

14465

No. _____

Supreme Court of Illinois

Hoskins

vs.

Litchfield et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 86

Hoskins
vs
Stephens

89
80
14465

SUPREME COURT OF THE STATE OF ILL'S,
3rd GRAND DIVISION AT OTTAWA,

April Term, A. D., 1863.

WILLIAM HOSKINS,
vs.
HERVEY LITCHFIELD AND
ELIZABETH LITCHFIELD. } ERROR TO BUREAU.

ABSTRACT

1 & 2 On the 30th August, A. D., 1859, the Complainant, Wm. Hoskins, filed with the Clerk of Bureau
3 & 4 Co. Circuit Court, his bill in Chancery, to foreclose a Mortgage executed by the LITCHFIELDS
5 to the Complainant, dated 10th December, 1857, acknowledged on the 26th Feb'y, 1858, and filed
5 & 6 for record the same day, and duly recorded, a copy of which Mortgage is attached to the bill.—
The Mortgage is in the ordinary form, containing the words, "*grant, bargain, sell and convey*"
on the part of the Mortgagors. The bill required the answers to be under oath, and prayed for
a foreclosure of all equity of redemption and *claim* in and to the mortgaged premises. On same
6 & 7 day process was issued against the Defendants, returnable to the Sept. Term, A. D., 1859, of
7 & 8 said Circuit Court, which was duly served upon the LITCHFIELDS on the 7th Sept. 1859, and as to
the other Def't, PETER McQUAID, (whose interest if any was subsequent to Compl't's lien), returned
8 & 9 not found, at the December Term, A. D., 1859, of said Circuit Court, publication having been
9 & 10 made as to PETER McQUAID, all three of said Defendants were duly called and defaulted, for want
of demurrer, plea or answer to Complainant's bill. On the 17th day of said Term, the said
11 to 16 & 17 Court on the report of the Master in Chancery entered a decree against all of the said Defendants, for
18 a foreclosure and sale of the mortgaged premises. At the March Term, A. D., 1860, of said
18, 19 & 20 Circuit Court, the Master reported to the said Court, that he had, on the 18th February, A. D.,
20, 21 & 22 1860, made sale of said premises in pursuance of said decree, and that the same were purchased
22 & 23 by Complainant. At the same Term the said report was approved, and sale confirmed by the
said Circuit Court, and the case ceased to be further docketed, Defendants having made *no objection*
to the rendition of the decree, the sale of said premises, or the confirmation of said sale. And
never having made any claim of homestead, either when the decree was entered, or when the sale

23 & 24 was made, or when the sale was confirmed. On the 12th February, A. D., 1861, the said LITCH-
 to FIELDS filed with the Clerk of the said Circuit Court their motion supported by affidavit, with notice
 to Complt to set aside said decree of sale and all the proceedings subsequent to such decree, be-
 cause that said mortgaged premises were their homestead, and that such homestead did not exceed
 in value \$1000, and had never been relinquished according to law, and that the debt secured by
 Complainant's Mortgage, had accrued after August 4th, 1851, and was no part of the purchase
 money for said premises, but not showing *any reason* why their claim of homestead had not been
 set up when the decree of sale was entered, or when the sale was made or confirmed. It was
 stipulated by the Complainant and the LITCHFIELDS that the said LITCHFIELDS should have all the
 relief by their said motions and affidavits that they could have had by Bills in Chancery and Dep-
 ositions, or other proceedings to set aside such sale, if they were entitled to any such relief upon
 the facts, and the said case was redocketed at the March Term, 1861, of said Circuit Court, which
 said motion of the said LITCHFIELDS, the said Circuit Court at its September Term, A. D., 1862,
 sustained, and set aside the said sale, and the original decree of sale, and all the proceedings sub-
 sequent thereto, to which said decision of the Court, the Complainant then and there excepted,
 and had his bill of exceptions signed and sealed by the Court, embodying said motion, notice,
 affidavits, and the decision of the Court thereon. The Court also further entered at said time a
 formal decree for the said LITCHFIELDS, complying with said motion, and ordering "*that said
 premises stand in all respects as though no proceedings were had upon the said Mortgage,*"
 36 and that the LITCHFIELDS recover their costs of Complainant.

POINTS AND AUTHORITIES FOR PLAINTIFF IN ERROR.

The Plaintiff insists that the Circuit Court erred in sustaining Defendants' motion and entering
 decree for the Defendants, because,

1st. The sale was strictly in pursuance of the decree, and there was no injurious mistake, mis-
 representation or fraud in said sale, and therefore such sale could not be invalidated.—3 Gil. 508.

2nd. The sale was confirmed, which order of confirmation as well as the original decree became a
 judgment of the Court, which could not be set aside by the Court, at a subsequent term of said
 Court except by bill of review.—24 Ills. 295.

3d. This motion is substantially a bill of review by the stipulation of the parties, otherwise
 relief could not be sought in the form of a motion. Bills of Review are to correct errors of law
 apparent upon the record of the original case, or to introduce important testimony newly discov-
 ered, neither of which were claimed. The Defendants admitted there was no error in the record
 of the original cause, and they also conceded that they had not discovered any new testimony.—
 Besides they had not paid the costs of the original case, which is necessary in a bill of review.—
 3d Gil. 10. 14th Ills. 209. 23d Ills. 408.

4th. The Defendants were guilty of unreasonable delay in making their application to set aside
 the sale. One whole year having elapsed and no excuse shown for such delay.—23d Ills. 503.

5th. Defendants having neglected to make any claim of Homestead, when the decree for the

sale was entered, or when the sale was made or confirmed, and no excuse shown why such claim was not made at the proper time, they cannot now for the first time make such a claim.—Blackwell's Statutes, 576. 18th Ills. 518.

6th. While the husband is living he alone can set up the claim of Homestead. The wife can not. The law of 1857 only changes the law of 1851, so as to require the signature of the wife to the deed relinquishing the Homestead. No other change was made.—18th Ills. 518.

7th. Besides Mrs. LITCHFIELD was made a party to the original suit, and she was, therefore, as much bound as her husband to have set up the claim of Homestead in that suit, if she desired her Homestead, and not having done so she cannot do it now, any more than her husband.—18th Ills. 518. This case was a bill of review by the wife to recover her Homestead, and her application was denied.

8th. 25th Ills. 222. decides that at common law, judgments were not a lien upon real estate, that such liens exist only by statute and that Homesteads are excepted. While this mortgage contains *covenants of warranty* on the part of the LITCHFIELDS against their own acts, and they cannot claim that Complainant's mortgage is no lien whatever. The Circuit Court in the decree for Defendants, held that this mortgage was absolutely void, because there was no relinquishment of the Homestead, for the decree provided "*that said premises should stand in all respects as though no proceedings were had upon the said mortgage.*" Thus denying all right whatever to foreclose a mortgage upon a Homestead, when the Homestead had not been formally relinquished. If this be the law, then the Complainant's mortgage has no more force than blank paper, and at no time could the mortgage be foreclosed, though after the premises had ceased to be the Homestead of the Defendants, which would be contrary to the terms of the mortgage deed which estops the mortgagors from claiming that none of their estate passed by the mortgage.—Blackwell Statutes, p. 961.

9th. 25th Ills. 222, does not conflict with 18th Ills. 518, which latter case holds that there must be a claim of Homestead made at the proper time, but if this mortgage was no lien upon the premises by reason of they being a Homestead, yet this was not made known to the Court in the original suit, and so the decrees of the Court therein were correct upon their face, and could only be reviewed for newly discovered testimony, which is not set up in this case. 21 Ills. 45, relied upon by Defendants' counsel, merely establishes that there was no release of the Homestead in Complainant's mortgage, which is not insisted upon by Complainant. But this case does not decide that when the Homestead has not been relinquished it still is not necessary to *claim* the Homestead, when a sale is sought to be made, but impliedly decides that such claim has to be made, and so is the statute.—Blackwell's Statutes, p. 576, sec. 3.

The 25 Ills. 222, in saying that "the statute casts the privilege upon him and is secured to him without his ever manifesting any intention to avail himself of the homestead act," doubtless refers to the difference between our homestead laws and those of some other States, which requires that the party claiming the Homestead must file his claim with the Recorder of Deeds or other public officer, so that his claim of Homestead may be made known to the public. But our Court did not decide that this privilege of Homestead is *different* from other *privileges*, which always have to be set up and insisted upon at the proper time, or they are debarred. A privilege is not compulsory upon the party entitled to it; he can claim it or not as he sees proper. If he does not claim it at the time when he is required to manifest it, then by his own consent his privilege is gone.

MILTON T. PETERS.

Attorney for Plaintiff in Error.

Wm Hoskins
20
Harvey Litchfield & Co
Abstract & Pleff, bonds
& authorities

Ydell Feb. 19. 1863
S. Ydell
CNR

STATE OF ILLINOIS---SUPREME COURT.

Third Grand Division.

APRIL TERM, 1863.

WILLIAM HOSKINS, }
vs. } *Error to Bureau.*
HARVEY LITCHFIELD & }
ELIZABETH LITCHFIELD. }

This cause was heard in the Circuit Court under a stipulation of the parties, by which it was agreed that the defendants should have all the benefits by motion supported by affidavits, to set aside the sale of the Mortgaged premises, *'that they could have by bill in Chancery, or other proceeding brought to set aside such sale.'*

It is tacitly admitted by the plaintiff that the premises in question up to the time of the foreclosure were the homestead of the defendants, and even if this were not so admitted—the affidavits of Benjamin Newell, and Brant Rawson, on pages of the record—distinctly and clearly prove every fact necessary to entitle the defendants to hold the premises in question as a Homestead against the plaintiff's Mortgage. It will also be seen from the said Mortgage itself on page of the Record, that said defendants have not waived their claim to said premises as a Homestead in any manner whatever.

There is then, but one question arising in this case, for this Court to determine, and that is—Did the defendants by their laches—in neglecting to appear in the said suit of foreclosure of the Mortgage, and there set up their claim to the Mortgaged premises as a Homestead, thereby lose their Homestead in the premises? We say not, and respectfully submit the following suggestions in support of our position :

The language of our Homestead statute is—*"There shall be exempt from levy and forced sale, under any process or order from any Court of law or equity in this State, &c.,"* and *no release or waiver of such exemption shall be valid unless the same shall be in writing subscribed by such house-holder &c.,"* and by the amendatory Act of 1857, it is declared to be the *"object of this Act to require in all cases the signature and acknowledgment of the wife as conditions to the alienation of the Homestead."* In construing this Act, This Court said in the case of *KITCHELL vs. BURGWIN* : "It must appear that

"the privileges and advantages of the Act were in contemplation of the parties executing the deed and that they "were expressly released or waived, in the mode pointed out "in the statute. The wife must do something more than "release her dower." 21 Ill. 45. 23 Ill. 542.

In the further construction of this Act, this Court said in the case of VANZANT VS. VANZANT, 23 Ill. 541, That "the intention of the Act is to save a Homestead for the family," and in that case the Court say, "as a home it had never been granted away, or the right to occupy it released or waived, by any one competent to release or waive it." So we say in this case. The proofs show that the defendant Litchfield, has a wife and two minor children who occupy the premises in question as their Homestead,—admit for the argument that the defendant Litchfield in not setting up his claim of Homestead in defense of the foreclosure suit, thereby waived it, can such a waiver by the laches of the husband, and father, rob the wife and minor children, of the home and shelter which this Court declared was the intention of the Act to secure to them? For certainly the plaintiff can take nothing by the laches of the defendant Elizabeth Litchfield—who is a *feme covert*, nor of the children composing the family of said Litchfield who are minors, and who were not even parties to the suit, of foreclosure. As well might it be insisted that the wife and children of Litchfield would lose their homestead in the premises by the voluntary desertion of said Litchfield leaving said family in possession of said premises.

By the terms of the above recited Act the Homestead is absolutely exempt from forced sale under any order of the Circuit Court.

The defendants were not required by law to do any thing in order to make good their claim of Homestead; if the circumstances surrounding them bring them within the provisions of said Act, then the statute casts the privilege upon them for the benefit of themselves and their minor children. In the case of GREEN VS. MARKS et al. 25 Ill. 222. this court in speaking of this Act use this language, "By "this enactment the debtor falling within its provisions is "required to perform no act, to discharge no duty, or even "to manifest any intention to avail himself of its benefits. The "law casts it upon him, but at the same time has provided "the means by which he may, if he shall choose, waive that "benefit, but until he does so, or until some one of the circumstances which is essential to the operation of the statute, ceases to exist, the exemption continues by its own "force." We submit 1st, That under this ruling of the

court that the defendants were not bound to do any act to save their Homestead. 2d, That the *waiver* insisted on by plaintiff's counsel, (i. e. by omitting to set up their claim of Homestead to the plaintiff's bill of foreclosure,) is not the *means* or mode of waiver provided by the statute (by which they may waive the benefit of their Homestead.) And 3d, That it don't appear from the Record that any one of the circumstances essential to the operation of the statute has ceased to exist.

It is distinctly proved in this case by all the affidavits, and the fact is not controverted by the plaintiff that the premises in question were never worth more than one thousand dollars, and as there was no waiver of the Homestead by the defendants, in the execution of the said mortgage by them, there was nothing upon which the said mortgage could operate. We insist therefore that the mortgage never became a Lien upon the said premises. There can be no difference in the operation of a Mortgage Lien, and a Judgment Lien, both alike are a Lien—a right by a creditor to detain the property of another until ~~some~~ claim be satisfied. 2. *Bouvier Dic.* 54.

In the case of GREEN vs. MARKS et. al., this court said that "If the judgment (in that case) operated as a Lien on "the Homestead, that then no act of the debtor could defeat it, but the payment of the judgment." If then *that* be true of a *Judgment Lien*, it must also be true of a *Mortgage Lien*, and no defense that the defendants could have made to the plaintiff's bill of foreclosure (if they had appeared,) could have availed them, for the mortgage having once attached; a lien on the premises, no act of the defendants (claim of Homestead or what not,) could have defeated it, such can not be the law, and this court in the case last cited, say (the premises not exceeding in value \$1000,) that the judgment in that case was no lien, and that the "*vendee of the judgment debtor took the Homestead free from any Lien of the judgment.*"

In the case of COLE vs. GREEN 21. Ill. 104, this court in construing the Act exempting certain chattel property "*from levy and sale on execution*" said, as to such exempt chattel property, that "*no judgment, execution or attachment could exist.*" Now the Homestead is as clearly exempt from *levy and forced sale, and from alienation without an express waiver by the Mortgagors*, as the chattel property was, and we insist that by parity of reasoning ~~that~~ *as to the Homestead in question, that no judgment, execution, mortgage without a waiver, or a decree for the sale of said Homestead can exist!*

We conclude therefore, that ~~no~~^a valid mortgage or decree against the premises in question, does not now, nor never did exist, and that the whole proceedings under the decree of foreclosure are a nuljty.

Much has been said by plaintiff's counsel about the decree of the Circuit Court confirming the sale of the premises in question without objection, and this proceeding being a bill of review &c. The defendants had been defaulted, and the bill as to them taken for confessed before the decree for the sale was made, they were therefore out of court when the order confirming the sale was made, as appears by the record. We have already shown that it was not necessary that the defendants should have made their claim of Homestead, that nothing was required by the law to be done by them to secure to themselves the benefits of the Act. The plaintiff was himself the purchaser of the premises at the Master's sale. He is chargeable with notice of all the rights of the defendants in the premises. With notice or knowledge of these rights it was manifestly wrong in the plaintiff to take his decree to sell premises which he knew were not in law, or equity subject to his mortgage at all, it don't lie in his mouth then to complain, when he acted with a full knowledge of all the rights of the defendants, and it is a well settled principle of law that where the plaintiff himself becomes the purchaser, that he is chargeable with notice, and the consequences of all irregularities of the sale. 11. Ill. 523.

This proceeding by the terms of stipulation of the parties is not necessarily a bill of review, it is more analogous to a bill to quiet the defendants title, or to remove the cloud which the plaintiff's purchase of the premises at the Master's sale is calculated to cast over it, for the objects and benefits intended to be secured by the homestead act ~~is~~^{are} not only shelter, food, and raiment to the debtor and his family, but also the right of selling and disposing of the same for all that it will bring in the market with a good title. If therefore, the plaintiff by the proceedings under his mortgage, has impaired the character and reputation of the defendants title to the premises, so that they will not bring so much in the market as they otherwise would, it is manifestly their right to go into a court of equity, and have these proceedings vacated and annuled—and this too at any period of time while they remain in the occupancy of the premises.

Taylor & Saddock
attys for defns. Error

Apr. 20 1873

H. 1. 12

Mr. Chief Justice Coaton delivered the opinion of the court. ^x
 The ~~case~~ ^{case} now presented with a new question under the honest law. Ever since its enactment, we have endeavored to administer ^{the law} in that spirit of liberality, which manifestly influenced the legislature in its enactment, without frittering away its benefits by construction, because we might not, as individuals, approve its policy. This was for the legislature to determine, and we cordially accept that determination, and will faithfully discharge our duties, by fairly enforcing the law in its true spirit ^{and} intent.

No one can doubt, who will carefully examine this legislation, that it was the object of the legislature, especially to throw a shield and protection around the wife and children, even more than the husband. To those, they designed to secure a home, in spite of the husband ^{and} father, ^{and} in defiance of the world, unless it should be expressly, and understandingly, released by the wife, in the mode provided by the statute, or unless she removed from

and abandoned it as a home. In one of these cases alone, does the law design that the right shall be lost to the wife ^{and} children.

This right was designed by the legislature to be as sacred as the right of dower, and from similar considerations of public policy, and occurring events which ^{are} filling the land with widows and orphans. Solmnizing the policy which dictated the law at a time when no such occasion existed to suggest its propriety.

This mortgage, as to the homestead right, is like a mortgage in which the wife has not released her right of dower, when sought to be enforced in defiance of that right. Suppose in such a case the wife were made a party to a bill to foreclose a mortgage, without any avowment that any right of dower existed, or that the wife had released her dower, and a decree passed against the husband and wife, for closing the mortgage and ordering a sale of the premises. No one would contend that the right of dower would be affected by such decree, or that a sale made ^{could} ~~to~~ convey the premises free from the right of dower, and for the simple reason that the law has provided a different and an only mode for the release of dower.

So here, the statute has provided another ~~and~~ different and only mode, for the release of the homestead right while the premises are occupied as a homestead. The husband cannot, by failing to make defence for himself and wife, give the mortgage, in which the wife has not released the homestead, ~~the~~ the same practical effect to the mortgage that it would have, had she thus released. This would be to defeat the statute and its manifest object, by a mere legal form. By this law the homestead is placed beyond the control of the husband, and he cannot be allowed to destroy this right indirectly, any more than directly, by act of omission more than commission, save only, by one mode, which is, by removing his family from it ^{and} ~~for~~ with the design that it shall thereby cease to be a homestead, and perhaps proceeding there with another home. If this be the true construction of the law, even this decree did not impair the homestead right, although as it was an apparent cloud upon it, it was proper for the court to set it, and the proceeding under it, aside. The order is affirmed.

In this opinion the whole court concurred.

Decree affirmed.

86 26-8

Hastings

^m
Litchfield

Opinion
Latham

C. E.

(Latham)

Received 8.12-163

Supreme Court of the State of Illinois
3^d Grand Division at Ottawa
April Term AD 1863.

William Hopkins
vs. Error to Bureau
Mersey Litchfield v
Elizabeth Litchfield &c

And the said plaintiff, comes and
says, that in the records and proceedings
of the said Circuit Court, there is
manifest error in this, to wit,
1st That the Court erred, in sustaining
defendants, ^{Litchfield's} motion, to set aside the sale
under the decree of foreclosure, and the
original decree & the proceedings subsequent thereto,

2^d The Court erred, in rendering decree for
the defendants, ^{Litchfield's} at the Sept T. 1862 of said Court,

3^d That the Court erred, in all its proceedings,
subsequent to the confirmation of said sale,

Wherefore the said plaintiff in error,
prays that all of said proceedings be rescinded
so that the case be restored, as it stood when the
sale to complainant was confirmed.

Melton F. Peters
atty for Plaintiff in error

State of Illinois, Supreme Court
3^d Grand Division -

William Hosking

vs
Harvey Titchfield &
Elizabeth Titchfield

And the said defendants
came and said that in the ^{Judgment} Records &
proceedings of the said Circuit Court
aforesaid that there is no error, and
the said defendants therefore pray that
the Judgment of the said Circuit
Court may in all respects be
affirmed &

Taylor & Paddock atty
for Defs.

1
Be it remembered that on the 30th day of August A.D. 1859 came William Hoskins, by his Solicitors Kendall & Ide, into the Office of the Clerk of the Circuit Court within and for the County of Bureau and State of Illinois and filed his Praecipe, Bill and Affidavit of Non-residence therein in the words and figures following, to wit;

(Copy of Praecipe)

State of Illinois, Bureau County. ss.

Circuit Court September Term 1859

William Hoskins

@

Foreclosure

Harvey Litchfield & Elizabeth

Litchfield his wife & Peter McQuaid

Praecipe

Issue Summons to said Defendants, to Sheriff of said County, returnable to said Term Also make publication in Bureau Co. Republican forthwith as to Peter McQuaid

Kendall & Ide

To Circuit Clerk.

Complts Solicitors

(Copy of Bill)

To the Honorable Judge of the Ninth Judicial Circuit in and for the County of Bureau and State of Illinois; in Chancery sitting.

Complaining sheweth unto your Honor of our Orator William Hoskins of said County that on the tenth day of December A.D. 1857 Harvey Litchfield of said County was seized, or pretended to be seized, in fee, of certain lands with the hereditaments and appurtenances thereunto belonging situated in said County of Bureau and State of Illinois, known and described as lots twenty

Bill

(70) Seventy one (71) and Seventy two (72) in the Town of Trenton according to the recorded plat of said Town.

And your Orator further shows that on the said tenth day of December 1857 said Hervey Litchfield, being justly indebted to your Orator in the sum of four hundred and twenty two and ⁵⁰/₁₀₀ Dollars, made and delivered to your Orator his certain promissory note subscribed H. Litchfield, bearing date the ^{said} tenth day of December A.D. 1857 for said sum of four hundred and twenty two and ⁵⁰/₁₀₀ Dollars, payable six months after the date thereof to your Orator, as by said note will more fully appear, when produced as this Honorable Court shall direct

And your Orator further shows that said Hervey Litchfield and Elizabeth A. Litchfield, his wife, for the purpose of securing the said sum of money in said promissory note specified on the said tenth day of December A.D. 1857 executed and delivered to your Orator a Mortgage of the aforesaid premises, a copy of which mortgage marked "Schedule A" and made a part of this Bill is herewith annexed.

Your Orator further shows that said Mortgage was duly acknowledged by said Hervey Litchfield and Elizabeth Litchfield on the 26th day of February A.D. 1858 before William Martin a Justice of the Peace of said County as by the certificate of said Justice, a copy of ~~which~~ whereof is herewith annexed appears; that said Mortgage was duly filed for record in the Recorder's office of said County on the twenty sixth day of February A.D. 1858 and recorded in Book 84 of Mortgages page 190 as by the certificate of said Recorder endorsed therein fully appears.

3
Your Orator further shows that said sum of money remains wholly due and unpaid that the same long since became due and payable to your Orator and that your Orator is entitled to interest at six per cent on said sum since the same fell due, by means whereof the estate of your Orator in said premises has become absolute at law according to the tenor and effect of said mortgage and the condition thereof.

Your Orator further shows that one Peter McQuaid as a Judgment Creditor of said Litchfield, or otherwise has some interest in the aforesaid premises which interest of said McQuaid accrued subsequent to your Orator's lien on said premises and with notice of the same on said McQuaid's part

Your Orator further shows that said Hervey Litchfield has not paid said note and interest thereon due to your Orator, or either, or any part of the same, altho' often requested so to do, that the same is now wholly due, and that no proceedings at law have been commenced or are now pending to recover said debt & interest or either of them

Your Orator therefore asks the aid of this Court in the premises that the said Hervey Litchfield and his wife Elizabeth A Litchfield and Peter McQuaid be made defendants to this Bill, that summons issue against them and that they severally be required to appear and answer all the allegations in this Bill contained under oath. That said Hervey Litchfield be decreed to pay the amount of said mortgage debt and the interest due thereon according to the terms of said promising note together with costs of suit herein, by a short day to be appointed by the Court, and in default thereof that said defendants and all persons claiming by, through, or

under them or either of them may be foreclosed of and from all equity of redemption and claim in and to the said mortgaged premises and that the said mortgaged premises be sold by the decree of this Court, subject to such redemption as is provided by law, and that out of the proceeds thereof the full amount of your Orator's said note and interest may be paid to your Orator, with all your Orator's costs and charges in this suit expended and that your Orator may have such other and further relief as to your Honor may seem meet and shall be equitable, and your Orator will ever pray &c.

By Kendall & Ide

His Solicitors

"Schedule "A"

This indenture made this tenth day of December in the year of our Lord one thousand eight hundred and fifty seven between Harvey Litchfield and Elizabeth S Litchfield his wife of Bureau County Ill. party of the first part, and William Hoskins of the same County and State party of the second part: Whereas, the said party of the first part is fully indebted to the said party of the second part, in the sum of four hundred and seventy two and fifty hundredths dollars: secured to be paid by one certain promissory note given by the party of the first part & payable to William Hoskins, of even date herewith & due & payable six months after date & calling for \$422 ⁵⁰/₁₀₀ Dollars therefore this indenture witnesseth, that the said party of the first part for the better securing the payment of the money a

foresaid, with interest thereon, according to the tenor and effects of the said promising note above mentioned, and also in consideration of the further sum of one dollar to them in hand paid by said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted bargained sold and conveyed and by these presents does grant bargain sell and convey, unto the said party of the second part his heirs and assigns forever all of the following described lots pieces or parcels of land situate lying and being in the said County and State of Illinois to wit; Lots Seventy (70) Seventy one (71) & seventy two (72) in the Town of Trenton in said County of Bureau & State of Illinois according to the recorded plat of said Town of Trenton. To have and to hold the same together with all and singular the tenements ^{privileges} hereditaments and appurtenances thereto belonging or in any wise appertaining and also all the estate interest and claim whatsoever in law as well as in equity which the party of the first part has in and to the premises hereby conveyed unto the said party of the second part his heirs and assigns, and to their only proper use benefit and behoof. Provided always and these presents are upon this express condition that if the said party of the first part his heirs executors administrators or assigns the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promising note according to the true intent and meaning thereof that then and in that case these presents and every thing herein expressed shall be absolutely null and void. In witness whereof the said party of the first part hereunto set their hands and seals the day and year first above written


Henry Littlefield (Seal)
Elizabeth Littlefield (Seal)

Sdled and delivered in presence of }
}

Copy of Acknowledgement

(Acknowledgement)

State of Illinois }
 Bureau County } I, William Marton a Justice of the peace in
 and for said County in the State aforesaid, do
 hereby certify that Harvey Litchfield and Elizabeth Litchfield
 who are personally known to me as the real persons whose names
 are subscribed to the above mortgage, appeared before me this day
 in person and acknowledged that they executed and delivered
 the said Mortgage as their free and voluntary act, for the
 uses and purposes therein set forth. And the said Elizabeth
 Litchfield wife of the said Harvey Litchfield having been by
 me examined separate and apart and out of the hearing of
 her husband, and the contents and meaning of the said Mort-
 gage having been by me made known and fully explained to
 her acknowledged that she had freely and voluntarily executed
 the same and relinquished her dower to the lands and tenements
 therein mentioned without compulsion of her said husband, and
 that she does not wish to retract the same. Given under my hand
 and seal this 26th day of February in the year of our Lord one
 thousand eight hundred and fifty eight

William Marton J.P. 

Certificate on Mortgage.

(Recorder's cert)

State of Illinois }
 Bureau County } I certify that this instrument was filed for
 record the twenty sixth day of February A.D. 1858 at the hour of two
 O'clock P.M. and duly recorded in Book 4 of Mortgages
 page 190. Edward M. Fisher Recorder

Copy of Note.

(Copy of Note)

Trenton Dec 10/57
 \$422.50 Six months after date I promise to pay Wm Hocking

7.

four hundred + twenty two ⁵⁰/₁₀₀ Dollars for value Recd.
H. Litchfield

(Copy of Affidavit of non-residence)

State of Illinois } ss
Bureau County }

Circuit Court
Sept. Term 1857.

William Hoskins

} Bill for Foreclosure

Hervey Litchfield Elizabeth

Litchfield his wife }

Peter McQuaid }

William Hoskins the complainant
being duly sworn says that Peter McQuaid aforesaid, resides in the
Territory of Kansas and not within the State of Illinois, so that
process can be served upon him

Subscribed + sworn to before me

Wm Hoskins

this 16th day of Aug 1857.

George O Ide

Police Magistrate

Town of Princeton.

And on the said 30th day of August AD 1857, the clerk,
upon the filing of said Bill, process and affidavit made and
published a notice of the pendency of this suit to the said De-
fendant Peter McQuaid, and also issued a summons herein,
in the words and figures following to wit: -

(Copy of Summons)

State of Illinois } ss
Bureau County }

The People of the State of Illinois

To the Sheriff of Bureau County, Greeting.

8.

We command you to summon Hervey Litchfield & Elizabeth J Litchfield his wife & Peter McQuaid, if they shall be found in your County, to be and appear before our Circuit Court for said County on the first day of the next term thereof to be holden at the Court House in the Town of Princeton, on the third Monday of September next to answer to a certain Bill of Complaint filed in our said Circuit Court, on the Chancery side thereof against them by William Hoskins and further to do and receive whatever our said Court shall then and there consider in that behalf; and this they shall in no wise omit. Hereof fail not, and make due return of this writ, with an endorsement of the manner in which you execute the same.

Edw. M. Fisher
E. J. I.

Witness Edward M Fisher, Clerk of our said Court and the seal thereof, at Princeton, in said County this 30th day of August in the year of our Lord, one thousand eight hundred and fifty nine

E. M. Fisher Clerk
 Per *Wm. Hall Jenkins* Dep. Clerk

Upon which summons the said Sheriff endorsed the following return, to wit;

Served on the within named Hervey Litchfield & Elizabeth J Litchfield his wife by delivering each of them true copies of this writ this 4th day of Sept 1859. The within named Peter McQuaid not found in my County.

D. C. Norton Sheriff Pr Co
 By *Wm. C. Stacy* Dep.

Pleas before the Hon^d M. C. Hollister, Judge of the Ninth Judicial Circuit of the State of Illinois at a term of said Circuit Court begun and held at the Court House at Princeton in the County of Bureau and

(Copy of Sheriff's Return)

State of Illinois on Monday the 12th day of December in the year of our Lord One thousand Eight Hundred and fifty nine.

Present Hon^{ble} M. E. Hollister Judge

Edward M. Fisher Clerk

David C. Norton Sheriff.

Do wit on the 7th day of said Term, said Court sitting in Chancery.

William Hoskins

vs Foreclosure.

Hervey Litchfield, & Elizabeth I Litchfield his wife + Peter McQuaid.

This day came the said complainant by Kendall & Ide his Solicitors and filed his proof of publication herein, in the words and figures following, to wit;

Princeton Ill. December 16. 1859

McRuke & Hewitt, Successors to Hewitt & Robinson, Proprietors of the "Bureau County Republican", a weekly newspaper published in Princeton, Bureau County, Ill., do certify, that the annexed notice of foreclosure was printed in said Newspaper four successive weeks, the first insertion bearing date September, 8. 1859, and the last insertion bearing date September 29th 1859.

Ruke & Hewitt, Prop^s

State of Illinois, Bureau County. ss.

Bureau Circuit Court. September Term 1859.

William Hoskins

vs

Hervey Litchfield, Elizabeth I Litchfield his wife, and Peter McQuaid.

} Bill for Foreclosure.

(Printers Certificate)

(Copy of Published notice)

Notice is hereby given to the said

Defendant, Peter McQuaid, to appear before our Circuit-Court of said County, on the first day of the next term thereof, to be holden at the Court-House in Princeton, in said County, on the third Monday in the Month of September A.D. 1859 to answer unto a certain Bill of Complaint, as above entitled, filed in our said Court, by said Complainant, against him, (impleaded with Harvey Litchfield and Elizabeth J. Litchfield, his wife) also, that affidavit showing that said defendant resides out of the Limits of this State, has been filed with said Bill, and that summons has been issued against him returnable to the said term of said Court

Kendall & Ide Sol^s for Compl^r Edward M. Fisher Clerk

Princeton Ill Sept 2^d 1859 Per Wm H. Allenkin's Deputy Clerk

- And it appearing to the Court that the said Defendant McQuaid had been duly notified of the pendency of this suit by publication of a notice thereof in the Bureau County Republican (for four successive weeks) a weekly newspaper printed & published in the County of Bureau & State of Illinois, the first insertion of such notice in said paper having been more than sixty days prior to the first day of the present term of this Court, and the said Harvey & Elizabeth Litchfield by service of summons against them more than ten days prior to the first day of the present term of this Court; on motion, and by order of said Court, the said Defendants were each three times solemnly called, in open Court, to come into Court here and plead answer or demur to said complainant's Bill filed herein, but came not nor came any one for them but made default herein, It is therefore considered and ordered by the Court that said complainant's Bill and the allegations therein contained, as against the said defendants and each of them be taken as

(Order of
Default
and Refer-
ence to Master)

and for confessed and that this cause be referred to the Master in Chancery of this Court, to take and report to the Court the proofs touching the Allegations contained in said Complainants Bill filed herein.

To wit on the 17th day of said Term.

This day came the ~~Mr~~
William Hoskins

Foreclosure

vs
Hervey Litchfield, Elizabeth Litchfield
his wife & Peter McQuaid

This day came the Master in Chancery of said Court, and filed his report herein, in the words and figures following, to wit;

(Master's Report
on Bill)

State of Illinois } ss Bureau Circuit Court
Bureau County } December Term 1859

William Hoskins

}
} In Chancery

vs
Hervey Litchfield, Elizabeth Litchfield }
his wife and Peter McQuaid } Bill to foreclose mortgage.

To the Hon Wm. E. Hollister

Judge of the Ninth Judicial Circuit of the State of Illinois - in Chancery sitting.

In compliance with an order of this Court in the above cause made at the present term thereof, referring the said Complainants Bill to the Master in Chancery for taking proofs on the matters and things alleged in said Bill, I the subscriber, Master in Chancery of said Court having with due

care examined the evidences exhibited on the part of the Complainant in support of said Bill, do find & report as follows, to wit,

That on the tenth day of December A. D. 1857 the said Defendant Hervey Litchfield did execute & deliver to the said Complainant his certain promissory note for the sum of four hundred & twenty two dollars & fifty cents. the same being for value received; that to secure the payment of said note which would become due & payable six months after its date, the said Hervey Litchfield together with Elizabeth his wife did on the day of the date of said promissory note make sign & seal a mortgage deed to said Complainant of the following described real estate, sit in said County of Bureau to wit; Lots seventy (70) seventy one (71) & seventy two (72) in the Town of Trenton, according to the recorded plat of said town, which Mortgage deed was duly acknowledged before a competent officer on the 26th day of February A. D. 1858, by said Mortgagors, & filed for record on the same day in the Records office of said County. That the said Note marked (A) & the said Mortgage marked (B) are hereto attached and made a part of this report. That the said note & mortgage became due & payable on the tenth day of June A. D. 1858 and that no part thereof has been paid. That the said defendants have all been duly notified of the pendency of this suit as the law requires & have been herein defaulted. That the interest of the said ~~Hervey~~ Peter McQuaid as a Judgment creditor of said Hervey Litchfield accrued subsequent to the entry of said Mortgage on record to wit on the third day of January A. D. 1859. That all the Material Statements alleged in said Complainant's Bill appear to be true in substance

and that by computation I find now due from said Defendants
Hervey Litchfield to said Complainant on said Note & Mortgage
the sum of four hundred & sixty one Dollars & Eighty cents
(\$461.80) All which is respectfully submitted

December 28. 1859.

Cyrus Bryant

Master in Chancery

(A)

\$422.50

Trenton Dec 10/59.

Six months after date I promise to pay ~~Hervey~~
Hoskins four hundred & twenty two ⁵⁰/₁₀₀ Dollars for value rec^d
N. Litchfield

(B)

This indenture made this Tenth day of December in the year of
Our Lord One thousand eight hundred and fifty seven, between
Hervey Litchfield and Elizabeth S. Litchfield his wife of Bureau
County Ills party of the first part and William Hoskins of the
same County and State party of the second part: Whereas the said
party of the first part is justly indebted to the said party of the
second part in the sum of four hundred and Seventy two
and fifty hundredths dollars secured to be paid by one certain
promissory note given by the party of the first part & payable to
William Hoskins of even date herewith & due & payable six months
after date & calling for \$422. ⁵⁰/₁₀₀. Now therefore this indenture
witnesseth that the said party of the first part for the better securing
the payment of the money aforesaid with interest thereon according
to the tenor and effect of the said promissory note above mention-
ed. And also, in consideration of the further sum of One dollar
to them in hand paid by the said party of the second part at the
delivery of these presents, the receipt whereof is hereby acknowledged

Have granted bargained sold and conveyed and by these presents do grant bargain sell and convey unto the said party of the second part his heirs and assigns forever all of the following described lots pieces or parcels of land situate lying and being in the said County, and State of Illinois, to wit; Lots Seventy (70) Seventy one (71) & Seventy two (72), in the Town of Trenton in said County of Bureau & State of Illinois, according to the recorded plat of said Town of Trenton. To have and to hold the same together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining; And also all the estate, interest, and claim whatsoever in Law as well as in Equity which the party of the first part has in and to the premises hereby conveyed unto the said party of the second part his heirs and assigns, and to their only proper use benefit and behoof. Provided always and these presents are upon this express condition that if the said party of the first part his heirs executors and administrators shall well and truly pay, or cause to be paid to the said party of the second part his heirs executors administrators or assigns the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory note, according to the true intent and meaning thereof, that then and in that case, these presents and every thing herein expressed shall be absolutely null and void. In witness whereof, the said party of the first part hereunto set their hands and seals the day and year first above written.

Scaled and delivered in presence of


Hervey Litchfield (S)

Elizabeth Litchfield (S)

(15)

State of Illinois } ss

Bureau County } I, Wm Martin a Justice of the Peace in
 and for said County, in the State aforesaid, do hereby certify that
 Harvey Litchfield and Elizabeth Litchfield who are personally
 known to me as the real persons whose names are subscribed to
 the above mortgage appeared before me this day in person and
 acknowledged that they executed and delivered the said
 Mortgage as their free and voluntary act for the uses and
 purposes therein set forth And the said Elizabeth Litchfield
 wife of the said Harvey Litchfield having been by me examined
 separate and apart and out of the hearing of her husband and
 the contents and meaning of the said Mortgage having been by me
 made known and fully explained to her acknowledged that she
 had freely and voluntarily executed the same and relinquished
 her dower to the lands and tenements therein mentioned, without
 compulsion of her said husband, and that she does not wish
 to retract the same. Given under my hand and seal this 26th
 day of February in the year of our Lord one thousand eight
 hundred and fifty eight

William Martin J. P. 

State of Illinois }
}

Bureau County }
}

No 4669.

I certify that this instrument was filed for record
 the twenty sixth day of February A.D. 1858 at the hour of two O'
 Clock P.M. and duly recorded in Book 4 Mortgages Page 190

Edward M. Fisher Recorder

- which report of said Master is approved by the Court and ordered
to be filed

Atty for Plaintiff

To wit: - on the same day of said Term of said Court to wit; the 17th day of said Term.

vs. William Hopkins

(vs)

Foreclosure.

Henry Litchfield, Elizabeth
Litchfield & Peter McQuaid

(Decree for sale)

This day came the above named Complainant by Kendall & Ide, his solicitors, and it appearing to the satisfaction of the Court that summons had been issued in the above entitled cause against said defendants and that the same has been returned duly served upon said defendants Henry Litchfield & Elizabeth Litchfield more than ten days prior to the first day of the present term of this Court and returned not found as to Peter McQuaid; and it further appearing from Affidavit on file that said Peter McQuaid is not a resident of the state of Illinois, and that due notice of the pendency of this suit has been given him by publication in the "Bureau County Republican" a weekly newspaper published in said County for four successive weeks, the first insertion of which was at least sixty days prior to the first day of the present term of this Court; And said defendants having been three times solemnly called and having come not, but made default, it is ordered that a default be and the same is hereby entered against said defendants, and that the Bill of Complainant and all the allegations therein contained be taken as to said Defendants pro confesso.

And it further appearing to the Court from the Master

in Chancery to whom this cause was referred to take the proofs herein, which report is approved and ordered to be filed, that the allegations contained in said Bill are substantially true, that on the tenth day of December A.D. 1857 the said Defendant Hervey Litchfield executed & delivered to said Complainant his promissory note for the sum of four hundred & twenty two dollars and fifty cents, payable to Complainant six months after date, and that to secure the payment of said note, said Hervey Litchfield with Elizabeth Litchfield his wife did on the day of the date of said note make, sign seal, acknowledge and deliver a Mortgage Deed to said Complainant of the following described real estate in said Bureau County to wit; Lots Seventy (70) Seventy one (71) & Seventy two (72) in the Town of Trenton according to the recorded plat of said Town. That the principal sum of money in said note and Mortgage became due and payable on the tenth day of June A.D. 1858 & that in part thereof has been paid and that the ^{amount} ~~amount~~ ~~that~~ ~~is~~ ~~now~~ now due on account of said principal and the interest thereon amounts to the sum of four hundred & sixty one dollar and eighty cents And it further appearing to the Court that said Defendant Peter McQuaid has some interest in said premises which interest accrued subsequent to the lien of Complainant's Mortgage and on the third day of January 1859 and consists of a Judgment against said Hervey Litchfield in said Court—

It is therefore ordered adjudged and decreed by the Court that the said Defendant Hervey Litchfield pay to the Complainant within ten days from this day the said sum of four hundred & sixty one dollar and eighty cents with interest from this day at 6 per cent and the costs of this proceeding and in case of default in the payment of said sum within

said time then that said defendants and each of them stand absolutely debared and foreclosed of all equity of redemption in and to said mortgaged premises and that said mortgaged premises or so much thereof as may be necessary to pay said money, with the interest thereon the costs of this suit and of such sale be sold for that purpose by Cyrus Bryant the Master in Chancery of this Court who is hereby empowered and appointed to carry this Decree into effect: That in case of Default in payment of said sum of money, interest and costs aforesaid, the said Master in Chancery proceed to sell the said premises for cash at Public Auction after first advertising the time place and terms of said sale by publishing a notice thereof in a weekly newspaper published in said County or by posting notices thereof in four of the most public places in said County, at least four weeks previous to the time appointed for such sale said notice to contain a description of said premises, and that on the day appointed for said sale between the hours of ten O'clock A.M. and five O'clock P.M. of said day at the front door of the Court House in Princeton in said County, said Master proceed to sell the said mortgaged premises or so much thereof as may be necessary to pay said sum of money, the interest thereon and the costs of this suit and of said sale for cash to the highest and best bidder therefor and upon the sale thereof that he give to the purchaser a certificate of purchase conditioned that he will convey to such purchaser or his assigns, the premises so purchased by him at the expiration of fifteen months from the day of such sale, provided said premises are not redeemed in the manner provided by law: that out of the proceeds

arising from said sale said Master pay first the costs of this suit and of sale, and secondly said sum of \$461.80 with interest thereon from the date of this Decree to the said Complainant and thirdly the remainder if any to the clerk of this Court to be held subject to the further order of this Court; and finally that said Master report his actings and doings under this Decree to this Court at the next term thereof.

Pleas before the Hon^{ble} M. C. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois at a Term of said Circuit Court begun and held at the Court House at Princeton in the County of Bureau and State of Illinois on Monday the twelfth day of March in the year of our Lord one thousand eight hundred and Sixty

Present Hon^{ble} M. C. Hollister Judge
Edward M. Fisher Clerk
David E. Norton Sheriff.

To wit on the 7th day of said Term of said Court, it being March 19th AD 1860, the Court being in Chancery sitting.

William Hockins

vs

Bill to foreclose Mortgage.

Mersey Litchfield & Elizabeth J.

Litchfield his wife & Peter M. Duval

(Proc. of
Confirmation)

This day came the Complainant by Kendall & Ide his Solicitors and Cyrus Bryant Master in

Chancery appointed to execute a Decree of this Court made at the December Term 1859 of said Court in the above entitled cause, having in pursuance of said Decree, made sale of the Mortgaged premises mentioned in said decree this day presented his report of his proceedings thereunder to this Court, which report is ordered to be filed and the same is in the words and figures following to wit:

To the Hon W. E. Hollister Judge of the Ninth Judicial Circuit of the State of Illinois - In Chancery sitting

In pursuance of a Decree of this Honorable Court made in the above cause on the 30th day of December A.D. 1859, I the Subscriber Master in Chancery of said Court do report.

That all and singular the Mortgaged premises in said Complainant's Bill & in said decree mentioned, were sold by me in person at public auction at the front door of the Court House in Princeton in said County on Saturday the Eighteenth day of February A.D. 1860 between the hours of ten o'clock A.M. & five o'clock P.M. - That previous to such sale I gave four weeks public notice of the time, place & terms thereof by advertisement in the Bureau County Republican a weekly newspaper printed & published in said County of Bureau That such advertisement contained a description of said premises & was published for the period & in the manner directed in said decree; - a certified copy of said printed notice being hereto attached & made a part of this report.

That at such sale the said premises being offered for sale by me at public auction to the highest bidder for cash in separate lots as described in said Bill & decree; the first lot mentioned in said decree, to wit Lot number 70 in the Town of Trenton in Bureau

(Master's
Report of
Sale)

County Illinois, was struck off & sold to the said Complainant for \$80.00 that being the highest sum bidden therefor; The second lot mentioned in said decree, to wit Lot Number 71 in said Town of Trenton was struck off & sold to the said Complainant for the sum of \$80.00 that being the highest sum bidden therefor; The third lot mentioned in said decree to wit; Lot number 72 in said town of Trenton was struck off & sold to the said Complainant for the sum of \$345.00 that being the highest sum bidden therefor. The whole amount for which said three lots were sold being \$505.00 which sum is just sufficient to pay the debt interest & costs in this cause by said decree adjudged to said Complainant. That I have executed duplicate certificates of purchase of said premises to the purchaser one of which I have filed in the Clerk's office for record & the other delivered to said Complainant & taken a receipt therefor which is hereto attached & made a part of this report. That out of the proceeds of said sale, the same being advanced by said Complainant, I have paid the costs of this proceeding;— To the Clerk for the Bill of Costs taxed by him \$22.50 & 50 cts for recording certificate, to the Printer \$3.00 for advertising sale, & have taken receipts of said Clerk & printer which are hereto attached & made a part of this report. I have retained for my fees \$10.50 as percentage on this sale & \$3.00 for two certificates & this report.

Recapitulation

Bill of Costs taxed by the Clerk	\$ 22.50
Recording certificate of purchase	.50
Printers fee for ad. sale	3.00
Master's fee a percentage on sale	10.50

22.

u u u 2 Certificates & Report



3.00

Debt \$461.80 Int to 8. by 18. 1860 = \$3.70

465.50 = \$505.00

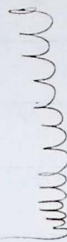
And I further report that in executing said Decree I have in all things done as therein directed

Cyrus Bryant
Master in Chancery

State of Illinois  sp.
Bureau County 

William Hoskins

@

Henry Litchfield, Elizabeth
Litchfield and Peter McQuaid 

Received February 18. 1860 of

Cyrus Bryant Master in Chancery a certificate of purchase of the mortgaged premises in said complainant's Bill & in said Decree mentioned to wit Lots numbered 70-71 & 72 in the Town of Trenton in Bureau County Illinois, which certificate is in lieu of the sum of \$575.00 being the amount of the debt interest & costs for which judgment by said Decree was rendered against said defendants & in favor of the complainant at the term aforesaid.

William Hoskins

\$22.50
50

Received Feby 18. 1860 of Cyrus Bryant twenty two dollars & fifty cents in full for the Bill of costs as taxed by me in the above cause - also 50 cts for recording certificate of purchase

Per E. W. Fisher Clerk
Wm Hall Jenkins Dep Clerk

(Receipt for Clerk's Receipt for costs)

(Receipt for Cpt of Purchase)

23.

Masters Sale

State of Illinois, Bureau County, ss.

Bureau Circuit Court, December Term 1859

William Hoskins. vs Harvey Litchfield,
Elizabeth Litchfield and Peter McQuaid.

Public notice is hereby given that in pursuance of a
Decree made in said Court in the above cause on the 30th
day of December A.D. 1859, J. Cyrus Bryant Master in
Chancery of said Court, will, on Saturday, the 18th day
of February A.D. 1860 at the front door of the Court
House in Princeton, between the hours of 10 O'Clock A.M.
and 5 O'Clock P.M. of said day, sell, at public auction
to the highest bidder, for cash, the following described
real-estate situate in said County of Bureau, and State
of Illinois, to wit. Lots Number 70, 71 and 72 in the Town
of Trenton according to the recorded plat of said Town
January 19. 1860
Cyrus Bryant
Master in Chancery

Copy of Certified
Copy of advertisement
of sale)

\$3.00 Received Feb'y 18. 1860 of

Jayrus Bryant three dollars in full
for publishing the annexed adver-
tisement of sale for four ^{weeks} successively
in the Bureau County Republican
a weekly newspaper printed & published
in said Bureau County - the first inser-
tion having been more than four
weeks prior to the sale

Rube & Hewitt. Publishers & Proprietors
of the Bureau County
Republican

- which report having been examined by the Court is ordered to be
approved, and it is further ordered that the sale therein mentioned
be confirmed and in case said mortgaged premises so sold are not
redeemed at the end of fifteen months from the day of such sale
that said Master in Chancery convey said premises to the pur-
chaser thereof named in said report, according to the Statute
in such case made and provided.

(Order of con-
firmation)

Pleas before the Honl M. E. Hollister, Judge
of the Ninth Judicial Circuit of the Circuit Courts of the State
of Illinois at a Special Term of said Circuit Court begun and

holden at the Court House in Princeton in the County of Bureau and State of Illinois on the fifth Monday in the Month of September (it being the twenty ninth day of said month) in the year of Our Lord One Thousand Eight Hundred and Sixty Two.

Present Hon^{ble} M. C. Hollister Judge
George M. Radcliffe Clerk
Daniel M^o Donald Sheriff.

To wit on the Fifteenth day of said Term, it being the 15th day of October A. D. 1862, the Court sitting in Chancery.

William Hacking

(vs)

Foreclosure. (Redocketed)

Hervey Litchfield & Elizabeth
his wife & Peter McQuaid

Motion to set aside sale

This day came the above defendants Hervey Litchfield & Elizabeth Litchfield his wife by Taylor & Paddock their Solicitors, and also came the above Complainant by Peter & Smith his Solicitors. And thereupon the motion of the said defendants Hervey Litchfield & wife upon the written stipulation of the parties filed in this cause now came on for hearing upon the proofs evidence papers and exhibits filed in this cause, and after hearing the argument of counsel and being duly advised in the premises it is the opinion of the Court that the equity of the case is with the said Defendants Hervey Litchfield & Elizabeth. It appearing to the satisfaction of the Court that the premises described in the said Motion & written stipulation filed herein ^{were} at the time of the making of

(Decree setting
aside Martin's sale)

the mortgage foreclosed in the above suit were and ever since have been the Homestead of said Litchfield & wife. It also appearing that said parties did not in and by said Mortgage or otherwise waive their claim to said premises as their homestead under the laws of this State. It also appearing that the debt intended to be secured by said mortgage did not accrue for the purchase money nor for any improvements upon the said premises and that the same has accrued since the 4th day of July 1851, and since the said parties Litchfield & wife were married and since the said premises became their homestead and that said Litchfield & wife with their family occupied the dwelling house upon said premises as their homestead at the time the said mortgage debt accrued, and that they have ever since and still occupy the said premises as such homestead and that they have not in the manner provided by law waived their right to said premises as their homestead. It also appearing that said premises are not & have not been worth more than \$1,000.00. It is now therefore ordered adjudged and decreed by the Court that the sale of the said premises by the Master in Chancery of this Court under the decree made in the above entitled cause be vacated, annulled and set aside and that all the proceedings touching the sale of the said

mortgaged premises under the said decree be annulled vacated and held for nought, and that the said premises stand in all respects as though no proceedings were had upon the said mortgage and that the defendants, Litchfield & wife recover their costs herein expended

It is however provided that if the Complainant shall pay to the said Litchfield and wife the sum of one thousand Dollars on account of their claim to the said premises as a homestead that then and in that case the said sale so made by the Master in Chancery of this Court shall stand as though these proceedings were not had any thing in this decree contained to the contrary notwithstanding.

To wit on the said fifteenth day of said Term of the said Court.

William Stockins

Enclosure (Redocketed)

Hervey Litchfield, & Elizabeth

his wife & Peter Mt Duaid

Motion to set aside sale

This day came the said Complainant by Kendall & Ide & Peter his Solicitors and filed his Bill of Exceptions herein in the words and figures following, to wit;

Litchfield was at the date of said Mortgage and ever since has been a householder having a family consisting of said Elizabeth who is his wife and several children, which family together with the said Harvey at the date of said Mortgage and ever since that time have dwelt upon and actually occupied said premises as a homestead; there being a dwelling house thereon which now is and ever since the date of said Mortgage has been occupied by these defendants as their only place of residence, and said lots though numbered severally being actually in one piece and making but one tenement consisting of a dwelling house as aforesaid and a small garden not more than sufficient for the actual wants of these defendants as an appendage to said house -

That said lots in all are not now worth more than one thousand dollars having been bid in by said Complainant at said sale for the sum of only Five Hundred and Five Dollars or thereabout.

2 That neither of these defendants has ever in any wise released or waived his privileges or rights under the Homestead Exemption Law of this State touching the said lands or any part or parcel thereof; nor was such Mortgage given for the purchase money or improvement of said

lands or any part or parcel thereof, nor was the same given for any debt accruing prior to August fourth A.D. 1851. said land belonging at the date of said Mortgage and ever since in fee simple to said Harvey Litchfield subject to said Mortgage.

3. That said sale was inequitable and oppressive toward said defendants in as much as a large part of the demands set forth in said Bill was for and on account usurious interest reserved by said Hookins upon an account stated between them in settlement of certain partnership accounts between said Harvey and said Hookins - to wit, twenty per cent per annum upon the balance so found to be due

4. That said sale and the subsequent proceedings herein are utterly irregular in many respects
 July 12. 1861
 Taylor and Paddock
 Sol. for said defts.

Notice

Notice to the abovenamed
 Complainant William Hookins
 and his Solicitors Messrs.

Rendall + Ide - Gentlemen;

Please take notice that on the first day of the next term of said Circuit Court of Bureau County Ill. or as soon thereafter as his Honor will hear the same the said defendants will take up the above motion herein, supporting the same

by affidavits of the facts mentioned - when & where you may appear and resist the same if you see fit

July 12, 1861 - Yours truly

Taylor & Paddock

Rec^d a true copy of the } for defts L. & L.
foregoing motion and
notice this 12th July 1861-

Kendall & Ide

Hoskins' Solicitors

Agreement:

State of Illinois } In Circuit Court
Bureau County } March Term A.D. 1861.
William Hoskins

vs

Harvey Litchfield, et al.

In this cause it is stipulated by said parties, as follows:
That whereas the Master in Chancery of this Court has heretofore, to-wit: 18 July 1860, made a sale of Lots Nos 70, 71, 72, in the Town of Trenton in said Bureau County to the said Complainant under and by virtue of the decree of sale herein, and whereas said defendants Harvey Litchfield & Elizabeth Litchfield are about to apply to said Court to set aside said sale upon the grounds mentioned in their motion of even date herewith now to

be filed herein it is agreed by the said parties that for the purpose of saving time and costs the said defendants may have and take every benefit and advantage by their said motion which may be sustained or defended by the respective parties by affidavits the taking of depositions being hereby waived which they might or could have by bill in Chancery or other proceeding brought to set aside said sale upon the facts set forth in said motion; the intent hereof on the part of said Complainant not being to admit the right of said defendants to the relief asked in said motion but merely to waive all objection as to the mode of applying for the same =

Feb'y. 12. 1861-

William Hoskins

By Kendall & Ide his attys.

Taylor & Paddock agents
& Solrs. for Litchfield.

In support of which the defendants filed the following affidavits:

State of Illinois
Bureau County }^{3⁰⁰}

In Circuit Court
December Term 1861.
Motion to set aside sale.

William Hoskins

vs.

Harvey Litchfield, et al.

Before me George W. Redcliffe

Affidavit of
Bureau County

Clerk of the Circuit Court within and for said County this day appeared Brant Rawson of said County who being duly sworn on his oath says that for more than Eight years last past he has resided in the village of Trenton in said County of Bureau, and has lived during that time a neighbor to the above defendant, and within sixty rods of where the said defendant has resided during that time.

That affiant is well acquainted with the above defendant Harvey Litchfield and has known him well for the past Eight years.

Affiant further says that in the summer of 1853, the said Litchfield erected on Lot No. 70, in said Village of Trenton a dwelling house and enclosed the said Lot No. 70, with Lots Nos. 71, + 72, in said Village of Trenton with a common board fence, and that in the fall of 1853, the said Litchfield moved into the said dwelling house with his family consisting of himself, his wife Elizabeth Litchfield + two children, Barstow W. Litchfield + John Spratt and that said Harvey Litchfield with his said family have occupied the said dwelling house + Town Lots with his said family as their sole and only residence + homestead from the said fall of 1853 until the present time, and that said Litchfield

still occupies the said dwelling house and Town Lots with his said family, and that the same is his only homestead.

That said Lots Nos 70, 71, & 72 are all enclosed with one common fence or enclosure, and form one Lot or enclosure, the dwelling house being on Lot No. 70 and that the same has been so enclosed and occupied by said Litchfield with his said family since the fall of 1853.

The said Lots 71, & 72, being used by said Litchfield & his family as a garden, since they have lived in said dwelling house.

That said dwelling house & three Lots aforesaid with all the improvements thereon are not now worth one Thousand Dollars, and have not been worth more than one Thousand Dollars at any time for five years past.

That said Harvey Litchfield is the head of the family above named and has resided with the same since the fall of 1853, upon the said premises, and still resides with his said family upon said premises.

Subscribed and sworn to
before me George W. Radcliffe
Clerk of Circuit Court this
14th of Dec. 1861.

Brant Rawson.

Geo. W. Radcliffe Clk. Cir. Ct.

By Cairo D. Trimble Deputy

Affidavit of
Benj. Stowell
(34)

State of Illinois }
Bureau County }^{3rd} In Circuit Court.
December Term 1861.

William Hoskins

vs

Harvey Litchfield } Before me Geo. W. Stedcliffe
Clerk of the Circuit Court within and for said
County this day appeared Benjamin Stowell
who being duly sworn on his oath says that he
is well acquainted with the parties to the above
suit. That he has known the defendant for
the past twenty five years; that he is the brother
in-law of affiant. That affiant was the
proprietor of the village of Trenton in said County
and laid off said Town in the year 1850 or 1851.

That on the 13th of July 1853 affiant
being the owner in fee of Town Lots No. 70, 71, + 72,
in the said Village of Trenton, he and his wife
conveyed the said Town Lots to the above defendant
by Warranty Deed dated on that day for a
valuable consideration. That said defendant
fully paid up to affiant the purchase money
in full for said premises when affiant conveyed
the same to him as aforesaid.

That affiant states that in the summer of
1854 said defendant constructed a dwelling
house upon said Lot No. 72, and enclosed
the whole said three lots with a board fence

making the entire three Lots into one Lot. or enclosure; and that in the fall of that year (1854) the said defendant then being a married man the head of a family & living with the same, said family consisting of himself, his wife Elizabeth Litchfield his son Barston Litchfield & John Spratt, moved into the said dwelling house with his said family, and that said defendant with his said family have occupied the said dwelling house & premises by actual residence therein from the said time when they removed there, to wit: in the fall of 1854, until this present time. And that said defendant is still the head of his said family living with the same and in the occupancy of said premises as their sole and only homestead, and that they have so occupied said premises since the fall of 1854,

That said defendant paid affiant for said Town Lot in labor done by himself personally, and that said defendant purchased of affiant the lumber and materials with which he constructed the said dwelling house, and paid affiant for same when he got said materials and lumber.

Affiant further says that one Albert White the brother-in-law of said defendant built the said house for defendant. That said defendant had no dealing with Complainant

to the knowledge of affiant until long after said Town Lots were purchased as aforesaid, + paid for, nor until long after the said improvements upon said Town Lots were made and paid for by said defendant.

Affiant states that he lived and done business in the said Village of Trenton from the year 1851 to the month of August 1857.

That defendant was under employment of affiant when he purchased said Town Lots and built said house and until a year or more thereafter, so that affiant had the opportunity of knowing the facts herein above stated.

That after defendant left the service of affiant he engaged in business with the Complainant in the grain + lumber business, in which business the indebtedness for which the Mortgage was given in the above cause accrued.

Affiant heard Complainant say that a part of the said indebtedness to secure which the said Mortgage was given was for grain which Complainant sold to defendant in the year 1857, and the balance of said indebtedness was for money loaned by Complainant to defendant.

Benjamin Jewell
Subscribed and sworn to

before me Geo. W. Radcliffe

Clerk this 19. day of Dec 1861. Geo. W. Radcliffe
Clerk

Affiant of
Harvey Litchfield

State of Illinois } In Circuit Court
Bureau County } March Term A.D. 1861.
William Hoskins

vs

Mortgage to set aside & sale &c.

Harvey Litchfield et al

Said defendant Harvey Litchfield being duly sworn on his oath ^{do} say that he is the defendant above named, that he is a householder and is now and ever since the year 1854 has been in the actual possession and occupation of the premises mentioned in the Mortgage and bill herein, to wit; Lots Nos 70, 71 & 72 in the Town of Trenton Bureau County Illinois That in said year 1854 affiant erected on said land a certain dwelling house and appendages which are now on the same and occupied ^{and} resided in by affiant and so have been ever since the time of said erection; that affiant has a family who have always resided with him since & during his said occupation and residence which family consists of affiant's wife Elizabeth and several children to wit; John Spratt, Honora D. Litchfield which said family are now with affiant residing on said land in said house; that no part of the money mentioned in said Bill Mortgage and Decree of Sale herein consists of purchase money nor is any part thereof due on account of the improvement of said premises in any wise being money found to be due from affiant to said Hoskins upon an account stated between them in settlement of a prior series of partnership dealing, that no part of

said indebtedness accrued nor did any of said dealings take place until long after the first July A.D. 1857 to wit in 1854. That a large portion of the said balance so found to be due was made up of certain charges of usury which said Hopkins extorted of this affiant wilfully corruptly and contrary to the form of the Statute in that behalf and also contrary to equity and good conscience there being 18 or 20 percent interest on the true balance of account added into the note and mortgage aforesaid

Affiant further says that he has never nor has his said wife nor have both executed any release or waiver of the rights of said affiant and wife under the Homestead laws of the State of Illinois nor any paper or contract designed in any wise to waive or release the right to reside on said premises as exempt from sale under said Mortgage and as the only homestead of Affiant

That Affiant has no other and different residence or abode than the foregoing


That said premises tho' separately numbered are situated together and make but one lot and are not worth more than one thousand dollars and that this affidavit is made in support of his motion to have set aside the aforesaid Decree, sale and subsequent proceedings and further he says not.

Subscribed & sworn before me } H. Litchfield

this 25th Feb'y 1861.

Geo L. Paddock N.P. " }

- The Court sustained the said motion and set aside the sale made upon the foreclosure of the Complainant's mortgage, to which said Decision of the said Court in setting aside said sale and sustaining the said motion of the said Defendants the Complainant ~~then~~ William Hoskins then and there excepted and then and there prayed the Court to sign and seal this his Bill of exceptions and make the same a part of the records of this Court which was done accordingly

M. E. Hollister 

Judge of the 9th Judicial Circuit of the State of Illinois

State of Illinois } ss
Bureau County } I, George M Radcliffe, Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify that the above and foregoing is a true and perfect copy of all the proceedings in the above entitled cause as the same appear on file and of record in the papers and Books in my Office.

In witness whereof I hereunto set my hand and affix the seal of the said Court at my Office in Princeton in said County, this Twenty fifth day of October in the year of our Lord One thousand Eight hundred and Sixty two

Geo. M. Radcliffe Clerk

By Isaac D. Trimble Deputy



Clerk's Fees \$10.00 Paid by W. J. Peters Off. Sec.

W^m Hoskins

vs Error to
Bureau

Harvey Sitchfield et al

Transcript of Record
Assignment of Errors
and Joinder in do

Filed Feby. 19, 1863

S. Seland,
Clerk

We hereby agree to enter the
appearances of Harvey Sitchfield
& Elizabeth Sitchfield in
the Supreme Court of the State
of Illinois at the next term
thereof, and we hereby waive
our assigning & service of
process - Feby 16th 1863

Taylor & Paddock

attys for Harvey Sitchfield
Sitchfield