

14730

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

# Supreme Court of Illinois

Milner

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VS.

Willard et al

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STATE OF ILLINOIS,  
SUPREME COURT,  
THIRD GRAND DIVISION.

No. 257

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

Milner  
vs  
Hilard



257 - 107

STATE OF ILLINOIS.

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SUPREME COURT,

APRIL TERM, A. D. 1864.

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*Thomas Milnor, Appellant,*

*vs.*

*E. W. Willard, S. Lind, his*

*Assignees and others,*

*Appellees.*

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ARGUMENT FOR APPELLEES,

By MATHER & TAFT.

*Filed May 18. 1864*  
*S. S. Mather & Co*

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CHICAGO:  
JAMESON & MORSE, PRINTERS.  
1864.

# SUPREME COURT OF ILLINOIS,

Third Grand Division, April Term, 1864.

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*Thomas Milnor, Appellant,*  
*vs.*  
*E. W. Willard, S. Lind, his*  
*Assignees and others,*  
*Appellees.*

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ARGUMENT OF MATHER & TAFT FOR APPELLEES.

*May it please the Court:*

The dates of the transactions upon which the present suit has arisen are as follows :



1854; June 19. Date of contract under which Milnor claims, and of which he is assignee.

Down payment paid June 19, 1854.

Payment of June 19, 1855, paid July 21, 1855.

Payment " 1856, paid June 19, 1856.

Payment " 1857, paid June 20, 1857.

Payment " 1858, paid June 25, 1858.

Last Payment " 1859, not paid.

1859, January 11. Lockwood conveys the lot in question to Lind and Willard.

1861, January 9. Willard sells out to Lind his interest in all the property, Lind agreeing to *relieve* Willard of the debt of \$85,575 due to Brown & Lockwood on 1st February and 1st March, 1864.

1861, April 1. Lind releases the lot in question to Willard, to increase the fund for Willard's relief and indemnity.

1861, July 6. Lind, *insolvent*, assigns his estate to Lake and Osborn for benefit of creditors.

1861, October 6. Willard serves notice on Milnor that contract is at an end and forfeited.

1861, November. Willard files his bill *quia timet*, against Lind and others. Amends do. *Cross bill* filed.

1862, September 22. Decree entered; Lake and Osborn appointed receivers, at Willard's request, and the lot in question put into the decree for sale, at the request of Willard and also of assignees.

1862, October 16. Wells Lake offers \$2,000 for the lot, *Court approve*, and sale made by contract.

1863, April 19. Milnor *tenders* to Willard \$934.21, after a delay of *one year, six months and over* from Willard's notice to him that his contract was at an end and forfeited.

1863, May 2. Milnor files his bill for specific performance.

" May 4. Wells Lake pays up in full for the lot; all the moneys immediately paid over to Brown and Lockwood (as was the down payment), for Willard's indemnity and relief.

This Court will perceive, that on October 6, 1861, when Willard served upon Milnor the notice of forfeiture and end put to his contract by reason of non-payment, then past due by two years, three months and over, he was acting under the impulse of the principle of self-preservation, under circumstances of the utmost urgency. A debt to Brown and Lockwood, amounting to \$85,575, besides interest accruing and the annual taxes on the property, for all which he was *surety for Lind*, was fast maturing. Lind, three months before, had become *insolvent*, and assigned all his property for the benefit of his creditors; and Willard, in his bill, states that the 69 lots yet unsold were entirely inadequate to produce the money sufficient for his relief.

Some men would have gone crazy or stark mad under the circumstances. If any man did not, it would afford the best evidence in the world of one of two things: either it would prove him to have a strong head, or a long purse which he did not much care for. Judging him according to ordinary rules, applicable to the understanding of human nature, no man can doubt that he meant exactly what he expressed; his words, his acts and his circumstances were in entire harmony with each other.

It is very immaterial in this controversy what construction he chooses *now*, by his answer to Milnor's bill, to put upon his former lamentations and his piteous cries to the ear of equity for relief from impending ruin. Suffice it to say, his answer is not evidence against his co-defendants; it is mere hearsay, without oath, and himself in every sense an incompetent witness to impeach himself (were he even sworn), by giving the lie direct to all his above cited acts and declarations, done and made under circumstances that leave no doubt of their reality and truthfulness. That is to say, such as we have stated, is the just inference, unless it be an axiomatic principle of human nature, that *no man loves money*, and that all mankind are exceedingly averse from being at any time delivered from impending pecuniary ruin.



More than this; we insist that Lind's assignees and creditors were as much interested in Willard's repudiation and forfeiture of the Milnor contract, on the 6th day of October, 1861, as Willard himself; and, sustaining that relation, his present effort to play into the hands of Milnor by his answer, is a fraud upon others, for the sake of which he has no right even to impeach his own motives by any *ex post facto* confession or tergiversation.

In close connection with this, we therefore add, not only was Willard in *dead earnest* in declaring an end put to the contract of Milnor, but Milnor himself practically and quietly submitted thereto, and acquiesced in it, without doing a single act, or making the least effort in a contrary direction, for the full period of 1 year, 6 months, and over, i. e., from October 6, 1861, to April 19, 1863, at which latter period he tenders the money and demands a deed. In *Loyd vs. Collet, & Bro.*, 469, there had been a delay on a contract, where *time was essential*, for *only 6 months*; and yet Lord Laughbero held that the vendor had *abandoned* the contract by *laches*, and sarcastically observes that the equity set up was "*an equity arising out of one's own neglect*"!! which, he says, "*is a singular head of equity.*"

It is worthy of note, that when Willard gave this notice to Milnor, that his contract was forfeited and ended, he was just about preparing to file his bill *quia timet*. The notice was in October, 1861. The bill was filed in November, 1861—the next month.

It is quite a curious coincidence, that the laches of Milnor acquiescing and submitting to the acknowledged *end* put to his contract, continued until Willard had ample time and opportunity to discover that all his threatened danger was passed, viz., 1 year, 6 months and 7 days, down to the time of the tender. It seems to bear on the face of it a suspiciousness that there is some sort of concert of action, some co-operative combination between the complainant and one of the defendants, after the danger of Willard was passed by.

This natural suspicion is not in the least relieved, but rather heightened, when we come to look at the pleadings in this case. There, we find the bill of complaint filed by Milnor against E. W. Willard, complaining of injustice, hardship and wrong, and the amiably complying answer of the defendant, E. W. Willard, bear the sign manual of the same identical solicitors and counsel.

We had always supposed, before this, that the duty of attorneys, solicitors and counsel, required of them to be one side or the other, and not on both. There surely must be some novel reason for a departure from the usual course of law and equity in this case. Perhaps it may be found in this: When Willard's dangerous position in 1861 led him to file his bill *quia timet*, his interest was directly antagonistic to Milnor's, and should he succeed in that bill, in any degree, the same success would of necessity equally enure to favor Lind's assignees and creditors; we say it would so enure, though Willard did not so design it: he had an exclusive design to favor No. 1, as the prayer of the bill showed, viz., that the whole property be ordered to be sold *instanter*, and the proceeds applied to his indemnity. Obviously, however, this would have put the whole property up to the party or person having the longest purse. The decree of 1862, Sept. 22d, therefore, wisely ordered the receivers to sell on a credit, which should use up all the unexpired credit given by both contracts, so as to save as much as possible, beyond Willard's indemnity, for the creditors of Lind. This the assignees and creditors of Lind claimed by their cross bill, and with this decision they were content. To the greatest possible extent, under the circumstances, it was in favor of the assignees and creditors, and against Willard.

When the tender was made by Milnor, on April 19th, 1863, the sales by receivers had progressed finely, and it was obvious that all danger being past by Willard, he was at liberty to sway to which side he pleased, uninfluenced by selfish, slavish fear.

Having served one side while under the influence of fear and torment, and now having happily gotten out of the woods, we can



only suggest the possibility that he might have thought, according to an old adage, that *a turn about was fair play*, and he might, therefore, be excused if he should now try to render some service to the other side.

We regret, however, to observe, that inasmuch as his earlier service leaves the impression that self interest *was* a strong and prevailing motive prompting those acts, the same influence *might be* the prompter in the last stage of the controversy.

Especially is this suspicion strengthened, when we see that to carry the last point, he is reduced to the necessity of attacking and maligning his own friends, Lake and Osborn, who were appointed assignees of Lind, by his procurement, as the cross bill charges, and his answer admits; and the same persons were also appointed *receivers* by the decree of Sept. 22, 1862, at *his special request*, as the case shows; and still, he in his answer (unjustly, as we will show,) accuses them of *fraud* in selling the lot in controversy to Wells Lake.

We observe the complainant's counsel objects, in the 2d point, that the notice of forfeiture was not given by the owner of the property, Willard being only a trustee for Lind in holding the title.

To this we answer, Willard, at that time, had an interest far greater than any other person. He was surety for Lind for \$85,575, and interest and taxes, all of which would overgo \$100,000 by the time the debts should fall due; and the several lots, including this in controversy, were all that he could look to for his indemnity. He certainly, then, had the paramount right to declare the contract at an end, as he did, for his own indemnity, on the principle that self preservation is the first law of nature.

This, however, is not all.

Notice to Milnor that his contract was put an end to, was entirely unnecessary, as declared by the Court in *Chrisman vs. Miller et al.*, 21, *Ills. R.*, 235: "After default (the Court say) he (the

purchaser) was entirely at their mercy, (i. e., the vendor's mercy). The mere act of offering the land for sale, or entering in their sale book, or any other act showing that they considered the contract as terminated, or treated it as terminated, was sufficient to put an end to it, and deprive Bush of the right to claim its performance. If we treat M. as a stranger, the mere act of selling to him, was of itself a sufficient election by the vendors to seek their remedy by taking advantage of the forfeiture, and released their remedy on the covenants." In view of the principles here so clearly announced, we see that in the course of litigation, by Willard's bill, and the answer thereto, the cross bill of Lind, and his assignees and creditors, and the answer thereto, and especially in the decree of Sept. 22d, 1862, there is evidence of forfeiture, time and again, in which not only Willard acted, but all the other parties, Lind, his assignees and creditors, participated and concurred. The agreed case annexed to the record, shows that this lot now in controversy was put into the decree for sale, by Willard's own act, and by concurrence of Lind, and his assignees and creditors. The Court accordingly acted upon it, and the receivers themselves sold it under the decree. The last of these acts occurred October 16, 1862. Six months before the money was tendered by Milnor to Willard. We thus see, that prior to the supposed tender by Milnor, the termination and forfeiture of Milnor's contract had been declared and made known in a great variety of ways, and by the concurrent acts and declarations of all the parties who had any interest therein.

At page 5 of complainant's brief, under point 4, we notice a statement purporting to give facts and dates, which are calculated, as we think, to mislead the judgment of the Court, and therefore it will need explanation. It is said that Willard's notice of forfeiture was given on the 12th of October, 1861, and that on 22d Nov., 1861, the interest of the parties in the lot in question was *scheduled* as a balance of \$720, and interest, due from Thomas Milnor.

In answer to this we ask, who thus *scheduled* it? The answer will fully remove the force of the argument. The *schedule* referred to is a mere copy annexed by Willard to his bill against Lind and



his assignees and creditors of the original *schedule, and bill of sale* written at the foot of it, whereby Willard transferred all his interest in the partnership property and purchases to Lind, on the 9th of January, 1861. The annexation of that schedule to the bill was the act of Willard alone, and not of any of the other defendants, and of course cannot be allowed as having any bearing to prejudice their rights; and if we then look back to 9th January, 1861, we see that when that paper or schedule had its inception, neither Lind nor Willard had yet elected to treat Milnor's contract as determined. That election, by all the adjudged cases, they were at liberty to make at any time they pleased; Milnor's default on a contract in which timely payment was expressly declared *a condition precedent, and time the essence of the contract*, had been running ever since June 19, 1859, but the election was not made until 6th or 12th October, 1861. After that neither Lind or Willard did any act whatever to excuse or let off Milnor, nor did Milnor *seek, ask, treat, or sue for any relief* from the declared determination of his contract for the period of one year and six months, when the tender was made.

His long acquiescence in the forfeiture shows, conclusively, that his mouth had been shut long before the tender, and that he knew it and like a man submitted to it, without even complaining. He was bankrupt all the time, and for all we know still is, and these facts, to our mind, afford irrefragible evidence that somebody is litigating this suit in the name of a man of straw.

Willard's personal interest terminated wholly when the prime object of his indemnity was attained; after that he became an entire stranger, having no more right to do an act prejudicial to Lind's assignees and creditors, or to barter away their rights by any of his constructions or admissions, than any other stranger. Prior to that his interest on the principle of self preservation was as all the facts and the decision of the Superior Court and the decree shows, concurrent with the interest of Lind's assignees and creditors, and to permit him now, after his danger passed and indemnity secured, to give a contrary construction and meaning to

his previous acts and declarations (which he seeks to do in his answer in this case) would be lending the sanction of the sacred principles of law and equity to a changeful process at war with every principle of honor and of truth.

The case of *Parkin vs. Thorold*, in 11th *Eng. Law and Eq. Reports*, 275, lays down the law applicable to *time the essence of contract* in so clear terms, we shall be excused for making quite an extract from it. At page 279, the Vice Chancellor says:

"Whatever be the foundation of the doctrine of the court, there is no doubt of its existence, that is, though the contract, according to its terms is that the purchase shall be completed on a given day, and is so framed that if not completed on that day the purchaser is at law entitled to recover back his deposit, yet if the parties *deal together* on the footing of having disregarded the appointed day, of having, according to the ordinary language used, agreed to treat *time as not being of the essence of the contract*, then this court will grant relief, although the day for completion may have passed. *But this relief is, as I have already stated, given solely on the ground of such dealing of the parties. I have not been able to discover any case*, in modern times at all events, in which the court, compelling the purchaser to complete the purchase after the appointed day, *has not proceeded on this ground*. In *Seton vs. Slade*, 7 *Vesey*, 265, (a leading case on the subject,) Lord Eldon expressly says: 'There is no authority that has not some reference to *the conduct of the parties*,' and I find similar expressions in almost all the subsequent cases. Whether the facts have in all cases been such as fairly to warrant the inference relied on; whether the court has not sometimes made a new contract for the parties, and so enforced on the purchaser the performance of what he never undertook to do, is not the point for decision. It is sufficient to say that the ground on which the court has professed to proceed has *always* been, *that the parties have so acted as to enable it to give to the original contract a meaning different from its prima facie obvious import, or else to say that the original contract, so far as relates to*



the time fixed for its completion has been *abandoned*, and a new and more extended one has been by implication entered into."

In the case thus before the English Court of Chancery, the facts stated show that the parties by agreement fixed on 25th October to complete the purchase, and afterwards, at the request of the seller, the purchaser consented to extend the time to 5th November (ten days), and then on non-performance sued for and recovered his deposit money, deeming the contract at an end. Yet the court say, at page 280: "The defendant was at liberty to insist on completion on 25th October. He never did anything to forfeit his right, except by voluntarily extending the day for the convenience and at the request of the plaintiff to the 5th of November, and default having then been made, the defendant was in the same position as if he had never allowed any extension and *had refused to go on with the contract up to the 25th of October.*"

In Milnor's case, now before this Court, we see that after June 19th, 1859, when the last payment on the contract fell due, Milnor made no effort to pay till April 19, 1863, a period of *three years and ten months*. He opened no treaty or negotiation with Lind or Willard on the subject. For aught appearing in evidence, not one word passed between the parties on any subject for all that period. After notice of forfeiture in October, 1861, he ceased even to pay the taxes, and they were paid by Willard, evidently showing that he *submitted to the determination of his contract*, and continued his submission quiet and unbroken until the tender made April 19th, 1863.

These facts are much stronger to demonstrate a final end put to a contract of sale, where time was agreed to be the essence of the contract, than any reported case.

No excuse is ever hinted at in the complainant's bill or proofs, except insolvency or pecuniary embarrassments, which the case of *Allay vs. Derchamps*, 13 Vesey, 225, declares to be no excuse at all; and the reason of things shows the same, because such an

excuse, if good for any short period, would be good indefinitely or forever.

A sample case, to show what would be a good excuse on a time contract, is cited by *Newland on Contracts*, page 231, from *Vernon vs. Stephens*, 2 P. W., 66, "where the vendor was *dead* at the time the money was to have been paid, and the executors not acting, it was some time before the defendant took out administration, with the will annexed, of his father; the exact performance of this part of the contract will be dispensed with."

The case cited by complainant's counsel, from 21 Ills. R., 495, *Morgan vs. Herrick et al.*, to show that the attempted forfeiture is invalid, is a strong case, bearing in a directly opposite direction, as we read it. His Honor, Mr. Justice Breese, says, at page 495: "The parties may make time of the essence of their agreement, and when this distinctly appears to have been their intention, and no peculiar circumstances have intervened to prevent or excuse strict performance, it must, in equity, be considered and treated as of the essence, as with all other contracts the intention of the parties controls."

We have only to say, if time was not the essence of Milnor's contract, then the most express terms of contract to that effect cannot make it so.

In the case of *Morgan vs. Herrick*, there were no words indicating that the parties agreed that *time should be the essence of the contract*, so expressed, nor any declaration, that if the party did not pay punctually on the day set, his contract should be void, and of no effect. The Court treat and consider either of these forms of agreement as identical in effect, and constituting a complete bar to specific performance, unless it should be shown that peculiar circumstances had arisen to prevent or excuse timely performance by the purchaser. Time being essential in the case, was inferred from the fact of the covenants being mutual and dependent.



We desire no better authority for our positions in this case.

The complainant's counsel, in the 5th point, assume that the forfeiture we rely upon was *abandoned* by Willard.

We think enough has been said already, to show that this point has no force argumentatively, and is contrary to facts, and that it places Mr. Willard in an attitude which, to say the least, is self contradictory, and that the acts and declarations in his answer are not evidence against those who are nominally associated with him as co-defendants.

In answer to the sixth point made by complainant's counsel, we have shown, as we think all the facts show, that Milnor's *laches* did amount to *abandonment*, and continued for three times the length of period which Lord Laughboro averred was full and ample evidence of abandonment.

Complainant's seventh point insists that the vendors in this case did not surrender the contract to him. We answer, there was no necessity we should do so; all that Milnor needed was that vendors should do some act to evince that they had elected to terminate the contract so that *he could not be sued afterwards for the remaining payment*, as decided by this Court in *Chrisman vs. Miller*, 21 Ill. R., 235. "The mere act of offering the land for sale or entering it on their sale book, or any other act showing that they (the vendors) considered the contract terminated or treated it as terminated, was sufficient to put an end to it and deprive Burk of the right to claim its performance, and them of the right to sue him upon his covenants contained in it."

Again, complainant says under his seventh point, that there has been no return or offer to return the money paid under the contract.

We answer, if there is any virtue in this objection, the complainant must institute a suit to recover back the money paid. The case cited by complainant, 21 Ill. R., 611, *Murphy vs. Lockwood*,

announces principles identical with those we have above sought to establish as decisive of this case. The circumstances upon which complainant's counsel seem disposed to catch in this case, as drowning men seize a straw, will be found to have no parallel in the transactions between Milnor and his vendors. He doubtless refers to the observations of his Honor, Mr. Justice Breese, at page 619. He says, "This is all the delay shown (three months). The vendor was unusually indulgent, and should not now desire to convert his generous forbearance into seeming injustice and oppression." How different these facts from the position and circumstances surrounding Willard when, on 6th October, 1861, he gave notice of an end put to Milnor's contract? *Total ruin* arising from a suretyship for \$100,000 stared him in the face, and as he said, he held no adequate indemnity, he had none that was sure or reliable as times then were, and he was driven to file his bill *quia timet* under an oppressive load of fear. Chancellor Kent in cases cited, and other jurists of the most exalted character, declare the prompting principle of self-preservation under such circumstances just and equitable, and often they say a last and only resort by vendors to meet their own time contracts. See also the remaining observations of his Honor, Judge Breese, to the effect that the vendor was then *harsh* to the last degree, and driving his vendee to the wall.

So, also, the circumstances of Lind and his assignees and creditors, and of Wells Lake, in this case, bear no kind of parallel or likeness to those which existed in *Murphy vs. Lockwood*.

Complainant's 10th point is at variance with the facts. When the last payment fell due, on the 19th of June, 1859, Willard and Lind held the title in fee to this lot, by deed from Lockwood of January 11th, 1859, to them. Lind conveyed, on April 1, 1861, his interest to Willard, for the express purpose of increasing the fund for Willard's relief. The last deed from Lind to Willard preceded Lind's assignment three months. The assignment was made July 6, 1861. Willard, therefore, is seen to have been in perfect capacity to have given a good title to Milnor on the 19th of June, 1859, by uniting with Lind at any time before April 1, 1861, and



after that he held the whole title exclusively for his relief and indemnity.

On the 9th of January, 1861, when Willard sold out his interest in the partnership property to Lind, no deeds were given, but merely the bill of sale, called the schedule, annexed to the record, bearing date January 9, 1861, which was followed on the 1st of April, 1861, by Lind's conveyance to Willard, in whom the full title has remained to this day, in trust for whomsoever entitled thereto.

In answer to complainant's 11th point :

In this case the answer of Wells Lake denies all notice whatever, directly or indirectly, and alleges that he was an innocent purchaser for a good and valuable consideration, without notice. Milnor's contract was never recorded.

The proof in this case making out neither notice nor fraud, Wells Lake is entitled to the favor and protection of this Court.

Concerning the value of the lot in question :

Mr. Wanghop is complainants sole witness, and estimates the lot at \$3,500. But the Court will see by his cross-examination, as shown in the record, that he lived in a different part of the city, and had not dealt in real estate in the vicinity of the lot for some years, and did not know of any sales in the section west of the river, and near the premises, to which he could compare this sale, so as to settle the question of value ; whereas, *e contra*, the defendants prove by Albert Keep, John A. Tyrell, and Caleb D. Fitz, all of whom reside in the west division, near the premises in question, and well know the same, and are land dealers, acquainted with sales in that vicinity, and who unanimously say, on oath, that \$2,000, the price paid by Wells Lake, was the full value of the premises at the time of the sale to him.

And yet Willard accuses Lake and Osborn of fraud in the sale to Wells Lake.

We would like to inquire how the receivers could be guilty of the fraud charged, when the decree required every offer to purchase to be first reported to the Court of Chancery, and to be first approved or condemned by them.

The stipulations and agreed case here standing in the place of depositions, show that the receivers strictly complied with this decree, *first*.

Wells Lake's offer is presented to the Court :

The Court order it accepted, and in making the sale, the receivers acted under the express sanction of the Court's order, and only did precisely what the Court enjoined them to do.

Lot 1, block 2, the premises in question, was only the first or second lot sold by the receivers within a few days only after the decree was entered, and at a time when it was an unsolved problem, involving the gravest doubt whether the whole property would yield enough to pay up to Brown and Lockwood for Willard's indemnity.

The court adopted a vigorous course, and it has terminated successfully both for Willard's full and entire indemnity, besides raising a handsome surplus for Lind's creditors.

Never, until this point was reached, do we hear a word from Milnor, though he had, when his tender was made, been acquiescing in the forfeiture and abandoning his contract for full eighteen months.

We most respectfully submit to this Court, that we have shown the strongest case of *time, the essence of a contract, and condition precedent in that view unperformed*,—of *notice of forfeiture incurred by purchaser*, under circumstances that drove the vendor to that point by *the direst necessity for self preservation* ; the strongest case, we say, in all those aspects that could possibly be supposed,—stronger, far, than any case reported. Milnor never even complained of hardship.



He never opened even a treaty or negotiation for more time.

He never intimated, nor do his counsel now intimate, that he was ever *prompt, desirous, ready* or *eager* to perform and get a deed.

No excuse is pretended, on his part, to relieve the hardship of his case by throwing back the charge of oppression upon the defendants.

The case, on his part, is wholly unrelieved.

We therefore submit, that the decree of the <sup>erion</sup>Supreme Court be affirmed.

MATHIER & TAFT, *for Defendants,*  
*Lind, Lake & Osborn, receivers, and Wells Lake, the purchaser.*  
 CHICAGO, *May 16th*, 1864.



257-189

# SUPREME COURT OF ILLINOIS.

## THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

THOMAS MILNER,

APPELLANT.

vs.

ELISHA W. WILLARD,  
DAVID J. LAKE,  
WILLIAM OSBORN,  
SILVESTER LIND, and  
WELLS LAKE,

APPELLEES.

Bill for the specific performance of a contract for the sale of real estate. Appeal from Superior Court of Chicago.

### FACTS.

The facts of the case, as admitted or proved, are as follows: On the 19th day of June, 1854, the lot was sold to the complainant's assignor for *four thousand dollars*—four hundred dollars in cash, and the balance in five equal annual payments on the 19th day of June in each year, with interest annually *in advance* on the deferred payments.

The cash payments and all subsequent payments (except the last), with interest annually upon the whole sum unpaid, were made under the contract. All taxes and assessments upon said property

*Given May 11. 1864*  
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for the years 1854, 1855, 1856, 1857, 1858, 1859 and 1860 were paid by the complainant or his assignor. The payments so made of principal and interest, taxes and assessments, amount to the sum of forty-one hundred and eighty-seven dollars and five cents (\$4,187 05) as per receipts in evidence.

On the 12th day of October, 1861, when there was due and unpaid upon said contract the sum of seven hundred and twenty dollars, and interest thereon since the 19th day of June, 1859, the defendant Willard gave complainant a notice in writing which is evidence in the case declaring a forfeiture of the contract.

No other proceedings were taken to forfeit the contract, *and as between the parties the same remained in precisely the same condition as before said notice was given until the 19th day of April, A. D. 1863*, when a tender was made by complainant to defendant Willard of the sum of nine hundred and thirty-four dollars and twenty-one cents, being the balance due upon said contract, and a deed therefor was also presented for his (said Willard's) execution, upon his refusal this bill was filed.

It also appears in evidence that defendant Willard held and now holds the legal title to said lot in trust for defendant Lind, whose assignees are defendants David J. Lake and William Osborn. It also appears that the lot in question with others was purchased by the defendants Lind and Willard from Brown and Lockwood by contracts, and that after paying in full for the lot in question, there being a large sum still unpaid upon the contracts, Lind bought out the defendant Willard, and agreed to release and relieve him from subsequent payments to be made to Brown and Lockwood, and they also divided the assets on hand between them (*the balance due on this lot from complainant being set apart to defendant Lind.*) (See Exhibit, page 97.) Lind having afterwards become insolvent, and made an assignment to the defendants Lake and Osborn, a bill was filed in the Superior Court of Chicago by Willard to enforce a specific performance of Lind's contract to relieve and release him, Willard,

from his liability upon the Brown and Lockwood contracts. To this suit Lind, his assignees and judgment creditors were made parties, defendants, *but complainant Milner was not in any way made party to the suit.* The defendants Lake and Osborn were appointed receivers by the decree made in said case, and were directed to sell *the right, title and interest of Lind and Willard* in the lots named in the contracts with Brown and Lockwood which had not been paid for, *and also their right, title and interest in the lot in question.* (See decree, pp. 41 and 42.) This interest was scheduled in said case as being the balance due on said lot from Thomas Milner, assignee \$720. (See p. 97.) Under the decree appointing them Receivers, the defendants Lake and Osborn went on and sold this lot, with full notice of complainant's rights, to the defendant Wells Lake, *the brother of David J. Lake, one of the Receivers*, for the sum of two thousand dollars, but no deed has been made therefor, the legal title being in the defendant Willard. It is charged in the bill that the lot was worth at the time of the sale to Wells Lake a much larger sum than two thousand dollars, and one witness is introduced who swears to that effect, but the evidence on the point being contradictory, and it being considered immaterial, so far as complainant's rights are concerned, it is not insisted on. It appears that the lot in question was sold to Wells Lake on the 16th day of October, 1862 for two thousand dollars, five hundred dollars cash, the balance in three equal payments at six, twelve, and fifteen months from that date. On the *4th day of May, being two days after the bill was filed in the case*, Wells Lake paid up the balance due on the contract, being fifteen hundred dollars and interest.

It is also shown by the testimony that complainant was prevented by his poverty from making the last payment at the time it matured, and was prevented by like cause from making an earlier tender of the amount due under said contract. (See Waughop, pp. 90 and 91.)

*Witnesses*  
*David J. Lake*  
*William Osborn*



Such being the facts of the case, the following points are made, and authorities cited for the appellant:

## I.

There being no right of forfeiture given by the contract, the attempted forfeiture is invalid.

*Morgan et al vs. Herrick, Adm., &c.*, 21 Illinois, 495.

## II.

The notice of forfeiture was not given by the owner of the ground or the contract (having been given by Willard, who merely held the legal title), and for that cause is invalid.

## III.

If there had been a right of forfeiture by non-payment of the instalment on the day named in the contract, that right had been waived by the action of the parties as to prior payments.

*Harris vs. Troupe*, 8 Paige, 423.

3 Maddox Ch. R., 440 to 447.

*Nibbe vs. Brauhn*, 24 Illinois, 268.

## IV.

The notice of forfeiture to be good must give a reasonable time for performance; a sudden and absolute forfeiture cannot be insisted on. This notice, on account of not giving such time, is invalid.

*Falls vs. Carpenter*, 1 Deverx & Battel, 237.

*Parker vs. Thorold*, 13 Eng. Law & Eq., 416.

*Steele et al vs. Biggs et al*, 22 Ill., 655.

*Harris vs. Troupe*, 8 Paige, 425.

*Carney vs. Newberry*, 24 Illinois, 203.

2 Story's Eq. Jurisprudence, Section 1323.

A formal declaration of forfeiture is not necessary, *but some act must be done* to show the election of the seller to terminate the



contract. In this case the notice in writing declaring the contract at end was given by Willard to the complainant *on the 12th day of October, 1861*. Afterwards, and on the *22nd day of November, 1861*, the interest of the parties in the lot was scheduled in the case of Willard *vs.* Lind, his assignees and creditors, as the balance due from Thomas Milner, assignee of lot one (1), block two (2), \$720 and interest since the time that instalment became due. *Milner is not made a party to the bill*, and the decree simply directs a sale of all the right, title and interest of Lind and Willard in the lot. We contend, therefore,

### V.

That the forfeiture was abandoned by the action of Willard in recognizing complainant's interest in the lot *after the declaration of forfeiture*, and that there has been no act done by Willard or Lind since that schedule was filed which is inconsistent with the recognition of complainant's claims.

### VI.

Equity will decree the performance of a contract *which has been partly performed*, even where the parties have agreed that time shall be the essence of the contract, unless the laches has been such as to amount to an abandonment.

*Edgerton vs. Peckham*, 11 Paige, 352.

*Clark vs. Lyon*, 25 Illinois, 105.

*Harris vs. Troupe*, 8 Paige, 425.

*Bishop vs. Newton*, 20 Ill., 175.

### VII.

*There was no surrender of the contract by which complainant may still be held, there has been no return or offer to return the money which had already been paid under the contract, and there is no clause in the contract authorizing the forfeiture of the money previously paid by complainant, which should have been returned to make the forfeiture valid.*

*Murphy vs. Lockwood*, 21 Illinois, 611.



3 *Maddox Ch. R.*, 440 to 447.

*Smith et al vs. Doty*, 24 Illinois, 163.

*Gehr vs. Hagerman*, 26 Illinois, 438.

### VIII.

The lapse of time in this case was acquiesced in by the owner of the property, and thereby a construction given to the contract in favor of appellant, and the owner is thereby precluded from suddenly insisting on a forfeiture.

*Murphy vs. Lockwood*, 21 Illinois, 611.

### IX.

There was no tender of a deed to the appellant (either when the last payment became due or at any time since,) duly executed, and conveying title with covenants of warranty which the contract calls for.

*Murphy vs. Lockwood*, 21 Illinois, 611.

*Bishop vs. Newton*, 20 Illinois, 179.

*Brown vs. Cannon*, 5 Gilman, 174.

### X.

It does not appear that Willard could have conveyed free of incumbrances at the time the last payment became due or afterwards when the notice of forfeiture was given. Lind, who was the real owner of the lot, failed, and made an assignment *in July*, 1861.

*Conway vs. Case*, 22 Illinois, 139.

### XI.

As against complainant there has been no bona fide purchase of the lot, and Wells Lake can claim no more than Lake and Osborn could sell.

4 *Gill & Johnson*, 479.

- a. The lot was purchased by Wells Lake from the Receivers appointed in a Chancery Case to which appellant was not a party, and he cannot therefore be affected by such sale.

*England vs. Clark*, 4 Scam, 489.

*Brown vs. Wallace*, 2 Bland, 585.

*Anderson vs. Foulke*, 2 Harris & Gill, 346.

- b. The legal title of the lot was in Willard, who held the same as trustee for the parties in interest, and it was incumbent upon Wells Lake to ascertain who those parties and what those interests were.

- c. The papers in the Chancery suit in which the Receivers were appointed, and under the decree in which the sale was made, show enough of appellant's right and interest in the lot to put the purchaser upon enquiry.

*Doyle vs. Teas*, 4 Scam, 251.

*Rupert vs. Mark*, 15 Ill., 542.

*Owing vs. Thompson*, 3 Scam, 509.

- d. Wells Lake paid the bulk of the purchase price, being over three-fourths of the amount, after the bill was filed by complainant in this case, the bill having been filed on the 2d day of May, 1863, and the payment of \$1,549 made on the 4th day of May, 1863.

- e. There can be no damage or pecuniary loss to Wells Lake by a decree in favor of complainant, as the money paid, or an amount in lieu thereof, is subject to the order of the court under whose decree the sale was made, and can be refunded.

### XII.

If the appellant has not tendered enough money to compensate for the delay, the court, in the exercise of its jurisdiction, can do justice between the parties.

*Hall vs. Pier*, 27 Illinois, 312.

### XIII.

Under the general prayer in the bill, the court having jurisdiction of the case should have rendered a decree in favor of the com-



plainant below for the money which has been paid under the contract, if he be not entitled to specific performance.

2 *Story's Eq. Jurisprudence*, section 799.

*Woodcock vs. Burnett*, 1 Cowen, 711.

*Andrews vs. Brown*, 3 Cushing, 130.

The peculiar hardship of this case, if all relief is to be denied to the complainant, will be apparent to the court: the contract price of the lot was *four thousand dollars. Forty-one hundred and eighty-seven dollars and five cents* in principal, interest and taxes has already been paid upon it.

Complainant by his poverty was prevented from making last payment when due, but it was not insisted on by the owners of the ground, and further time was given, as had been done on prior payments, and complainant continued to pay the taxes and act as owner of the lot until the sudden and peremptory notice of forfeiture was given. No tender of a deed was made; no return of the money or of any part of it which had been received; no surrender of the contract; and some time afterwards the lot was scheduled in the case in which Lind's interest in it was sought to be sold by the party who had given the notice as a balance due upon it from complainant, amounting to the last payment.

The situations of the parties as to the lot have not been changed by the lapse of time, so as to render the performance detrimental to the parties against whom it is sought to be enforced, as the lot has not risen in value, but the contrary. No new rights have been acquired except with full and ample notice of complainant's claim, and the party who claims to be the purchaser can be fully protected and reimbursed by the court under whose decree the sale was made.

All we ask for the appellant is that the law, as frequently declared by this court, and particularly in the case of *Murphy vs. Lockwood*, may be fairly applied (as it doubtless will be) to the facts of this case.

BLODGETT & WINSTON,

*Counsel for Appellant.*



**SUPREME COURT OF ILLINOIS:**  
THIRD GRAND DIVISION.

**April Term, A. D. 1864.**

THOMAS MILNOR, Appellant,  
vs.  
E. W. WILLARD, et. al. Appellees, }

**BRIEF OF POINTS FOR APPELLEES.**

1st. The first question which presents itself for the consideration of the court in this case is this:

Had the contract for the purchase of the Lot in question by the Church Trustees and by them assigned to complainant, ceased to exist, so that the vendees or assignee no longer had any equitable rights under it on the 16th day of October, 1862, the date of the purchase by Wells Lake? In answer to this we say—

**POINT 1st.**

The contract in this case by its terms expressly provided that the money to be paid under the covenants as therein expressed to be performed by the vendee should be a *condition precedent*, that is to say, in the words of the contract, "*the prompt performance of the payments and covenants being a condition precedent and time being the essence of said condition, agrees to sell, &c.*"

This provision we insist constituted a condition precedent, the prompt performance of which at the time specified was essentially necessary in order to entitle the complainant, as assignee of the original purchase, to a deed or decree for specific performance.



The bill does not show or aver a performance at the time specified in the contract, and therefore shows no title in the complainant for the relief sought.

2 Story's Eq. Jur. Sec. 1306.

"The time fixed for the performance of a contract is at law deemed the essence of a contract, and if the seller is not ready and able to perform his part of the agreement at the day the purchaser may elect to consider the contract at an end."

*Tyler v. Young*, 2 Scam. R. 445.

*Wells v. Smith*, 2 Edwards Ch. R. 72.

The right of the parties to make by contract timely and prompt payment a condition precedent and the essence of their contract is well established.

1 Sugden on Vendors 340.

2 Story's Eq. Jur. sec. 776

1 Johns. Ch. R. 370, *Benedict v. Lynch*.

1 Russell 376, *Coslake v. Till*.

2 Simons 78, *Williams v. Edwards*.

2 Gilm. R. 327, *Andrews v. Sullivan*.

The intention of the parties in this case as to time, the essence of contract and a condition precedent is clear and express.

No excuse known to the law is even pretended to be stated in the bill for omitting its performance. See Sugden on Vendors 305, in which Sir John Leach V. C. avers that all doubt that ever existed as to the right of parties so to contract and the inviolability of such contract when once made is now at an end. See also 3 Maddox, 440; 1 Jac. & Walk. 419; 2 Simonds 78.

1 Young & Collyer 410, *Loyd v. Ripingdale*.

In the last case, Baron Alderron at page 416 says, "The parties have a right so to contract, and why should a court of equity interfere to make a new contract which the parties have not made."

11 Eng. Law & Eq. R. 275, *Parkin v. Thorold*.

Judge Story asserts the same to be American law in 2 Eq. Jur., sec. 776, note.

The Supreme Court of Illinois adopted the same rule in 22 Ills. R. 657, *Steele v. Briggs*. In the case at bar, Willard in declaring the contract forfeit and ended acted upon the principle of self-preservation from threatening ruin impending over him, a principle which this court recognize and



adopt [in the last cited case] as eminently wise and just under the circumstances.

See also 21 Ill. R. 235, *Chrisman v. Miller*, where C. J. Caton declares the undoubted right of parties to make these conditions precedent as to time as stringent as they please, and that in case of non-performance, *no matter from what cause*, he says the stipulated consequences must follow.

But even suppose [for argument sake] that these consequences would not ensue by mere non-payment, we yet insist—

#### POINT 2d.

That all rights of the complainant under the contract were terminated by the notice of forfeiture served upon complainant by Willard on 12th Oct. 1862, and also by the further act of Willard acting jointly with Lind, and Lake and Osborn his assignees, in having the lot in dispute included and put in the decree of Sept, 22d, 1862, for sale in the cause of *Willard v. Lind* and his assignees and creditors. In fact we insist the notice of forfeiture to the purchaser was entirely unnecessary. The consequence of forfeiture or termination of a contract ensues as well upon the mere will of the seller, *if* that will be entertained and adopted in any way whatever.

So says this Hon. Court expressly in 21 Ills. R. 236, above cited, [case of *Chrisman v. Miller*.]

So also in 24 Ill. R. 515, *More v. Smith*, this court say, "If vendor manifests such to be his intention *the contract ceases to exist*." Neither party can after that insist on performance.

#### POINT 3d.

The complainant's *laches and delay* in this case is a sufficient and insuperable objection on his part to specific performance. His last payment fell due June 19, 1859, and we hear no more of him in any attempt or offer to pay up until April 19, 1863, the time of the alleged tender, (nearly 4 years.)

At this time Willard had, as they say, "*got out of the woods*." When ruin hung over him in the shape of a debt to Brown & Lockwood, for



which he was bound as surety for Lind, to the amount of \$85,575, he feared and trembled exceedingly, filed his bill *quia timet*, declared Milner's rights all gone, and was eager to put the lot in question into the decree to be sold to swell the fund to the utmost, which he hoped and relied on to save him from submersion.

But now, finding himself delivered from threatening ruin by his own persistent and successful engineering including the forfeiture of Milner's contract, and the sale on the decree, which he consented to and procured for his own indemnity, he turns around and has the unblushing hardihood *to take the side of his victim*, and accuses Lake & Osborn, as assignees of Lind, and receivers appointed at his special instance and request, of fraud in selling the premises to Wells Lake. It might, perhaps, be quite sufficient for us to say that Willard's answer is not evidence against his co-defendants; but we cannot forbear to add, "*Out upon such hypocrisy!*"

See 1 Sug. Vendors, 289, to this effect, that to entitle one to claim specific performance he must show himself to have been *ready*, [which includes *time*,] *desirous, prompt and eager*, and due diligence is necessary to call into activity the power of a Court of Chancery.

There is not a particle of proof in this case showing a *readiness* or *willingness* or excusing the manifest laches of near 4 years; nor is there any allegation or pretence set up in the bill that any such existed in fact.

Judge Story, in 2 Eq. Jur., sec. 771, says, also, "Courts of equity do "not, any more than Courts of law, administer relief to the gross negligence of suitors."

In *Loyd v. Collsett*, 4 Bro., 469, Lord Loughboro, in a case where only six months laches had supervened on a time contract to convey, speaks of a claim thereafter for specific performance with the severest sarcasm and contempt: "An equity, (he exclaims,) arising out of one's own neglect!! It is a singular head of equity," and he expressly declares that contract "*abandoned*" by mere neglect.

Chancellor Kent, in *Benedict v. Lynch*, 1 Johns. Ch. R., 376, declares the administration of relief in such cases by a court of equity to be "*injurious to good morals, and a violation of the sanctity of contracts.*"



See, also, 5 Viner, 538, pl. 18, *Hayes v. Coryell*, 4 Vesey, Jr., 667-686; *Spurnen v. Hancock*, and *Harrington v. Wheeler*.

In the case of *Alley v. Duchamps*, 13 Vesey, 225, it is decided that the *insolvency* of vendee is no valid excuse for a delay or failure to pay on the day set.

#### POINT 4TH.

Nor will the Court decree specific performance where under all the circumstances it is not equitable.

2 Sto. Eq. Jur., secs. 742, 750, 769 and 70.

1 Madd. Ch. R., 405-6.

2d. Equity *cannot* relieve from the consequences of a failure to meet a *condition precedent* unperformed, though it may relieve against a *condition subsequent*, which would work a forfeiture if compensation in damages would be consistent with equity.

See *Wells v. Smith*, 2 Edw. Ch. R., 78

2 Sto. Eq. Jur., sec. 1324.

3d. But whatever the equities between complainant and Willard, Wells Lake, as a subsequent purchaser, without notice of the agreement, cannot be affected by it.

1 Johns. Ch. R., 213, *Bumpus v. Platner*

do do 300, *Frost v. Beekman*.

1 Gilm. R., 317.



257-189

Thomas Milnor  
vs appellee

C. W. Willard  
& others appellees

Brief & Points  
for  
appellees

Mather & Tapp  
for appellees

Filed May 17, 1864  
S. Leland Clerk



# UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Please, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Monday day of April in the year of our Lord One Thousand Eight Hundred and Sixty Seven and of the Independence of the United States of America the Eighty Eighth

Present, The Honorable John M. Wilson Chief Justice of the }  
Superior Court of Chicago. }

Van H. Higgins }  
Joseph E. Gary } Judges.

Joseph Rney Prosecuting Attorney.

Garret J. Hammond Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

That I, Thomas Milner, do hereby certify that on the second day of May in the year of our Lord one Thousand Eight Hundred and Sixty Seven Thomas Milner, by Blodgett and Whiston his Solicitors, filed in the Clerk's office of the Superior Court of Chicago, his certain Bill of Complaint, which is in the words and figures following to wit:



Of the Honorable the Judges of the Supreme  
Court of Chicago in Chancery sitting

Complaining Shows unto your Honors your  
Orator Thomas Minter of the City of Chicago  
County of Cook and State of Illinois, That  
Dionisia Lind and Elisha H. Willard being  
or pretending to be owner and possessor of  
or otherwise entitled to the following described  
Lot of Land to wit Lot No one (1) in Block No  
Two (2) in Duncan's addition to Chicago in  
said Cook County Illinois on the nineteenth  
day of June A.D. 1854 entered into a certain  
agreement or contract in writing for the sale  
of said lot to Frederick Wiseman August  
Theirs Jacob, Nathaniel Christian Lotz and  
August Theirs Trustees of the South Chicago  
German Society of the Methodist Episcopal  
Church in consideration of the sum of Ten  
Thousand Dollars to be paid in manner specified  
in said agreement a copy of which is hereto  
annexed marked "Exhibit A" and is hereby  
made part of this Bill. And your orator  
further Shows unto your Honors that the said  
Trustees of the South Chicago German Society  
of the Methodist Episcopal Church paid  
to said Dionisia Lind and Elisha H. Willard  
of said principal sum so agreed to be



paid as consideration for said lot and in the manner specified and at the times named herein the sum of Twente hundred forty two  $\frac{9}{10}$  dollars and on the 17<sup>th</sup> day of July. A.D. 1855 the said Trustees of the People's Church German Society of the Methodist Episcopal Church by an assignment in writing under their hands and seals have assigned and transferred said Contract for a valuable consideration to your Orator which said assignment is indorsed on the back of the Contract. hereinafter referred to as will appear from said copy annexed to this Bill and that your Orator thereby became entitled to a deed of said Lot upon making the payments and performing the covenants mentioned in said Contract to be made and performed by said Vendor or assign

And your Orator further shews that he has paid upon said Contract to said Peterse Lund and Eliska O. Thelland the sum of Twenty six hundred and thirty three  $\frac{9}{10}$  Dollars and that there is now due upon the same including interest and taxes paid upon the same by said Vendor or one of them the sum of nine hundred and thirty four  $\frac{21}{100}$  Dollars



And your orator further Shews unto your Honor, that he has been informed that, since the making of said Contract for a conveyance of said lot the said Plaintiff has conveyed all of his right title & interest in and to said lot unto said Elisha W. Willard who now holds the legal title thereto in his own name expressly and that your orator has this 19<sup>th</sup> day of June 1863 tendered to the said Elisha W. Willard the said sum of nine hundred and thirty four <sup>71</sup>/<sub>100</sub> Dollars due upon said Contract and demanded of him a deed therefor having previously prepared a deed to be signed but that the said Willard declined to execute a Deed to your orator for said lot and claims that your orator has forfeited his right to said deed by the delay which has occurred in making said payments, but your orator charges the contrary thereof to be true and that the right of your orator to said Deed upon making said tender, became absolute and perfect.

And your orator further Shews unto your Honor, that he has never abandoned said Contract but that he is a poor man and has been prevented by his poverty from making said tender at an earlier date.



And your orator further shews that David  
J Lake William Storm Robert H. Briggs  
George Smith and the Chicago Southern  
Insurance Company claim or pretend  
to have some interest in or right to said  
lot or the proceeds thereof by judgment pur-  
chase, assignment or otherwise. but your  
orator expressly charges that such in-  
terest if any was acquired with full  
notice of and is subject to the rights of  
your orator under said contract, and that  
notwithstanding such interest or claim  
your orator is entitled to a deed of said  
lot free and clear of all encumbrances,  
upon making the payment aforesaid.

And your orator further shews with  
your Honor that he has always been  
ready and willing to perform his part  
of said agreement, on having a proper  
conveyance of said Lot made  
to him to pay the residue of said purchase  
money of Four Thousand Dollars interest and  
taxes to the said Eliza St Philard

+ And your orator further shews with your Honor  
that one Wells Lake, who is the brother of  
David J Lake, claims to have purchased  
said lot under a decree of this Court for



the sum of Two Thousand Dollars but  
your orator charges that if any such  
sale was made, the same was made  
fraudulently, on the part of said Wells  
Lake and David J. Lake, and with full  
notice of your orator said right and was  
for a grossly inadequate consideration and  
is wholly void as against your orator.

And your orator hoped that the  
said Elisha H. Willard would have specifically  
performed his part of said agreement, as  
in justice and equity he ought. But now so  
it is may it please your Honor the said  
Elisha H. Willard continuing and conspiring  
with the said other defendants and other  
other unknown persons refuses to comply  
with and perform his part of said agree-  
ment and pretends that your orator  
is not entitled to said deed.

All which actings, refusals and pre-  
tences are contrary to equity and good  
conscience and tend to the manifest in-  
jury of your orator. In consideration  
whereof and for as much as your orator  
has no remedy according to the strict  
rules of the Common Law and can only  
have relief in a Court of equity where  
matters of this nature are properly cognizable  
and relivable. In the end therefore that the



7

said Eliza W Willard Abigail Lind David  
of Lake. William Estom Robert H Pop George  
Quinn's Insurance Company and George  
Smith and the rest of their Confederates  
when discovered may full true direct and  
perfect answers make to all and singular  
the matters and things herein before stated and  
Charged, the same as if specially interroga-  
ted thereto

And that the said Defendant Mc-  
lure may be decreed to specifically per-  
form said agreement: and make exe-  
cute and deliver to you orator a  
deed conveying said premises in fee simple  
in accordance with said agreement, and  
that your orator may have such other or  
further relief in the premises as the nature  
of the case may require and as to your &  
Advers shall seem meet.

May it please your Honor to grant  
unto your orator a Writ of Summons Com-  
manding the Sheriff of said County to  
Summon the said Eliza W Willard  
Abigail Lind David of Lake, William Estom  
George Smith, Robert H Pop and the  
Chicago Quinn's Insurance Company  
and their Confederates, when discovered com-  
manding them and each of them to be



appear before your Honor in this Honorable  
Court. Then and there to answer all and  
satisfy the premises and to stand to per-  
form and abide by such order and decree  
therein as to your Honor shall seem meet  
and your Honor shall ever pray.

(Thomas Minor)

Bridgett & Master  
Sole for Compt & Counsel ..



A paper of agreement made, and concluded  
 the nineteenth day of June in the year  
 of our Lord one Thousand Eight Hun-  
 dred and fifty Two. Between Sylvester Lunt  
 and E. W. Whelan of the City of Chicago  
 County of Cook, and State of Illinois of  
 the first part: and Frederick Fuchse August  
 Thier Jacob Walthen, Christian Lotz  
 and August Kellner, Trustees of the South  
 Chicago German Society of the Methodist  
 Episcopal Church of the second part at  
 Minneapolis that the party of the first part at  
 the request of the party of the second part, and  
 in consideration of the money to be paid and due &  
 covenants as herein expressed to be performed  
 by the party of the second part (the prompt per-  
 formance of which payments and covenants  
 being the condition precedent and time being  
 the essence of said condition) hereby agree  
 to sell to the said party of the second part  
 all that certain lot and parcel of land  
 situate in Duane's Addition to Chicago  
 County of Cook, and State of Illinois  
 known and distinguished as lot one (1) in  
 Block Two (2) with the privileges and  
 appurtenances thereto belonging,  
 And the said party of the second part in  
 consideration of the premises hereby agree



to pay to the said party of the first part. then  
 Executor administrators, and assigns at  
 the Office of George Southwick in the City of  
 Chicago the Sum of Four Thousand Dollars  
 (\$4000) in manner following to wit: Four  
 Thousand Dollars at the delivery of these presents.  
 and the Remainder in five equal annual  
 payments of Seven Hundred and thirty dollars  
 each payable on the nineteenth day of June  
 in each and every year hereafter together  
 with interest at six per cent. per annum pay-  
 able annually in advance, on said nineteenth  
 day of June in each year or the whole sum remain-  
 ing from time to time unpaid (see endorse-  
 ments on back for description of payments)  
 And also that they will well and faithfully  
 in due season pay or cause to be paid the  
 ordinary and extraordinary taxes assessed  
 upon said premises or any part thereof  
 and also all assessments which now  
 are or may be hereafter charged or applied  
 upon or against said premises or any  
 part thereof. But in case the said  
 party of the second part shall fail to pay  
 any such taxes or assessments upon said  
 premises or appurtenances or any  
 part thereof whenever and as soon as the  
 same shall become due or payable



and the party of the first part shall pay from time to time any such taxes or assessments, or any part thereof, or cause the same to be paid the amount of any and all such payments so made by the party of the first part shall immediately thereupon become an additional consideration for the premises herein agreed to be conveyed and payment shall be made by the party of the second part unto the party of the first part for the same. And the said party of the first part Covenant and agree unto the said party of the second part that upon the faithful performance by the said party of the second part of their undertaking in this behalf and of the payment of principal and interest of the O.M.M. above mentioned in the manner specified the said party of the first part shall and will without delay here and faithfully execute acknowledge and deliver in person or by attorney duly authorized to the party of the second part their heirs or assigns a good and sufficient deed of said premises with Covenants of Warranty. The expenses of such doing at the cost of said party of the second part.



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And it is mutually covenanted and agreed  
by and between the parties hereto, that in  
case of default by the said party of the  
second part in payment of principal or  
interest the said party of the second part  
their heirs Executors representatives or  
assigns who may have possession or right  
of possession of the said premises at the  
time of such default or at any time  
thereafter shall be considered and ac-  
knowledged agreed and declared to be in law  
and equity the tenant and liable at  
the will of said party of the first part their  
representatives and assigns on a rent  
equal to an interest of ten per cent per  
annum on the whole amount of the  
purchase money above specified pay-  
able monthly from the time of such  
default on the payment of principal or  
interest and after such default the said  
party of the first part their representatives or  
assigns shall and may have and exercise  
all the powers rights and remedies provided  
by law or equity to collect such rent  
or to remove such tenant or tenants in the  
same manner and to the same extent  
as if the relation of landlord and tenant  
hereby declared were created by an



original absolute lease for that purpose in  
a specified rent payable monthly on a  
tenure at Will and that in such case  
the said tenant or tenants shall, and  
will pay, or cause to be paid all taxes  
and assessments ordinary and extraordinary  
which may be laid or assessed on said  
premises or any part thereof during the  
continuance of such tenancy and will  
not commit or suffer any waste, or dam-  
age to said premises or the appurtenances  
but will keep and deliver up on the ter-  
mination of such tenancy the said premises  
and appurtenances in a good condition  
upon (ordinary wear and decay and  
unavoidable injury by the elements ex-  
cepted) as they were at the commencement  
of such tenancy

In Witness Whereof the parties here-  
unto set their hands and seals on the day  
and year first above written

Witness my hand  
E. W. Thellat  
H. Tschu  
Christian Loren

Seal  
Seal  
Seal  
Seal  
Seal  
Seal  
Seal

Augustus Kellner



For value Received we, Fr. Fischer &  
Augustus Kellner Augustus Thier Jacob  
Wallis & Christian Lotz, trustees of the  
South Chicago German Society of the  
Methodist Episcopal Church, do hereby  
assign and transfer all the interest of  
the said Society invested in us as has  
been in the lands described in the agreement  
of Thomas Minton his heirs and assigns  
forever, and authorize him to receive  
a deed for said premises

Chicago July 17<sup>th</sup> 1835.

|                |     |
|----------------|-----|
| Fr. Fischer    | Geo |
| Jacob Wallis   | Geo |
| Augustus Thier | Geo |

State of Illinois }  
Cook County }

I John L. Bernidge,  
Notary Public for the Town of Ridgeland  
in said County do hereby certify that  
George L. Malmgren to me personally known  
this day came before me in person and  
being sworn did say that he was per-  
sonally acquainted with Frederick  
Fischer Jacob Wallis and Augustus  
Thier whose signatures appear to the above  
assignment that said signatures were



assigned to said assignment respectively by  
the said D. Fisher Jacob Waller and  
Augustus Their in his presence and the  
same was done voluntarily and for the  
uses therein named by the said Fisher, Wal-  
ler & Their

Witness my hand and notarial  
seal this 17<sup>th</sup> day of July A.D. 1855

John L. Beruago

Notary Public

Notariable  
seal

J. Lind & E. W. Whelan

Indemnity to Augustin and Augustus

June 19, 1854

Agreement for sale of Lot 1 Block 2 Duncan  
Addition to Chicago

Payable

|      |         |           |        |                |      |
|------|---------|-----------|--------|----------------|------|
| 1854 | June 19 | Principal | 400.   |                |      |
|      |         | Interest  | 216.   | <del>666</del> | paid |
| 1855 | June 19 | Principal | 720.   |                |      |
|      |         | Interest  | 572.50 | 542.50         | paid |
| 1856 | June 19 | Principal | 720.   |                |      |
|      |         | Int.      | 729.60 | 549.60         | paid |
| 1857 | June 19 | Principal | 720.   |                |      |
|      |         | Interest  | 56.40  | 566.40         | paid |
| 1858 | June 19 | Principal | 720.   |                |      |
|      |         | Int.      | 4320   | 763.20         | paid |
| 1859 | June 19 | Principal | 720.   |                |      |

Rec<sup>d</sup> June 19, 1856. The installment of eight hundred forty  
nine dollars for due this date also seven dollars  
43<sup>cts</sup> for assessment on the lot paid by us on 24<sup>th</sup> inst.  
Lind & Whelan



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Rec<sup>d</sup> June 20 1837. An installment of Eight Hun-  
dred and Sixty four due June 19 1837  
Lind & Shillard

Received June 25 1838 An installment of Seven hun-  
dred and Sixty three dollars due June 19 1838  
Lind & Shillard

Rec<sup>d</sup> of Rev. G. L. Mearns for trustee June  
hundred and twenty six dollars and fifty nine  
Cents - ~~exp~~ payment of June payment on lot  
one. Block lot sold by Lind & Shillard to  
said Trustee

Dated July 21 1835  
Lind & Shillard  
per Wm. C. Hough their attorney

Thomas Milnor

Superior Court of Chicago  
Chancery.

vs  
Elisha A. Shillard David J.  
Lake William Osborn  
Elizabeth Lind Robert St  
John George Smith  
The Chicago Fireman's  
Insurance Company

The clerk will please  
issue Summons as above.

Blodgett & Munster  
Clerk of Court



And thereupon afterwards went on the day and  
year aforesaid then issued out of the  
Clerk's office of the Superior Court of  
Chicago, the People Just of Summons  
which with the return of the Sheriff  
endorsed thereon, is in the Words and figures  
following to wit

State of Illinois  
County of Cook } ss

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

We Command you that you  
Summon Elisha W. Philant David J.  
Lake. William Estlin. Albertus Lint  
Robert H. Dief George Smith, and  
the Chicago Premium Insurance Company  
if they shall be found in your County  
personally to be, and appear before the  
Superior Court of Chicago of said County  
of Cook, on the first day of the Month June  
Aforesaid at the Court House in the City  
of Chicago in said Cook County on the  
first Monday of May next to answer  
unto Thomas Milner in his certain  
Bill of Complaint filed in the said Court  
on the Chancery side thereof  
And have you then and there this  
Just, with an endorsement thereon in what



manner you shall have executed the same.

Witness Thomas B. Cantu Clerk of  
 said Court and the Seal  
 thereof at Chicago aforesaid.  
 this 15<sup>th</sup> day of May A.D. 1863

Revenue stamp  
 } 50 cents }

Thomas B. Cantu Clerk

Served this writ by delivery a Copy hereof  
 to two persons named defendants Elisha W.  
 Philard David & Luke William Estlin  
 Robert H. Gros and Thomas Church  
 who is President of the within named  
 Chicago Germania Insurance Company  
 the 4<sup>th</sup> day of May 1863 the other  
 defendants Silvestre Lind and George  
 Smith not found in my County. the  
 4<sup>th</sup> day of May 1863

David J. Hammond Sheriff  
 By J. Harding Deputy.



And afterward to wit on the sixteenth  
day of June in the year aforesaid, Pet-  
itioner Lind, David & Lake and William  
Ostrom, three of the said defendants, by  
Matthew & Dapt their Solicitors filed  
in the Clerk's office of the said Court their  
Answer first and several answers which  
in words and figures following wit

Thomas Mulnes  
vs  
Elisha M. McLean  
Petitioner Lind, David  
& Lake, William Ostrom et al

In the Superior  
Court of Chicago  
In Chancery

The first & several answers of Petitioner  
Lind David & Lake, and William  
Ostrom three of the Defendants above  
named to the Bill of Complaint  
of Thomas Mulnes filed in the  
above entitled cause

These defendants now and at all times  
hereafter saving and reserving to  
themselves all and all manner of  
benefit and advantage of Exception  
to the many errors insufficiencies and  
other impuginations in the said Complaint



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and said Bill of Complaint contained  
for answer thereto or unto so much and  
such parts thereof as they answering  
are advised is material and necessary  
for them answering to make answer  
unto. Answer & Say

The said Defend-  
ant Lybrieh Lind admits the execution  
and delivery of said Contract of Sale &  
Purchase dated 19 June A.D. 1834 set  
out on the Complainant's bill of which  
Contract "Exhibit A" attached to same  
part & parcel of said Bill is a correct  
Copy. He has also no reason to doubt  
& therefore admits the assignment  
of the same by the original Contracting  
purchaser to the Complainant as  
stated in said bill and that said  
original Contracting purchaser or  
the Complainant as their assignee  
proceeded to make payments upon  
said Contract to E. W. Meland and  
Lind the amount up to & including  
the payment due thereon or or about  
June 19<sup>th</sup> 1838 leaving the last pay-  
ment thereon due on the 19<sup>th</sup> day  
of June 1839 both principal & interest  
wholly unpaid and unpaid for



The defendant Lind also admits that all that remained unpaid of said Contract price was the amount of said last installment with interest & accruing together with such taxes & assessments as by Contract appeared the purchaser or his assignee were bound to pay, but which neglecting to do devolved upon said owner. Thus enhancing the debt so long as said Contract remained in force & up to that time, the debt to the owner or owners with interest but whether or not. Said balance of principal unpaid with accruing interest with tax payments, or assessments and interest added together would amount to nine hundred & thirty four  $\frac{21}{100}$  Dollars (\$934  $\frac{21}{100}$ ) on the 19<sup>th</sup> day of April 1880 so much dependent upon authentic computation & other proof that this defendant Lind is unable to answer & he leaves the same to be matter of computation & proof as to the precise amount of at any time hereafter it shall become necessary or important to go into the ascertainment thereof.

Said Defendant Lind admits that the sum of, referred to Lot 1 Block



2. Invenius Addendum was conveyed to said Lind & E W Willard to another of defendants in fee by Samuel Lockwood & wife by Deed dated January 11<sup>th</sup> 1859 and that said Lind and wife by Deed of April 1, 1861, released and quit claimed all his interest in said Lot to said defendant E W, Willard who then upon became the sole owner of said Lot.

The Defendant Lind and his said assigns Lake & Born. answering further state & shew to the Court that the Compliment Thomas Minor assignee of said Contract attests & reflects refused to make any further payments upon said Contract of purchase or to fulfill the terms and conditions thereof to any further extent in any respect whatever leaving to the vendor the burden of tax payment and abandoning all intention of any further performance and afterwards that that is to say on the 12<sup>th</sup> day of October A.D. 1861 the said E W Willard having made up his mind long before to the same effect. Determined to avail himself of his utmost legal rights & remedies with



reference to the premises so Contracted for.  
 sale as aforesaid. under said Contract, which  
 expressly provided that the prompt payment  
 performance with respect to payment,  
 & covenants therein contained was to be  
 held and taken as a condition precedent  
 to the obligations thereof on the part of  
 the Vendor. and that timely payment & per-  
 formance was to be held & taken as the  
 essence of the condition upon which the  
 Vendor were to be bound. And that ac-  
 cordingly said defendant William H. Allen  
 in his own mind to declare said Con-  
 tract & all the rights and interests of  
 said Complainant thereunder to be for-  
 feited determined & for ever ended, and  
 accordingly said defendant William H. Allen  
 on said 12<sup>th</sup> day of October 1861 caused  
 to be served upon said Complainant,  
 Pursuantly to written notice signed by  
 him in the words & figures following  
 "Do Thomas Milner

Chicago Ill

" you will please take notice, that  
 " default having long since been made  
 " in the payment of the last instalment due  
 " upon a certain Land Contract bearing  
 " date the nineteenth (19<sup>th</sup>) day of June  
 " A.D. 1854 & executed by the undersigned



" & Sylvester Lind to. Medwick Joseph & others  
" Trustees of the South Chicago German So-  
" ciety of the Methodist Episcopal Church.  
" & which has been duly assigned to you  
" which said Contract, stipulated for the conveyance  
" of Lot number one (1) in Block number  
" 300 (2) in Duncan's addition to Chicago &  
" the undersigned having since become  
" & now being the sole owner of said Lot,  
" Now therefore in accordance with the  
" provisions and conditions in said Contract  
" contained I do hereby declare the same  
" and all your right title and interest therein  
" under the lot therein described for-  
" feited determined & for ever ended  
" Chicago Oct 9<sup>th</sup> 1861 E W Willard "

And the said defendants David J Little  
& William Robinson assignors of said Syl-  
vester Lind under an assignment herein  
equally mentioned made & filed by them  
in Trust for the benefit of the creditors  
of said Lind avowing that they  
have acquired all their knowledge of  
the facts and circumstances above stated  
on the part of said Lind & Willard jointly  
or severally by hearsay, only but they  
believe the same to be strictly true  
as now set forth by one or both of said



the defendants Lind & Thellard and all  
of said above named defendants insist  
& claim that by reason of such de-  
fault in respect of timely performance  
and payment upon said Contract and  
the express determination of said Thellard  
so to do as above stated & set forth all  
the right title & interest of the Complainant  
as assignee of the original vendor under  
said Contract to the lot and premises  
therein specified, most did become  
both in law & in fact, equitably perfected  
determined & forever ended

The said defendants <sup>admit</sup> ~~admit~~ from  
hearsay & on information derived  
from said E. N. Thellard that on  
or about the 19<sup>th</sup> day of April 1863  
the Complainant tendered to him the  
said E. N. Thellard the said sum  
of \$934 <sup>21</sup>/<sub>100</sub> mentioned in the Bill  
of Complaint and demanded a deed  
of the premises aforesaid under said  
purchase Contract which he said  
Thellard refused to give on the ground  
of forfeiture & abandonment of said  
Contract by non payment & non performance  
according to its terms & conditions. But  
these defendants insist, (admitting that  
they have received information from said



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Said Plaintiff of the facts last stated  
on his part and believe the same to be  
true) that by reason of the facts above  
stated and set forth and also for many  
other reasons hereafter contained the said  
Plaintiff was under no obligation in law  
or equity to give such deed to the Com-  
plainant as was demanded of him but  
was under imperative obligations of the highest  
character to withhold said deed from the  
Complainant & to give the same to other  
claimants in consequence of other obli-  
gations assumed by & binding upon him  
as will hereafter appear

And all the defendant above named  
further answering states show to the Court  
that said Lot 1 in Block 2 in Duncan addi-  
tion was one of a large number of lots  
on the same addition which were purchased  
or acquired by said Luit & Plaintiff in  
the year 1834 by two separate contracts  
made by them one with Mr. A. Brown  
and another with J. D. Lockwood said  
Contract at first being in the form  
of a Lease or Leases with the privilege  
to said Luit & Plaintiff reserved to turn  
the same at their election into a purchase  
on a credit extending thence into the



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future ten years & when of nearly one  
year was yet unexpired & was to be given  
for any lot as fast as paid for at the  
rate of twenty five dollars per front foot  
that by election of said Lind & Mellaan  
made a short time after the original  
Contracts the same were in due form  
changed into purchase contracts & they  
the said Lind & Mellaan being jointly &  
severally held & bound to their said ven-  
dor for the whole amount of purchase money  
which was but a trifle short of one hun-  
dred & forty thousand Dollars under  
which to receive and pay assessments  
to be incurred, & that said lots were pur-  
chased by said Lind & Mellaan for purpose  
of sale or speculation that they pro-  
ceeded jointly in the business of converting  
said Lots by selling & improving until  
January 9<sup>th</sup> 1861 at which time it  
was found that there was yet re-  
maining unpaid to said Benson  
of the original purchase money a  
balance of

to said Lockwood

Total to both vendors \$85,575  
which sum drawn interest from about  
the same date last mentioned and  
about 69 lots of the original number



of 109 remained unsold & uncon-  
 veyed. the legal title still remaining  
 in said Brown & said Lockwood.  
 It was also then found, that said  
 Lind & Phillard had on hand notes  
 contracts and securities mainly good  
 & available being proceeds & profits  
 realized or received by them from  
 sales of about 40 of said Lohs, to the  
 amount of \$48,765<sup>28</sup> which they  
 then on said 9<sup>th</sup> day of January 1881  
 proceeded to divide between them,  
 that said Lind then purchased and  
 bought out the whole interest of said  
 Millard in the unsold Lohs under said  
 purchase contract limited to 69 in  
 number and also in all the assets  
 notes & securities on hand excepting  
 about \$22,925 due & reserved to said  
 Phillard as his share besides a certain  
 other sum of \$323<sup>33</sup> and said  
 Lind also thereupon agreed to release  
 said Phillard from all and every lia-  
 bility to said Brown & said Lockwood  
 or their assigns upon the original  
 purchase contracts above mentioned  
 And these assignments further  
 state & show that Lind that on the



On the day of July A.D. 1861, said defendant Lind having become entirely insolvent by a deed of assignment of that date executed acknowledged & delivered under his hand & seal made over assigned & transferred & conveyed all his estate real and personal to the said Defendant Lake and Stone in Trust for the benefit of all his creditors which deed of assignment was accepted and the Trust indultation and entered upon by the assignees who thenceforth received & took possession of said Lands assigned properly & have ever since held & now hold & are endeavoring to convert the same for the benefit of all his creditors.

And these defendant further answering state & show, to the Court that the insolvency of said Lind was unknown to said Plaintiff until about the date of said assignment; at which time said Plaintiff still remained liable (& as between himself & said Lind) in the relation then existing between them quasi or only as surety for said Lind to said Brown & said Lockwood



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for said balance of \$85.575 besides  
interest, taxes accruing & to accrue  
as in having & holding at that time  
no indemnity or security from said Lint  
to save him harmless due from & under  
these circumstances said Philantony  
greatly alarmed at the prospective  
ruin that threatened him from so  
great a pecuniary liability imposed  
- upon & fast maturing, & consider-  
ing also the very much depressed  
state of the real estate market arising  
from the effect of the Civil War upon  
over the country and greatly fearing  
that the real estate, or 69 lots yet  
remaining unsold, in Duncan's  
additions, would be quite inadequate  
to meet said mortgage so soon to  
become due, thereupon proceeded to  
file his Bill in this Court in Chancery  
(Bill filed in the Month of November  
1861) against said Lint and his  
said assignees with sundry Creditors  
whose interests were represented <sup>mainly</sup> by  
them and by said Bill as  
amended after one hearing, said Philantony  
prayed among other things that said  
real estate remaining unsold or



unappropriated under the said original purchase contracts of Lind & Mullan with Brown & Lockwood to be sold & the proceeds applied to relieve said Mullan from his said liability which had been on the ninth day of January in the same year assumed by said Lind which was sought to be done by just doing what should be necessary to pay the cash of the debt & the residue to said Brown & Lockwood the balance or the excess of any to be brought into Court to abide its further order.

The said Lake & Osborn as assignees representing & guarding the interest of said Creditors of Lind answered said Original Bill & also the same as amended & with the latter filed their Cross Bill & against said Mullan and therein insisted & claimed that said assignees under said Lind were entitled to avail themselves of the whole unexpended portion of credit given by said Browns & Lockwood extending to the first day of January A.D. 1864 & under said Lockwood's Contract extending to March 1<sup>st</sup> in the same year <sup>1864</sup> within which to convert the remaining job amount in Duncan's addition they



Also insisted in said Crop Bill that  
 since the 9<sup>th</sup> day of January 1861, said  
 Lind had conveyed back to said Whelan  
 some of his Lots or his share in them  
 being lots for which they had no pay-  
 ment obtained and from said Brown  
 or said Lockwood & which release  
 or conveyance to it was only intend-  
 ed for the purpose expressly & another  
 consideration but for the purpose of  
 converting the same in the hands of  
 said Whelan or the proceeds thereof to  
 payment on the debt due to said Brown  
 or said Lockwood which allegation  
 said Whelan admitted in his answer  
 to the said Crop Bill, and therefore  
 said assignees insisted that both the ori-  
 ginal and these 3 or 4 last mentioned  
 (of which Lots in Block 2 in Duncan's  
 addition was one), should all be placed  
 in the hands of some competent person  
 to be appointed by the Court with di-  
 rections to sell the same for cash  
 & on credit in no case to exceed the  
 original credit given by Brown  
 Lockwood severally & the proceeds  
 be devoted just to pay to said Brown &  
 said Lockwood the original purchase



price & all advantages of interest & taxes  
ad intum (without which accord-  
 ing to the terms of purchase no deed  
 could be obtained) & that thus & thus  
 only said Whellard should be indem-  
 nified & saved harmless. & a suffi-  
 cient fund could be raised from the  
 premises for that purpose. & if the  
 premises should yield a surplus beyond  
 that indemnification that the same of  
 right belonged to said assignees in  
 Trust for the creditors of said Ltd.  
 And the said Defendants further  
 answering say that contemporaneously  
 with the filing of said Bill (or nearly so)  
 he said C. W. Whellard sured a cause  
 to be served upon Complainant the  
 matter. Notice of the forfeiture determi-  
 nation & for ever ending of his interest  
 of record. & all rights interests & claims  
 under it a cause which he deemed  
 himself justified in taking as these  
 defendants have learned from said  
 Whellard the Bill & answer. by the law  
 of self preservation in view of the great  
 loss he felt himself exposed to and  
 arising from the large debt still  
 due to Dixon & Lockwood all  
 to be raised from funds otherwise



which in the then state of the Country  
 appeared to him totally inadequate  
 to the purpose as he alleged.  
 And these defendants accordingly an-  
 swering say that sometime in the  
 month of September A.D. 1862 the  
 said original Bill as amended  
 & the said Verdict Bill came on for  
 argument before this Court in Chambers  
 sitting. On Bill answer & Verdict  
 Bill & answer & Verdict & replication  
 filed to both answers and after  
 hearing arguments thereon a decree  
 in the main interdicting but settling  
 and determining the most material  
 questions raised between the parties, was  
 made and entered upon the premises  
 a copy whereof is annexed to this  
 answer both taken as part & parcel  
 thereof and marked "Exhibit A."

By which said decree said  
 defendants, Lake & Storm, at the  
 special request, and on the intercession of  
 said Edward & his solicitor were  
 appointed receivers of special master  
 to act from time to time under the  
 direction of this Court for the purpose  
 of making sale of the Real Estate



thruin specified (including thruin  
the said Lot one (1) Block (2) in  
Duncans addition) or of such other  
thruin as said Lind & Whelan author  
of them had

And among other things de-  
creed. but unnecessary to be here enu-  
merated the said Lot 1 Block 2  
in Duncans addition of said was  
specially inserted included by & at  
the Express request of both said  
Whelan & Mr. Winston his solicitor &  
Commiss in said Court to whom the  
original draft of said decree was  
submitted before the Court caused it  
to be entered

And these defendants all say  
further answering & they insist that  
in law & in Equity the act of said  
Whelan & his said solicitor & commiss  
by causing said Lot 1 Block 2 in  
Duncans addition aforesaid to be  
inserted in said decree to be subject  
to the sale thruin ordered & decreed  
for the eventual benefit of the creditors  
of said Lind as to any surplus to be  
produced or raised beyond the un-  
avoidable in damages resultant to  
said Whelan from necessary



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payment. Just due and payable to  
Brown & Lockwood

was and is to be taken in law. as an  
indubitable & irrevocable utterance of  
his the said E. D. Milledents solemn  
natural act. whereby said Contract  
assigned to Complainant was  
and all the interests rights & claims  
of the Complainant were forfeited  
determined & forever ended

And these defendants further answer-  
ing all say that over & above & beyond  
the rights & interests of Linda Lueders  
to be upheld & protected in the pre-  
mises through the estate vested in said  
assignee by the assignment and also  
by the decree aforesaid. there are yet other  
interests estates & Equities subsequently  
arising in & of the same premises and  
demanding the protection of this Court  
as a Court of Equity. That is to say  
the said Defendants. Latta & Osborn.  
acting in good faith and in  
obedience to said decree & having  
entirely upon the execution of said de-  
cree received a written proposition  
from one Wells Lake of Chicago  
proposing to become purchaser of



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and Lot 1. Block 2. in Duncan's ad-  
dition to Chicago, which offer was in  
the words & figures following that  
of today, "Mr. Osborn & D. & Lake

"I offer \$2000. for Lot 1 in  
Block 2. Duncan's addition to Chicago.  
one fourth Cash the balance in 6, 12,  
& 18 Months time The lot I under-  
stand is lots 30 & 125. 1/2 ft deep  
Oct 16 1862. (Wells Lake "

Which offer was drawn up and  
made for the purpose of being sub-  
mitted to the Honorable Court before  
the same should in any event be  
accepted or acted on by the Recor-  
der & Special Master Lake & Osborn in  
conformity to the instructions so to be  
embodied by the Court in the terms of said  
decree.

And thereupon the same being submitted  
to the Court accordingly the same was  
marked at the foot by the Court as  
'approved' with the following addendum  
by the Court. "Debtors of course under-  
stood to run on deferred payments 6  
per cent." Signed by the Court  
"John M. Nelson C.J."  
"Superior Court of Chicago"



And Thompson acting under the  
 decree and accepted of & approved  
 by the Court these defendants procured  
 Wells said Lot by contract in usual  
 form to said Lake for said sum of  
 \$1000.00 and Dollars in full of  
 which said ~~sum~~ money received as down payment &  
 from said Lake on the execution of the  
 said contract & the same was imme-  
 diately paid over with the monies re-  
 ceived on sales of a like nature to said  
 Jm H Brown to apply on the same  
 purchase all which was done in  
 accordance with the express direction  
 of said decree and the residue being received  
 & secured by the purchase contract at 6,  
 12, & 15 months & within that time  
 with interest etc paid was all both  
 principal & interest soon after paid to  
 said Lake & Osborn by said Wells  
 Lake the purchaser in full satis-  
 faction of said contract on his part.

And these defendants assist that said  
 Wells Lake as a bona fide purchaser  
 under said decree without notice or  
 knowledge of any adverse equity or  
 claim whatever, is entitled to a deed



for said Premises to be entered by said  
 Whelan & wife under & in accordance  
 with the terms of the decree and the Con-  
 tract of Sale so as aforesaid made to  
 him and they also insist & claim  
 that in consequence of the facts above  
 stated he has an interest by reason  
 whereof he becomes a necessary  
 party to any litigation or decree &  
 touching the premises in question & is  
 entitled to be made a party to answer  
 & defend in this Suit.

These defendants further ans-  
 wering all say that neither the original  
 contracting parties the assignor under  
 whom <sup>Complainant</sup> claims, nor Complainant have ever  
 caused said original Contract dated June  
 19<sup>th</sup> 1834 to be recorded in the Recorder's  
 office of Cook County and the de-  
 fendants Lake, Osborn assignees of  
 said as aforesaid entered upon its  
 discharge of their duties as assignees  
 and also as receivers under said  
 decree and have done all the business  
 pertaining to the Sale of said Lot to  
 Wells Lake as aforesaid in total igno-  
 rance that any such Contract of Sale  
 had ever been made <sup>by said Lake & Osborn</sup> with the trustees of  
 the South Chicago German Society



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Society, of the Methodist Episcopal Church  
or that the same had been assigned to Com-  
plainant or had any existence whatever  
& they insist that long before their interest  
accrued to them as assignees said  
Contract had been put an end to & is  
wholly defunct.

And yet the said LaRue & Osborn  
say that at the time of the Contract, made for  
sale of said Lot to Wells Lake, they the said  
assignees had been informed that the former  
Contract of said Philand to same or other person  
for sale, had been long before forfeited & void  
& that the lot had been restored to & was held by  
said Philand. And they also say that said  
Wells Lake, had no information or know-  
ledge whatever at that time or at any  
time since after full payment of any of  
the duties touching said Contract of sale, so for-  
feited as aforesaid. All which matters &  
things the Defendant is ready to verify main-  
tain & prove to the Honorable Court & shall  
direct & humbly pray to be hence dismissed &  
with their reasonable costs and charges in this  
behalf must wrongfully sustained.

David & LaRue  
William Osborn  
D. L. M. D.

Mathew & Daft  
Sols for Dfts above named,



(Copy of Decree upon to in the above answer)

Elisha W. Thwait

vs  
Miles Lind  
David & Lake  
Thos. Estom

Sept 23<sup>d</sup> 1862

This cause having  
been this day brought on for argument on  
Bill and answer. Cross Bill and answer  
therein and Replications filed & to each  
answer.

And after hearing Messrs. Thwaiter &  
Blodgett for complainant Thwaiter & Messrs.  
Matthew & Daft. on behalf of said Lind  
& the other defendants his assignees

It is thereupon ordered by the Court  
that David & Lake, and William Estom  
be and they are hereby appointed as  
Quors or special Masters to act from  
time to time under the direction of the  
Court for the purpose of making sales  
of the Real Estate herein after specified  
or of such interest therein as the said Lind  
and Thwaiter or either of them have or  
hold by Contract of Lease or purchase  
set forth in the pleadings in this cause.

Subject to the instructions herein contain-  
ed, or hereafter from time to time to be



Item

The real estate above referred to is  
described as follows to wit-

Lot 10, 11 & 13 in Block 1

Lot 6, 11 & 12 in Block 2

Lot 6 in Block 3

Lot 14 & 15 in Block 11

Lot 10, 11 & 15 in Block 11

Lot 1 to 14 inclusive in Block 13

Pl. 28, & 29 & Lot 11 to 14

in Block 22

All in means addition to the  
City of Chicago Cook County Ill

Also Lot 1 in Block 2

Lot 10 in Block 9

Lot 2 & 3 in Block 10

Same addition

Which several last enumerated  
Lots are intended to cover & include the  
several lots which have been conveyed  
by said Lint, to said Millard since  
the 9<sup>th</sup> day of January 1861, as men-  
tioned in the City Bill & which are  
admitted in the answer to have been con-  
veyed for the purpose of adding to the same  
fund in the hands of said Millard to be  
paid over to Jm P Brown & Samuel  
Lockwood in the purchase Antiachi



& Leases mentioned in the pleadings in this Cause

The said David J. Lake, & Wm. Brown, are directed immediately from time to time as they may hereafter offer from responsible parties to call into contracts for the sale of said Lots on payment of at least one quarter of the purchase price of each lot, in cash down & the residue within such periods (to be approved of by the Court to whom in each case the terms of sale are first to be submitted) as shall make the same available or at least an adequate proportion thereof ~~from the other xxxxxx~~ ~~xxxxxx~~ ~~xxxxxx~~ available to meet with the additional amount from the other sources herein pointed to the full payment of at least \$25 per front foot on each lot. Being the amount due to said Wm. Brown & to said David J. Lockwood with interest & charges on or before the 1<sup>st</sup> day of February & the 1<sup>st</sup> day of March A.D. 1864.

Said Receivers will pay over money to Brown & Lockwood notice they are <sup>fully paid</sup> that they will pay into Court as ordered hereafter.

All matters touching the proceeds mentioned in the pleadings in this Cause



as well as the application of the same  
and the share of assets set off to said  
Lind in the Division made between  
said Lind & said Philard on the 9<sup>th</sup>  
day of Jan'y 1861 as well as  
questions touching the claims of Lind  
or debt in the surplus (if any) are  
reserved for future adjudication

It being nevertheless adjudged that  
whatever amount is included in said  
share or part of assets set to said Lind  
on 9<sup>th</sup> Jan'y 1861 is retained by  
said Philard & shall be deemed to  
belong to said Lind as part & parcel  
of the fund for payment to Brown & Sick  
more both of principal and interest & of  
other charges. And draw interest from  
the date hereof while so withheld from  
its proper destination

This order decreed upon in  
the Cause

Blodget Plamier  
Amphibols  
Mathur & Vast for Lind  
& assignees



And affirmant to that on the Twenty  
second day of June in the year aforesaid  
the same being one of the days of the June  
Term of said Court. the following among  
other proceedings were had and entered  
of record in Court to that:

Thomas Milner.

vs.  
Elihu W. Willard  
David J. Lake William  
Storm Delrose Lind  
Robert H. Hop. George Smith  
Chicago Merchants Insurance Company

Bill

And now comes said Complainant, by Blossie  
Thurston his solicitor and on their motion  
it is ordered that Complainant have leave  
to amend the Bill of Complaint in  
said Cause, and it is further ordered,  
that Defendants be and they are hereby  
required to file their answer herein to  
amended Bill, of Complaint by first day  
of July Term of this Court.



And do hereby certify that on the  
day and year aforesaid there issued  
out of the Clerk's office of the said Supreme  
Court of Illinois the Process of  
Summons, which with the return  
of the Sheriff endorsed thereon is in  
word and figures following to wit  
State of Illinois

County of Cook; ss

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

We command you that  
you summon Wells Lake the said  
defendant in your County personally to be  
and appear before the Supreme Court of  
Illinois of said County of Cook, on the  
first day of the term thereof to be holden  
at the Court House in the City of Chicago  
in said Cook County, on the first Monday  
of July next, to answer unto Thomas  
Molner, who hath filed a Bill of Complaint  
filed in the said Court on the Chancery  
side thereof.

And have you done & there  
this that with an endor-  
sement thereon in what man-  
ner you shall have executed



the same,

Dear

Whmip Thomas Blewett  
 Clerk of our said Court  
 and the Seal thereof at  
 Chicago, Illinois. This  
 22<sup>nd</sup> day of June A.D. 1863  
 Thos B. Curtis Clerk

Given this writ on the within named  
 Wells Lake by delivering a copy  
 thereof to him. the 29<sup>th</sup> day of June 1863  
 D. O. Hammond Sheriff  
 By A. Nelson Deputy

And afterward to wit on the Sixth  
 day of July in the year aforesaid  
 the same being one of the days of  
 the July Term of said Court the  
 following among other proceedings  
 were had and entered of record in  
 Court Court

Thomas Menis

vs.

Elisha Dillard and David Lake.  
 William Estlin. John Lind  
 Robert H. Prop George Smith  
 Chicago Insurance Insurance  
 Company Wells Lake

Bills



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And now comes the said Wells Latta  
one of the Defendants in above entitled cause  
by Matthew J. Gaff his solicitor, and on  
their Motion, and no objection being it  
is ordered that time for said Defend-  
ant to answer the Bill of Complaint in  
said cause be and the same is hereby  
extended ten days from this day.

And afterward came on the tenth  
day of July in above and aforesaid  
the said Defendant by Wells Latta  
by Matthew J. Gaff his solicitor &  
filed in said clerk's office of said  
Court his certain answer which  
is in words and figures following to wit;



Thomas Milner  
 vs.  
 Elisha W. Willard  
 Executor In & others

Jacob S. Pomeroy  
 Clerk of the Court  
 & in Chancery

The answer of Wells Lake one of the  
 Defendants to the Bill of Complaint  
 of Thomas Milner Complainant, filed  
 in the above entitled Cause as amended

This defendant Howard at all times heretofore  
 saving and reserving to himself all and  
 all manner of benefit and advantage  
 of Exception to the many errors, insufficien-  
 cies and other imperfections in the  
 said Complainant's said Bill of Com-  
 plaint contained for answer there-  
 unto as much and such &  
 parts thereof, as he answering was  
 need to be material & necessary for  
 him to make answer unto, answers  
 & says.

That since he became per-  
 chaser of the premises in question, viz.  
 Lot one (1) in Block Two (2) in  
 Case at Tilton to Chicago as herein after  
 mentioned he has heard from David  
 Lake, & the person from whom he



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purchased that Elisha Willard and  
Simeon Lind two of the defendants  
executed a contract for the sale of said  
Lot. date 19<sup>th</sup> June A.D. 1834 of which  
Contract "Exhibit A" attached to the  
Bill is a correct copy & he believes the  
same to be true. In the same manner  
as well as by the information contain-  
ed in said Bill he has heard of the  
assignment of said Contract to Thomas  
Milner the complainant. As to  
payments made upon said Contract  
by the original purchaser or by said  
Milner the assignee he knows nothing  
& leaves the complainant to his proof.

As to a tender made by Thomas  
Milner of any sum to the said E  
Willard as a balance due upon said  
Contract. he this defendant also knows  
nothing and he thus leaves the  
same to such proof as the complain-  
ant may be able to make.

The conveyance of said Lot to Lind  
& Willard by Sam<sup>l</sup> L. Lothrop &  
wife by Deed dated January 11<sup>th</sup> 1837  
& the release of same by said E  
Willard dated June 1<sup>st</sup> 1836 are  
admitted by Defendant.



This defendant further answering says  
 he has been informed & believes that after  
 the assignment of said contract to the Com-  
 plainant Thomas Wilson he the  
 said assignee utterly neglected and  
 refused to complete the payments due  
 upon the purchase of said Lot: &  
 refused to pay the taxes and abandoned  
 & gave up all intention of completing  
 the purchase and that afterwards on  
 the 10<sup>th</sup> day of October A.D. 1861 said  
 defendant E. W. Willard determined  
 to waive himself of his rights under  
 the terms of said contract, which  
 expressly provided that prompt  
 performance with respect to pay-  
 ments & covenants therein con-  
 tained was to be held & taken as a  
 condition precedent to the obligations  
 thereof on part of Vendor and that  
 timely payments & performance  
 was to be held & taken as the essence  
 of said contract & action upon which  
 the Vendor were to be bound and  
 on that account said defendant  
 E. W. Willard proceeded to declare  
 said contract and all the rights  
 & interests of complainant thereunder  
 to be forfeited determined and for-



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ended accordingly and on said  
12<sup>th</sup> day of October A.D. 1861. Said  
Phillips caused to be served upon the  
Complainant personally a written &  
notice signed by him and addressed  
to the said Complainant in the words  
& figures following that is to say  
Do Thomas Melner

Chicago Ill

" You will please take notice -  
" that default having long since been  
" made in payment of the last in-  
" statement due upon a certain land &  
" Contract bearing date the 1<sup>st</sup> of  
" March 1851 day of June A.D. 1854  
" & executed by the undersigned &  
" Lybush Lind to Frederick Busch  
" and others trustees of the South Chicago  
" German Society of the Methodist  
" Episcopal Church. and which has  
" been duly assigned to you. which said  
" Contract stipulates for the conveyance  
" of Lot number one (1) in Block number  
" No (2) in Duncan's addition to Chicago  
" & the undersigned having since be-  
" come and now being the sole owner  
" of said Lot.

Now Therefore in accordance



" into the provisions & conditions in said  
" Contract contained & whereby de  
" clare the same and all your right  
" title and interest thence to the lot  
" therein described forfeited determined  
" & forever ended"

Chicago October 9<sup>th</sup> 1861

E. W. Mullan

And the Defendant insists that by reason  
of such default of payment as is set forth in  
said instrument & had been made & incurred  
as he is affirmed & claims as consequence of said  
Mullan Election & determination as stated & set  
forth in said Mullan Notice & brought home  
to the Complainant as assignee of original  
Vendor all the right & title, interest property  
& claim of the said Complainant in equity  
under said Contract did wholly cease end  
and determine in consequence thereof of the  
said Complainant is entitled to no relief by  
reason of any of the matters stated in his said  
Bill

And the defendant further answering states  
& claims to the Court that said Lot 1 in  
Block 2 in Puncas addition to Chicago  
was one of a large number of city lots  
in the same addition, which were purchased  
or acquired by said Land & Mullan in the  
year 1854 by the separate contracts made



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by them one with Mr. Adams & another  
with J. D. Lockwood said Contract at  
first being in the form of a lease or lease  
with the privilege reserved to said Lm &  
Thillard to him the same at their election  
into a purchase on a credit extending  
thence into the future ten years and  
expired nearly one year & yet un-  
expired, due to be given for any lot as  
fast as paid for at seventy five Dollars  
per front foot. That by election of said  
Lm & Thillard made at that time after  
the original Contract, the same was in due  
form changed into purchase contract  
that the said Lm & Thillard being jointly  
or severally held & bound to them said Vendors  
for the whole amount of purchase money  
which was but a trifle short of one &  
hundred & forty Thousand Dollars  
besides interest to accrue & taxes and  
assessments to be incurred, that said  
Lots were purchased by said Lm & Thillard  
for purpose of sale or speculation that  
they proceeded jointly in the business in  
business of converting said Lots by selling  
or improving until January 9<sup>th</sup> A.D. 1861  
at which time it was found that there  
was yet remaining due unpaid to said



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From the original Purchase money a balance  
of \$69,573<sup>16</sup> } and to said Lockwood  
16 000. } Total to both vendors \$85,573  
which sum drew interest from about the same  
date last mentioned, & about 69 lots of  
the original number of 109 remained  
unsold & unconverted the legal title  
then remaining in said Bann. & said  
Lockwood. It was also then found  
that said Lind & Thillard had on hand  
notes, Emphatic and securities mainly  
good & available being proceeds &  
profits realized & received by them from  
sales of about 40 lots to the amount of  
\$48,765<sup>98</sup>, which they drew on said  
9<sup>th</sup> day of January 1861, proceeds to  
dividing between them. That said Lind  
then purchased & brought out the whole  
interest of said Thillard in the unsold  
lots made said purchase emphatic.  
Committed to be b.g. in number, and also  
in all the assets notes and securities  
on hand excepting about \$22,925,  
thereof reserved to said Thillard as his  
share besides a certain other sum of  
\$233<sup>33</sup>, and said Lind also thereupon  
agreed to release said Thillard from  
all & every liability to said Bann.  
said Lockwood or their assigns upon



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the original purchase. Contract also  
mentioned

And the defendant further answering  
states & shews to the Court that  
on the 6<sup>th</sup> day of July AD 1861 said  
Defendant Lind having become entirely  
insolvent by a deed of assignment of that  
date executed acknowledged & delivered  
and in his hand and seal made an  
assigned & transferred & conveyed all  
his estate real & personal to the said  
Defendant Lake & Brown in trust  
for the benefit of all his creditors which  
deed of assignment was accepted and  
the instrument taken & entered upon by the  
assignees who thereunto, secured and took  
possession of said Lind's assigned property  
& have ever since held & are holding and  
are endeavouring to convert the same for  
the benefit of all his creditors.

And the defendant further answering  
states & shews to the Court that the most  
recent of said Lind was unknown to  
said Millard until about the date of  
said assignment at which time said  
Millard still remained liable (& as  
between himself & said Lind) in the re-  
lations then subsisting between them



quasi or only as security for said Lm  
to said Brown & said Lockwood for said  
Balance of \$85 575 & said interest then  
accruing or to accrue & arise, having  
holding at that time no indemnity or se-  
curity from said Lm to save him harmless  
therefrom & under these circumstances  
said Phelan being greatly alarmed at  
the prospect of ruin that threatened him  
from so great a pecuniary <sup>liability</sup> impending &  
just maturing and considering also the  
very much depressed state of the real  
estate Market arising from the effect  
of civil War raging in the country &  
greatly fearing that the real estate or  
by long yet remaining unsold in <sup>quantity</sup> ~~quantity~~  
addition would be quite inadequate to  
meet said indebtedness so soon to be due  
thereupon proceeded to file his Bill  
in this Court in Chancery (Became  
in the month of November 1861) against  
said Lm and his said assignees with  
primary Creditors whose interests were mainly  
represented by them & in and by said  
Bill as amended after the hearing, said  
Phelan prayed among other things, that  
said real estate, remaining unsold, be  
appropriated under said original purchase  
contract of said Lm & Phelan with Brown



& with Lockwood to sell the proceeds  
 applied to relieve said Miller from his  
 said liability which had been on the 9<sup>th</sup>  
 day of January in the same year as  
 ordered by said Court which was sought  
 to be done by just directing what should  
 be necessary to pay the cost of the suit & the  
 residue to said Brown & said Lockwood  
 the balance or excess if any to be brought  
 into Court to abide in further order and  
 the said Lake & Estlin as assignees re-  
 presenting & guarding the interest of said  
 Creditors of said assigned said original  
 Bill and also the same as amended and  
 with the latter filed their Cross Bill against  
 said Miller & thereon insisted & claimed that  
 said assignees and said Court were entitled  
 to avail themselves of the whole unexpired  
 period of credit given by said Brown's  
 Contract extending to the first day of  
 February A.D. 1864 & made & under  
 said Lockwood's Contract extending to  
 March 1<sup>st</sup> in the same <sup>year</sup> 1864 within  
 which to enroll the remaining balance of  
 said Duncan's addition and they also  
 insisted in the said Cross Bill that since  
 the 9<sup>th</sup> day of January 1861 said Court  
 had conveyed back & released said



Milled his interest in and to some four lotting  
 lots for which they had on payment re-  
 turned Duds from said Brown & said  
 Lockwood & which release or conveyance  
 back was only intended for the purpose ex-  
 pressly & no other consideration but for the  
 purpose of conveying the same in the hand  
 of said Milled & the proceeds thereof to  
 payment on the debt due to said Brown.  
 Said Lockwood which alleges said  
 Milled admitted to be true in his answer to  
 said Serp Bill & thereupon & therefore said  
 assignees insisted that both the original lots  
 & these 3 or 4 lots last mentioned (of which  
 Lot 1 in Block 7 in Duncan's addition  
 was one) should all be placed in the  
 hand of some competent person to be  
 appointed by the Court with directions  
 to sell the same for cash & on credit in no  
 case to exceed the original credits given  
 by Brown & Lockwood & finally the  
 proceeds to be devoted first to pay to said  
 Brown & to said Lockwood the original  
 purchase price and all charges & interest  
 & taxes ad interim (without which accord-  
 ing to the terms of purchase no deed could  
 be obtained) and that thus & thus  
 only said Milled should be indemnified  
 & paid his share of a sufficient sum



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Comer & raised from the premises for  
that purpose. And if the premises should  
yield a surplus beyond discharge of  
claim that the same ought belong to  
said assignees in trust for the Comers  
of said Land

And the defendant further answering  
says that contemporaneously with the  
filing of his said Bill (or nearly so) he  
the said O W Willard, sent or caused  
to be served upon Complainant the written  
notice of the forfeiture determining <sup>him</sup> for the  
ending of his contract aforesaid & all &  
right in trust & claims in and to a  
Conveyance which it would seem justly in-  
ferable from his position & his  
acts he deemed himself justified in  
taking (as the defendant has learned  
by information & hearsay) by the  
law of due presumption in view of the  
great loss he felt himself exposed to &  
arising from the large debt due  
to Brown & Lockwood, all to be raised  
from funds or resources which in the  
then state of the Country appeared  
to him totally inadequate to the pur-  
pose as he alleged

And the Defendant further answering



says he has learned by inquiry and information that some time in the month of September A.D. 1862 the said original Bill as amended and said Crop Bill came on for argument before this Court in Chancery sitting on. Bill answers & Crop Bill answers direct & replications filed to both answers and after hearing arguments thereon a decree in the main interlocutory but settling and determining the most material questions raised between the parties was made & entered upon the premises a copy whereof is annexed to the answers.

By which said decree the defendants Latta & Osborn who had been appointed or nominated to be assignees of said Lind on the suggestion and by the request of said defendant E. W. Phillips were now affirmed by the Court at the special instance request and on the indorsement of said E. W. Phillips as Complainant in that Cause a matter as well as defendant in the Crop Bill as well as his solicitor appointed receiver & special master to act from time to time under the direction of this Court for the purpose of making



sales of the real estate therein specified  
 (including therein said Lot 1 Block 2.  
 in Duncans addition) or of such interest  
 therein as said Lord & Maitland or either  
 of them and among other things decreed  
 but unnecessary to be here enumerated  
 the said Lot 1 Block 2. in Duncans  
 addition of a said was specially inserted  
 included by & at the express request  
 of both said Lord & Maitland and Mr  
 Thierlin his solicitor & counsel in said  
 suits to whom the original draft of  
 said decree was submitted in 1841  
 into the book to be filled in by them  
 before the Court caused the same to  
 be entered of record

And the defendant further answering  
 says & he insists that in law & in  
 equity the act of said Lord & Maitland  
 & of his said solicitor & counsel act-  
 ing under & for him in causing said  
 Lot 1 Block 2. in Duncans addition  
 of a said to be inserted in said decree  
 to be subjected to the process of sale  
 therein and thereby ordered & decreed  
 for the eventual benefit of the creditors  
 of said Lord as to any surplus to  
 be produced or raised by all the



sales therein contemplated & provided for  
 beyond the unavailing date in demerit result  
 ant. to said Plaintiff from necessary pay-  
 ment. Just due & payable to Brown  
 & to Lockwood was & is to be taken  
 in law & in equity as an indebtedness  
 & mortgage retention of said Plaintiff.  
 Admittance & act whereby said En-  
 tact and all the interests rights and  
 claims of the Complainant were  
 forfeited determined & forever ended  
 and the defendant and further answering  
 says that the said Defendant Lake & Os-  
 born as receiver and special master  
 appointed by the Court in good faith  
 under and in obedience to said  
 decree and having interest upon the  
 performance & execution of their duties  
 in the premises he the defendant wish-  
 ing to purchase real estate for his own  
 use in the City of Chicago made a  
 proposition in writing to him the said  
 receiver & special master stating  
 date the 16<sup>th</sup> day of October A.D. 1862  
 he the defendant offered \$2000 for  
 said Lot 1 Block 2 Duane's addi-  
 tion to Chicago 1/4 cash balance in  
 6 12 & 15 months time which offer  
 was prepared & made for the purpose



of being submitted to the Honorable Court  
 being accepted and acted on by  
 said Receiver & Special Master, in  
 conformity with instructions so to be embodied  
 in the decree of said Court and thereupon  
 said Receiver & Special Master, through  
 their solicitors & counsel did present  
 said offer to the Hon John M. Wilson being  
 the Judge & Chief Justice of said Court  
 before whom said decree & all the pro-  
 ceedings in said cause were had &  
 held in Chancery who after due  
 consideration approved and sanctioned  
 the acceptance of said offer by said  
 Receiver & Special Master with  
 the provision superadded that interest  
 of course being understood to run  
 on deferred payments at six per  
 cent, which was signified to said  
 Receiver & Special Master by the  
 signature of said approval of said John  
 M. Wilson as Chief Justice of said Court  
 and thereupon said Receiver & Special  
 Master under and in obedience to  
 said decree & in pursuance of the instruc-  
 tions & express directions of the Honorable  
 Court so made in writing they there-  
 upon proceeded to enter into a full



& specific contract for sale of said Lot  
 on the terms & conditions & for the price  
 of said Lot or sum offered as aforesaid.  
 & accepted & approved, and this  
 defendant thereupon paid in cash  
 in advance upon said amount of purchase  
 money the sum of Five Hundred dollars  
 or one fourth & said receiver and special  
 master then & thereupon entered  
 with this defendant into a special contract  
 for sale of said Lot to this defendant  
 a copy whereof is hereto annexed under  
 the hand and seals of said receiver  
 & special master & this defendant he  
 obligating himself to pay said deferred  
 payments at or within the times specified  
 with interest at six per cent per annum  
 & they to convey free and clear of all  
 encumbrances & to procure such  
 deed from John H Brown Esq a S.D. Lock  
 wood which was might be the owner  
 or E W Willard in case the title by deed  
 should prove to be in him (as it actually  
 has) the particulars of which contract  
 will more fully appear from the copy  
 thereof hereto annexed & to be taken  
 as part of this defendant's answer,  
 and this defendant further says  
 that on the 4<sup>th</sup> day of May 1863 he



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he paid up in July to said account  
& special master of sum hundred  
Dollars of principal & forty five dollars  
the interest accrued upon said Contract  
in satisfaction of the sum which they  
the said Lake & Osborn received and  
advanced in full payment upon said  
Contract and the defendant is thereby  
entitled to a deed for said premises  
as executed by said E. W. Thellard in  
such manner & with such signatures  
acknowledgement & other minimum of  
title as this Court shall direct & decree  
on the whole subject matter the  
said Thellard being a party in this suit  
& in the previous suits & to said decree  
& having himself moved & procured  
the interposition & decree of this Court on  
the subject matter said Lot. His  
own Will & for his own protection.  
And the defendant further says he  
is informed & believes that said Lake  
& Osborn the Receiver & special  
master agreed immediately  
paid over the \$500. a down pay-  
ment of the defendant to Wm.  
& Wm. on the original purchase  
Contract in pursuance of the said



decree and to his receipt thereof  
 And this defendant further answering  
 denies as to the allegation of the  
 said - as amended whereby it is  
 stated & charged that the sale to this  
 defendant by Lake & Osborn was a  
 fraudulent sale on the part of this  
 defendant & said David & Lake &  
 with full knowledge of the supposed  
 alleged rights of complainant & for  
 a grossly & otherwise inadequate con-  
 sideration & was void as against Com-  
 plainant. On the contrary one of this  
 defendant says that said sale was  
 made in good faith both on his part  
 & that of both of said David & Lake  
 & William Osborn and that he had at the  
 time no notice knowledge or information  
 of any rights or interests held by Com-  
 plainant in or to said Lot when he  
 so purchased and paid his money as  
 aforesaid and that he is entitled to all  
 the rights and protection of a bona  
 fide purchaser who has parted with  
 & paid his money for property with-  
 out notice and that in matters of  
 fact more than the said complainant had  
 no rights in or to said premises but  
 had long before incurred & suffered



a forfeiture of what he may once  
have had as now stated in extens.

And the defendant now on oath that  
the price paid amply sufficient  
and not inadequate & more than that he  
says that said sale was a judicial sale  
in an emergency and was made at  
a time when the market for real estate  
in Chicago was & long had been excee-  
dingly depressed by monetary reverses  
& the impending state of civil war  
in the country & the sale made by said  
Receivers & Special Masters, to the defend-  
ant was among the first that was made  
under said decree & while as yet the  
state of the market was entirely uncertain  
& under all the circumstances the sale  
was a good one and for an adequate  
& full consideration

And the defendant tho' he admits  
the said David & Lake to be his brother  
yet says that David & Lake had  
no interest in said purchase

This defendant further answering  
alleges & states that the contract of  
said deed of the Complainant claims  
to be assigned was never recorded  
& he is required to believe that the



70

recurs & Special Master never had  
any information of the same. Until after  
the sale was made to this defendant  
when they also learned of the forfeiture  
& ending of said Contract by said Plaintiff  
all which matters & things this defendant  
is ready to truly maintain &  
prove as this Honorable Court shall di-  
rect & humbly prays to be hence dismissed  
with his reasonable costs & charges in the  
behalf most wrongfully sustained.

Matthew & Galt.  
Sols & of Counsel  
for Wells Lake

Wells Lake

(Contract referred to in above answer)

Articles of agreement made & concluded  
the sixteenth day of October in the year  
of our Lord one thousand Eight Hun-  
dred and Fifty One Between David  
& Lake. The estate recurs & special  
Master appointed by the Superior Court  
of Chicago, in the Cause of E. H. Mullan  
vs. J. Lind, his assignees & al. to sell cer-  
tain real estate in Chicago of the first  
part and Wells Lake of the City of Chicago



7  
Cook County, State of Illinois of  
the second part

Whereas that the party of the first  
part at the request of the party of the  
second part in consideration of the money  
here paid and the covenants as herein  
expressed to be performed by the party of the  
second part (the prompt performance  
of which payments and covenants  
being a condition precedent and  
now being the essence of said contract)  
have agreed to sell to the said party  
of the second part all that certain  
lot and parcel of lands situate in  
the County of Cook and State  
of Illinois known & designated as lot  
number one (1) Block Two (2)  
in the Division addition to said City  
of Chicago with the privileges and  
appurtenances thereto belonging

And the said party of the second part  
in consideration of the premises hereby  
agrees to pay the party of the first part  
his heirs or their Executor, Administrator  
or assigns the sum of Two  
Thousand Dollars purchase money  
as follows viz One Hundred Dollars  
as a down payment which is paid &



receipts for by these presents The residue  
 as follows. Five Hundred Dollars in six  
 months, from date The same amount  
 in Twelve & the same in fifteen months  
 from date with interest at the rate of six  
 per cent per annum from date on de-  
 ferred payments to be paid as the same  
 fall due in each year on the whole  
 sum from time remaining unpaid  
 And also that he will well & faithfully  
 in due season pay or cause to be paid  
 all ordinary taxes assessed for revenue  
 purposes upon said premises or any  
 part thereof subsequent to the year 1811.  
 And also all other assessments which  
 may be hereafter charged or assessed upon  
 or against said premises or any part  
 thereof but in case the said party of the  
 second part due to pay <sup>any</sup> all such taxes  
 or assessments upon said premises  
 or appurtenances or any part thereof  
 whenever and as soon as the same shall  
 become due & payable and the party  
 of the first part shall pay from time to  
 time or at any time any or all such taxes  
 or assessments or cause the same to be paid  
 the amount of any and all such payments  
 so made by the party of the first part  
 shall immediately thereupon become



an additional consideration & payment to be made by the party of the second part hereunto for the premises herein agreed to be conveyed

And the said party of the first part further covenants and agrees with the said party of the second part: that upon the faithful performance by said party of the second part of his undertaking in his behalf and of the payment of principal & interest of the sum above mentioned in the manner specified by the said party of the first part. shall and will without delay well and faithfully execute acknowledge & deliver by him or by attorney duly authorized to the party of the second part his heirs or assigns a deed of conveyance of all the right title and interest of the party of the first part of in and to the above described premises unto the appointee with full covenants & warranties, which shall procure said Deed from Mr. St. John Esq. or J. D. Lockwood who or may be the owner or E. W. Milant if he has the deed.

And it is mutually covenanted and agreed by and between the parties



hitherto that in case default be made in the payment of principal or interest at the time or any of the times above specified for the payment thereof and for ten days thereafter this agreement and all the preceding provisions hereof shall be null and void and no longer binding at the option of said party of the first part their representatives or assigns and all the payments which shall then have been made hereon or in pursuance hereof absolutely and forever forfeited to the said party of the first part. and at the election of the said party of the first part their representatives or assigns the covenants and liability of said party of the second part shall continue and remain obligatory upon the said party of the second part and may be enforced and the said consideration money and every part thereof with the annual interest as above specified be collected by proper proceedings in law or equity from the said party of the second part. their  
Executive administrator or assigns

And it is further mutually covenanted and agreed by and between the parties hitherto that in case of default in the payments stipulated to be made by the



Said party of the second part or any  
 part thereof and the Election of the  
 party of the first part their representatives  
 or assigns to consider the foregoing con-  
 tract of sale at an end. and pay pay-  
 ments forfeiting the said party of the  
 second part his own representatives or  
 assigns who may have possession or de-  
 posit of possession of said premises  
 at the time of such default or at any  
 time thereafter shall be considered and  
 are hereby agreed and declared to be in  
 law & equity the tenant or tenants at &  
 will of said party of the first part their  
 representatives and assigns on a rent equal  
 to an interest of ten per cent. per annum  
 on the whole sum of the purchase money  
 above specified payable quarterly yearly  
 from the day of such default in payment  
 of principal & interest. And after such  
 default in payment. And Election to consider  
 the above contract of sale at void the  
 said party of the first part their representa-  
 tives and assigns shall and may lawfully  
 and exercise all powers rights & remedies  
 provided by law or equity to collect  
 such rent or to remove such tenant or  
 tenants the same as if the relation of



Landlord & Tenant hereby declared were created by an original absolute lease. for the purpose of a special rent payable quarterly on a term at Will. And that in such case the said Tenant, or Tenants shall and will pay & cause to be paid. all taxes assessments ordinary and extraordinary which may be laid or assessed on such premises or any part thereof during the continuance of such tenancy, and will not commit or suffer any waste or damage to said premises or the appurtenances but will keep and deliver up on the termination of such tenancy the said premises and appurtenances in as good order and repair (ordinary wear and decay and maror & deterioration by the elements except. as they were in at the commencement of such tenancy

In Witness whereof the party of the first part. Lake. (S) & other party of the first part. and the party of the second part in his own proper person have hereunto respectively set their hand & seals on the day & year first above written.

Signed sealed & delivered  
In presence of  
Attest Matthew

(Signed) Land & Lake  
Jm 22<sup>nd</sup> Nov  
Wells Lake

Real  
Real  
Real



77  
\$1349 <sup>00</sup>/<sub>100</sub> Received on the Nathan Contract  
Eighteen hundred Dollars Balance of Con-  
tract and Forty Nine Dollars interest  
(Signed) David J. Lake  
Chicago May 4/63 William Brown



And afterwards Comt<sup>r</sup> on the seventh day of October in the year aforesaid. the same being one of the days of the October Term of said Comt<sup>r</sup>. the following among other proceedings were had & entered of record in said Comt<sup>r</sup> Court-

Thomas Milner

vs.

Eliza Meland David J Lake.  
William Osborn Petros Lind  
Robert H. Hop. George Smith.  
Chicago Firemans Insurance Company  
Wells Lake

Bill

And now at this day come Mathew Tapp. Solicitor and on this motion it is ordered that the said Complainant be and he is hereby required to file his replication within ten days or case be set down for hearing on the Bill of Complaint against the said defendants <sup>several</sup> viz David J Lake. William Osborn and Wells Lake



And afterwards (met on the 23<sup>rd</sup> day  
 of the month and year last aforesaid  
 the said Thomas Milner by his agent  
 Thos. his Solicitor filed in the office of the  
 Clerk of said Court his certain Repli-  
 cations to the answers respectively of  
 Sir John Lind, David J. Lake, and Wm  
 Osborn and Wells Lake, which are  
 in Words & figures following, to wit:

|                     |   |                                                                                                                        |
|---------------------|---|------------------------------------------------------------------------------------------------------------------------|
| Thomas Milner       | } | Superior Court of Judicature                                                                                           |
| as                  |   |                                                                                                                        |
| Sir John Lind & Coe | } | The Replication of Thomas<br>Milner Complainant to the answer of Sir John<br>Lind David J. Lake & Wm Osborn Defendants |
|                     |   |                                                                                                                        |

The Replication of Thomas  
 Milner Complainant to the answer of Sir John  
 Lind David J. Lake & Wm Osborn Defendants

The replicant saving & reserving  
 unto himself all & all manner of advan-  
 tage of Exception to the manifold in-  
 sufficiencies of the said answer for replication  
 sheweth forth that he will answer & prove  
 his said Bill to the Court & sufficient  
 in the law to be answered unto and that  
 the said answer of the said Defendants is  
 uncertain untrue & insufficient to be  
 replied unto by the Replicant without this  
 that any other matter or thing whatsoever



in the said Answer. Contained material or  
effectual in the law to be replied unto con-  
fessed & avoided traversed & denied in this  
all which matters & things this repliant  
is and will be ready to prove as the  
honorable court shall direct & command  
as in and by the said Bill he hath al-  
ready prayed

By his attys  
Strafale & Munster

Thomas Milner }  
Debra<sup>re</sup> Lind } Supr. Court of  
Chicago

The Replication of Thomas Milner  
Complainant to the answer of Wells Solt  
Defendant

This Repliant saying &  
 turning into himself all and all manner  
 of advantage & Exception to the manifold  
 insufficiencies of the said answer for ap-  
 plication sheweth forth that he will  
 & proce. his said Bill to be true certain and  
 sufficient in the law to be answered  
 unto and that the said answer of the  
 said defendant is uncertain untrue  
 & insufficient to be replied unto by the  
 repliant without that any other



8<sup>c</sup>

Matter or thing whatsoever in the said  
answer contained material or essential  
in the law to be replied unto Confessed  
& avoided traversed or denied or true  
all which matters & things the re-  
pliant & and will be ready to aver &  
prove as this Honorable Court shall  
direct & command, prays as in and by his  
said Bill he hath already prayed

By his attys.  
Bradford & Threlk.



And after said Court on the sixteenth  
 day of February in the year of our Lord  
 one thousand eight hundred and  
 six by John the said Defendant  
 E W Willard by Blood & Thurston  
 his Solicitors filed in the Clerk's Office  
 of the said Court. his Certain answer  
 which is in Words & figures follow-  
 ing to wit:

|                            |                             |
|----------------------------|-----------------------------|
| Thomas Milner              | } Superior Court of Chicago |
| <sup>vs.</sup> Morris Lind |                             |
| Elisha W Willard           |                             |
| & al                       |                             |
|                            | } In Chancery               |

The separate answer  
 of Elisha W Willard one of the  
 defendants to the Bill of Complaint  
 of Thomas Milner Complainant

My Defendant now and at all  
 times hereafter saving and reserving  
 himself all and all manner of  
 benefit of Exception to the many errors  
 and insufficiencies in said Bill of  
 Complaint contained for answering there-  
 unto, or unto so much and such  
 parts thereof as he is at or is to or  
 are material to be answered unto



answering says That he admits that  
 the respondent and said sister  
 Lind being the owners in fee of the  
 said Lot. No one (1) in Block. No  
 one (2) in Luncans addition to  
 Chicago in said Cook County en-  
 tered into a certain agreement or  
 contract in writing for the sale  
 of said Lot to said Frederick W.  
 Chr. August Thiel Jacob Walther Chris-  
 tian Lotz Trustees of the Smith Chicago  
 German Society of the Methodist Epis-  
 copal Church to sell to them said Lot  
 in consideration of the sum of Four-  
 thousands Dollars to be paid in  
 manner specified in said agree-  
 ment. a copy of which is annexed  
 to and made part of said Bill,  
 And this deponent further answer-  
 ing admits that said purchaser  
 of said Lot paid to the respondent  
 said Lind of said purchase price  
 the sum of Eighteen hundred &  
 thirty two Dollars and that  
 on the 12<sup>th</sup> day of July A.D. 1855.  
 they assigned and transferred said  
 Contract for a valuable consideration



84.

to said Complainant and that said  
Complainant thereby became entitled  
to a Decree of said Lot upon making the  
payments and performing the covenants  
mentioned in said Contract, both made  
and performed by the said Vendor or his  
assigns

And the defendant further answer-  
ing admits that said Complainant has  
paid upon said Contract to the defend-  
ant and said Lord the sum of Ninety  
six Hundred and seventy Three 96/3  
Dollars, and that this was due upon  
the said Contract, at or about the time  
of filing said Bill including taxes  
paid and interest the sum of Nine  
Hundred and thirty Four Dollars  
And the defendant further answering  
admits that since the making of  
said Contract, for the conveyance of  
said Lot, the said Sir John Lord  
has conveyed all his right title and  
interest in and to said Lot to the re-  
spondent, and that he now holds the  
legal title to the same in his own name  
in trust however (as respondent alleges)  
for the use and benefit of said Lord  
his assigns and Creditors

And respondent further answering



admits that said Complainant did  
 on the 19<sup>th</sup> day of June A.D. 1863  
 under to respondent the said sum  
 of nine hundred & thirty four<sup>21</sup>/<sub>100</sub>  
 Dollars due upon said Contract: and  
 demanded of the respondent a deed  
 of said Lot. and your order admits  
 that he declines to make said deed  
 for the reason as the respondent alleges  
 that he is not the owner of said Lot but  
 simply holds the legal title to the same in  
 trust as aforesaid for said Lord and his  
 Creditors and assigns and that on  
 or about the 12<sup>th</sup> day of October A.D. 1863  
 respondent during to protect the rights  
 of said Lord and his Creditors in said  
 Lot and to collect the balance due  
 upon the same from said Milner ca-  
 used to be served upon said Milner a  
 notice in writing declaring forfeited  
 his interest in said Contract a copy of  
 which said Notice is annexed to this  
 Answer marked "Exhibit A" and re-  
 spondent, was not willing to make a deed of  
 said property to said Milner after  
 having given said Notice & after un-  
 der the order and direction of this Hon-  
 orable Court.



And the respondent further answering at  
milit that said Complainant did not  
abandon said Contract and that he  
was prevented by poverty from making  
said last payment, on the same.

And the respondent further answering  
status that he has been informed that  
it is his to state in said Bill that  
one Wells Lake claims some interest  
in said Lot. and as respondent is in-  
formed and believes said Lake claims  
to have purchased the same from said  
David J. Lake, and William Estlin &  
who are receivers appointed by the  
Honorable Court in a certain cause  
now pending wherein respondent is  
Complainant and others are  
defendants for the alleged  
sum or price of Ten Thousand Dollars.  
And the respondent at milit that  
if any such sale was made, it was  
done fraudulently by said parties, en-  
titled as against the rights of the creditors  
of said ~~David J. Lake~~ David as well as  
against the rights of said Complainant  
therein and further that said sale was  
made by said Lake and Estlin with  
full notice of the sale of the same to  
said Complainant as aforesaid, and of



The amount due and unpaid thereon,  
and further admits that said sale was  
made for a grossly inadequate con-  
sideration and states further that at the  
least one of said Receipts was not re-  
turned to the Clerk of said Sale. that  
the same must be objected to by this  
respondent who was interested in having  
the same realize as large a sum as  
possible to be applied upon a debt for  
which respondent was jointly liable  
with said Lunt, on the ground that  
the price offered by said Wells Lake  
was grossly inadequate, and defendant  
admits that said Sale is wholly void  
as against said Complainant provided  
he has any right to a due discharge  
of said Contract which respondent  
neither admits or denies but leaves  
the question to be decided by the Honorable  
Court.

And the defendant denies all and  
all manner of combination and conspiracy  
with which he is by said Bill charged  
without this that any other matter or  
thing whatsoever material or necessary  
to be answered unto and not herein and  
hereby Well and sufficiently answered



until hurried and avoided confession,  
or denied or hid both knowledge, a belief  
of this defendant and claims to be  
hence dismissed with reasonable costs in  
this behalf, most wrongfully sustained

E. A. Millard

Bradford & Thustin  
Deft. - vs -

E. A. Bradford of counsel



And afterwards first on the Twentieth day of March in the year aforesaid there was filed in the office of the Clerk of said Court certain depositions which are in words and figures following to wit

Thomas Milner,  
vs.  
E W Thillard  
David J Latta  
William Osborn &  
Christen & al

In the Superior  
Court of Chicago  
In Chancery

Depositions taken  
in the above entitled Cause on behalf of  
Arthur Ponty, by consent

John W Thaughop

I reside in the City  
of Chicago I know the parties and am a  
Counselor & attorney at Law

I know Thomas Milner the Complain-  
ant. I have known him over twelve years  
in the City of Chicago I have attended  
to business for him as his attorney for  
the last preceding eight years Mr  
Milner had made some money prior  
to 1837 & bought some real estate since



he had paid for & on some: had made partial payments. By the failure of the Bank of United Brethren which occurred before 1837 his ready money was tied up & remained so how long I don't know. Indeed I don't know he has ever received it. His real estate was mostly unproductive except the house he lived in. Along previous to 1837 (how long I don't know) he borrowed money on his real estate (by mortgage) and thus encumbered it for the purpose of making improvements on real estate. He borrowed at long 10 per cent loans all he could get on his property. In the season of 1837 his assets so depreciated that he was unable to pay the interest on his loans. He then came to Gtnepe to consult as to the propriety of making an assignment. I advised him not to do so but to struggle along. He did as I advised him. He borrowed or obtained some help from friends in England to meet his interest. Still some interest was left unpaid. He had one piece of property that was unincumbered but there was some defect in the title which prevented his using it in obtaining loans. & it is



but recently that he has got the defect removed, so as to be able to use the property, by way of getting loans. I only know of his once receiving money from England, as above stated, that was last Spring. His health has been such - from a break or rupture, of the heart, that he has been unable to do business as his trade as a mason for five years past.

The lot which I now refer to as bought once by him i.e. 50 feet on Queen street (corner of Madison) 125 feet on Madison is worth now the sum of thirty four hundred Dollars

I think it has been worth three thousand Dollars & could have been made available to that amount at any time within three years past.

Cup Examined by Mr Fast.

I was not dealing in Real estate in that lot, neighborhood in the fall of 1862. I do not reside in that neighborhood but on Dearborn Park, in the South Division. I don't know as I sold any property in the West Division within three years past. I cannot say how much Miner was worth in June 1859

John W. Vaughn.

objects to

objects to



Oaths sworn & sworn to  
December 26<sup>th</sup> 1863.  
before me.

St H Mashin  
Master in Chancery  
of the Superior Court of Chicago

Albert Rup, sworn

I reside in Chicago  
ann. of ~~being~~<sup>my</sup> age of 37 years up-  
wards was formerly a merchant.  
Reside on West Monroe Street be-  
tween Morgan & Madden Streets have  
lived there most of the time since 1835  
I know the premises Lot 1 Block 2  
Dancans and Ditton situate on the  
South W. Corner of Green & Madison Streets  
West Division 50 feet front on Green St  
& 125 on Madison Street The fair  
value of the lot as sold in October  
1862 was in my opinion \$7000  
Dollars. Property was then very  
low & very few sales. I have bought  
considerable real estate within the  
year last past & have taken pains to  
inform myself as to values of real  
estate in the City for that purpose  
i.e. of purchasing for investment



on my own account I think at the  
time named I knew the value of lot  
in that vicinity

Albert Hupp

Subscribed & sworn to  
January 20 1864. Before me

of H. Martin

Master in Chancery of  
the Superior Court of Chicago

John A. Gynell

I have been engaged to  
in loaning money & buying & selling  
Real Estate in Chicago since the spring  
of 1838 in Company with Mr. Thos. H. Gynell  
under the firm of Thos. H. Gynell & Co.

My age is 47 years

I was somewhat acquainted with  
the value of real estate, in the West Division  
as well as in other divisions of Chicago  
I dealt more in the West than in  
the N. Division I know lot 1 Block  
2. in Laramie ad joining at the corner  
of Green & Madison Street so situated  
on Green & 125 on Madison

I consider the fair value of that  
lot estimated on the Green St front  
in the month of October 1862 to  
have been forty dollars per foot



Subscribed & sworn to,  
January 20, 1864  
before me.

94

John A. Dymall

Wm H. Mather Master

in Charge of the Superior Court of Chicago

Caleb P. Fitz

Reside on Peoria  
Street in the West Division of Chicago  
in Cook County, am of the aged 55  
years, am engaged in Commission  
business. I live between Adams &  
Monroe Street & have done so since  
1847 have occasionally bought & sold  
real estate on my own account  
in that section of the City.

I know the  
lot 1. Block 2 in Duncan's addition  
50 ft. on Green Street & 125 on  
Madison at the S. W. Corner a  
vacant lot. I am of Block 2 from  
Madison where I live & up then 3  
Blocks from the lot in question by  
measuring & otherwise I have been in-  
volved in the value of lot, in  
that neighborhood for years past.

The fair value of that lot in October  
1862, I should consider to have been



95  
Diply Dollars per foot. estimating on  
the Green Street front,

Ordered / from to Caleb D. Pittz  
Jan'y 20 1864 before me  
H St Martin  
Master in Chancery of the  
Superior Court of Chicago



The following paper is the Exhibit annexed to  
 the original Bill of Complaint in the Chancery case  
 of Weirards vs. Lind Lake & Osborn under the decree  
 in which the lot in question was sold to the late  
 Wells Lake - and was on file in said case at the time  
 of the sale to Wells Lake. This was referred to in said  
 agreed case and offered in evidence at the hearing.

Matthew & Daft Sole for  
 Lind, Lake, Osborn Wells Lake et al  
 Blodgett & Winston plouff



95

Statement of the Affairs of J Lind & E  
 W Willard as relates to the purchase &  
 Contract to purchase sundry Lots in  
 Duncan's Addition to Chicago from Wm  
 A Dunn & Samuel Dickwood made  
 up to this 1<sup>st</sup> of January 1861. Containing  
 Cash on hand. \$1344.26

Dep. discomit on note of R M

5000 Stough for 5000 due July 2 1861. 234.17. \$1290.17  
 J D Metzler past due. 5000.00

draft of H Botsford on C Burr due. m. 24 July 21/61. 5000.00

Note of R M 5000 Stough due July 1/61 with int to pay. 5000.00

" do " March 1/61. " " " 5000.00

Int. on the two notes above 5 mt. 44.66

Note R M 5000 Stough due July 2<sup>d</sup> 1861. with int. 5000.00

Balance due from Wm Milner assignee Sept 1 1862.

\$720 Int. to Jan 1 1861 10 p ct. 18 m. 13 days \$110.60 830.60

2 Lots 2 & 3 Block 10 Contract to Goldue paid for. 4000.00

(House) 2 " 11 & 12. " 8. " " Manufacture " 8000.00

1. " 10 " 8. " " do " " 2000.00

(House) 1. " 13 " 14 " " Manufacture " 2500.00

1/2 " 15 " 13 " " Sheds & etc " 430.62

(House) 1/2 " 15 " 13 " " Sheds & etc " 1300.00

Due from Wm 21st 1861 for sale of Lots 10 & 2 Burr

22. Not paid for say due April 1 1860 \$1475

Int 10 p ct to July 1/61 122.91

Interest due April 1 1861 1400.00

" " " 1 1862 1325.00  
 Deduct to W paid to Burr for 2 lots 4322.91  
 Lot 9 Block 10 paid for not sold 2500.00 1522.91  
 1125.00  
 43-765.91



Memorandum of agreement entered into  
 this ninth day of January 1861 Between  
 J Lind & E W Thellard as follows. The  
 said Lind buys all the interest of the  
 said Thellard in the Lot in Duncan's addition  
 specified in certain leases and agreements be-  
 tween Mr A Brown & J D Lockwood & the  
 said Lind & Thellard to which agreement  
 or had and to all the assets now or hereafter  
 which have been realized thereby upon the  
 following terms. The said Thellard is to  
 receive as his full proportion all the  
 assets enumerated in the foregoing Statement  
 and marked on red thus amounting  
 to say \$22,925 the said Lind retaining  
 as his proportion all the residue except  
 the sum of \$23.33 being half the in-  
 terest on the two notes of R M & O Hays  
 for \$5000 each due Feb-1<sup>st</sup> & March 1<sup>st</sup> 1861  
 which sum of interest when paid shall  
 be paid over to the said Thellard.

The said Lind agrees to release the  
 said Thellard from all and every liability to  
 the said Thellard & J D Lockwood as  
 their assigns on account of the said articles  
 of Lease and of his the said Thellard's ac-  
 ceptance to purchase the Lot as he elect-  
 ed to do and from all and every liability.



to any party or parties whatsoever, on  
account of the same. upon such release, from  
liability being given to the said Willard &  
the amounts enumerated in the foregoing  
Statement, divided as set forth and due  
of release being executed the said Willard  
and to surrender to the said Lord his  
Certain Bond given to secure the sum  
of One Thousand Dollars

And it is further agreed on the part of  
said Lord that if he shall make out  
will with the lot, now unsold he will  
pay over to said Willard some portion of  
what he may make as profit but he  
shall not be obligated in any manner to  
do.

Witness my hand this 9<sup>th</sup>  
day of January 1861.

Cybele Lord Read  
E W Willard Seal

Jan 18<sup>th</sup> 1861. Rec<sup>d</sup> the Bond for One  
Thousand Dollars from E W Willard upon the foregoing  
agreement  
J. Lord

Feb 2 1861. Rec<sup>d</sup> of E W Willard fifty hundred & ninety seven<sup>th</sup>  
Dollars in agreement of the foregoing \$1597<sup>th</sup>.

Feb 25 1861. Rec<sup>d</sup> of E W Willard One Thousand Dollars  
in accordance of the foregoing agreement  
J Lord.



The stipulations which next follows hereinafter, was  
entered into by Solicitors & Counsel for both parties  
to obviate the necessity of transcribing into the  
Record the bills & answers in the case of E. W. Willard  
vs S. Lind, Lake & Osborn his assignees & Wells & Luce  
appellants by contract under the date of Sept. 22<sup>d</sup> 1862 &  
the said bill in that suit filed on behalf of said Lind  
his assignees & Creditors with answer & replication  
and to show the facts agreed upon, Matthew & Tappan  
for Defendants  
Blodgett & Weston  
for Plaintiff



Thomas Milnor  
 appellant  
 or  
 Sylvester Lind,  
 E. W. Willard  
 David I. Lake,  
 William Osborn  
 Wells Lake & others  
Creditors of said Lind

} Appeal from the  
 Superior Court  
 of Chicago

In explanation of the paper marked (Agreed Case) which is copied into the Record in the above case the following Statement is agreed upon by counsel for both parties to obviate the necessity of transcribing the bill or answer or answer &c &c in the Cause of E. W. Willard vs S. Lind, his assignees & Creditors. The original bill referred to was filed in the Superior Court of Chicago at Nov. Term 1861 by said Willard against S. Lind & others stating partnership purchases of real estate by Lind & Willard by two several contracts in 1854 one with Wm H. Brown & one with S. D. Lockwood (109 Lots in all situate in Duncan addition to Chicago) The credits on the purchase money extended until 1<sup>st</sup> Feb'y 1864 on Brown contract & until 1<sup>st</sup> March 1864 on said Lockwood; Lind & Willard being at liberty



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on payment of the sum of \$25. per front foot  
to receive deeds for any designated lots in advance  
of the others at any time. The parties Lind and  
Willard proceeded to sell about 40 lots  
under this arrangement until January 9th  
1861 at which time there remained 69 lots  
unsold and a balance unpaid to Brown  
on the principal of purchase, amounting  
to the sum of \$69.575  
& to Lockwood 16.000.

Making a Total \$85.575

On the 9th day of January 1861 Lind and  
Willard divided between them selves equally  
the profits & proceeds of sales remaining on  
hand from the 40 lots sold amounting  
to \$48.765.<sup>98</sup> (having paid to Brown  
& Lockwood \$49.375) and at that date  
said Lind purchased out the whole  
interest of Willard in the unexecuted  
part of the purchase contracts covering the  
right to 69 lots yet unsold & unpaid for  
and agreed to indemnify said Willard  
against his liability to Brown & Lock-  
wood on the original purchases

The bill reported to above was filed  
by Willard at above Term 1861 in the Sup-  
reme Court of Chicago against Lind &  
his assignees & Creditors by Judgment



or otherwise Stating the facts of the case & the great damage he was exposed to in consequence of his liability to Brown & Lockwood on the purchase contracts, which was fast maturing & likely to be increased by Auction & Taxes & claiming that the Lots were in sufficient number to raise the money to meet the liability. The bill charged Lind with default & neglect in giving Willard a adequate Security and indemnity which he claimed to be due him by contract & that Lind had become insolvent & had made an assignment and prayed for an immediate sale of the lots not remaining in the 69 unsold Lots deemed or reserved to the original sellers on the purchase contracts & the proceeds to be applied to payment of the sums due to Brown & Lockwood thereupon for Willards indemnity.

The answer & Cross bill Contested many points in the bill which it is unnecessary to state & insisted on Lind's right in behalf of his Assignees & Creditors to the advantage resulting from the then yet unpaid Credits given by the original purchase contracts (Feb 1. 1864 on Browns Island 1864 on Lockwood)



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and praying for a receiver to be appointed to make sales of the real estate aforesaid & to apply the proceeds first to pay balances due to Thoms & to Lockwood with interest taxes & expenses within the periods allowed by the Contract & the residue if any to such of said Creditors as should show themselves to be entitled to same

It was on the final hearing of this case On 24th, answer, cross bill answers, proofs, replications to the answers and the agreed case aforesaid that the Decree of Sept. 22. 1862 was pronounced by the Superior Court a copy of which is mounted in the Record in this case in full and the Lot 1 Block 2 in controversy in this case was included in the Decree as ordered for sale (with the other Lots as stated in the agreed case) by direction of Willard & as well as of both of the other party

It was admitted by the agreed case & is now admitted in this case that Lind on the 6th of July A.D. 1861 being in embarrassed circumstances executed a general assignment of all his Estate real & personal to the defendants Lake & Osborn for the benefit of his creditors and



That the assignees accepted the Trust & went into possession of the property

By the decree aforesaid Lake & Osborn at the instance of both parties were appointed receivers & Special Masters

And acting under such decree they have proceeded to sell off all the remaining 69 Lots aforesaid. They have sold under the decree with the approval of the Court first had & obtained the debt 1 Block 2 (being the premises in controversy in this case) and have paid the whole Debt due to Brown and Lockwood with Interest & Taxes to the full indemnity of Willard in the premises. They have received payment in full for the Lot 1 Bl 2 from Wells Lake and used the proceeds in paying Brown & Lockwood but they have on hand as profits realized from said sales of the lots embraced in the Brown and Lockwood contracts more than the amount realized by the sale to Wells Lake of lot 1. Block 2. aforesaid which surplus funds they hold <sup>as receivers</sup> subject to the order of the <sup>Superior</sup> Court by which they were appointed Receivers and it is further agreed that the foregoing



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Stipulations with the other stipulations  
and proofs <sup>in this regard</sup> embrace all of the Evidence  
offered by either party on the hearing  
of said cases

Nathan & Tapp  
Soli & Counselors  
Lind Lake & Osborn  
Wells Lake & the children  
of S Lind  
Blodgett & Winston  
Soli for Counselors



The paper next following marked "Agreed Case" was signed by both parties or sold & confirmed & filed on the hearing before his honor Judge Wilson in the case of *Phos. Milnor* vs *S. Lind & al* which resulted in the decree dismissing the bill. The contents will show the object.

Matthew & Sons solicitors  
Blodgett & Winston  
for counsel.



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And afterwards brought in the nineteenth day of April in the year aforesaid the parties to the above entitled cause by their attorneys respectively filed in the Clerk's Office of the said Court. a certain paper writing entitled "Agreed Case" which is in words and figures following to-wit:

|                                 |                                                 |
|---------------------------------|-------------------------------------------------|
| Thomas Melner                   | } On petition, Court of<br>Chicago for Chancery |
| Elisha W <sup>rs</sup> Wallford |                                                 |
| David J Lake &                  |                                                 |
| William Brown & Co              |                                                 |

It is hereby stipulated and agreed by and between the parties to this Court that the following facts be admitted on the hearing of this cause without further proof to-wit:

The notice of forfeiture, a true copy of which is set forth in answer of Defendant Lake Brown & Lake, was as submitted by the defendant E W Thellard, and a copy of the same served on the Complainant on the 12<sup>th</sup> day of October A.D. 1861 by direction of the said defendant E W Thellard and that the sum of Seven Hundred and Twenty Dollars and no part since June 1<sup>st</sup> 1858 was at that time all which was remaining due and unpaid up on



The Contract mentioned in the Bill of  
 Complaint, in this case for principal  
 and interest on the final instalment  
 mentioned in said Contract, and that  
 all of the previous payments made &  
 interest due thereon upon said Con-  
 tract and mentioned therein had  
 been paid by the said Complainant, or  
 his assignors (the receipts for such  
 payments to be introduced in evidence  
 as part of this case) and that said  
 Complainant or his assignors had  
 paid all taxes & special assessments  
 upon said Lot for the years 1854  
 1855, 1856, 1857, 1858, 1859 and 1860.  
 but that since the said notice of  
 forfeiture said defendant - Thellard  
 has paid said taxes for the years  
 1861 and 1862 amounting to the  
 sum of Fifty or  $50^{33}$  Dollars. That  
 the schedule of said Lot in the case  
 of E. M. Thellard vs. Sylvester and that  
 in the Supreme Court of Illinois shall  
 be introduced in evidence & shall  
 form part of this case. That said  
 Lot subject to whatever rights the  
 Complainant had therein of any  
 by virtue of said Contract May be



to Englewood Lind at the time of his ap-  
 pearance, both defendants Lake &  
 Osborn and also at the time of the  
 notice of forfeiture of the Contract  
 unto Complainant hereinbefore referred  
 to and that the defendant Willard held  
 the legal title to the same as security  
 for the payment by Lind of a certain  
 joint liability of himself and Willard  
 which he and Lind had assumed  
 and agreed to pay that the defend-  
 ants David Lake & Osborn had  
 notice of the Contract of sale of  
 said Lot to Complainant before  
 the sale of the same to the defend-  
 ant Willard Lake & also notice of the  
 forfeiture of said Lot under said  
 Contract That said Complain-  
 ant did on the 19<sup>th</sup> day of June, A.  
 D. 1863. order to the defendant Willard  
 the sum of nine hundred and  
 thirty four & 1/10 Dollars and having  
 previously prepared a Deed to be signed  
 conveying said Lot to Complainant  
 demanded that the same be executed  
 by the said Willard That said Lot  
 is situated at the Corner of Madison  
 & Green Streets in the City of Chicago  
 and is one hundred twenty four feet



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on Madison Street and fifty on  
Green Street.

That said Lot was put  
into the decree or order of sale in  
the said Cause of E W Hillard vs.  
Sylvester Lind et al. in the Superior  
Court of Chicago by the direction of  
said defendant E W Hillard and  
said David J Lake and William  
Osborn as assignees of said defend-  
ant Lind. That the Bill, Cropp  
Bill and all the answers, Exhibits, to  
Bills & answers, & the order or decree  
of sale, and the record & files in  
said Cause of E W Hillard vs. Sil-  
vester Lind et al. shall be introduced  
in evidence on the hearing of this Cause  
& shall form part of this case. That  
the assignment of Sylvester Lind  
to David J Lake & Osborn, defendants  
dated July 6 1861 shall also be intro-  
duced, in evidence on the hearing  
of this Cause, and shall form part  
of the same. That the offer of de-  
fendant Mills Lake for the purchase  
of said Lot, and the approval of the  
same, by the Superior Court of Chicago  
by the Hon John M Nelson Chief



Indee of said Court, and the Contract  
for the sale of said Lot by Defendants  
D J Lake & Osborn. to the defendant  
Wells Lake dated & sworn 16 1862<sup>nd</sup>  
the receipt on the same, for the purchase  
money of said Lot. shall be introduced  
in evidence on the hearing of this cause  
& shall form part of this case.

Mathew & Japt. Sols for  
Def<sup>s</sup> Lind Osborn. D J & Wells  
Lake

Blodgett & Thuston  
Sols for Complainant,

And afterwards Court on the 11<sup>th</sup> day of the month and year aforesaid the  
same being one of the days of the s<sup>pe</sup>cial  
Term of said Court. the following among  
other proceedings were had and entered  
a record in said Court book;

Thomas Thelmer

Elsiea St Hillard. David J Lake  
William Osborn Sylvester Lind Robert  
H. George Smith Chicago Fire  
Insurance Company  
and Wells, Lake.

} Dues



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This Cause coming on this day to  
be heard upon the pleadings filed and  
the proof taken therein and Messrs.  
Blodgett & Thurston of Counsel for the  
Complainant, and Messrs. Mathew  
& Wadsworth of Counsel for the defendants  
David J. Lake William E. Brown and  
Wells Lake, and H. W. Blodgett of  
Counsel for the Defendant; Elisha W.  
Thelland having ~~been~~ been heard and  
the Bill having been taken as confessed by  
the Defendants Robert H. Hop Chicago  
Firemans Insurance Company, and  
George Smith of the personal service of  
Messrs. of the said Chicago Firemans  
Insurance Company, and after the appear-  
ance of the said Robert H. Hop and the  
said George Smith had been entered in  
said Cause the said Robert H. Hop  
by Joshua L. March his Solicitor and  
the said George Smith by H. A. Thurston  
his Solicitor; It is ordered adjudged  
and decreed and the Court by &  
virtue of the power and authority  
therein vested doth order adjudge  
and decree that the Complainant's  
Bill of Complaint in this Cause be  
dismissed with Costs, and that



The Complainant pays to the defend-  
ants, then Esti in this Cause, to be taxed  
and that the defendants have execution  
therefor.



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And afterwards to wit on the Twentieth day  
of the Month. and year aforesaid. the  
said Thomas Milner by Blagden Austin  
his solicitor, filed in the office of the Clerk of said  
Court his certain appeal Bond which  
is in Words & figures following to wit,

I know all men by these presents that, we  
Thomas Milner as principal and Hugh  
Martini as surety are held and firmly &  
bound unto Elisha N. Hillard, Paul & Lake,  
William Estlin, Silvestre Luro and Wells  
Lake in the penal sum of Ten thousand  
Dollars lawful money of the United States  
to which payment well & truly to be made  
we bind ourselves jointly and severally firmly  
by these presents.

Witness our hands and seals the  
13<sup>th</sup> day of April A.D. 1864.

The Condition of the above obligation is such  
that whereas in a suit lately pending in the  
Superior Court of Chicago on the Chancery side  
thereof wherein the above named Thomas Milner  
was complainant and the obligors Elisha  
N. Hillard and Paul & Lake, William Estlin  
Silvestre Luro and Wells Lake were defendants  
a decree was entered dismissing said com-  
plainant's said Bill of Complaint, at  
his cost whereupon said complainant



prayed an appeal to the Supreme Court  
of Illinois which was allowed

And the Court of the said Complainant shall  
pursue his said appeal to effect, and shall  
pay all costs interest and damages in case the  
same are not allowed. shall be affirmed then  
the above obligation shall be void else to  
remain in full force and virtue

app.  
J M Keim Esq.  
Superior Ct. of Chicago

Thomas Wilson Esq.  
Hugh Martin Esq.



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State of Illinois }  
County of Cook } ss.

I Thomas B. Carter  
Clerk of the Superior Court of Chicago. do hereby  
and for the County and State of aforesaid do hereby  
certify the above, and foregoing, to be a true and  
perfect, and complete transcript of all the pleadings  
and proofs on file in my office, together, with all the orders  
and decrees, made, and entered of record in said  
Court in a certain cause, lately pending in said  
Court on the Chancery Side thereof, wherein  
Thomas Milner was Complainant, and Elisha  
H. Willard David J. Lake, William Osborn, J. L.  
Vestlin Lind Robert H. Fox, George Smith Chicago  
Firemen Insurance Company, and Wells Lake  
were Defendants

In Witness Whereof, I have  
hereunto set my hand, and  
affixed the seal of said Court  
at Chicago in the County of  
aforesaid this Twentieth day  
of April A.D. 1864  
Thomas B. Carter  
Clerk





Thomas Milner

Off in Error

or

Elisha W. Willard

Silvester Smith

David S. Lake

William Osborne

Wells Lake

Off in Error

In Supreme Court  
First Grand  
Division  
April Term 1887

And now

Comes the said Thomas Milner Plaintiff  
in Error and says that in the record  
and proceedings aforesaid there is  
manifest Error in this Court

1. That the Court erred in its decree that  
said Complainants said Bill of  
Complaint be dismissed

2 That the Court erred in refusing  
and denying the relief to the Complain-  
-ant prayed in and by said Bill of  
Complaint -

By reason whereof the Plaintiff  
in error prays that said Judgment be  
reversed

Blodgett & Winslow  
Attys for Appellant



Thomas Milner

Plff in Error

<sup>vs</sup>  
Elisha W. Willard

Sylvester Lind

Leard & Latce

William Osborn &

Wells Latce Plffs in Error

Supreme Court  
of Illinois

3<sup>d</sup> Grand Juris in

April Term 1864

And now come the  
said defendants in error in the succeeding  
record named by Mather & Taft their  
Solicitors & say that there is no error  
either in the record & proceedings aforesaid  
or in granting & entering the decree aforesaid  
and they pray the Decree aforesaid stand  
in all things approved

Mather and Taft  
Solicitors & Counsel  
for Defendants  
in error (appellants)



Thomas Milner  
by  
Elisha W. Willard states  
Record

Filed Apr. 21. 1864,  
L. Island  
clk.

True. \$28.55  
1864 by  
Thomas Milner  
S. B. Clark



SUPREME COURT OF ILLINOIS.

---

THIRD GRAND DIVISION.

---

APRIL TERM, A. D. 1864.

---

THOMAS MILNER,  
vs.  
ELISHA W. WILLARD,  
SILVESTER LIND,  
DAVID J. LAKE,  
WILLIAM OSBORN, AND  
WELLS LAKE.

---

}

APPEAL FROM SUPERIOR COURT OF CHICAGO.

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ABSTRACT OF RECORD.

---

1 Placita.

2 Bill of Complaint, filed May 2d, 1862, alledging that on the 19th day of June, 1854, the defendants Lind & Willard being, or pretending to be, seized or possessed of, or otherwise entitled to lot one (1), block two (2), in Duncan's Addition to



Chicago, entered into an agreement or contract to sell the same to the trustees of the South Chicago German Church, for the sum of *four thousand dollars*, and that said trustees paid, of said  
 3 purchase price, the sum of fifteen hundred and forty two  $\frac{59}{100}$  dollars, and on the 12th day of July, 1855, assigned the same to complainant for a valuable consideration, which assignment is endorsed on back of contract. That complainant has paid upon said contract the sum of twenty-six hundred and seventy-three  $\frac{96}{100}$  dollars, and that there is now due on said contract the sum of \$934  $\frac{21}{100}$ .

4 That said Lind has conveyed his interest in said lot to Willard, who holds the legal title in his own name; that complainant tendered to defendant Willard on 19th April, 1863, the said sum of \$934  $\frac{21}{100}$ , and having previously prepared a deed demanded that it be executed, but Willard refused.

That complainant has never abandoned said contract, but that he is a poor man, and has been prevented by poverty from making an earlier tender.

5. That defendants Lake, Osborn, Foss, and other defendants, claimed some interest in said lot, but that such interests are subordinate to complainant's rights.

6 That Wells Lake, who is brother of the defendant D. J. Lake, claims to have purchased said lot under a decree of this court, for the sum of two thousand dollars; that such purchase is a fraudulent one, and was made by Wells Lake, with full notice of complainant's rights.

6 & 7 General clauses of bill.



Prayer for specific performance of contract, and general prayer for further or other relief.

8 Conclusion of bill.

9 The land contract referred to in bill of complaint set out,  
witnesseth that at the request of party of the second part, and  
in consideration of the money to be paid and the covenants  
expressed (the prompt performance of which payments and  
covenants being the condition precedent, and time being the  
essence of said condition, agrees to sell to said party of the  
second part, the said lot one (1), block two (2), and that said  
10 second party agreed to pay to said first party the sum of four  
thousand dollars, \$400 cash and balance in five equal annual  
payments, on the 19th day of June in each year, with interest  
annually in advance on all sums unpaid, and also all taxes here-  
after charged upon said lot ; and in case said taxes should be  
paid by said first party, the same should become an additional  
consideration to be paid by said second party. That upon the  
making said payments of principal and interest, the said first  
party *would execute, acknowledge and deliver to said second party,*  
*their heirs or assigns,* a good and sufficient deed, with covenants  
of warranty, the expense of such deed to be at the cost of said  
second party.

11 That in case of default said second party should become,  
and are thereby declared to be the tenant at will of said first  
party, at a rent of ten per cent. upon the whole amount of said  
purchase money, payable monthly.

12 And that in such case said tenant should not commit waste,  
and should deliver up the premises in good order and condition.



- 13 Acknowledgment by parties before notary public, receipt for \$849.70, due on contract, and \$7.43 for assessment, dated June 19, 1856.
- 14 Receipt dated June 20, 1857, for instalment of \$806.41 due June 19, 1857.
- Receipt dated June 25, 1858, for instalment of \$763.20 due June 19, 1858.
- Receipt dated July 21, 1855, for \$926.59, as June payment on said lot.
- 15 Praecipe.
- 16 Writ.
- 17 Return.
- 18 Answer of D. J. Lake, Silvester Lind, and Wm. Osborn.
- 19 Admits execution of contract, as stated in bill and assignment of same to complainant, and the payment of all sums due thereon, except last payment, due June 19, 1859, whether sum stated to be due in bill is correct does not know, but leaves the same as matter of computation and proof.
- 21 Lind admits that he conveyed his title in said lot to Willard ; claims that complainant, after making all payments except the last, abandoned the contract ; that the prompt performance of the covenants in contract was condition precedent, and time the essence of the condition.
- 22



22 That defendant Willard, on 12th day of October, 1861,  
declared said contract forfeited, and served upon complainant a  
23 notice in writing to that effect, which is set out, and declares  
contract forfeited from date of notice.

Lake and Osborn answer as to these facts upon hearsay, but  
24 believe same to be true, and claim that said declaration of for-  
feiture put an end to said contract, and complainant's rights  
therein, admit tender to Willard, &c.

25 State that said lot was acquired by Lind and Willard in  
1854, of Brown & Lockwood, stating the manner in which this  
26 lot and others were acquired; that Lind and Willard divided  
the assets realized by the purchase from Brown & Lockwood  
27 on 9th January, 1861, and Lind agreed to relieve Willard from  
all liability on said contract.

28 State the assignment by Lind to defendants Lake and  
Osborn on 6th day of July, 1861.

29 *That in November, 1861, Willard filed his bill in this court*  
to be relieved of the liability to Brown & Lockwood, through  
sale by order of court of all assets belonging to Lind, and pur-  
chased of B. & L.

30 States answers made by Lake and Osborn to that bill, &c.,  
31 and that they filed a cross-bill, asking that a receiver might be  
appointed to make sale of said assets.

32 That said original and cross-bill came on to be heard.

33 That a decree was made appointing Lake and Osborn re-



ceivers, and ordering, among other things, that the lot one (1),  
34 block two (2), or such interest as *Lind and Willard had therein*,  
should be sold ; that said lot was specially inserted in decree by  
request and consent of said Willard and his solicitor.

35 That said lot was afterwards sold by the receivers, and sale  
36 approved by court, to Wells Lake, for \$2000.

37 That said sum has been paid by Wells Lake, and that he is  
a necessary party to this bill.

38 That contract with complainant was never recorded, and  
that neither Lake and Osborn nor Wells Lake had any notice  
of it.

39 Answer signed by defendants Lake, Osborn and Lind, but  
*not sworn to.*

40 Decree in case of Willard, *vs.* Lake and Osborn, Lind and  
others, appoints Lake and Osborn receivers, and directs them to  
sell the interest of Lind and Willard, in the real estate men-  
tioned in the Brown & Lockwood contracts ; also their interest  
41 in and to lot one (1), in block two (2), in Duncan's Addition  
(the lot in question), the terms of each sale to be submitted to  
42 the court, and approved, and the proceeds of such sales to be  
paid over to Brown & Lockwood, under the contracts, till they  
43 should be paid ; the balance to be held subject to the further  
order of the court.

44 Leave to amend bill.

45 Summons issued to Wells Lake.



46 & 47 Time taken by Wells Lake to answer.

48 Answer of Wells Lake states that since he has become the  
 purchaser of the lot one (1), block two (2), he has heard the  
 49 to 64 facts stated in the answer of Lake Osborn and Lind, and stating  
*from hearsay* precisely the same facts as Lake and Osborn state  
 in their answer.

65 That he purchased said lot from the receivers under ap-  
 66 proval of court, and that on *4th of May*, 1863, he paid for  
 the same.

67 States that the sale was made in good faith, and for an  
 68 adequate consideration, &c.

69 Answer signed by Wells Lake, but not sworn to.

Contract between receivers and Wells Lake of sale of lot  
 70 one (1), block two (2), Duncan's Addition, for two thousand dol-  
 71 lars—five hundred dollars cash, the balance in three equal  
 instalments, in six, twelve and fifteen months from date.

72 That upon such payments being made a deed will be pro-  
 cured and delivered to said Wells Lake, conveying said lot to  
 him, &c.

73, 74 & 75 The usual clauses of forfeiture, &c.

76 Receipt of fifteen hundred and forty-nine dollars, *dated May*  
 4, 1863, signed by Lake & Osborn, endorsed on contract.

77 Order that complainant file replications.



78, 79 & 80      Replications to answers of Lind, Lake & Osborn and Wells Lake.

81      Answer of E. W. Willard.

82, 83      Confesses all of the allegations of the bill, and admitting that complainant was entitled to his deed upon making the payments mentioned in the bill.

84      Admits the tender as stated in the bill; also states the notice of forfeiture given by him to complainant.

85      Admits the facts stated in bill as to purchase by Wells Lake, being fraudulent and void.

86, 87      General conclusion and signature to answer.

Answer not replied to.

88      Deposition for complainant of *J. W. Waughop* states that  
89 since 1857 Milner has been in embarrassed circumstances, and in  
90 poor health.

That lot is worth thirty-five hundred dollars, and could have been sold for three thousand any time within three years.

91      *Albert Keep*, for defendants, swears that in October, 1862, lot in question was worth two thousand dollars.

*John A. Tyrrell*, for defendants: Lot worth in October, 1862, two thousand dollars.



93        *Caleb D. Fitz*, for defendants: Lot worth in October, 1862,  
           \$40 per foot, or two thousand dollars, lot being fifty feet front  
 94        on Green, by 125 feet on Madison Streets.

95, 96, 97        Exhibit annexed to and filed with original bill of com-  
   & 98        plaint, in Chancery case of E. W. Willard vs. Silvester Lind,  
           his assignees and creditors, in which the decree was made as  
           above abstracted, under which the lot in question was sold to  
           Wells Lake.

          This exhibit is a schedule of the assets belonging to Lind  
           and Willard, and which this agreement divides between them,  
           under which agreement the bill was filed to have Lind's share  
           in those assets sold.

96        The lot in question is mentioned in the schedule as follows:

|                                                          |          |
|----------------------------------------------------------|----------|
| “ Balance due from Thomas Milner, assignee, lot one (1), |          |
| block two (2).....                                       | \$720.00 |
| Interest to January 1st, 1861, 10 per cent., 18 months   |          |
| 13 days.....                                             | 110.60   |
|                                                          | <hr/>    |
|                                                          | \$830.60 |

99 to 104        The following is the substance of a stipulation signed by  
           counsel for both parties, and annexed to the record in this cause  
           in explanation of the *agreed case* or stipulation of like general  
           imports, annexed and entered into on the hearing before Hon.  
           John M. Wilson in this cause.

          This stipulation is designed to obviate the necessity of tran-  
           scribing the bill, cross-bill, answers, and other pleadings in the



case of E. W. Willard *vs.* Lind, Lake, Osborn, *et al.*, in the case which resulted in the decree of Sept. 22, 1862.

The original bill of Willard *vs.* Lind and *al.*, was filed at November Term, 1861, and stated a partnership between said Lind and said Willard, in two real estate purchases by contract, one with Wm. H. Brown, made on 1st February, 1854, and payments running until 1st February, 1864; and another contract with S. D. Lockwood, payments running for the same period (109 lots in Duncan's Addition to Chicago)—among which was lot 1, block 2, in controversy—Lind and Willard being entitled to a deed of any lot or lots at any time by paying \$25 per front foot on the contract.

That on the 9th of January, 1861, Lind and Willard divided between them \$48,765.98 from proceeds of sale of 40 lots deeded and sold by them, and there was a balance yet unpaid to Brown & Lockwood of \$85,575 of principal, for which Lind and Willard were jointly and severally liable; at this date Lind purchased all the interest of Willard in both contracts, and agreed to fulfil the same and indemnify Willard therefrom.

Willard's bill was filed at November term, 1861, *quia timet*, showing his liability to Brown and Lockwood fast maturing, Lind's insolvency, and the inadequacy of the lots (69 in number) to meet the liability, and praying for a decree to authorize an immediate sale of the interest of purchaser in the lots to be devoted to paying the debts to Brown and Lockwood for Willard's indemnity.

The answer of Lind and his assignees, and the cross bill filed by them contested the right of an immediate sale, and prayed



for a receiver to sell the lots during the whole period allowed by either contract (1st February and 1st March, 1864), and to pay out the money proceeds of sales first to Brown and Lockwood, and the residue to Lind's creditors. On hearing of these bills, answers and cross bill, the decree was entered on September 22, 1862.

Lind's assignment for benefit of his creditors to Lake and Osborn, dated July 6, 1861, was admitted.

As was also the fact that the lot in controversy (No. 1, block 2, Duncan's addition,) was sold by contract by Lake and Osborn, receivers and special Masters under said decree to Wells Lake for \$2,000, with the approval of the court as stated in the answer; that the purchase price was all paid over to Brown and Lockwood; thought in the closing up of the sales, besides paying Brown and Lockwood the \$85,575, interest, taxes and expenses in full, the said assignees had an ample fund on hand, and now under direction of the judge of the Superior Court of Chicago in Chancery, to cover the amount of the Wells Lake purchase and more.

105 The following agreed case, upon which, in connection with the foregoing pleadings, proof and stipulation, the case was submitted to the court, is here inserted entire.

" It is hereby stipulated and agreed by and between the  
 " parties to this suit that the following facts be admitted on the  
 " hearing of this cause without further proof, to wit :

The notice of forfeiture, a true copy of which is set forth in answer of defendants Lake, Osborn and Lake, was subscribed by



the defendant E. W. Willard, and a copy of the same served on the complainant on the 12th day of October, A. D. 1861, by direction of the said defendant, E. W. Willard, and that the sum of seven hundred and twenty dollars and interest since June the 19th, 1858, was at that time all which was remaining due and  
106 unpaid upon the contract mentioned in the bill of complaint in this case, for principal and interest on the final instalment mentioned in said contract, and that all of the previous payments with interest due thereon upon said contract, and mentioned therein, had been paid by said complainant or his assignees (the receipts for such payments to be introduced in evidence as part of this case), and that said complainant or his assignees had paid all taxes and special assessments upon said lot for the years 1854, 1855, 1856, 1857, 1858, 1859 and 1860, but since the said notice of forfeiture said defendant Willard has paid said taxes for the years 1861 and 1862, amounting to the sum of fifty-six dollars and thirty-three cents, that the schedule of said lot in the case of E. W. Willard vs. Silvester Lind et al in the Superior Court of Chicago shall be introduced in evidence, and shall form part of this case. That said lot, subject to whatsoever rights the complain-  
107 ant had therein (if any) by virtue of said contract, belonged to Silvester Lind at the time of his assignment, to the defendants Lake and Osborn, and also at the time of the notice of forfeiture of the contract with complainant herein before referred to, and that the defendant Willard held the legal title to the same as security for the payment by Lind of a certain joint liability of himself and Willard, which he said Lind had assumed and agreed to pay. That the defendants David J. Lake and Osborn had



notice of the contract of sale of said lot to complainant before the sale of the same to the defendant, Wells Lake, and also notice of the forfeiture of said lot, under said contract. That said complainant did, on the 19th day of April, A. D., 1863, tender to the defendant Williard the sum of nine hundred and thirty-four  $\frac{21}{100}$  dollars, and having previously prepared a deed to be signed, conveying said lot to complainant, demanded that the same be executed by the said Willard. That said lot is situated at the corner of Madison and Green streets, in the city of Chicago, and is one hundred and twenty-five feet on Madison street, and fifty on Green street.

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That said lot was put into the decree or order of sale in the said cause of E. W. Willard vs. Silvester Lind, et al., in the Superior Court of Chicago, by the direction of said defendant, E. W. Willard, and said David J. Lake and William Osborn, as assignees of said defendant, S. Lind. That the bill, cross-bill, and all the answers and exhibits to bills and answers, and the order or decree of sale, and the record and files in said cause of E. W. Willard vs. Silvester Lind, et al., shall be introduced in evidence on the hearing of this cause, and shall form part of this case. That the assignment of Silvester Lind to David J. Lake and Osborn, defendants, dated July 6th, 1861, shall also be introduced in evidence on the hearing of this cause, and shall form part of the same. That the offer of defendant, Wells Lake, for the purchase of said lot, and the approval of the same by the Superior Court of Chicago, by the Hon. John M. Wilson, Chief Justice of said court, and the contract for the sale of said lot by

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defendant D. J. Lake & Osborn, to the defendant Wells Lake, dated October 16th, 1862, and the receipt of the same for the purchase money of said lot shall be introduced in evidence on the hearing of this cause, and shall form part of this case.

MATHER & TAFT,

*Solicitors for Def'ts Lind, Osborn, D. J. & Wells Lake.*

BLODGETT & WINSTON,

*Solicitors for Complainant.*

- |           |                         |
|-----------|-------------------------|
| 110 & 111 | Decree dismissing bill. |
| 112       | Appeal bond.            |
| 114       | Certificate of Clerk.   |



257-189  
Supreme Court

c/o 257

Thomas Miller

vs

E. W. Willard et al

Abstract

Filed May 11, 1864

L. L. Willard & Co