledged that she had freely and voluntarily executed the same, and relinquished her right of dower to the lands and tenements therein mentioned without compulsion of her husband, and that she does not wish to retract the same.

Gives under my hand and seal this 26th day of November A. D. 1853 John M Hinkle Clerk of the County Court

Wm Smith etc  
By H. Smith  
Filed June 10 1858

Record  
R B Bugh  
State & Examiners  
of the books of all mortgages  
Filed for record Nov 20 1853

State of Illinois  
Record  
Clerk  
Office

No 9252

61

Mr. Public received J. Joseph Wagoner do hereby sell  
assign transfer and set over to George W. Phelps all my  
right-title interest claim and demand of in and to the  
with in indenture of mortgage and do hereby authorize  
and empower the said Phelps to for close the same  
in my name or otherwise as the law shall permit  
in this deed of mortgage.

Witness my hand seal this 30th day of March 1854  
State of Illinois  
Joseph Wagoner  
Egle County ss David S Pride Justice of the Peace in  
said County do hereby certify that Joseph Wagoner  
personally known to me as the said person whose name  
is subscribed to the foregoing assignment appeared  
before me this day in person and acknowledged  
that the signed sealed & delivered the said instrument  
of writing as his free & voluntary act for the use  
and purposes therein set forth

Witness my hand seal this 30th day March 1854  
David S. Pride JP Seal

## Decree of Foreclosure

George W Phelps  
 vs  
 John Zimmerman  
 David le Wagner &  
 Elizabeth Zimmerman

Bill in chancery  
 to foreclose Mortgage

And now on this day comes the complainant by Miles B. Light his Solicitor and Joseph Sears Esq Master in Chancery presents his report herein which is examined and approved by the Court and ordered to be filed and the said Defendants having been heretofore three times solemnly called and came not nor any one for them but made default herein and this cause coming on to be heard upon the complainants bill the said Masters report and the proffs and exhibits herein in consideration whereof ~~the Court~~ ~~whereof~~ the Court being fully advised in the premises finds the Equity of the case with the complainant and that there is due to him from the said Defendants John Zimmerman and David le Wagner on the notes and Mortgage in said complainants Bill mentioned on this 19<sup>th</sup> day of June A.D. 1858. the sum of Four thousand five hundred

21

and Twenty dollars and sixty Seven cents

\$4520.67

It is therefore ordered and adjudged <sup>by the Court</sup> and decreed that the said defendants within Sixty days from this date pay to the said complainant the said sum of Four thousand five Hundred and Twenty dollars and sixty Seven cents \$4520.67 with interest thereon to be computed from this day until paid and also the costs of this suit and in default thereof that Joseph Sears Esq. Master in Chancery of this Court sell the Lands and premises in said bill of complaint described to wit The North West Quarter of Section Number Eighteen (18) and the South West quarter of Section Number Eighteen (18) and the North West quarter of Section Number Nineteen (19) all in Township Number Twenty four (24) North and Range Number Ten (10) East of the <sup>2<sup>nd</sup></sup> Fourth 24<sup>th</sup> Principal Meridian in said Ogle County containing Four hundred and seventy five acres and forty six one hundredths of an acre 475 <sup>46</sup>/<sub>100</sub> which said sale shall be made at public Auction to the highest bidder or bidders for lease in hand at the door of the Court House in Oregon in said Ogle County after the same has been advertised by a notice of the time place and terms of such sale together with a description of the premises to be sold inserted in the

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Ogle County Reporter printed and published at said Oregon for ~~four~~<sup>four</sup> successive weeks next immediately preceding the day of sale and that upon making such sale the said Master in chancery make execute and deliver unto the purchaser or purchasers a certificate or certificates of sale of the tenor and effect required by law in case of sales of land on judgment and execution and that said Master file a duplicate copy or copies of said certificate or certificates of sale in the Recorder's Office of said Ogle County within the time prescribed by law for the filing thereof in like cases and that said Master of and from the proceeds of such sale pay first the costs of this proceeding and second the amount due complainant as aforesaid with interest as aforesaid and the balance if any there be unto the defendants and that upon the expiration of fifteen months from ~~said day~~ ~~day~~ of sale the said Master make execute acknowledge and deliver unto such purchaser or purchasers a good and sufficient deed or deeds of the lands and premises sold as aforesaid unless the same shall be before that time redeemed according to law and that said defendants and each and every of them in case of such default as aforesaid and of such sale and conveyance be forever barred and foreclosed

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of all right and equity of redemption of the  
lands and premises aforesaid and that  
the said master make report of this actings  
and doings herein by virtue hereof at the  
next term of this court after making such  
sale and that this cause is hereby continued  
June 19<sup>th</sup> 1858

John V. Estlin  
Judge

Said decree was filed as follows

"Filed June 28, 1858"

"M. W. Smith clk."

## Masters Report of Sale

State of Illinois  
 Ogle County ss

In Ogle Circuit Court  
 of February Special Term  
 A.D. 1859

George W. Phelps  
 vs  
 John Timmerman  
 Eliza Bath Timmerman  
 and David Le Wagner

To the Honorable John V. Ceastace  
 Judge of the twenty second judicial circuit  
 of said State in chancery sitting

I the undersigned Master  
 in chancery of said County respectfully report  
 to Your Honor that by virtue of a Decree  
 of said Court made in the above entitled cause  
 at the June Term of said Court <sup>A.D. 1858</sup> authorizing  
 me in default of payment by the above named  
 defendants to the above named complaint  
 within sixty days from the date of said decree  
 of the sum of four thousand Five hundred  
 and twenty dollars and sixty seven cents  
 and interest thereon from the date of said  
 decree and costs of said suit to sell  
 at public auction at the door of the  
 Court House at Oregon in said County

25 to the highest bidder for cash to make said  
 sum with interest & costs, <sup>and costs</sup> ~~and costs~~ of sale  
 The North West quarter and the South West  
 quarter of Section Eighteen and the North West  
 quarter of Section Nineteen all in Gordon County  
 Four Range Ten East of the fourth P.M. in  
 the County of Ogle and State Illinois I did  
 after the expiration of said sixty days default hav-  
 ing been made in the payment of ones aid  
 for the time aforesaid proceeded to Advertise  
 the said premises for sale by publishing  
 a notice in the Ogle County Reporter a  
 weekly public newspaper published at Oregon in  
 said county for the term of four successive  
 weeks next immediately preceding the day  
 of sale hereinafter mentioned giving in said  
 Notice a description of the premises aforesaid  
 and the names of the parties to said suit  
 and stating therein that I should proceed by  
 virtue of said decree to sell said premises  
 at public auction to the highest bidder  
 for cash to make the sum of ones aid at  
 the door of the Court House <sup>at Oregon</sup> in said  
 County on the Sixth day of October A.D.  
 1858 between the hours of ten o'clock A.M. and  
 five o'clock P.M. of said Day as from  
 the printers certificate of publication  
 hereto annexed marked "A" will fully appear  
 and at the time and place fixed

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for said sale by said notice I did proceed to sell said premises at public auction to the highest bidder for cash in separate parcels of one quarter section and the said lands were then and there severally struck off and sold to George W. Phelps aforesaid he being the highest and best bidder therefor for the sums following to wit The North West quarter of section Eighteen aforesaid for the sum of Fourteen Hundred and sixty seven dollars and the South West quarter of section Eighteen aforesaid for the sum of Fourteen hundred and sixty seven dollars and the North West quarter of section Nineteen aforesaid for the sum of One thousand seven hundred and fifty nine dollars and eighteen cents amounting in the aggregate to four thousand six hundred ninety three &  $\frac{18}{100}$  dollars and that thereupon I gave to the said purchaser a certificate in writing describing the lands purchased and the sum paid for each Tract and stating therein that the purchaser would be entitled to a deed of the same in fifteen months from the date of said sale unless the same were redeemed according to law and also within ten days from the date of said sale filed in the

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Said Report of Sale was filed as follows

"Filed. Nov 20 1858. M W Smith Clerk"  
J. B. Smith Esqy.

office of the Recorder of said Ogle County a duplicate of said certificate And the said purchaser then & there retained the amount of his debt it being the sum of Four thousand six hundred & one & 28/100 dollars & paid in the costs of suit & of the sale of aforesaid amounting to the sum of ninety one & 9/100 dollars of which latter sum I paid to the Clerk of the Circuit Court the sum of Thirteen & 69/100 <sup>dollars</sup> being the costs of suit as from his receipt hereto annexed ~~and~~ marked "B" will fully appear and to E. H. Leggett printer the sum of six dollars for <sup>publication</sup> ~~publishing~~ as from his receipt hereto annexed marked "C" will appear & retained my commissions on said sale at 3 pr cent on the first two hundred dollars and one & 1/2 pr cent on the balance amounting to seventy two & 30/100 dollars

All of which is respectfully submitted

Joseph Sears  
Master in Chancery  
Ogle County Ill

Recd of Sears <sup>"B"</sup> thirteen & 69/100 dollars in full of costs of suit in above matter Nov 18, 1858  
M W Smith Clerk

# OGLE COUNTY, SS.

George W Phelps vs John Timmerman, David G. Wagner, and Elizabeth Timmerman.—Bill to foreclose Mortgage.

**B**Y VIRTUE of a decree of the Hon. Circuit Court of the County of Ogle and State of Illinois, made in the above entitled cause at the June Term of said Court, holden at Oregon, in and for said county, on the first Monday in June, a d 1858, authorizing and empowering the undersigned, master in Chancery of said County, in default of the payment by the above named defendants to the above named complainant within sixty days from the date of said decree, of the sum of Four Thousand, Five Hundred and Twenty dollars and Sixty-seven cents, with interest thereon from the date of said decree and costs of said suit, to sell at public auction, to the highest bidder, for cash, the north west quarter of section number eighteen and the south west quarter of section number eighteen, and the north west quarter of section number nineteen, all in township number twenty-four, north of range number ten, east of the fourth principal meridian, in said county of Ogle and State of Illinois, containing four hundred and seventy-five and 46/100 acres, to make said sum with interest and costs as aforesaid and the costs of such sale; And whereas default has been made in said payment for the time limited in said decree aforesaid: Therefore, I will, on the sixth day of October, a d 1858, between the hours of ten o'clock a mand five o'clock p m, of said day, at the door of the Court-house, in Oregon, in said county, proceed to sell all the right title and interest of the above named defendants in and to the premises aforesaid, at public auction, to the highest bidder for cash, to make the sum aforesaid, together with interest and costs and the costs of such sale. Oregon, September 3, 1858.

S/S

JOSEPH SEAFS, Master in Chancery,  
Ogle County, Illinois.

"A"

INFORMS the citizens of Ore-  
gon and vicinity, that he is  
prepared to do all kinds of work  
in his line of business, at short notice.  
In Emerson & Barker's building,  
Oregon, 11 to 24, 1857.

**C. A. FREDERICK,**  
Watch Maker & Repairer.

Tuesday, Wednesday and Thursday,  
of each week. Persons wishing to secure pic-  
ture of themselves and friends will please give  
me a call. Room over Volter & Light's Drug  
Store.—914

WILL take PICTURES in OREGON, on

I, E. H. LEGGETT, Publisher of the Ogle County  
REPORTER, a weekly public Newspaper, published  
Oregon, in said County and State, do hereby certify  
that the annexed notice was published in said News-  
paper for and during Five successive weeks;  
the first of said publication being on the 9<sup>th</sup> day  
of September A. D. 1858, and the last on  
the 14<sup>th</sup> day of October A. D. 1858.

E. H. Leggett Publisher.

Printer's Fees \$ 6.00 By .....

Received of Joseph Sears Payment  
in full for publishing annexed notice as certified above.

"C"

E. H. Leggett  
By .....

## Decree Confirming Master Sale

George W. Phelps

John Tommerman

Elizabeth Tommerman

David Le Wagner

And now on this day comes the complainant by Miles B Light his solicitor and the Master in Chancery of this court having filed his report <sup>of sale</sup> ~~in this cause~~ of the premises mentioned in the bill of complaint in this cause whereby it appears that on the sixth day of October in the year of Our Lord one thousand eight hundred and fifty eight the said Master in Chancery sold at public auction in compliance with the decree heretofore made in this cause the premises aforesaid and that the same were struck off and sold to George W. Phelps for the sum of four thousand six hundred and ninety three dollars and Eighteen cents he having being the highest and best bidder therefore and an order having been entered confirming said report <sup>and sale</sup> ~~and an order having been entered confirming said report~~ and unless cause be shown to the contrary on or before the 22<sup>nd</sup> day of June AD 1859 which time having elapsed and no cause having been shown why said report and sale there in mentioned as made as aforesaid should not be approved and confirmed and it appearing to the court that said report and sale ought to be approved and in all respects confirmed it is therefore Ordered adjudged

29 and decreed on motion of said complainant  
by his said solicitor that the said report  
and sale be and they are hereby in all  
things approved and confirmed and in all  
respects held good and it is further ordered  
adjudged and decreed that in case the  
said lands sold as aforesaid shall not be  
redeemed in pursuance of the statute in  
such case made and provided by the  
defendants or either of them nor by other  
parties authorized by law to redeem the  
same that Joseph Sears Esq said Master  
in Chancery or the Master in Chancery for  
the time being at the expiration of the time  
provided by Law for such redemption  
by good and sufficient deed for that  
purpose convey the said lands and prem-  
ises as mentioned and described in said  
bill of complaint in said decree and in  
said report and sold as aforesaid to the  
said complainant and purchaser George  
W. Phelps his heirs and assigns in pursuance  
of said sale and the purpose thereof

And this cause is hereby continued  
June 1854 John V Eustace  
July 20

Said decree was filed as follows  
"Filed June 22<sup>nd</sup> 1854  
"M. W. Smith clk  
"By H J Smith  
"Depty

State of Illinois }  
 Ogle County, ss } I Mortimer M. Smith Clerk of  
 the Circuit Court in and for  
 said County, do hereby certify that the above and  
 foregoing is a full true and perfect Transcript  
 of the Record and papers of a cause lately pend-  
 ing in said Court on the Chancery side thereof  
 wherein George M. Phelps was Complainant and  
 John Timmerman, David C. Wagner and Eliza-  
 beth Timmerman are Defendants, and the  
 whole thereof

Witness my hand and the seal of  
 said Court this 17<sup>th</sup> day of March  
 A.D. 1866 at my office in said Ogle  
 County.

Mortimer M. Smith, Clerk

And now come the said Respon-  
 dents by Glover, book & pamphlet their  
 Solicitors and say that in the Record  
 aforesaid and in the decree of said  
 Court aforesaid there is manifest  
 error in this to wit

- 1 The Court erred <sup>in</sup> "entertaining ju-  
 risdiction of the person of said de-  
 fendants and each of them as afo-  
 said in manner and form aforesaid
- 2 The Court erred in entertaining  
 jurisdiction of the cause aforesaid  
 in manner and form aforesaid

The Court erred in rendering the  
decree aforesaid in manner and  
form aforesaid

Wm. Cook & Campbell

271 64 23  
John Furmenan

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George W. Phelps

Manuscript of  
Essay of Euseb

Filed April 11<sup>th</sup> 1860  
L. Deland  
Clerk

~~\$5.00 D. P. fee~~  
~~per L. Deland~~  
per Rev.