

No. **12399**

Supreme Court of Illinois

Whitlock, et al.

vs.

Taylor, et al.

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~~Jonathan Greenough &~~
Eliza A. Whitlock et al.

E. D. Taylor et al.

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~~12399~~

12399

1855

Shas before the Honorable Hugh J
Nickey Judge of the Seventh Judicial Circuit
Court of the State of Illinois at a term of the
Circuit Court begun and held at the Court House
in the City of Chicago in and for the County of
Cook in said Circuit on the thirteenth day being
the nineteenth day of November in the year of Our
Lord one thousand eight hundred and forty nine
and of the Independence of the United States the
twenty fourth,

Present-

The Hon. Hugh J. Nicky Judge,

Samuel McIlroy State Attorney for term

Isaac Cook Sheriff

Attest

L. D. Howard Clerk

Be it remembered that on the 24th day of
July in the year of Our Lord one thousand
Eight hundred and forty nine, there was filed in
the Clerk's office of the Circuit Court in and for
the County of Cook in the State of Illinois, a certain
Bond for costs in a case then about to be commenced
therein, which is in the words and figures following
to wit:

Cook County Circuit Court
November Term A.D. 1849

E. D. Taylor, Josiah J. Bruce
& Seth Davis for the use of E.
D. Taylor

^{vs}
Eliza Ann Whitlock &
Others

In Chancery.
Bill to foreclose
Mortgage

We do hereby enter our
selves security for costs in this cause & acknowledge
ourselves bound to pay or cause to be paid all costs
which may accrue in this action either to the
opposite parties or to any of the officers of this court
in pursuance of the laws of this State,
dated this 24th day of July A.D. 1849.
Seth & Alexander

And afterwards to wit; on the day and year
last aforesaid, there issued out of the office of the
Clerk of our said Circuit Court, the People's writ of
summons directed to the Sheriff of Lake County
in said State of Illinois, clothed in the words and
figures following, to wit;

State of Illinois }
Cook County } ss.

The People of the State of
Illinois to the Sheriff of Lake County, Greeting;
We command you that you summon Eliza

Ann Whitlock, Charles Whitlock, Jonathan H
Greenough, Eliza Ann Greenough, William Whitlock
Fayette Ann Whitlock, John A. Whitlock, Ogden
Whitlock, Young Whitlock, Seth J. Paine, and
Francis Paine if they shall be found in your
County, personally to be and appear before the
Circuit Court of said County on the first day of
the next term thereof, to be holden at the Court
House, in ~~the~~ Chicago in the said County, on the
third Monday of November next, to answer unto
a Bill to foreclose a mortgage filed in said Circuit
Court on the Chancery side thereof by Edmund
D. Taylor, Josiah J. Preece, & Seth Paine who
sues for the use of Edmund D. Taylor

And have you then and there this writ, with
an endorsement thereon, in what manner you shall
have executed the same,

Witness I, D. Hoard Clerk of said
Court, and the seal thereof at Chicago
in said County, this 24th day of July
A.D. 1849 -

Seal

L. D. Hoard Clerk

On the back of said writ is the following return
endorsed by the Sheriff to wit;

Executed the within by reading in the hearing
of Seth J. Paine, Francis Paine, Ogden Whitlock,
and Fayette Ann Whitlock all left in their

Shall a true copy of this writ this 13 day of
September 1849, the others not found in my County
to make copies on, - Service on from 50 cents each
200 travel 22 miles on each 88 miles 5 50 return
13¢ - four copies 100. - Sheriff's fee \$ 8.62 1/2 N.H.
Donsett Sheriff Pay E. A. Newell Deputy."

"Rec'd on this writ by Rick retainer amounts three
dollars in part for my fees. N.H. Donsett Sheriff"

"Filed Sept. 1849, L.D. Hoard clerk"

And afterwards, to wit, on the 24th day of
July A.D. 1849, there issued out of the office of
the Clerk of our said Court, the People's writ of
summons, directed to the Sheriff of Clarke County
in said State, clothed in the words and figures following
to wit;

State of Illinois,
County of Cook S.S.

The People of the State
of Illinois, to the Sheriff of Clarke County, - Greeting;
We command you that you summon Eliza
Ann Whitlock, Eliza Ann Greenough, William
Whitlock Jonathan K. Greenough, Charles Whitlock,
Payette Ann Whitlock John A. Whitlock, Cydon
Whitlock, Young Whitlock, Seth J. Saine & Frances
Saine, if they shall be found in your County, person-
ally to be and appear before the Circuit Court of

said County, on the first day of the next term thereof, to be holden at the Court House, in Chicago in said County, on the third Monday in November next, to answer unto a Bill to foreclose a mortgage filed in said Circuit Court, on the Chancery side thereof by Edmund D. Taylor Isaiah D. Bruce & Seth Paine who sue for the use of Edmund D. Taylor.

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

Witness L. D. Hoard Clerk of our said Court, and the Seal thereof at Chicago in said County, this 24th day of July A. D. 1849

L. D. Hoard Clerk,
Endorsed on said writ by the said Sheriff is the following return, to wit:

Served on Eliza Ann Whitlock, William Whitlock Jonathan K. Greenough, & Eliza Ann Greenough, by delivering into their hands a true copy of the above summons. August the 22nd 1849. Served on Charles Whitlock John A. Whitlock and young Whitlock, by leaving a copy at their usual place of abode with Eliza Ann Whitlock a white person of the family, over the age of ten years after informing her of the contents thereof August the 22nd 1849.

Jayette Ann Whitlock. ~~Kirin Whitlock~~ Ogden
Whitlock Whitlock, Seth Paine & Frances Paine
not found in the County, - Serving 7 p^{ts} 3. 50 - Indigo
7 m^{ts} 43³/₄. - Retaining 12¹/₂ - 14 06³/₄ Rec^d payment
of "McClure Sheriff"
"Filed Augt. 28. 1849 L. D. Howard clk"

And afterwards, to wit; on the 24th day of
July in the year last aforesaid, came the said
complainants by their Solicitors Messrs. Peck &
Hosmer and file in the Clerk's office of Am said
Court, their Bill in this case, which is in the
words and figures following, to wit;

State of Illinois,
Cook County. 3^d St. Cook Circuit Court of the
November term in the year of Am
Lord One thousand eight hundred
and forty nine. —

To the Honorable Hugh J. Dickey Judge of the
said Court in Chancery Sitting.

Complaining Sheweth
unto your honor your orators Edmund D. Taylor
Josiah J. Breece and Seth Paine who sue for
the use of Edmund D. Taylor, that your orators
were on the twelfth day of June A.D. 1838 and
before that time copartners in the mercantile
business in Chicago in the said County of Cook

under the firm of Taylor & Co. & Co. and the
while your orators were copartners and partners
engaged in the aforesaid business one James
Whitlock of Clark County in said State of
Illinois became indebted unto your orators in
a large sum to wit: the sum of three thousand
five hundred & thirty seven ⁰⁰/₁₀₀ dollars for merch-
andise sold and delivered by your orators unto the
said Whitlock & also in a large sum to wit: in
the sum of three thousand dollars in addition to
the aforesaid sum for liabilities incurred by your
orators for and on account of said Whitlock
by assuming & paying at the request of said Whitlock
undry debts due and owing from said Whitlock
to divers individuals. Your orators who see as
aforesaid further shew that the said James
Whitlock in consideration of his indebtedness
to your orators as aforesaid, & also in consideration
of your orators agreeing to pay certain debts
to divers individuals for and on account of said
Whitlock executed & delivered unto your orators
on or about the said 12th day of June A.D. 1888
a mortgage of certain lands & town lots particularly
described in said mortgage to secure to your orators the
payment of the aforesaid sums of money according
to the terms & conditions then agreed upon between
your orators & the said Whitlock & inserted in said
mortgage which mortgage was in substance as follows

to wit: "This indenture made this twelfth day of
Jan^y A.D. one thousand eight hundred and thirty
eight between James Whitlock and Eliza Ann his
wife of Clark County State of Illinois party of the
first part. and Edmund D. Taylor Josiah J. Reese
and Seth Paine merchants trading under the firm
of Taylor Reese & Co of Chicago Cook County Illinois
of the second part Witnesseth,

That the said first party for and in consideration
of the sum of Three thousand five hundred and
thirty seven dollars and sixty five cents to them
in hand paid by the said party of the second
part before the enclosing and delivery hereof, the
receipt whereof is hereby acknowledged, have
granted bargained, & sold & by these presents doth
grant, bargain, & sell unto the said party of the
second part & to their heirs, executors, administrators
or assigns forever, all & singular the following
described ~~premises~~ Lands & Town Lots viz:

The West half of the North East Quarter of
section fourteen and the East half of the South
east quarter of section Twenty one in Township
thirty eight north Range fourteen East of the
third principal Meridian the first named tract
being the same that was purchased of H. B. Hardy
and the second was bought at the Public sale
of Lands by the United States in June 1835.

Also the North West quarter of Section four,
Township

Township thirty eight north Range thirteen east
containing one hundred & fifty five & 9/100 acres
bought of Daniel B. & Nathaniel J. Brown; also
the South East fractional Quarter of Section twenty
nine Township six north range One East, conta-
ining one hundred & thirty six acres & 19/100 interest
at the Land Office at Vandalia in three separate
entries, also the following described Lots in the
Town of Marshall County of Clark, & State of said
viz: Lot numbered ^{Eight} & the East half of lot numbered
seven in square numbered twenty two, Lot numbered
four in square twenty one, Lots five, six, seven &
eight in square numbered four, Lot numbered
seven square numbered seventeen, being Lots
purchased of Wm B. Archer, also Lot numbered
three in square numbered twenty one, also the
house & part of Lot numbered six, being twenty six
feet off of the west side of said Lot in square
numbered twenty one which lot & part of lot
was ~~bought~~ bought of James E. Mathews the
said last named part of Lot has been by the
said first party lately bargained to one Jeremiah
Chapman for the sum of two hundred dollars
payable in equal installments to become severally
due within six, nine & twelve months from the
third day of April last & is hereby conveyed subject
to said bargain on the said Chapman's complying
with the terms thereof.

It have & to hold the said several tracts of land
& Town Lots with all their appurtenances unto the
said second party & to their only use & behoof
forever. And the said first party doth covenant
& agree with the said second party their heirs &
assigns that they will & their heirs executors & Adminis-
trators shall warrant and forever defend the ^{right &} title
& the property herein conveyed against the claims
or demands of all persons whosoever lawfully
claiming or to claim the same or any part thereof.

The foregoing conveyance is made however upon this
express condition, that whereas the said James
Whitlock is indebted to the said Taylor, Breese & Co.,
in the sum of Three Thousand five hundred & thirty
seven dollars & sixty five cents, for articles of merchan-
dize purchased of them by the said James Whitlock
in the year 1836 & the said Whitlock having this
day executed to the said Taylor, Breese & Co., his
Notes of hand payable within one & two years with
interest thereon at the rate of six per cent per
annum for the aforesaid sum, & the said Taylor,
Breese & Co., having agreed to pay or cause to be
paid for & on account of said Whitlock, to Peter
Payne & Co. of Chicago, to Edward Doolittle, Hall &
Lewis, & Amzi's Davis & Hyde, out of the avails
of the property herein conveyed in a rateable
proportion the amounts nowally due them from
the said James Whitlock,

Now therefore if the said James Whitlock shall well & truly pay the aforesaid notes as they severally become due and the said accounts of the said Payne & Co. Doolittle, Hall & Lewis & Kinzie, Davis, & Hyde then this Indenture shall be void & of no effect but if the said James Whitlock shall fail to pay the said notes & debts as aforesaid, then it shall be & remain in full force and effect.

In witness whereof the said party of the first part have hereunto set their names and seals on the day and year ^{first} herein ~~above~~ written.

Signed sealed & delivered.

in presence of

James Whitlock (Seal)

Eliza A. Whitlock (Seal)

Your orators who are as aforesaid ^{further} show that the aforesaid mortgage was duly acknowledged according to law before the clerk of the County Commissioners Court of said County of Clark by the said James Whitlock & Eliza Ann Whitlock his wife as will more fully appear by the certificate of said Clerk under his hand & Seal of Court appended to said mortgage which mortgage & certificate is now in the possession of your orators ready to be shown to your Honor.

Your orators who are as aforesaid further show that since the executing & delivery of the aforesaid mortgage unto your orators by the said James Whitlock, the said James Whitlock

has departed this life, but the precise time of his death your orators are unable to state, & one Jonathan N. Greenough was appointed or acted as administrator of the estate of the said James Whitlock deceased,

Your orator who swears as aforesaid further shows that Eliza Ann Whitlock the widow of the said James Whitlock deceased, Frances Jane daughter of the said James Whitlock deceased & wife of Seth J. Saine, Charles Whitlock, William Whitlock, John A. Whitlock, Ogden Whitlock & Young Whitlock sons of the said James Whitlock deceased, Fayette Ann Whitlock daughter of the said James Whitlock deceased, & Eliza Ann Greenough daughter of the said James Whitlock deceased, & wife of Jonathan N. Greenough are the heirs at law of the said James Whitlock deceased & the aforementioned persons with the said Jane & Greenough in right of their respective wives are the only persons legally interested in the Estate of the said James Whitlock deceased.

Your orator who swears as aforesaid further shows that the said James Whitlock in his lifetime neglected to pay your orators or either of them the amount due them by the aforesaid mortgage or any part thereof & since his death his personal Representatives & heirs at law have neglected

neglected & still do neglect to pay your orators
the sums justly due them by virtue of said
mortgage or any part thereof, and the said mortgage
still remains wholly unpaid & unsatisfied -

Your orators who sue as aforesaid further show
that they have complied with their agreement
contained in said mortgage by paying or causing
to be paid the several sums ascertained to be
due & owing from the said James Whitlock to
Peter Payne & Co. Edward Manning as your orators
discovered, Elijah Doolittle Hall & Lewis, Kingie
Davis & Hyde as will more particularly appear
by the vouchers in your orators hands ready to
be produced & shown as this court shall direct.

Your orators who sue as aforesaid further show
that the sum of three thousand five hundred
& thirty seven & ⁶⁰/₁₀₀ dollars are due to them
together with interest at the rate of six per cent
per annum from the 12th day of June A.D. 1838
on said mortgage and that there is also due
them on said mortgage the sum of three
~~thousand~~ ^{hundred} & seven & ⁵⁰/₁₀₀ dollars paid by your
orators on account of said Whitlock to E.
Doolittle with interest thereon from the 13th
October A.D. 1836 & also the sum of Eight & ²⁵/₁₀₀
dollars being the amt. of acct. of the said Doolittle
against the said Whitlock with interest thereon
from Sept. 29, 1836. as appears by the vouchers

in your orators hands ready to be produced as
the Court shall direct, -

Your orators who sue as aforesaid further
show that there is due them for moneys paid
on account of the said Whitlock the sum of
One hundred dollars & twenty four & ³⁴/₁₀₀ dollars
paid to King & Davis & Hyde with interest from
the 1st October A.D. 1842 & also the sum of three
hundred and ninety five & ³⁴/₁₀₀ dollars paid to
Peter Duyné & Co. with interest from the 27th
April A.D. 1842, as appears by the vouchers now
in your orators hands ready to be produced as
the Court shall direct,

Your orators who sue as aforesaid further show
that the property described in said mortgage
& by them held by virtue thereof falls far
short of being of sufficient value to pay the
amount justly due your orators by virtue of
said mortgage, & that the estate of the said
James Whitlock is insolvent so that your orators
have no other means of obtaining the amount
due them except what may be realized
by them from the said mortgaged premises -

Your orators who sue as aforesaid further
show that the said copartnership between them
has long since been dissolved and that the
said Edmund D. Taylor for whose use
this suit is brought became one said

dissolution the owner of the said mortgage
& the debt thereby secured the same being
accepted & received by him as his individual
property on the division of the assets of the
said copartnership by the said ^{your orators} copartners
aforesaid.

Your orators who sue as aforesaid further
show that said mortgage has been recorded
in the different Counties wherein said mortgaged
premises are situated as appears by the Records
Certificates on the back of said Mortgage ready to
be produced as this Court shall direct & your
orators further aver that the greater part of the
said mortgages premises are situated in the said
County of Cook where this suit is commenced.

Your orators who sue as aforesaid therefore in
consideration of the premises solicit the aid
of this Court to compel said defendants true,
full, & perfect answers to make to all & singular
the statements & charges above set forth (an answer
under oath from such defendants or either of them
being hereby waived pursuant to the Statute)
according to the best of their knowledge, information
& belief. And that an account may be taken
by & under the decree & direction of this Honorable
Court of what is due & owing to your orators
for principal & interest on the mortgage
aforesaid & that the said defendants may be

directed to pay your orators for the use of the said Edmund D. Taylor what may be found due to them on taking such account as aforesaid together with their costs in this suit, by a short day appointed by this honorable court for that purpose; or in default thereof, that the said defendants & all persons claiming under them may be absolutely debarred, & foreclosed off, from all rights & equity of redemption in or to the said mortgaged premises & every part thereof, & may deliver up to your orators all deeds, papers or writings in their custody or papers relating to or concerning the said mortgaged premises or any part thereof & that your orators may have such other or further relief in the premises as shall be agreeable to Equity, May it please your Honor to grant unto your orators the writ of summons issuing out of & under the seal of this court directed to the said defendants viz, Eliza Ann Whitlock (Seth J. Paine & Frances Paine his wife residing in Lake County in State of Illinois) Charles Whitlock, Jonathan H. Greenough, & Eliza Ann Greenough, his wife, William Whitlock, Fayette Ann Whitlock, John A. Whitlock, Cyden Whitlock & Young Whitlock, all residing except Paine & his wife in the County of Clark in the State of Illinois, commanding them & each of them to be and appear before this honorable court on the first day

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of the next term thereof, then and there to answer the premises, & to stand to & abide such order & decree of this Court as shall be made therein, & shall be agreeable to equity. And your orators shall ever pray &c."

"Peck & Hoerner"

Solicitors for Complainants

And afterwards, to wit; on the nineteenth day of November in the year last aforesaid, the same being one of the days of the November Term of our said Circuit Court, the following among other proceedings were had and entered of record in said cause, to wit;

Eduard D. Taylor, Josiah S. Breese,
& Seth Saine for the use of Eduard D. Taylor

vs

Eliza A. Whitlock, Seth S. Saine
Frances Saine, Charles Whitlock
Jonathan R. Greenough, Eliza Ann
Greenough, William Whitlock
Fayette Ann Whitlock John A.
Ogden & Young Whitlock

In Chancery
Bill to Foreclose

And now come the said Complainants by their Solicitors Peck & Hoerner and it appearing to the Court, that Fayette Ann Whitlock John A. Whitlock Ogden Whitlock and Young Whitlock are infant defendants under the age of twenty one years,

On motion of the said complainants

It is ordered that the Clerk of this Court Louis
D. Howard (he consenting in open Court, so to ^{act} ~~do~~)
be appointed Guardian ad Litem for the minor
defendants in this cause to wit, Fayette Anna
Whitlock, John A. Whitlock Ogden Whitlock,
and Young Whitlock.

And afterwards to wit, on the 23^d day of November
in the year last aforesaid, comes the said Guardian
ad Litem heretofore appointed by the Court in this
cause, & files the answer of the infant defendants
aforesaid, which is in the words & figures following
to wit;

State of Illinois, Cook Circuit Court
Cook County, S. S. November Term A.D. 1849.

In Chancery. Bill to foreclose mortgage,

The answers of Fayette Anna Whitlock, John
A. Whitlock, Ogden Whitlock, and Young Whitlock,
all being infants under the age of twenty one
years by Louis D. Howard their guardian ad Litem
they being four of the defendants to the original
Bill of complaint of the said Taylor, & Paine
& Paine for the use of the said Edmund D.
Taylor.

These defendants, answering by their said
guardian say, that they are strangers to all and
singular the matters & things in the said original
Bill of complaint contained; that these defendants

are infants under the age of twenty one
years, and claim such interests in the premises
as they are respectively entitled to, and submit
their interests to the protection of this honorable
Court.

Louise Howard guardian ad litem
for Fayette Ann Whitlock, John A.
Whitlock Cydon Whitlock & Young
Whitlock infants

And afterwards to wit. on the day & year
last aforesaid (the same being one of the days
of the November term of our said Circuit Court
for that year.) the following among other proceed-
ings were had and entered of Record in this cause,
to wit;

Edmund D. Taylor, Josiah I.
Preece & Seth Saine who sue for
the use of Edmund D. Taylor

vs
Eliza Ann Whitlock, Seth I.
Saine, Charles Whitlock, Frances
Saine, Josiah H. Greenough, Eliza
Ann Greenough, William Whitlock
Fayette Ann Whitlock John A. Whi-
tlock Cydon Whitlock & Young Whitlock

In Chancery

And now at this day come the
said complainants by Messrs Sack & Hoerner their
solicitors, and it appearing to the court that the ^{said}

defendants Eliza Ann Whitlock, Seth J. Saine
Francis Saine, Charles Whitlock, Jonathan R.
Greenough, Eliza Ann Greenough, & William
Whitlock, have been duly served with process,
it is ordered that the said defendants answer
said complainants Bill instantes and the said
above named defendants having failed to file their
answer in compliance with said order it is ordered
adjudged and decreed that their default be
entered, and that the said Bill of complaint
be taken as confessed against them, and the
said infant defendants Fayette Ann Whitlock,
John A. Whitlock, Ogden Whitlock, & Young Whitlock,
having filed their answer herein by Ed. Howard,
their guardian ad Litem, it is further ordered
adjudged and decreed by the court that it be
referred to Isaac Skinner Esq. Master in Chancery
of this Court to ascertain and compute the amount
due said complainants upon the mortgage in
this case & report the same to this court with
all convenient dispatch,

And afterwards, to wit; on the fourth day of
December in the year last aforesaid, comes the
said Master in Chancery of this Court, to whom
was referred the complainants bill in this cause,
and files his report herein, which said report
is in the words & figures following, to wit;

Cook Circuit Court
November Term 1849

Edmund D. Taylor, Isaiah J. Press,
& Seth Saine, for the use of E. D. Taylor

^{vs}
Eliza A. Whitlock, Charles Whitlock,
Jonathan W. Greenough, Eliza Ann
Greenough, William Whitlock
Jugette A. Whitlock, John A.
Whitlock, Agden Whitlock, Young
Whitlock, Seth J. Saine & Frances
Saine.

Bill to foreclose

Masters Report.

"It having been referred
to me, Master in Chancery in & for the County of Cook
to compute & report the amount due the complainants
upon the various debts secured by the mortgage
as mentioned in the Bill of Complaint filed
in this cause,

I do hereby report that on this fourth day
of December A.D. 1849 I have computed the am-
ount due to the said complainants & find due
to them the sum of sixteen hundred & three
dollars & three cents for interest monies, & the
further sum of Twenty five hundred & thirteen
dollars & forty eight cents for principal monies,
making of principal & interest together the
sum of Four thousand one hundred and
sixteen dollars & fifty one (\$4116.51) - and

I further report that, the instruments in writing
H. submitted to me by said plaintiffs solicitors
are as follows:-

"1st The mortgage mentioned in the Complainant's bill -
Said mortgage being in the words & figures follow-
ing, to wit:

This Indenture made this twelfth day of
June A.D. one thousand eight hundred and thirty
eight between James Whitlock and Eliza Ann
his wife, of Clark County State of Illinois, party
of the first part, and Edmund D. Taylor, Francis J.
Breece, and Seth Sains, merchants trading under
the firm of Taylor Breece & Co. of Chicago, Cook
County Illinois, of the second part witnesseth,

That the said first party for and in consideration
of the sum of three thousand five hundred and
thirty seven dollars and sixty five cents, to them
in hand paid by the said party of the second part,
before the sealing and delivery hereof, the receipt
whereof is hereby acknowledged, Hath granted
bargained and sold and by these presents doth
grant bargain and sell unto the said party of
the second part, and to their heirs executors adm-
inistrators or assigns forever, all and singular the
following described Lands and Town Lots, viz: The
west half of the north east quarter of section -
fourteen, and the east half of the south east
quarter of section twenty one, in Township thirty

eight north range fourteen east of the third
principal meridian the first named tract being
the same that was purchased of St. J. Hardy, and
the second was bought at the public sale of
lands by the United States, in June 1835. also
the north west quarter of section four, township thirty
eight north range thirteen east containing one
hundred & fifty five and 9/100 acres, bought of Daniel
B. & Nathaniel J. Brown; also the south East
fractional quarter of section twenty nine, township
six north range one east, containing one
hundred and thirty six acres & 19/100, entered
at the land office at Vandalia, in three separate
entries, also the following described lots in the
town of Marshall County of Illinois and State
aforesaid, viz, Lot numbered Eight and the east
half of Lot numbered seven, in square numbered
twenty two. Lot numbered four in square
~~numbered~~ twenty one, Lot five, six, seven,
and eight in square numbered four, Lot
numbered seven, in square numbered seventeen,
being lots purchased of Wm B. Archer; also
lot numbered three in square numbered
twenty one, also the house & part of lot
numbered six being twenty six feet off
of the west side of said lot, in square
numbered twenty one, which lot & part of
lot was bought of James G. Matthews, the

the said last named part of lot. has been by
the said first party, lately bargained to one Jeremiah
Chapman for the sum of two hundred
dollars payable in equal instalments to become
severally due within six, nine, and twelve months
from the third day of April last, and is
hereby conveyed subject to said bargain, on
the said Chapman's complying with the
terms thereof.

To have and to hold the said several
tracts of land & town lots, with all their
appurtenances, unto the said second party,
and to their only use and behoof forever,

And the said first party doth covenant
and agree with the said second party their
heirs and assigns, that they will and their
heirs executors and administrators shall warrant
and forever defend the right and title in and
the property hereby conveyed against the
claims or demands of all persons whomsoever
lawfully claiming or to claim the same or any
part thereof: The foregoing conveyance is made
however upon this express condition, that whereas
the said James Whitlock is indebted to the said
Taylor Breese & Co in the sum of three thousand
five hundred and thirty seven dollars and sixty
five cents, for articles of merchandise purchased
of them by the said James Whitlock in the
year

year 1836, and the said Whitlock having this
day executed to the said, Taylor Breese & Co his
note of hand payable within one and two
years with interest thereon at the rate of six
per cent per annum for the aforesaid sum
and the said Taylor Breese & Co having agreed
to pay or cause to be paid for and on account
of said Whitlock to Peter Pruyn & Co of Chicago
to Edward Doolittle Hall and Lewis, and Kinzie
Davis & Hyde out of the avails of the property
herein conveyed, in a rateable proportion
the amounts severally due them from the
said ^{James} Whitlock, Now therefore if the said
James Whitlock shall well and truly pay
the aforesaid notes as they severally become
due, and the said amounts of the said
Pruyn & Co, Doolittle Hall & Lewis, and
Kinzie Davis & Hyde, then this Indenture
shall be void and of no effect, but if
the said James Whitlock shall fail to pay
the said notes and debts as aforesaid, then
it shall be and remain in full force and
effect. In witness whereof the said party of
the first part have hereunto set their names
and seals on the day and year first herein
written.

"Signed Sealed & delivered"
in presence of

Jas. Whitlock (Seal)
Eliza A Whitlock (Seal)

State of Illinois
Clark County 3^d Sch. But it remembered that
on this seventeenth day of August in the year
of our Lord one thousand eight hundred and
thirty eight; Personally appeared before me
Darius Phillips Clerk of the County Commencement
Court in and for said County James Whitlock,
and Eliza Ann ^{Whitlock} his wife of said James
Whitlock, whose signatures appear to the
within deed of mortgage and who are
personally and well known to me to be
the persons described in and who executed
the same, did acknowledge that they had
executed the same for the uses purposes therein
mentioned; And the said Eliza Ann Whitlock,
wife as aforesaid, having been by me made
acquainted with the contents of the within
Conveyance and examined separate and
a part from her said husband acknowledge
that she had executed the within deed
of mortgage and relinquished her dower
to the premises therein conveyed -
voluntarily freely and without any
fear or compulsion of or from her
said husband.

In testimony whereof I have hereunto
subscribed my name, and affixed the
seal of said Court at Marshall

on the day and year just above written -
(signed) Darius Phillips Clerk

On the back of said mortgage are the following endorsements, to wit;

State of Illinois

Coast County 3^d S.S. On the 17th day of Augt,
1840, the within deed was left for record and
duly recorded in Book No 2 of mortgages page
3. - (signed) Eli Williams Recorder

also the following:- Filed for Record in
Jayette County July the 2 1849. M. Welch Recr.
State of Illinois

Jayette County 3^d S.S. Recorder's Office.
I Martin Welch Recorder in and
for said County do certify, that the within deed
of mortgage was this day duly Recorded in office
in Book 9 on page 12. 13. 14. 15. - Given under
my hand at Vandalia this 2nd day of
July A.D. 1849 - (signed) M. Welch Recr. J.C. Ills.

"2nd Note of J^{as} Whitlock for \$1768⁸² dated
Marshall 12th June 1838. due in one year to Taylor
Brees & Co. with int. &c" -

Which Note is in the words and figures following
to wit; -

Dolls 1768.⁸²

Marshall 12th June 1838

One year after date I promise to pay
to the order of Messrs Taylor Brees & Co And

Thousand Seven Hundred Sixty eight ⁸²/₁₀₀ as
dollars value received with interest at six per
cent per annum payable at the Office of the
Chicago Marine & Fire Insurance Company.

(Signed) Jas Whitlock

Endorsed in blank on the back: - Taylor Breese & Co,
There is also the following endorsement made with
pencil on the back of said note, to wit;

Rec^d Archer - \$1800. —

"3^d Note of Jas Whitlock for \$307.58. dated Augt.
13th 1836 due in 4 mos with int. after 60 days to -
Elijah Doolittle - & endorsed by Doolittle to Seth
Paine, - also having En^d as p^d apt. 20th 1837 \$100⁰⁰ -"
Which Note is in the words & figures following,
to wit;

August. 13. 1836.

Four months from date for value Rec^d.
I promise to pay to the order of Elijah Doolittle
or bearer three hundred and seven dollars and
fifty eight cents with interest after sixty days -
(Signed) Jas Whitlock

On the back of said note are the following end-
orsements, to wit: - Pay to the order of Seth
Paine, (Signed) E. Doolittle. - Also: Rec^d on the
within one hundred dollars by the hands
of N. B Archer, Chicago April 20, 1837. —

"11th Recept of Harmon & Loomis apigne of S. Paine & Co dated April 27, 1842, for \$395.31 paid by
Seth Paine for of Mr James Whittok"

Said Receipt is in the words and figures following, to wit;

Mr James Whittok

To Harmon & Loomis apigne of S. Paine & Co
For Bal. of acct from Ledger of
P. P. & Co as per Bill sent to him by Mr Paine 3 395.31
Received payment in full from Seth Paine April
27 1842; (Signed) Harmon & Loomis

On the back of said Receipt is the following
endorsement to wit;

For a valuable consideration we hereby assign
all our right title and interests to the within
account, to Seth Paine and any claim or interest
we may have acquired by virtue of a certain
mortgage given to Taylor Breece & Co by the within
mentioned James Whittok wherein it was
provided said Taylor Breece & Co should pay the
within account out of proceeds of ^{the} property men-
tioned therein pro rata to themselves. We
hereby relinquish to said Paine. Witness
our hands this 27th day of April A D 1842.
(Signed) Harmon & Loomis apigne of S. Paine & Co

"5th Rept. of W. H. Saltonstall assignee in Bankruptcy of R. A. Kingie Oct. 1st 1842 of \$124.30. paid by Seth Paine on account of amount due Kingie Davis & Hyde from James Whitlock."

Which said Receipt is in the words & figures following, to wit:—

Chicago 1st October 1842 Received of Seth Paine the amount of the account of Kingie Davis & Hyde against James Whitlock amounting to \$124.30.—
(Signed) W. H. Saltonstall Genl assignee for Cook Co

"6th Rept. of E. Doolittle for \$8.25. June 8th 1842. bal. of \$8.25 due Doolittle from Jas Whitlock & paid by Seth Paine"— Which said Receipt is in the words & figures following, to wit;

Chicago Sept. 29. 1846

Jas. Whitlock

Bot of E Doolittle

1 Box common Boots - 12 Pcs	19/-	28. 50
1 " 50 Pcs. Boys comn. Mogans		25. 00
" " 12 pairs Seat Slips	86	12. 75
" " 5 " Sunell do	8/-	5. 00
" " 6 mens comn. Shoes	6/-	4. 50
1 Box comn. Boots 12 Pcs	19/-	28. 50
1 " 50 Pcs mens comn. Shoes	6/-	37. 50
		141. 75
4 " to pack	2/-	1. 50
		143. 25

Acct. of my Rent to Whitlock

135. 00
/ 8. 25

On the back of said bill is the following endorsement, to wit:— Received of Seth Paine the amount due on the within account in full, June 8th 1842. — (Signed) E. A. Little.

"All which are herewith submitted"

"And I further respectfully report my fees for making computation & report at \$5 of all which is respectfully submitted."

December 4th 1849.

(Signed) Nathaniel Skinner Master in Ch^g

And afterwards, to wit: on the fourth day of December in the year of our Lord one thousand eight hundred and forty nine, the same being one of the days of the November Term of our said Court the following among other proceedings were had and entered of Record in this cause, to wit:—

Edmond D. Taylor, Josiah S. Paine,
Seth Paine vs of Edmond D. Taylor

Eliza Ann Whitlock, Seth S. Paine
Frances Paine, Charles Whitlock
Jonathan R. Greenough, Eliza Ann,
Greenough, William Whitlock
Payette Ann, Whitlock, John A.
Whitlock, Ogden Whitlock &
Young Whitlock

In Chancery
Bill to foreclose

On reading and

giving report of Master in Chancery to whom
it was referred to take proof in relation to the
material facts and allegations in said Bill of
Complaint on motion of Messrs Pick & Hosmer
Solicitors for said Complainants it is ordered that the
said defendants show cause by Thursday morning
next why the said report and the matters and
things therein contained should not be confirmed.

And afterwards to wit on the ^{sixth} day of December in the
year last aforesaid
the same being one of the days of the November term
of our said Circuit Court the following among other
proceedings were had in said Court in this cause
to wit;

Edmond D. Taylor, Josiah J. Bruce,
Seth Paine use of Edmond D. Taylor

Eliza Ann Whitlock, Seth J. Paine
Francis Paine, Charles Whitlock
Jonathan R. Greenough, Eliza
Ann Greenough, Wm Whitlock
Augusta Ann Whitlock, John A. Whitlock
Ogden Whitlock & Young Whitlock

Bill to foreclose

And now come
the complainants by their Solicitors and the said
defendants having failed to comply with the order
of this Court heretofore entered in this cause. It is
ordered that the said report and all the matters
and things therein contained stand satisfied and

Confirmed

Confirmed. —

And afterwards, to wit: on the eighth day of December in the year last aforesaid, (the same being one of the days of the November of our said Circuit Court) the following among other proceedings were had and entered of record in this cause, to wit:

Edmund D. Taylor, Josiah D. Bruce
and Seth Paine for the use of Edmund D. Taylor

Eliza A. Whitlock, Seth D. Paine
Francis Paine, Charles Whitlock, Jonathan
H. Breunough, Eliza Ann Breunough,
William Whitlock, Fayette Ann
Whitlock, John A. Whitlock
Ogden Whitlock & George Whitlock

In Chancery
Bill to foreclose

It appearing to
said Court, that this cause was referred on the 24th
day of Nov 1849 being one of the days of said
term, on motion of said complainants Solicitors
to mark Skinner Esq Master in Chancery in
and for the said County of Cork, to report the
^{amount}
~~amount~~ of principal and interest due said
complainants in their said mortgage, and it
further appearing that on the fourth day of
December A.D. 1849 being one of the days of,
said Term that said Master reported to said

count the amount due said complainants on their said mortgage at the sum of Twenty five hundred and thirteen dollars and forty eight Cents principal; and the sum of Thirteen hundred and three dollars and three cents interest making in all the sum of Four thousand one hundred and sixteen dollars and fifty one cents now due said complainants on their said mortgage which report was filed herein on the day last aforesaid, and it further appearing to said court that no objection has been made to said report on time being given by said complainants for that purpose. It is therefore ordered adjudged and decreed by said court that said Report of the said Master be and the same is hereby accepted and confirmed. It is further ordered adjudged and decreed that the said defendants pay to the said complainants for the use of the said Edward D. Taylor the said sum of four thousand one hundred and sixteen dollars and fifty one cents so reported to be due them at aforesaid within thirty days from the day of the entry of this decree and that thereupon the said complainants reconvey the said mortgaged premises free and clear of & from all incumbrances done by them or any person claiming upon them and deliver to the said defendants or to whom they shall appoint

all deeds & writings in their custody relating thereto; But in default of the said defendants paying unto the said complainants the aforesaid sum of money being principal and interest due on their said mortgage at the date hereof and the interest that may accrue thereon together with their costs in this behalf expended by the time aforesaid, the said defendants are from thenceforth to stand absolutely barred and foreclosed of and from all equity of Redemption of in and to the said mortgaged premises described as follows: The west half of the north east quarter of section fourteen, and the east half of the south east quarter of section twenty one in Township thirty eight north range fourteen east of the third principal meridian, the first named tract being the same that was purchased of W. S. Handy, and the second was bought at the public sale of lands by the United States, in June 1835, also the North West quarter of section four, Township thirty eight north Range Thirteen East, containing one hundred & fifty five and $\frac{9}{100}$ acres, bought of Daniel B and Nathaniel J. Brown; Also the Southeast fractional quarter of section twenty nine, Township six north Range one east containing one hundred and thirty six & $\frac{19}{100}$, entered at the land office at Vandalia, in three separate entries, also the following, described lots in the Town of Marshall,

County of Clark and State aforesaid viz: Lot
numbered Eight and the east half of lot numbered
seven, in square numbered twenty two. Lot
numbered Four, in square twenty one. Lots five
six seven and eight in square numbered Four.
Lot numbered Seven in square numbered seventeen
being lots purchased of Wm B. Archer; - also Lot
numbered three in square numbered twenty one,
also the house and part of lot numbered six
being twenty six feet off of the west side of
said lot in square numbered twenty one
which lot and part of lot was bought of James
G. Matthews, the said last named part of lot
has been by the said first party lately bargained
to one Jeremiah Chapman for the sum of two
hundred Dollars payable in equal installments to
become severally due within six, nine, and twelve
months from the third day of April last and
is hereby conveyed subject to said bargain, on the
said Chapman's complying with the terms thereof.
And it is further ordered, adjudged and decreed
by said court that in case of the default of the
said defendants, as aforesaid that the said mortgaged
premises in the said Bill and above described
be sold at public auction by and under the
direction of the said Master in Chancery, ⁱⁿ and
for the said County of Cook at the door of the
Court House in the city of Chicago in the
said

said County of Cook at such time as he may appoint, after having advertised the same for sale for the space of twenty days by posting up three written or printed notices of such sale in three public places in the said City of Chicago, and by causing the same to be published in one of the weekly newspapers in said City of Chicago for two weeks successively, to the highest and best bidder for cash; and that the said Edmund D. Taylor for whose use this suit is brought or any of the said parties in this cause may become the purchasers of said mortgaged premises on said sale and that the said Master in Chancery execute and deliver unto the purchaser or purchasers thereof at said sale a good and sufficient deed of the said mortgaged premises and pay over the proceeds thereof to the said Edmund D. Taylor or his solicitors, or so much thereof as may be necessary to satisfy the aforesaid sum of four thousand one hundred and sixteen dollars and fifty one cents and interest and costs of said together with the costs of advertising and selling said premises and the overplus if any to report to this court to abide the further order of this court, and it is further ordered and decreed that the purchaser or purchasers of said mortgaged premises be let unto

thereof & that any of the parties in this cause who may be in ^{the} possession,
the possession, the possession of said premises or
any part thereof or any person in possession
claiming under them or either of them deliver
possession thereof to such purchaser or purchasers
on production of the said master's deed for
said premises.

And afterwards, to wit; on the twenty second
day of May in the A.D. 1850 come the said com-
plainants by their Solicitors, and file the report of
the said master in Chancery of the sale of the premises
described as aforesaid, said report being in the words
& figures following, to wit;

State of Illinois

Cook County, Ill. Circuit Court May Term 1850
Edmund D. Taylor Isaiah S. Beeze
and Seth Paine for the use of Edmund D. Taylor

^{vs}
Eliza A. Whitlock, Seth J. Paine, Isaac
Paine, Charles Whitlock Jonathan R.
Greenough, Eliza Ann Greenough
William Whitlock Fayette Ann Whitlock,
John A. Whitlock, Ogden Whitlock &
Young Whitlock ~ ~ ~ ~ ~

In Chancery

Master's Report of Sale

In pursuance & by
virtue of a decretal order of this court in Chancery
sitting made in the above entitled cause,

Bearing date the 8th day of Dec^r. AD 1819 by which
it was among other things ordered adjudged and
decreed that all & singular the mortgaged
premises mentioned & set forth in the bill of
Complaint filed in said cause, and hereinafter
described, be sold at public auction by & under
the direction of Mark Skinner Master in Chancery
in & for said County & State, at the door of the Court
house in the City of Chicago in said Cook County
at such time as he might appoint, after having
advertised the same for sale for the space of twenty
days by posting up three written or printed notices
of such sale in three public places in the said
City of Chicago & by causing the same to be pub-
lished in one of the weekly newspapers in said
City of Chicago for two weeks successively to the
highest ^{best} bidder for cash & that the said Edmund
D. Taylor or any of the parties in the cause might
become the purchaser of said mortgaged premises
at said sale & that the said Master in Chancery
execute & deliver unto the purchaser or purchasers
at said sale a good & sufficient deed of the
said mortgaged premises, & pay over the proceeds
thereof to the said Edmund D. Taylor or his
solicitor, or so much thereof as may be neces-
sary to satisfy the sum of \$4116⁰⁰ & costs of suit
together with the costs of advertising & selling
said premises, & the overplus if any to report

to this Court. - I the undersigned master in Chancery
in & for the County & State aforesaid do respectfully
report that having been charged by the Solicitors for
the complainants with the execution of said decreed
order. I advertised said premises to be sold by me
at the door of the Court House in the City of Chicago
aforesaid on the thirtieth day of March A.D. 1850,
that previous to the said sale I caused notice
thereof to be published for two weeks successively
in the Chicago weekly Tribune, a weekly paper
published in the city of Chicago, and also by posting
up three written notices of such sale in three public
places in said City of Chicago which notices contained
a brief description of the ^{subdivided} premises. And I do further
report that on the said thirtieth day of March A.D. 1850
the day on which the said premises were so advertised
to be sold as aforesaid, I attended at the time and place
fixed for said sale & exposed said premises for sale at
public auction, to the highest bidder, offering each tract
and parcel of land separately, and the said premises
were then & there each & all respectively struck off
to Edmund D. Taylor he being the highest bidder therefor
& the sums bid by him for each and all of said tracts
respectively being the highest sums bidden for the same
and which said bids so made by him were for
each of said ^{lots &} tracts of land respectively as follows,
to wit: For the west half of the north east quarter of
Section fourteen (14) in Township thirty eight (38) North
Range

Range fourteen (14) East of the third principal meridian
the sum of \$320. For the East half of the South East
quarter of section Twenty one (21) Township thirty eight
(38) North Range fourteen (14) East of the third principal
meridian the sum of \$320. For the ^{South} West quarter of section
four (4) Township thirty eight (38) North Range thirteen
(13) East containing one hundred & fifty five acres
& ninety five one hundredths ($\frac{95}{100}$) of an acre the
sum of \$300. For the South East fractional quarter
of section twenty nine (29) Township Six (6) North
Range one (1) East containing one hundred & thirty six
(136) acres & nineteen hundredths ($\frac{19}{100}$) of an acre
the sum of \$272. And for the following described lots
in the Town of Marshall in the County of Cook and ^{the}
State of Illinois as follows, to wit, For Lot numbered
Eight (8) in square numbered 22. the sum of \$15. For the
East half of Lot numbered 7. in said square numbered
22. the sum of \$15. For Lot numbered four (4) in square
numbered 21 the sum of \$15. For Lot numbered 5 in square
numbered four (4) \$15. For Lot Six (6) in square numbered
4. \$15. For Lot 7. in said square numbered 4. \$15. For
Lot 8. in square numbered 4. \$15. For Lot numbered 7. in
square numbered 17. \$15. For Lot numbered 3. in square
numbered 21. \$15. And for the house & part of Lot
number 6 being 26 feet off the west side of said Lot in
square numbered 21. the sum of \$53 which said last des-
cribed Lot & part of lot is subject to a contract for sale a
conveyance to Jeremiah Chapman for \$200. all which

said several sums so bid by said Taylor amount in the aggregate to the sum of \$4200. And I do further report that I have executed acknowledged & delivered to said purchaser the usual musters & deeds for said premises & have paid over or disposed of the proceeds of said sale as follows. I have paid to the solicitor for the complainants the sum of \$4200. being the whole amount of the purchase money bid for said premises & have paid over & disposed of the proceeds of said sale as follows. I have paid to the solicitor taken his receipt therefor, which is here to annexed. And I further report that said sum of \$4200. is less than the amount decreed to be paid to said complainants including costs of said fees of selling & my fees. And I further report my fees for selling &c. as \$70. all which is respectfully submitted this thirtieth day of May A.D. 1850.

Mark Skinner

Master in Chy &c

Received of Mark Skinner the sum of Forty Two Hundred (\$4200) dollars being the whole amount of purchase money bid for the premises mentioned in the foregoing report by Edmund D. Taylor.

Chicago March 30th 1850

Pick & Warner
Sol^{ts} for Compl^{ts}

And afterwards, to wit; on the 23^d day of
May in the year of our Lord one thousand eight
Hundred and fifty, (the same being one of the days
of the regular May term of our said Circuit
Court for that year) the following among other
proceeding were had in said Court, in this cause,
to wit;

Edmond D. Taylor, Josiah J. Breese,
Seth Paine use of Edward D. Taylor

vs.

Eliza Ann Whitlock, Seth J. Paine
Francis Paine, Charles Whitlock
Jonathan R. Greenough, Eliza Ann
Greenough, William Whitlock
Payette A. Whitlock, John A. Whit-
lock, Ogden Whitlock, & Young Whitlock

Chancery
Bill to foreclose

And now at this
day come the said complainants by Beck & Hosmer
their solicitors and file the report of the master
in Chancery of the sale of real estate and other pro-
ceedings under & virtue of the decree of this Court heretofore
entered in this cause. Whereupon on motion of complainants
solicitors it is ordered that the said report and all
the matters and things therein contained stand rat-
ified and confirmed.

State of Illinois
Cook County J. S.

I Louis A. Hoard Clerk of
the Circuit Court of the County of Cook in
the State of Illinois do hereby certify that
the foregoing is a full, true and perfect
transcript of the papers and records of the
proceedings of the said Circuit Court in the
foregoing entitled cause as the same appears
from the files & records now remaining in
my office.



In witness whereof I have hereunto
set my hand & affixed the seal
of said Circuit Court at Chicago
this 1st day of May 1855
L. A. Hoard
Clerk

Dec 11, 1855 Paid
L. A. Hoard

14
Cook Co Circuit Court

C. A. Taylor Esq

24

Edgar & Whitcomb & Co

Transcript

Filed June 12, 1855.
L. A. Hoard Clk.

112

Jonathan K Greenough Ad

Superior Court, Ottawa

"

June Term 1855.

Edmund D Taylor Ad

And now the said Jonathan K Greenough, Eliza A Greenough
his wife, Lyman Booth, Fayette Ann Booth his wife, William
Whitlock, Charles Whitlock, Amos Paine wife of Ltt Paine
also sued by her next friend said Jonathan K Greenough
Ozden Whitlock, John Whitlock and Mary Whitlock minors
under the age of twenty are years who sue by their next
friend said Jonathan K Greenough, Eliza Whitlock and
Ltt Paine by their Attorney C Prokittle come before
the justices of said court and say that in the decree
made and proceedings aforesaid there is manifest error
in this.

1st That said decree was in favor of the complainants in
the court below, when by the law of the land and the
evidence therein contained the same ought to have been
for the said plff in error.

2^d That said court erred in rendering a decree against the
said Lyman Ann Whitlock, John Whitlock, Ozden Whitlock & Mary Whitlock
who were minors, for the amount claimed & due on the
accounts & demands in favor of E Doolittle, Knize Davis and
Hyde and Peter Pruyne &c, when there was no proof of
the amount of such accounts & demands.

3^d That the court erred in rendering a decree against said
Fayette Ann Whitlock, John A Whitlock, Ozden Whitlock & Mary Whitlock
who were minors, requiring them to pay to Taylor the amount
of the accounts & demands in favor of E Doolittle, Knize
Davis & Hyde and Peter Pruyne &c, without proof that
said Taylor was equitably entitled to the same.

4. That said court ended in rendering a decree against
^{Fayette and Whitlock}
said, Ogden Whitlock, John Whitlock and Young Whitlock —
who were then minors under the age of twenty one years
without proof to sustain the allegations of the bill —

5. That said court ended in rendering a decree against
^{Fayette and Whitlock}
said, Ogden Whitlock, John Whitlock and Young Whitlock
who were then minors under the age of twenty one years,
for the amount of the note, ^{of said Whitlock} mentioned in the Master's
report of ~~said Whitlock~~ where it appeared ^{by the evidence} that said
note was fully paid and satisfied —

Wherefore for the sums aforesaid and for other sums
apparent upon the face of said record, they pray
that said decree may be rescinded annulled
and for receipt held, and that they may be
restored to all things that they have lost by
said decree —

By their Atty
C. F. Smith

Filed June 10, 1856
L Leland
Clerk

Such is the argument.

If it is insisted, that when a minor is once properly in Court, Either as Plaintiff or defendant by his guardian ad litem to protect and take care of his interests and with or without an attorney to conduct the cause; that the highest and best evidence which the nature of the case affords must be given in order to charge him, — It is in my Judgment a mistake.

No decree or Judgment can be rendered against a minor without evidence of a debt or of the right or Justice of a decree — But is it to be understood that a minor who is in Court with his guardian defending him is supposed to be continually insisting upon the best evidence which the nature of the case affords, when his Guardian stands by and permits Evidence of an inferior, though Satisfactory Character to be given to a Court or Jury without objection?

An infant is sued and decreed against upon the Common Counts only — a guardian ad litem is appointed — a promissory note is offered in Evidence upon the trial — No objection is made, that its Execution is not proved, — it is given in Evidence and Judgment rendered for the amount. Under such Counts it is not evidence without proof of its Execution But would any Court on Error Reverse such a Judgment?

In this case there is evidence of the existence of these debts, The Mortgage in its recitals recognizes, and admits them, the Receipts of the parties to whom they are due (not objected to) is sufficient evidence of their several sums and of the payment of the money - That a Receipt of a party to whom a debt is due is evidence of the payment of the money by the party who was under obligation to pay it.

Pollanco v. Trisley 20th. 2. Scam. 63.

Said in this case these defendants who were minors had a guardian ad litem, he is presumed to have had notice of the proceedings before the Master - The Evidence was offered there without objection. It was reported to the Court and a rule entered to shew cause &c. No exceptions were taken to the evidence or to the Report - The Evidence tended to prove the issue. The guardian ad litem was present and made no objection to the character of the Evidence and the decree was entered accordingly.

The Evidence and the Masters Report was sufficient prima facie to prove those allegations in the Bill which related to the payment of the money on those claims.

D. Point

The Mortgage on its face admits a debt due to Taylor Bruse & Payne on the 10 June 1838. of \$3537.65. independent of any money paid out by them on other debts, which with the interest will amount to more than the sum, and there is no evidence that any portion of the said debt has been paid.

The indorsements on the back of the note in pencil of "Rec^d Archer \$1800" unexplained has no meaning. It does not appear that "Archer" ever had any thing to do with the note or ever had it in his possession, or that it is in any persons hand writing; and is very far from being a Receipt for the Payment of so much money on the mortgage. It may as well be considered a Memorandum for any other purpose. Unless some explanation is given its not being a Receipt for money intelligible of itself, it is no Evidence of any payment of money on the note, even —

The Mortgage is Evidence of the Existence of a debt from Whitlock to Taylor & Prude and Payne of \$3537.65. And of some debts due from him to Root and others amounting at the time of payment if correctly estimated and considered proved as to the amount to \$827.19. This with interest and one of the notes mentioned in the mortgage will amount to more than the sum reported by the Master to be due — Or if there is no proof of payment of any portion of the amount due on the Mortgage to Taylor and others as stipulated in said Mortgage then the decree is only wrong because it is for too small a sum — Of this Of course Defendants have no cause to complain.

It is not at all indispensable that the Master's Estimate of the sum due should be made upon precisely a proper basis — Or that the process by which he has been able to arrive at a conclusion should be technically correct. If the Records show that the amount reported by him is due and unpaid, it is enough. No injustice is done — The question is What is due; not, what shall be the Method of computation. The former is Substance — The latter Shadow merely.

¹⁴
Greenough Whitlock
& Mrs
E. D. Taylor

Arguments

Purple

Filed June 20, 1856

L. Seland
Clerk

Filed June 20, 1856

L. Seland
Clerk

Ex parte No Greenough Ad

or

Eduard D. Payson Ad

In Supreme Court

June Term 1856

II. The mortgage having been duly acknowledged, no evidence was required of its execution and the truth of its recitals. But all the other allegations of the bill must be sustained by proof. Hence it was necessary to establish in addition to the fact of the execution of the mortgage and the truth of the recitals therein, first, the amount of the indebtedness from Whitlock to Coolidge, Knapp Davis & Hyde and Peter Prueve &c. The mortgage was not evidence of the amount of this indebtedness. It contained no recital of its amount. Was there any evidence of the amount of this indebtedness? We insist there was not. The only pretence for evidence upon this point, was slips of paper without a particle of proof of their correctness. The accounts of Knapp Davis & Hyde and Peter Prueve &c were neither made out nor receipted by them. Without any proof whatever of the correctness of these accounts, a decree was taken for the amount thereof.

II. The receipts were not evidence of the payment of the debts to Dr. Little
Kierce Davis & Hyde and Peter Pringle & by Payson Burdett &c. It was
therefore incumbent upon the plffs to show that these debts had
been paid by that firm. Is there any evidence in the case
to show that these debts had been paid? We insist there is not.
The receipts of course the original parties would not be evidence until
proof of their execution, but the receipts of third parties to wit
Harrison & Loomis and Mrs. Saltwater with or without proof of
their genuineness prove nothing, unless there is some magic
in the word assignee added to their names. There is no
proof whatever of the authenticity of Harrison & Loomis & Saltwater
to receive payment of these debts.

III. The decree directs the money to be paid to Payson, and it is incumbent
upon him to show that he was equitably entitled to receive the
~~money~~^{same}. He alleges that the money was paid by Payson Burdett
and that upon the dissolution of that firm he became entitled
to the assets thereof. There is no evidence in the case tending
to show either of these facts. On the contrary the papers
exhibited to the Master if they show any thing, show the
debts to have been paid by Little Paine, but how Payson became
the successor of Little Paine does not appear.

IV. But it said that although this part of the decree was not established by the best evidence, still the papers exhibited before the Master were of such a character that if the infants did not object thereto, they are bound thereby.

1st The case was not referred to the Master to take proof of the allegations of the bill. It was assumed by the reference that the allegations of the bill of the payment of the debt and that Taylor was equitably to receive the amount thereof required no proof. The Master was only to compute the debt and report the amount due. He was not sworn to take proof of the amount due. Under the reference as made the Master had no authority to take proof, and no papers before him can be considered as admitted.

Second. The papers exhibited to the Master were not evidence at all. If a suit had been brought against a receiver and these papers had been offered in evidence without any other proof, it is submitted that no court or jury could have rendered a verdict or judgment against him upon such evidence -

V. It is however claimed that if the indebtedness upon which the decree was rendered was not proved, there was another side upon which the decree was not rendered which might have been excluded therefrom and therefore the decree should be sustained. The decree and sale under it extinguished and paid the causes of action upon which the decree was made, and no others. If there is another side the estate of Whitlock is liable to pay the same, and the decree and sale would be no defense to an action upon it, and therefore the decree cannot be supported by it. In fact the other side was paid, and this was the reason why it was not produced before the master.

Chief

Matthew R. Cunningham & Co

vs

Edmund D. Taylor & Co

Brockville

Filed June 20. 1854

L. Leland

Clk. B.

Jonathan K Greenough

Eliza A Greenough his wife

Logan Booth &

Fayette Ann Booth her wife

William Whitlock

Charles Whitlock

Amos Parne wife of

Isaac Parne who sues by her certificate

said Jonathan K Greenough

Ogden Whitlock

John Whitlock &

Young Whitlock minors under age
of twenty one year who sue by their certificate
said Jonathan K Greenough

Eliza Whitlock &

Isaac Parne

"

Edmund D Taylor

Louis T Reese &

Isaac Parne

3 Supreme Court
of the State of Illinois
Third Grand Division
June Term AD 1855

Defendants in
error.

The Clerk of the Supreme Court of
the State of Illinois for the Third Grand Division in said
state, held at Ottawa, will please issue a writ of error
in the above entitled cause upon a decree rendered
in the Circuit Court of Cook county in Chancery in favor
of said defendants in error on the 8th day of December
AD 1849 in pursuance of the prayer of the annexed petition
December 7th 1854.

Blackwell & McKnight
Attys for Plffs in error.

To the Hon Justices of the Supreme Court of the State of
Illinois.

Y^r petitioners Jonathan R Greenough &
Eliza A Greenough his wife, Lyman Booth & Fayette Ann
Booth his wife, Charles Whitlock, William Whitlock,
Frances Paine, the wife of F^{ts} Paine, who was by her next
friends Jonathan R Greenough, Ogden Whitlock, John Whitlock
and George Whitlock minors under the age of twenty one years
who was by their next friend Jonathan R Greenough, Eliza
Whitlock & F^{ts} Paine, respectfully show unto your honors
that on the 24th day of July A^D 1849 Edmund D Taylor
Josiah T Bruce, and F^{ts} Paine exhibited and filed
in the Circuit Court of Cook County their original bill of
complaint for the use of said Edmund D Taylor,
on the Chancery side of said court, against all of your
petitioners, except said Lyman Booth who has since
that time intervened with the said Fayette
Ann Booth, then known by the name of Fayette
Ann Whitlock. and that such proceedings were
had in said suit that on the 8th day of December
A^D 1849 a final decree was rendered by said
Court therein against your petitioners; and
your petitioners further allege that in said
proceedings and decree a^d manifest error
hath intervened, and they therefore pray that
a writ of error be allowed them, in due form
Decy. 1854.

By their Attorneys
Blackwell & McKimble

Jonathan R Greenough
Eliza A Greenough his wife
Lynnan Borth
Fayette Ann Borth his wife
Charles Whitlock &

William Whitlock
Frances Paine wife of
Ltho Paine who dies by her next friend
viz Jonathan R Greenough

Ogden Whitlock
John Whitlock &
Young Whitlock

union under age of 21 years who sue by
their next friend Jane R Greenough
Eliza Whitlock &
Ltho Paine

vs
Edmund D Taylor
Isabel T Burrise &
Ltho Paine

Supreme Court
of Illinois
3^d Circuit Division
held at Ottawa
Unit of Nov-

I do hereby enter myself security for
costs in this cause and acknowledge myself bound
to pay or cause to be paid all costs which may
accompany in this action either to the opposite party
or to any of the officers of this court in pursuance
of the laws of this state Dated this 7th day of Decr
AD 1854.

Conjome PreKuntle

28 14

June 15 Greenough's Sub

Edmund D Taylor Sub

Receipt, Bond
for entry.

Filed Dec. 8. 1854.
S. Leland Clk.