

No. 14613

Supreme Court of Illinois

Carter et al

vs.

Moses

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION

Ref. 177
No. 177

1854
J. W. Middleton & Co., Stationers, 196 Lake St.

A P P E A L

FROM THE

SUPERIOR COURT OF CHICAGO.

ROSWELL CARTER, Impleaded, &c.,

vs.

HIRAM P. MOSES.

ABSTRACT OF RECORD.

3 Hiram P. Moses filed his Bill against Roswell Carter, Seth Wadhams,
4 Henry Howland, and J. Young Scammon, alledging that, about March
2, '53, he and said Wadhams borrowed from said Carter \$3,000, and
gave their note therefor, payable to said Carter or order, in six months
from the date aforesaid, with interest at 10 per cent., and on or about
the same date, said Moses and Wadhams executed and delivered to
said Scammon, a Trust Deed, (which was filed for record on the 8th
day of March, 1853,) of certain lands and tenements situated in said
5 Chicago, (describing the same) to secure the payment of said note,
authorizing said Scammon (on default of payment of said note,) on
application of the holder thereof, and on giving 30 day's notice, to sell
6 said lands and tenements, and out of the proceeds of such sale after
7 paying expenses, taxes, and all other prior liens thereon to pay the
8 amount due on the notes, as will more fully appear on examination of
said *Trust Deed* when produced. That from the date of said note and

Trust Deed up to May 21, 1856, the same were in the possession of said Carter, and that long before that time, said note was fully paid, and that Carter, while said note was held by him, received, before May, 21, 1856, more money from said Moses and Wadhams than the whole amount due thereon,—charges that long after said note was paid, said Howland has pretended in some manner to have some interest in said notes; that Carter had given up to Wadhams said note as paid; that on or about June 7, 1853, Carter became the holder of a certain other note, dated March 8, 1853, given by said Moses and Wadhams to F. T. and C. D. Flagler, payable two years after date, with interest, for the sum of \$1,500, which was duly secured by a mortgage (with a power of sale therein contained) upon the same property covered by said Trust Deed, as will fully appear when produced by Carter.

That on or about March 2, 1855, Moses, being at that time greatly embarrassed, and in ill health, was “threateningly” required by Carter to pay said notes, and was told by Carter, that unless he should pay said notes, or would agree to pay him interest for the money so loaned, and the other note since the same came to his hands, at the rate of 2 per cent. a month, up to the time of payment thereof, he would cause his (~~without account~~) property to be sold under said Trust Deed, whereupon, Moses “then and there” agreed to, and did with said Wadhams, enter into a usurious contract, whereby, for the forbearance of the money secured by the said notes, including the interest reserved by said notes, they would pay at the rate of 24 per cent. per annum, to be computed with annual rates at what is known as compound interest. And after the computation as aforesaid, said Carter, Moses and Wadhams agreed that it was \$2,367, and thereupon said Moses and Wadhams made their note of March 2, 1855, promising to pay Carter \$2,367. That said contract and agreement, whereby Moses and Wadhams agreed to pay that rate of interest for the use and forbearance of the sum of money mentioned for the time the money had been loaned, by Carter to Moses and Wadhams, to wit: From March 2, 1853 to March 2, 1855, was more than the rate of ten per cent. per annum for the said time, and that the same was usurious, and that said contract aforesaid, whereby said Moses and Wadhams agreed to pay 2 per cent. a month, for the time said Carter had held said \$1,500 note, to wit: from about June 7, 1852, to March 2, 1855, was usurious, and therefore said \$2,367 note was without consideration, usurious and void.

That before March 2, 1855, Wadhams had paid \$1,500 on said \$3,000 note, and the further sum of \$750 on said \$1,500 note, and the further sum of \$1,183.50 on said \$2,367 note, and interest on one-half of said \$2,367 note, at the rate of 2 per cent. a month, and that all of the aforesaid payments by Wadhams, were made on or before March 2, 1855, and before any payments had been made thereon by Moses, but the precise sum, and where and at what time paid, will fully and particularly appear in THE ANSWERS of said CARTER and Wadhams.

That at the time of giving the \$2,367 NOTE, and for the SECURITY thereof, as well as for the balance due on the \$3,000 and \$1,500 notes, Moses assigned and DELIVERED to Carter (with the EXPRESS AGREEMENT, that all collections to be made thereon should be endorsed and applied, so far as necessary, to the payment of said \$3,000 and \$1,500 notes,) a large number of notes and checks of different dates, and amounts from different persons and firms amounting, in the aggregate, to \$4,888.81. That Carter collected, prior to May 8, 1855, on said collections the sum of \$3,019.15. That said \$3,019.15, together with the aforesaid sums paid by Wadhams greatly exceed the amount equitably due to Carter upon said \$3,000 and \$1,500 notes, and should have been endorsed thereon by Carter, in accordance with the aforesaid agreement, charges that the balance of the moneys collected on said assigned notes, beyond what was necessary to pay (with what Wadhams had already paid thereon) said \$3,000 and \$1,500 notes, belongs to Moses, and that Carter ought to repay the same with interest to Moses. That Moses had asked Carter for a statement and account of said collections and payments in order that the same might be settled up, but that Carter had refused to do it, and, at the instigation of Wadhams, and with a view to injure and defraud Moses, on December 1, 1852, assigned said \$3,000 note to Howland, or to some one else. That Scammon, as said Trustee, at the request of Carter, Howland or some one else, (as will appear in Carter and Wadhams' answer,) had advertised said lands and tenements for sale, (setting out the advertisement), fears Scammon will sell the property unless enjoined, and charges Carter, Wadhams, Howland and Scammon with combination and confederation to injure, &c.

Prays that Carter, Wadhams, Howland and Scammon may fully discover and answer (without oath) all and singular, the matters &c., that Carter render a full account of the payments, and when made by Wadhams, Moses and others in and upon the said notes for \$3,000, \$1,500, and \$2,367; also of his collection upon said collaterals, and of his disposition of the same, and that he be decreed to apply the same so far as may be necessary to the liquidation of the first two of said notes, and to deliver up to be cancelled all three of said notes, and to pay any balance that may be in his hands from collections on said collaterals after paying said \$3,000 and \$1,500 notes, and redeliver all of said collaterals not collected by him; that Scammon reconvey said real estate in accordance with said Trust Deed, and for an injunction against defendants; also a writ of summons for defendants, &c.

CARTER'S ANSWER.

(Prefixed thereto are copies of the list of notes turned out to him by Moses for collection, (to apply on said first named notes,) and Carter's receipt for said collaterals to Moses; also receipts from Moses

43 to him of several of said collateral notes which were returned by Carter
 to Moses,) states that on or about March 2, 1853, Moses and Wadhams
 44 came to him and stated that they had got the "refusal" of a piece of
 land (the same as described in the bill) at a figure, and upon terms
 which they regarded as perfectly safe, and of a highly advantageous
 speculation for them to purchase, one of which terms was the payment
 in hand of \$3,000, which sum they could not raise without the assistance
 of their friends, that they could raise said sum upon their own paper
 with J. Y. Scammon as surety, and that Scammon had consented to
 sign a note with them for said amount payable in ninety days, pro-
 45 vided they would give him \$100 bonus and get said Carter to sign
 with him as surety. That Carter refused to sign with them in that
 manner, and also stated to them that he had no money to loan, but that
 as a friend he would see what he could do for them, and that if he
 could, he would raise the amount for them without fee or *bonus*, pro-
 vided they would, *without fail*, meet and pay the same at the end of
 ninety days, which they promised to do, and as further assurance
 therefor, they proposed to give him a chattel mortgage upon
 about \$6,000 worth of tools and machinery of said Moses, in said city,
 with a power to take immediate possession and to sell the same on
 defalcation; also to give him a Trust Deed on said land to secure the
 46 payment of the same. Whereupon he borrowed from R. K. Swift,
 upon his own credit, the required sum, (less ninety days interest thereon
 at 10 per cent.,) by giving his own note for \$3,000, payable in ninety
 days in the city of New York, and immediately delivered said sum to
 Moses and Wadhams, whereupon said \$3,000 note and Trust Deed
 mentioned in said bill were duly executed and delivered by said Moses
 and Wadhams as alleged in said bill. That said note was made paya-
 ble in 6 months instead of 90 days after date as was agreed as afore-
 said, at the request of said Wadhams and Moses, but on the verbal
 promise at the same time that they would pay the same in 90 days
 if they could, and proposed, in case they should not pay the same
 47 in said 90 days, that they would pay him 2 per cent. a month thereon,
 until the same should be fully paid.

That said Moses and Wadhams also then and there executed and
 delivered to Carter a chattel mortgage of said tools and machinery as
 before proposed, for the security of said note and on the delivery
 thereof, they requested Carter to defer placing the same on record
 until after said 90 days, as such record might affect their ability to
 raise said sum in said 90 days, to which request Carter assented. That
 Moses and Wadhams failed to pay within 90 days as they agreed to do
 and Carter, to save his own credit, was compelled to borrow money
 at the rates then current among money lenders in said city, and which
 ranged from 15 to 33 per cent. per annum, in order to take up his said
 note, with exchange on New York, according to the tenor and effect

thereof, and that he thus carried said debt for a period of two years at an expense and damage to him of more than 2 per cent. a month for the *exclusive use and benefit* of said *Moses and Wadhams*, and that after the expiration of said 90 days, and on June 11, 1853, he put said chattel mortgage on record. That on or about March 2, 1855, (having in the mean time obtained a note for \$1,500, secured by a mortgage on said real estate, (as mentioned in said bill,) and being anxious to get his pay on said \$3,000 note, and his security therefor by virtue of said chattel mortgage being about to expire by limitation of the statutes,) he did in a respectful (and not in a threatening) manner, request said Moses and Wadhams to pay said notes; that otherwise, he would be compelled to take possession of said chattels mentioned in said chattel mortgage, in accordance with the provisions thereof, whereupon said Moses and Wadhams, of their own accord, and not at the solicitation or demand of Carter, executed and delivered to him said \$2,367 note, mentioned in said bill. That the consideration of said last mentioned note, was for *past services, expenses*, and indulgence of said Carter for and towards them; also that Carter should suffer his said chattel mortgage lien upon said goods and chattels to expire, and also for said Carter's endorsement then made by him upon said note for \$3,000 of the interest then due thereon, and on said \$1,500 of the interest up to the time it should become due, to wit: to March 8, 1855. That *no part* of the *consideration* for said \$2,367 note was for the *further forbearance* of said notes for \$3,000 and \$1,500, or of any pre-existing debt or money loaned, *nor was there any agreement of any kind* for Carter to *forbear the payment of any pre-existing debt* due from said Moses and Wadhams to Carter, but *on the contrary*, they were required by Carter to, and did immediately set about the payment of their said notes to him, and to that end they did assign to him two bank checks amounting to \$245.26, which amount Carter immediately endorsed by direction and agreement of said Moses and Wadhams upon said \$2,367 note, and Moses also assigned and delivered to Carter at the same time a number of notes due and shortly maturing from sundry persons, for Carter to collect and endorse such collections, when, and as fast as they should amount to the sum of \$500, upon either of said notes, at the option of Carter, but with the understanding that such collections should be first endorsed upon said \$2,367 note, until the same should be fully paid—a list of said assigned notes and Carter's receipt therefor is attached to and made a part of the answers. Denies complainant's statement in regard to the application of moneys collected on said assigned notes.

States in answer to complainant's demand for a full account of his collection and application thereof, of said assigned notes, that, in pursuance of the agreement, as he, Carter, alleges was made in regard thereto, he did on March 2, 1855, endorse on said \$2,367 note the sum

of \$245.26, the amount of said bank checks as appears by said receipt for said assigned notes, and on March 5, 1855, he collected \$254.74 upon said assigned notes, and endorsed the same on said \$2,367 note, and on April 14, 1855, he had collected \$500 more and endorsed the same on said \$2,367 note; and on May 2, 1855, he had collected \$1,435, and endorsed the same on said \$2,367, which fully paid and liquidated the amount due thereon; and on May 7, 1855, having collected \$584.15 more, he endorsed the same on said \$3,000 notes.

55 That the aforesaid sums mentioned as collected, are *all* the *collections* made or received by CARTER, and that all the balance of said assigned notes was afterwards re-delivered by Carter to Moses, or his agents, as per receipts therefor (copies of which are attached to and made a part of the answer,) will show, and that the same have, by Moses, been since collected and appropriated to his own uses. That on March 9, 1855, Wadhams paid \$750 upon said \$1,500 note, which was endorsed thereon accordingly, and that there is now justly due to Carter on said \$1,500 note, the sum of \$750, with interest thereon from March 8, 1855. That on March 2, 1856, Wadhams paid \$1,650, to be endorsed on said \$3,000 note, which was done accordingly, and that there is justly due to Carter on said \$3,000 (note the sum of \$3,000, with interest thereon at the rate of 10 per cent. per annum, from March 2, 1855, less the payment endorsed thereon, as aforesaid, and interest

56 thereon at the same rates. Admits that he applied to Scammon to advertise and sell said lands as alleged in the bill. Says that in the year of A. D. 1858, Wadhams represented to him that Moses had become insolvent, and requested Carter to have said land sold under

57 said Trust Deed for the payment of the balance due on said \$3,000 note, to which Carter replied, that Scammon the trustee was then in Europe, and that it could not be done until his return, and that he did not want the trouble and expense of a lawsuit to foreclose said mortgage. That Wadhams in reply, suggested that said \$3,000 might be assigned to some one, through whom as the legal holder thereof, a change of trustees could be obtained and the lands sold to pay said note, whereupon Carter did afterwards for the purpose aforesaid, and without consideration, endorse and deliver said \$3,000 note to said Howland, and that proceedings were thereupon instituted in the Cook County Court of Common Pleas, for a change of trustees, but before the same was brought to a final hearing, Scammon returned, and said proceedings were discontinued, and said note was re-delivered to Carter who holds the same and is the owner thereof, and that Howland never had any interest in said note, except in the way, and for the purpose aforesaid. *Denies* that said \$3,000 and \$1,500 notes, or either of them, were ever given up or surrendered to Wadhams as paid. *Denies* that the whole or any part of said notes have been paid, except as before stated by him. *Denies* that he has ever contracted for, or taken usurious interest as charged in the bill. *Denies* all fraud, combination, confederation as charged, &c., &c.

WADHAM ANSWERS,

61 Corroborating substantially the statements in Carter's answer
 64 touching the loan of said \$3,000, and the *object* thereof, the trust deed
 63 and mortgages and the \$1,500 note, and the agreement to repay the
 65 said \$3,000, in 90 days, and the request that Carter should not put said
 chattel mortgage on record during said 90 days; the non-payment of
 said amount in said 90 days and the putting of said chattel mortgage
 on record, the execution and delivery on March 2, '55, of said \$2,367
 67 note, and the consideration thereof.

68 That it was no part of the agreement or consideration, for the
making and delivery of said \$2,367 note, that Carter should, for one
moment forbear to have, sue for, and collect the amount that would
be due on said \$3,000 or the amount that would be due on said \$1,500,
 69 *the moment it would become due, according to the tenor and effect*
thereof. He also corroborates Carter's statements touching the pay-
 ments and endorsement made on said \$3,000 and \$1,500 notes, and
 75 the balance still due thereon, also in regard to Howland's interest and
 proceedings in the matter of said \$3,000 note, and in regard to the as-
 70 signment of notes by Moses to Carter for collection, and application
 of the proceeds of such collections.

71 That at the date of said assignment by Moses to Carter, of said
 notes for collection and application, Moses was and still is indebted to
 Wadhams in a much larger sum than one-half the amount of said
 \$2,367 note, in consideration whereof, it was agreed between said
 Moses and Wadhams that whatever amount Carter should collect from
 said assigned notes and apply on said \$2,367, beyond one-half the
 amount thereof should, as between said Moses and Wadhams, be
 credited by Wadhams on final settlement between him and said Moses
 on said indebtedness.

77 Avers that the part which he took in the matter was not with any
 design to injure, oppress, or damage Moses, but only to get himself
 relieved and disentangled from his said liabilities and relations with
 Moses as far and as fast as he could, in a fair and legal manner.
 Denies all fraud, combination, &c., as charged in the bill.

HOWLAND ANSWERS

79 and corroborates the statements of Carter and Wadhams in regard to
 his conduct in the premises, and disclaims all further knowledge and
 interests therein.

83 Carter also files his cross bill for specific relief, on the ground that
 he is the holder of said \$1,500 and mortgage to secure the same,
 (which contains no power of sale, as alleged in Complainant's bill,)
 as well as said \$3,000 note, secured by said trust deed, both upon the
 86 same lands, and upon each of which there is a large amount due to

to him; that said \$1,500 note was given for the purchase price of said lands; that although said mortgage and trust deed were executed and delivered on the same day, yet the said mortgage was not filed for record until the day after said trust deed was filed for record, and that in consideration of the facts aforesaid, there are reasonable grounds for doubt and uncertainty as to the priority of lien of said trust deed and mortgage upon said real estate, wherefore, and for the purpose of avoiding multiplicity of suits between the same parties in substance, he prays that Moses, Wadhams, Howland and Scammon, be made defendants to said cross bill and to answer without oath all and singular the matters therein set forth, that an account may be taken of what is justly due him on said \$1,500 note, and that on final hearing said injunction be dissolved, and Scammon directed when he shall sell said lands, &c., by virtue of said trust deed, to pay so much of the surplus after paying what is due on said \$3,000 note and expenses as may be necessary to satisfy said balance so found due upon said \$1,500 note, if the same be not before that time otherwise paid, and for *general relief*. To said cross bill, (and as a part thereof,) are attached copies of said mortgage and \$1,500 note, with the endorsements thereon, as stated in Carter's answer.

101 Replication of Moses to the answers of Carter, Wadhams and Howland.

107 Answer of Moses to cross bill, denying all and singular the allegations therein, which conflict with the allegations of the original bill.

111 Carter's general replication to Moses' answer to cross bill.

TESTIMONY.

113 Deposition of James M. Walker, (a lawyer), called by complainant, Moses,

Says, (in answer to an interrogatory which was objected to by Carter), that a client of his, Martin Ryerson, has an interest in the premises, or a part of them, covered by said trust deed and mortgage, and that he (witness) has always claimed that said trust deed and mortgage was no lien on the premises as against his client Ryerson, that he (witness) has within the last two or three years had several conversations with Wadhams, who represented himself as owning or controlling the interest of said notes and mortgage or trust deed, and claimed that neither of them had been fully paid. And he (Wadhams) has made various propositions for a settlement of the same; that he (witness) has always replied to such conversations that said trust deed and mortgage were no lien on the property as against his client Ryerson, but that Ryerson might be willing to give something to avoid

controversy, can't fix the time or date of such conversations, and has never had any communication with Carter on the subject.

EXHIBITS OFFERED BY CARTER.

- 119 *The Trust Deed*, Exhibit "A. A." Acknowledged and delivered March 8, 1853, and filed for record the same day, March 8, 1853.
- 125 *The Flagler Mortgage*, Exhibit "B. B." Acknowledged and delivered March 8, 1853, given to secure the purchase money for the lands, and filed for record March 9, 1853, and assigned to Carter, June 7, 1853.
- 131 *The Chattel Mortgage*, Exhibit "C. C." with its endorsements, as alleged in Carter's answer.
- 137 *The \$3,000 Note*, "Exhibit No. 1," with its endorsements, as alleged in Carter's answer.
- 139 *The \$1,500 Note*, "Exhibit No. 2," with its endorsements as alleged in Carter's answer.
- 142 *The 2,367 Note*, "Exhibit No. 3," with its endorsements as alleged in Carter's answer.
- 144 *A package of 3 receipts* fastened together, "Exhibit No. 4" which show the re-delivery of the several notes therein mentioned, by Carter to Moses, as alleged in Carter's answer.
- 145-6 *A list of Notes, with the receipt therefor*, from Carter to Moses, "Exhibit No. 5," which describe the notes assigned and the object and conditions of such assignment. as alleged in Carter's answer.

EXHIBITS (OFFERED BY MOSES.)

- 147 *A half sheet of paper*, "Exhibit A," on which are words and figures in pencil marks, in Carter's handwriting.
- 148 *A half sheet of paper*, Exhibit "B," on which are words and figures in pencil marks, in the handwriting of Carter.
- 150 *A letter* from Carter to Moses, dated May 21, 1856, "Exhibit C," stating that Wadhams has paid one-half of the \$3,000 note, and also one-half of the \$1,500, and the same is endorsed on said notes, also, that he has paid the interest as was agreed by the parties on March 2, 1855, also, that the \$2,367 is paid by moneys received on notes put into my hand for collection, also, interest on the same agreeable to the

understanding had at the time the note was given (and says,) "Now taking this together with the figures I gave to S. W., which I suppose you have, and *I hope you will not allow this matter to run much longer, for I am suffering from the want of the money, and am compelled to pay more interest than I receive from you.*"

STIPULATION.

151 That the last three Exhibits, "*A*," "*B*," and "*C*," are in the handwriting of Carter and that all the other foregoing Exhibits, "*A*," "*B*," "*C*," "*No. 1*," "*No. 2*," "*No. 3*," "*No. 4*," and "*No. 5*," were duly proved, and that the *receipt* for the Peter Crum & Co. note, has reference to the note against "Peter Crum & Co.," as described in Exhibit No. 5.

153 Bill taken as confessed against J. Y. Scammon.

155

158

159 Whereupon Carter prays an appeal to the Supreme Court which
160 is allowed, &c. Appeal bond filed and approved, &c. Certificate o
161 Clerk &c.

ASSIGNMENT OF ERRORS.

I.

1st. The Court rendered a decree against said Carter, when by the allegations, proofs, and law of the land, they should have rendered one in his favor

II.

2d. The Court decreed that Carter should pay to said Moses the sum of \$570, contrary to the law and evidence in the case.

III.

The finding of facts, as well as the decree, is contrary to the evidence, the law and equity.

~~Finding in Error by Moses.~~

Points and Authorities relied on by Plaintiff.

1st.—There are no allegations in the complainant's bill to which his proofs are applicable and pertinent.

21 Ill. R. 17.

2d.—The allegations in said bill upon the subject of usury are not sustained by the proofs, and do not make a case that is obnoxious to the law of Illinois against usury.

13 Ill., 577; 25 Ill., 218; 26 Ill., 54

3d.—The finding of the Court below that the balance due on said notes was paid by funds belonging to Moses is not sustained by the proof.

4th.—The decree below that Carter should pay to Moses, \$570, is contrary to the law and the evidence.

24 Ill., 381; 28 Ill., 519; 29 Ill., 184.

5th.—Plaintiff in error is entitled to the specific relief asked in his cross bill.

A. E. WOLCOTT,
Attorney for Plaintiff.

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Supreme Court B. P. A.

Respectfully,
Imperial

Es.

W. H. P. Moore

Abstract of Record

of Supreme Court

in
point of authority

Filed Apr. 19, 1864,
S. H. L. and
C. H.

W. H. P. Moore
for P. H.

177.

In the Supreme Court of Illinois.

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

ROSWELL CARTER, ET AL., vs. HIRAM P. MOSES—*Appeal*.

ARGUMENT FOR APPELLEE.

This bill was filed for a four-fold purpose: 1. To enjoin an attempted sale under the trust deed given to secure the \$3000 note mentioned below. 2. To ~~procure~~ release the said trust deed and the mortgage named below. 3. To secure the cancelment of said \$3000 and \$1500 notes, and the \$2367 note given on usurious consideration. 4. To recover back moneys which the appellant, Carter, had extorted from the appellee, and holds in trust for him and for his use and benefit.

The court below decided upon all these points in favor of the appellee, and that the sum of \$570 be paid by appellant to appellee.

The appellant objects that the decree is erroneous *in toto*; and claims, under cross bill, foreclosure and sale on trust deed and mortgage.

The appellee, though claiming that the decree is, in other respects, correct, alleges it erroneous in not awarding him a much larger sum.

I.

The following facts are admitted in the answer :

Wadhams was the brother-in-law of Carter, (p. 45) and the confidential agent and clerk of Moses, (p. 62) and 2d March, 1853, applied to Carter to aid Moses & Wadhams, by his endorsement, in raising \$3000 to pay part of the purchase money of the land described in the bill—which finally Carter volunteers to loan them, at the rate of two per cent. per month, for six months, taking their joint note of that date for \$3000, discounting the interest for 90 days at 10 per cent., (copy of note, p. 137,) which was endorsed on the note, and Carter then paid \$2925 to said Moses and Wadhams.

In regard to the loan, Carter, in his answer, (p. 46) says : "They, the said Moses & Wadhams, assuring said Carter that they would do their best to pay the note in 90 days, according to their agreement, *and proffered, of their own accord, that in case the same should not be paid in 90 days, to pay to the said Carter two per cent. a month thereon until the same should be fully paid,*" and the said Moses & Wadhams then and there executed and delivered to said Carter the trust deed upon the land as described in the bill.

Wadhams states the same thing (p. 65) in his answer, which the appellant claims corroborates Carter's, as follows : "The said plaintiff (Moses) and the said defendant (Wadhams) assuring said Carter that the said sum of \$3000 should be repaid in 90 days, if they could do it, and that if they should fail to pay the same in 90 days, *that they would pay him, said Carter, two per cent. a month thereon, if he should require it, until the same should be fully paid,* and the said Carter, in pursuance of said understanding and agreement, as soon as said \$3000 note was made, endorsed a receipt of the interest thereon for ninety days."—*Am'd Abstract, p. 3.*

As early as June 7, 1853, Carter became the assignee of a note and mortgage given to Flaggers to secure the purchase money of \$1500 due in 2 years, at 6 per cent. interest, covering the same land.

Moses & Wadhams failed to pay the \$3000 note in the 90 days; and the said Carter, in his answer, says, (p. 38) that "at the earnest solicitation and request of the said Moses & Wadhams, upon their often repeated assurances and promises liberally to pay and reward the said Carter therefor," he (Carter) carried said loan for two years for their use and benefit, (*Am'd Abst.*, 2), and that at the end of the two years, March 2^d, 1855, Moses & Wadhams made the \$2367 note, which is expressed on its face to be "for money actually loaned," (*Copy Abst.*, p. 4) upon the consideration stated in his answer, (*Record*, p. 51,) substantially admitting the allegations in the bill, (*Record*, 13 and 14, *Amended Abst.*, pp. 1 and 2) to wit: that the consideration was wholly usurious and unlawful, without consideration and void.

It is fair to state that Carter afterwards (*Record*, p. 53, and *Abst.*, p. 3) avows that "no portion of the consideration of the \$2367 note was for usurious interest or forbearance of any pre-existing debt, and that the amount did not exceed what was in honor and equity due from said Moses & Wadhams.—*Am'd Abst.*, p. 3. It will be seen (*Am'd Abst.*, 4, *Record*, p. 139) that neither the endorsements upon the \$1500 or \$3000 specify the amount of the interest received; and that all the papers referred to constitute part of and are annexed to Carter's answer.

On the same day, March 2, 1855, Moses delivered to Carter notes and checks to the amount of \$4888.81, upon a receipt of Carter agreeing to collect and apply the same so often as \$500 was collected on three notes he held, amounting to \$5367. (*Copy of Receipt*, p. 146.) Within 63 days \$3019.15 was collected, and the balance of these notes was returned to Moses, as appears by receipts attached to Carter's answer; the first of them as early as August, 1855. (*See Receipt*, p. 144, *Exhibit*, 4.) But \$584.15 of these collections were endorsed on the \$3000 note, none on the \$1500, and the balance of the collections were endorsed on the \$2367 note, (*See Am'd Abst.*, p. 4, *Record*, 144) which Moses alleges in bill was usurious, without consideration and void.

But it appears that but 580% was
Endorsed till after May 21. 1856
See Exhibits a &c.

3019.15
584.15
2435.00
2367
584.15
2951.15

The answer admits payments by Wadhams on the \$3000 and \$1500 notes of \$2250, and payments by Moses of \$3019.15, collected as aforesaid.

Under these circumstances, Wadhams conspires with Carter, his brother-in-law, and becomes his passive tool, *first*, to obtain a change of trustee, by the endorsement of the \$3000 note to Howland; *second*, to instigate the sale under the trust deed, to enjoin which, after advertisement, the bill was filed; and Carter also undertakes to claim a large balance due him, for which he files his cross bill.

So much for the admissions of the record. It is worthy of note, however, that the bill was filed and an injunction issued in 1861; that none of the answers are under oath, as they well might have been, if they could have denied the equities of the bill, and thus dissolved the injunction—and particularly, that Wadhams was a defendant and a competent witness, and that he would, without doubt, have been used against the appellee, Moses, in the court below, were it not that he would know too much on the subject of usury and payment. It is fair to infer that his testimony would be fatal to the appellant's case.

II.

Under this state of facts, disclosed in the pleading, it is assumed that the appellee might have safely submitted his case on bill and answer.

1. *The transaction upon the pleadings is usurious.*

"In equity no form which can be given to a particular contract will be permitted to shield a usurious transaction, and preclude the borrower from impeaching it on the ground of usury." "It is not the form, but the nature and substance of the contract which must determine whether or not the instrument is not a mere device to obtain more than legal interest, and colorable to evade the provisions of the statute."

Ferguson vs. Sutphen, 3 Gilm., 570.

"It is a well settled principle that any shift or trick which may be resorted to for the purpose of evading the statute, is as much within the statute as if its provisions had been directly violated."

Shirly vs. Welty, 19 Ill., 625.

"Wherever a device is resorted to for the concealment of usury, or hard and unconscionable terms, it is destined to defeat whenever its true character may be reached and exposed."—*Davis vs. Hopkins*, 15 Ill., 52. Much more when it is unblushingly admitted.

Whenever even an ostensibly legal transaction "is merely colorable and really designed to cover a usurious loan of money, it is the duty of the court to strip it of its false coloring, and treat it according to its real character, as an usurious transaction."

Earl vs. Mitchell, 22 Ill., 532.

The transactions are all prior to the statute of 1857, and consequently occurred under and are governed by the statutes of 1845 and 1849.

Safford vs. Vail, 22 Ill., 327.

Dooly vs. Stipp, 26 Ill., 89.

By Stat. 1845, § 5, "The *directly or indirectly contracting to accept* or receive in money, goods, discounts, or things in action, any greater sum or greater value for the *loan or forbearance* of money" than 6 per cent. is prohibited, under penalty of three times the usurious interest; and § 6 provides for the recovery of that penalty by the party paying of the party ^{receiving} recovering, by action of debt or bill in chancery, which provisions were not changed by act of 1849, except in allowing party to contract for a greater rate than 6, not to exceed 10 per cent. 23 Ill., 505.

Under a similar statute, the law is well laid down in *Delano vs. Rood*, 1 Gilman., 694-698.

"The fact that the appellant has made a substitution" of the \$2367 note for the usurious interest on the other notes "first given does not purify the transaction of its usurious taint. The statute

has forbidden appellant from receiving more than 10 per cent., and he cannot avoid its effect by indirection."

Safford vs. Vail, 21 Ill., 330.

Flemming vs. Jenks, 22 Ill., 475.

Usury may be predicated upon past forbearance, equally as upon a contract whereon future forbearance is stipulated for. 4 *Burr*, 2251, 2253; *Rex vs. Allen T. Raymond*, 196, 197; 1 *Saund.*, 295 and note; 1 *Cowp.*, 112, 114; 5 *N. Hamp.*, 339; 3 *N. Hamp.*, 186.

The only ^{difference} ~~defense~~ under the English law was that it did not avoid the contract originally made, unless it was tainted with usury, but the party was liable to prosecution for the penalty, under the statute, which, under our statute, is three-fold the interest received. *Stat.* 1845, Ch. 54, § 4, 5 and 6.

This provision of the statute is not affected by act of 1849. *Kinsey vs. Nisley*, 23 Ill., 505.

Our law did not avoid the contract, but provided for the forfeiture equally with the English law. The contract was alike usurious, but the major part of the penalty was remitted by our statute, and the forfeiture of the three-fold interest remained.

The new note being given, therefore, for the usurious interest, was within the statute wholly usurious. It had no legal foundation. It would be absurd to treat it as a legally subsisting contract. It wanted legal consideration. It was made directly and wholly in contravention of the statute. Such a note is void. *Wheeler vs. Russell*, 17 *Mass.*, 258, 281, and cases there cited. The court will not sustain a note given wholly without consideration or in violation of the statute. The endorsement of the legal interest upon the \$3000 and \$1500 note will not alter the case. The former contracts remained under our law legal, and the endorsements, which were mere receipts, and always explainable, were explained away, and those notes were unaffected by the endorsements of the interest, as it was not paid by the new note, which had no validity.

See 1 *II. Black.*, 464; 9 *Pet.*, 399.

2. *The decree releasing the trust deed and mortgage is right if, as appears on the pleading, the debts secured thereby are paid.*

The appellee is entitled to the release of the land upon payment of the original loans and the legal interest, according to the terms of the original notes, *Heacock vs. Swartwort*, 28 Ill., 298.

3. *The decree for the money was right.*

"If a party has paid usurious interest upon a loan (made even since the statute of 1857) secured by mortgage, he has a right, at any time before the final statement (settlement?) of the debt, or before it has been adjudicated upon by judgment or decree, to claim the benefit of such usurious payments,"—*Caton Judge, Johnson vs. Thompson*, 28 Ill., 357, 358, 359. The dissenting opinion of Judge Breeze, *Page*, 359, admits that this is the law under the statutes of 1845 and 1849. *Under these statutes*, for any amount over paid, the appellee was entitled to a decree.

Dooley vs. Stipp, 26 Ill., 89.

4. *The case cited by appellant, Lawrence vs. Cowles*, 13 Ill., 578, *does not apply.*

Here, upon a note payable in six months, with interest at ten per cent., (the interest at ten per cent. being included and having been already discounted,) if it was not paid in ninety days, that is, if it was not paid before it was due; the agreement was to pay 2 per cent. per month on the whole amount of the note.

The case of *Lawrence vs. Cowles* was well put in the language of *Treat, C. Justice*, 13 Ill., p. 578: "The only pretence for holding the contract usurious was the fact that a greater rate of interest than the law allowed was to be paid *after* the note became due. *That circumstance* did not taint the transaction with usury. The interest was in the nature of a penalty to secure the *punctual* payment of the debt. It was in the power of the maker to *avoid* the payment of the interest altogether by the *prompt* payment of the principal. Where, *by the terms of the contract*, a party can discharge himself by paying the real amount due, the transaction is not obnoxious to the statute against usury."

But in the case at bar the greater rate is to be paid if the debt is not paid *before* it is due. The extra interest or usury was to be paid, not to secure the punctual payment of the debt, but unless the *party anticipated the terms of the contract and paid months in advance*. The *prompt* payment of principal, according to the contract, did not discharge the party and avoid the payment of the usury. If the note was paid at maturity, the promissors must pay at 2 per cent. per month. The payment of the real amount legally due would not discharge the promissors *unless it was paid before it was due*.

5. In no respect does it come within the case of *Lawrence vs. Cowles*; but even if it did, it was a mere device to cover usury; and unless it was intended that the note should be paid on the day fixed, *e. i.*, in three months, it was usury.

Osborn vs. McCowan, 25 Ill., 219.

The very contract itself provides that the note shall not be paid till three months after the penalty attaches; so that if the contract was kept in every particular, still the penalty would attach. This is most clearly usury, and is not the well recognized exception of *Lawrence vs. Cowles*. There must be no design to cover up usury. *Bishop Hill Colony vs. Edgerton*, 26 Ill., 55.

Back the note over 6 months, repels such presumption
If this shallow pretext can avail, then, as the Court say in *Osborn vs. McCowan*, 25 Ill., 219, "the wit of man has succeeded in devising an expression which defeats the statute of usury, which a very high authority has said is impossible. * * * There are a thousand forms, perfectly fair upon their face, which the intent of the parties may render in substance and in fact usurious. Where the form is fair, the intent of the parties stamps upon it its true character."

6. We have seen that the consideration of the \$2,367 note was usurious. This is apparent from the original agreement, admitted in the answer; also from the statements that the appellee and Wadhams often promised and assured liberally to pay, &c. (*Amended Abs.*, p. 2; *Record*, p. 48.) The fact which appears on computa-

tion, that the 2 per cent. per month, and annual rests and exchange of New York, at 5-10 of one per cent., will make the exact sum of the note, within a very few cents, which was ~~entered~~ ^{inserted} on the oral agreement. Taking these in connection with the admission of the answer of Carter, that it was the interest on the \$3,000 note and the \$1,500, and the "*fair and deserved equivalent for services and past indulgence*," (*Amended Abstract*, 2; *Record*, 51,) and the usury is apparent. This was stipulated for at the outset, and attempted to be exacted to the end. The pretended forbearance of the foreclosure of the chattel mortgage, if it were duly set up and proved, would, under the circumstance, be treated as an after thought—a mere device to cover the usury. But there is no averment that the appellant did suffer the lien of his chattel mortgage to expire, or did forbear to foreclose and take possession, and no evidence that he either agreed to forbear upon that, or that he did forbear on that chattel mortgage. For aught that appears either in allegation or evidence, he may have foreclosed it, and did foreclose it. The Court, in a case of so great oppression, will not consider the suggestion a moment, as against the other circumstances in the case.

The case, then, is made out on the bill, answer, and exhibits annexed to answers, and made part thereof.

What, then, is at issue? We answer, nothing—for nothing is denied—unless it be the intent. All else is admitted.

And when more than legal interest is taken, all the cases assume that a *prima facie* case of usury is made out, and the burden, to explain it away, is on the party taking excessive interest. The intent in this case crops out on every page of the answer.

But if not sustained on the pleadings, replications being duly filed,

III.

How stands the case on the proofs?

Thus far I have considered the case as if on bill and answers and exhibits; but now let us consider it on bill, answer, exhibits, replication and proofs.

(1.) Every statement in the bill which is not admitted in the answer, and every statement of the answer which is contradicted by the replication, may be said to be at issue, though neither party is obliged to prove more than he pleases.

Gresley, Ev., 238.

(2.) Statements in the bill, and admissions in the answer, being so strictly conclusive on the parties as to prevent the party who made them from disputing the truth, it would be worse than useless to allow his adversary to file superfluous examinations in support of them.

Gres., Ev., 237.

(3.) The evidence must be confined to the issues.

Gres., Ev., 230.

(4.) A party is only "bound to establish by proof whatever is not admitted by the answer."

Dooley vs. Stepp, 26 Ill., 89.

(5.) The answers *not under oath*, while they are still admissions of equal authority as the admissions on the bill, are of course nothing but admissions, and do not conclude the complainant unless disproved. *See Stat. 1845, Ch. 21, § 21. 4 Scam. 20.* "It is only incumbent to sustain those allegations in the bill which are put in issue by the answer." 5 *Gilm.* 213.

And here in this view of the case the admissions of the answer are equally available as if in any pleading at law. If, for instance, the complainant might read, if the answer were under oath, as evidence for the purpose of showing the *intent* of the parties (the main question, perhaps I might say the sole question, being reduced to the intent), "*they the said Moses & Wadhams nevertheless assuring the said Carter that they would do their best to pay the note in ninety days according to their agreement, and proposed of their own accord, that in case the same should not be paid in ninety days, to pay to the said Carter two per cent. a month thereon until the same should be fully paid,*" p 46, he may, it not being under oath, appeal to this admission to show that a subsequent computation made at

that or about that rate, was upon the intent disclosed in the statement, even if voluntarily inserted in the answer. We find one party claiming under a computation or computations based apparently under the usurious stipulation above disclosed, and the other party yielding to it; can intent be more clearly proved, or be more readily made apparent? The defendant having admitted the fact, why is it not within the reach of complainant?

And here let me advert to the very singular want of discrimination of the appellant's counsel. He argues as if the answers were under oath, and concluded the appellee. The answers, if they were ten times as strong, ~~and even under oath~~, all fall harmless on the filing of replications. We can appeal to them as admissions, and so far as they admit facts on our side, they are admissible for that purpose as evidence; but the same rule, at least as strict a rule, in reading them is to be applied as if they were under oath. The complainant when he reads the answer is only obliged to take with the admission so much as is inseparably connected with it. We appeal to the answer to show what perhaps is sufficiently apparent upon other testimony, that the \$2,367 note *was usurious and without consideration and void*—and appeal to the original understanding to pay two per cent. per month, Record, pp. 46 and 47, cited above, and also to the *assurances and promises* referred to, (amended Abstract, 2, Record, 48,) both of which show conclusively that the parties had an agreement to pay two per cent. per month. If we find as in this case that the note for \$2,367 is based on such a computation of two per cent. per month, in the want of all opposing proof, the conclusion is irresistible that usury existed; particularly as for Carter, Wadhams was a competent witness, and might have been called to rebut the usury and show some other or different computation or consideration. The statement of Carter as to the consideration of the note in the answer, (Record, pp. 50 and 51, amended Abst. p. 2,) is *not positive but qualified*, and even if the appellee were compelled to resort to it or adopt the whole answer on this subject, the case would not stand in view of the other facts different. But the consideration being a fact which could not fail to be within the recollection and knowledge of the appellant, he

could have stated it positively and unequivocally—without any negative pregnant as to *two per cent. per month*, or any other *rate per cent. per month*, or any reference “*to honor or equity*” in determining the amount due. It is apparent that it is evasive. It is not probable that he cannot recollect the facts. There is no apology for this evasive manner, or the qualifications or negative pregnant, or the quibbling about “*past forbearance*,” or “*pre-existing debt*.” Taking it as it appears, the statements of the answer, pp. 50 and 51, are to be treated as mere pleading, and if under oath could not be read against us for any purpose, and the denial goes for nothing. 3 *Story's Evidence*, § 287, and cases cited. The truth, if spoken, would be that the note was computed and given according to the previous agreement, *the often-repeated assurances and promises*, and that the true consideration was “*the fair and deserved equivalent for the services, expenses, and past indulgence of Carter*,” for which they had promised in the outset to pay the two per cent. per month, and often had promised and assured the said Carter liberally to pay and reward him. Who would not say that the statement of the answer (Record, 51) but faintly and evasively sought to repel what conscience compelled to declare (record, 46, 47, 48)? The original agreement to pay two per cent. per month stands executed in the note for \$2,367.

But it is said that there is no allegation on which to introduce these admissions of facts prior to March 2, 1855. If this was not asserted so pertinaciously, we would not notice it. Whatever in the answer goes to show that the note for \$2,367 was usurious, void or without consideration, is responsive; and if, as alleged in the answer, any part of it was for past indulgence, we are surely at liberty to show that that *past indulgence* was previously stipulated for at *two per cent. per month*, which we contend is done, by the admissions of the answer, to which for such a purpose we rightfully appeal to sustain the allegation of the bill, and to explain the faint denial of the answer if denial it can be called.

But here come Exhibits A, B, and C.

The only doubt suggested is as to the intent. On these papers it is apparent, taken in connection with the exhibits filed with the answer, and the admissions of the answer. If there was usurious intent as to either note, it applied to all. An appeal to the admissions of the answer, page 51, with the fair equivalent for past indulgence, etc., and its negative pregnant, of rate per cent. per month, etc., and its quibbling as to past forbearance and pre-existing debt, (Record, pp. 51, 52, Amn'd Abstract, 2 and 3,) is unnecessary. Legal interest is the only compensation for such *services, expenses, and indulgence*, allowed by law, and memory may well be at fault as to the particular method of computation when \$2,367 is taken for use of \$4,500 for less than two years.

The fact agrees with the allegations of the bill. Compound the \$3,000 note, and the \$1,500 note from June 7, 1853, at ⁷/₁₀ per cent. per month, with annual rests, then add exchange at ~~six~~ ⁷/₁₀ per cent. on New York for the \$3,000, and you have \$2,366.82. The parties agreed it was \$2,367. This was not merely accidental. There was method in this madness which was substantially admitted by the argument of the appellant, who nowhere denies the correctness of the computation; which madness extended to the computation not only of the \$3,000 and \$1,500 notes, but also to the computation and compounding of the \$2,367 as late as May or June, 1856. See Exhibits A and B, pp. 147, 148, Amended Abstract, pp 4, 5 and 6. By these Exhibits A, B, and C, it most clearly appears that this very liberal and generous and unselfish money lender, who "*volunteered*," as he would have it believed, without "*fee or reward*," "*to carry*" these debts for his disinterested "brother-in-law," and Moses, having been long accustomed to trust to the syren song of "*assurances and promises of said Moses & Wadhams*," continued from June 2, 1853 to March 2, 1856, "*honorably and liberally to pay and reward him, the said Carter*," p. 48, after every dollar on said notes was really paid, and when justly and equitably a large sum was due to appellee, Moses, attempted with the aid of "S.W." this same brother-in-law Wadhams to extort \$2,220.29 from said Moses; and these Exhibits A, B and C, pp. 147—150, not only reveal the plan, but the *modus operandi*, which, if any doubt could

remain, makes the usurious intent not only certain but doubly sure, *ab initio*. The study of these exhibits is commended to the Court. These very remarkable computations, emanating from Carter and his brother-in-law, Wadhams, the quondam clerk and confidential agent of the victim, Moses, show to what extent the madness was carried. Will the Court still lend their aid to it? When will the usurer cry "hold, enough"? What decree, if the Court calls not such proceedings usury, will the Court render for the appellant? for if these proceedings were not usury and legal in 1853 and 1854 and 1855, they are legal and not usury now, and a decree of foreclosure and sale should be made sanctioning them; in which case what will become of subsequent purchasers who bought under the belief that these mortgages and the trust deed were paid as stated in the bill, and without notice of anything but legal rates of interest as the same appeared on the face of the notes.

The intent being thus made plain, the decree for the appellee was fully justified, if there was a balance overpaid upon the collaterals equal at least, with interest upon it, to the amount of the decree, and should be affirmed, unless it appears that it is for too small a sum.

This bill was filed among other things to restrain sale on trust deed, to cancel notes, discharge mortgage and trust deed, and recover balance of moneys of Moses in Carter's hands which are not necessary to apply on the \$3,000 and \$1,500. Carter has applied but \$584.15 on these notes. If, as we claim above, the \$2,367 note is void, he has made no legal application to this day of the balance of the money of Moses in his hands, \$2,435, which he now holds, with interest, to the use of Moses, and subject to the decree of this Court, unless he can show some equitable right to retain it. Indeed, as he had not at the date of Exhibit C, May 21, 1856, applied but \$500, see Exhibit A, the unapplied balance is \$2,519.15.

He cannot retain it on the ground of application of it to any legal note, and he can only apply it to the \$3,000 note and \$1,500 note, for so much as is not paid by Wadhams. If what has been paid by Wadhams more than pays those notes, Moses will recover

back at least the \$2,519.15 and interest. If there is anything left unpaid by Wadhams, Moses' funds in Carter's hands *pro tanto* may now be applied. Let us, then, now inquire how stand the payments by Wadhams.

Here exhibit C becomes important, and is copied in full:

CHICAGO, May 21st, '56.

Mr. H. P. MOSES.

Dear Sir:

Mr. Seth Wadhams has paid one-half of the \$3,000 note, also one-half of the \$1,500 note, which I hold against you and Mr. W., and the same is endorsed on the notes; he has also paid the interest, as was agreed by the parties on the 2d March, 1855.

Now, sir, the note which you and Seth gave me March 2, '55, for \$2,367.00, is paid by money which I have received on notes which you put in my hands for collection, (over) also interest on the same agreeable to the understanding had at the time the note was given.

Now, taking this together with the figures I gave S. W., which I suppose you have, the whole matter is before you, and I hope you will not allow the matter to run much longer, for I am suffering for the want of the money, and am compelled to pay more interest than I receive from you.

Yours truly,

ROSWELL CARTER.

Whatever construction is given this letter, Carter thereby elects to apply Wadham's payments in liquidation of the \$3,000 and \$1,500 notes and the interest thereon as agreed, at 2 per cent. per month, March 2, 1855, the whole of which he says was paid by Wadhams. Now, applying these payments, principal and interest, to the \$3,000 and \$1,500 notes, and Carter is equitably entitled out of the fund of Moses, to but enough to supply the deficiency of these payments, to make up all that is equitably due him, to-wit: the principal and interest on the \$3,000 and \$1,500 notes, accord.

ing to their tenor and effect. It is here worthy of remark that the holding the \$2,367 note void and of no effect, in no wise affects the equitable or even the legal rights of Carter, as the endorsement of the interest would go for nothing, as stated above, 12 *Pick*, 128, 129, 13 *Wend.*, 511, 512, 5 *Wend.*, 597, 598, by which it appears that a subsequent usurious contract will not affect the original contract, which still remains good at law and can be enforced.

Such construction should be put on the letter as will not allow Carter to get more than the amount equitably due him. We are entitled to the full import of the language of that letter in a case of manifest oppression like this. Wadhams' claims are merely buncombe, *make weights*, are not proved, nor does he appeal, and thus only show the *animus* of the man who conspires to oppress his former employer. Neither he nor Carter should profit by this infamous transaction.

The allegation in the bill that *at least* \$3,444.75 have been paid by Wadhams (see Record, page 15), was made with a view to the introduction of evidence of any sum that had been paid by Wadhams, more or less, as well as to draw out the facts as to the payments, and is justified by equity pleading, which will admit even of alleging fiction, for the purpose of eliciting the fact. The true construction of the letter (Exhibit C) will justify the finding that Wadhams has paid a very much larger sum than \$3,444.75, viz: the half of the \$3,000 note, \$1,500, and the half of the \$1,500 note, \$750, and interest on both notes at 24 per cent. per annum, if that was the interest agreed, and the bill alleges (Record pp. 9, 10, 11,) that the \$3,000 and \$1,500 notes had been *fully paid*, which will justify the proving of any payments, however large, by any party.

IV.

This Court will hear the cause *de novo*, and as a Court of Chancery, having obtained jurisdiction, will retain it to do complete justice between the parties, and enter such decree as the Court below should have entered. It will not remand the cause, where the decree as in this case will, when the construction of "*Exhibit C*" is given,

be a mere matter of computation, and thus subject the appellee to further oppression, expense and delay.

V.

The allegations of the bill are sufficient whether the Court find the usury or under the authorities cited find the \$2,367 note void and without consideration, as alleged in the bill. (Am'd Abstract, p. 2, Record, 15.) And in this case, after the payment of the \$3,000 note and \$1,500, Carter will hold any balance in his hands on the collections of the collaterals in trust and to the use of the appellee, as alleged in the bill. Record, pp. 14, 19, Am'd Abs. p. 2.

VI.

The cases cited, 24 *Ill.*, 381, 28 *Ill.*, 519, 29 *Ill.*, 184, have no application, being predicated on the statute of 1857.

VII.

Appellee claims an allowance for the additional abstract—the plaintiff's abstract having omitted those matters on which appellee relied, and being *passim* partial and incorrect. See note to Am'd Abstract, p. 6.

VIII.

Perhaps it will be expected that we should explain Exhibits A and B, the set of figures referred to in letter C.

Exhibit A is a computation of one-half the \$750 after March 2, 1855, at two per cent. per month, (with rests at date of payment.) the interest agreed upon March 2, 1855, and also of the half of \$3,000 note, with the like interest, to which the amount from the half of the \$1,500 note is brought down and added, claiming as due June 2, 1856, \$2,220.29 on both notes.

The figures on the right hand side appear, as will be seen, to have some relation to the subject matter, but what, if any, application they have, it is for the court to determine.

Exhibit B shows, *first*, the application of the moneys collected on the collaterals, and a balance at that time in the hands of Carter of \$84.15, which is deducted in the computation Exhibit A, to which it is carried. *Second*, it shows moneys collected on the collaterals to apply on Moses and Wadhams' notes, but which, if the \$2,367 note is void, have not been applied, except as to the sum of \$584.15, and are now in the hands of Carter to apply so far as necessary, the balance of which, with interest, the appellee claims. The court below respected that claim, and allowed it to the extent of \$570. This decree we claim is too little, and should be increased by this Court. *500**

GEO. HERBERT,

Counsel for Appellee.

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

ROSWELL CARTER, SETH WAD-
HAMS, HENRY HOWLAND, AND
J. YOUNG SCAMMON,
Appellants, } In Chancery.
vs.
HIRAM P. MOSES,
Appellee. }

POINTS AND AUTHORITIES.

I.

The facts admitted by the answers.

II.

The appellee might safely have submitted his case on bill and answers.

I. The transaction upon the pleadings is usurious.

Ferguson vs. Sutphen, 3 Gilm., 570. 2 N Hamp 339
Shirly vs. Welty, 19 Ill., 625. 3 N Hamp 186
Earl vs. Mitchell, 22 Ill., 532.
Safford vs. Vail, 22 Ill., 327.
Dooly vs. Stripp, 26 Ill., 89.
Delano vs. Rood, 1 Gilm., 694-698.
Fleming vs. Jenks, 22 Ill., 475.

Stat. 1845 and Stat. 1849 on Interest.

The transaction is all per to Stat 1857.

II. Decree releasing Trust Deed and Mortgage is right, if, as appears by the pleadings, the debts secured are paid.

Heacock vs. Swartout, 28 Ill., 298.

III. The decree for the money was right.

Johnson vs. Thompson, 28 Ill., 357-359.

Dooly vs. Stripp, 26 Ill., 89.

IV. *Lawrence vs. Cowles*, 13 Ill., 578, has no application..
Osborn vs. McCowan, 25 Ill., 219.
Bishop Hill Colony vs. Edgerton, 26 Ill., 55.

V. The intent gives character to the transaction, and stamps it as usury.

Osborn vs. McCowan, 25 Ill., 219.
Bishop Hill Colony vs. Edgerton, 26 Ill., 55.

VI. The consideration of the \$2,367 note, in the whole, usurious; the pretended forbearance to foreclose a mortgage, a mere device to cover usury.

III.

The case on the proofs, *the answers not being under oath*.
A party is only bound to prove what is not admitted in the answer.

Gresley's Ev., 230, 237, 238, 26 Ill., 89.

Willis vs. Henderson, 4 Scam., 20.

Harris vs. Reece, 5 Gilm., 213.

Kelley vs. Chapman, 13 Ill., 533.

If there were any doubt on the pleadings, every doubt is dispelled on examination of the Exhibits "A," "B" and "C," and the Exhibits of appellant.

The intent the only question at issue.

The computation by which the sum of \$2,367 was arrived at, March 2, 1855, is made up on basis stated in the bill.

Even if not so made up, it was agreed upon, as the 2 per cent. per month originally stipulated for, or "*the honorable and liberal pay and reward assured and promised many times between June 2, 1853, and March 2, 1855,*" p. 48.

The intent being thus made plain, the contract is usurious, upon the authorities cited above, and the decree justified.

The basis of computation of the decree, as to amount, is erroneous.

The statements of the letter Exhibit "A," page 150, are to govern, rather than the endorsements on the notes, which are made with intent to deceive and conceal the real usury of the transaction.

The construction of Exhibit "C" is unequivocal, and the court will not torture the natural import of its language to favor either Carter, the usurer, or Wadhams, the real instigator of this hard and unconscionable transaction, and the *quondam* confidential clerk of the victim, Moses.

The Court in Chancery, having obtained jurisdiction, if there are sufficient allegations in the bill, will retain it to do complete justice between the parties, and will enter such decree as will fully dispose of the whole subject matter between the parties.

And here the importance of the allowance of the assignment of the error made by the appellee appears.

The case neither on the allegations nor the proofs stands solely on the ground of usury.

Carter's equitable claim is only for the \$3,000 note and \$1,500 note, and interest according to their terms.

12 Rec 128, 129; 5 Mass 597, 598; 13 Mass 511, 512

Treating the \$2,367 note as *usurious and without consideration and void*, as alleged in the bill, and then applying the payments made by Wadhams, according to letter Exhibit "C," Record, p. 150, will do complete justice to Carter, giving him all he is entitled to.

*17 Mass. 281. 114 Black 464, 9 R. 399
Stat 1845 Ch. 54, § 4 & 6.*

Statement Bill

We ~~claim~~ that some sums exceeding \$3,444.75 in all have been paid in this transaction, by Wadhams, before anything was paid by Moses, or legally applied from the collaterals turned out by Moses; and that after deducting these payments by Wadhams, the balance is to be paid by Moses out of these collections. And after applying what is necessary to discharge the \$3,000 and \$1,500 notes not paid by Wadhams, a decree should be entered for the fund in the hands of Carter, which he holds, as alleged in Bill, equitably in trust and for the use and benefit of Moses, with interest. Record, p. 19.

Some questions may arise on the priority of application of the payments made by Wadhams, but in this regard the appellee contends that the allegations of the bill are sustained on the proof, and particularly by the language of Exhibit "C."

This language will give a very much larger decree for the appellee, Moses, which, under the constant practice of this court, it will enter.

IV.

There is no necessity for remanding the case. The principle being established on which the decree should be based, the result is a mere matter of computation, and the court will not subject the appellee to the hazard of sending the case back, when they can enter its *quietus* here, and prevent the possibility of further oppression, expense and delay.

V.

The allegations of the bill sufficient.

See amended abstract.

VI.

Cases cited by appellant, 24 *Ill.*, 381, 28 *Ill.*, 519, 29 *Ill.*, 184, inapplicable, the whole transaction being prior to the law of 1857.

GEO. HERBERT,

Attorney for Appellee.

*Attention is called to the note
at end of amended abstract
claiming cost of it should be allowed.*

¹⁷⁷
Supreme Court
Third Grand Division
Ronald W. Carter,
vs.
Herman P. Miller.

County & Authorities
for appellee

Filed May 11, 1864.
L. Island
Ch.

Geo. Heberh.
Solicitor for appellee

Russell Carter et al. appellants
Hiram P. Mores, appellee.
Supreme Court of Illinois
Third Grand Division
April 7, 1865.

To The Honorable judges of the Supreme Court of Illinois

And ^{now} the said Hiram P. Mores appellee in the above entitled suit represents that the opinions filed in said cause are conflicting and that as he is advised the real ground of the original bill of complaint is misapprehended and lost sight of in the opinion which is supposed to be the controlling opinion or the opinion of a majority of the court. He therefore prays your honors to grant the said original complaint to the appellee a rehearing of the said cause at the present term of this Court.

Respectfully
Geo. Herbert

I certify that there are probable grounds for granting a rehearing in the above entitled case, and direct a stay of further proceedings herein, until the session of the the Supreme Court at Ottawa to commence on the 1st Tuesday of April 1865, at which term said petition must be presented.

March 20, 1865

C. B. Lawrence
Judge del. del.

Russell Carter vs appellant
Hiram P. Moore appellant.

Superior Court of Illinois
Third Grand Division

The appellant above named will take
notice that within the first ten days of the term of said
Court next to be holden at Ottawa within & for said
Third Grand Division the said appellee will apply
for a rehearing of said cause or motion by the
within petition.

Geo. Herbert Appellee Solicitor.

To A. C. Wolcott Esq.

Solicitor & Counsel for appellant.

I hereby admit notice by copy of the
within petition & notice
Chicago March 21, 1865.

Wm. H. Hasty Secy.
for Mr. Carter

117
Superior Court of Illinois
3rd Grand Division
Russell Carter
vs Appellant
Hiram P. Moore
Appellee.

Petition for Rehearing
and order thereon.
And notice to appellee.

Geo. Herbert
Solicitor for Appellee.

Process I. The allegation in Complainant's bill is of usury after March 1855 and not before. The Complainant does not base his claims to relief upon the Statute but upon ^{the broad} general principles ^{of equity} he claims no forfeiture under the Statute. Under these circumstances, it seems to me, fact and equitable that the respondent should be allowed to ~~take~~ claim and receive interest at ten per cent up to 1855 and after that six per cent. Equity requires that Complainant should pay the legal interest claiming, as he does, equitable relief from an usurious ^{contract}, and not a forfeiture. He who asks equity shall be required to do equity, is a familiar maxim.

The decree will be vacated and the cause remanded with directions to the Superior Court, to ascertain the interest on the note for two thousand dollars, and for fifteen hundred dollars up to March 1855 at the rate of ten per centum per annum, and after that time, at the rate of six per centum per annum. The note for two thousand then denominated fifty seven dollars being considered paid or given without consideration or for usury. Should the payments made by Moody and Adams, exceed the amount of the two notes, paid, added with the interest thereon computed as directed, then a decree will ~~be~~ pass for Complainant for such balance and the

Two opinions were prepared in this case
presenting different views. The opinion of
Chief Justice Walker was that finally
adopted by the court and concurred in
by all the members of the court. The
other opinion was left by mistake in the
files, and should not have been removed
by the clerk.

deed of Trust and Mortgage cancelled. If
the balance shall be in favor of the defend-
ant on the principles we have stated, then
a decree to pay in his favor for such
balance and the deed of Trust and Mort-
gage remain as security to be executed by

177-

Enter

as

Moses

Opinion by

Reese Jr.

This opinion was
never agreed upon
by the Court; ~~but~~
was left among
the papers & recorded
by mistake, as
shown by the in-
correct explanation
written by Judge Lawrence

Recorded D. 12 B. 356
compare

THE SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

ROSWELL CARTER,

vs.

HIRAM P. MOSES,

APPEAL

From the Superior

Court of Chicago.

PLAINTIFF'S BRIEF AND POINTS

CHICAGO :

THE TIMES STEAM PRINTING HOUSE, 74 RANDOLPH STREET.

THE SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

ROSWELL CARTER,

VS.

HIRAM P. MOSES.

} *Appeal from the Superior
Court of Chicago.*

PLAINTIFF'S BRIEF AND POINTS.

I.

1st. As to the usury charged in the bill.

The allegations in the original bill upon this point are, in substance, that Moses and Wadhams, on *March 2, 1855*, corruptly and unlawfully *agreed* with Carter to pay him as interest on said \$3,000 note, from its date, *March 2, 1853, up to*, (and not beyond), *March 2, 1855*, at the rate of two per cent. a month; and also to pay him as interest on said \$1,500 note, from *June 7, 1853, up to* (and not beyond) *March 2, 1855*, at the rate of two per cent. a month, *for the forbearance of said sums from the dates aforesaid up to* (and not beyond) *March 2, 1855*, and, having computed the interest at that rate upon said sums *for the periods aforesaid*, with annual rests at what is known as compound interest, they, said Moses, Wadhams and Carter, *agreed* that it was \$2,367. Whereupon

they, Moses and Wadhams, made and delivered to Carter said \$2,367 note, alleging that *said forbearance* was the only consideration of said note for \$2,367, and that such *interest*, for the *time aforesaid* was, and is, by the statutes of Illinois *usurious*, and that said agreement, made March 2, 1855, to pay such interest, *for the forbearance of said sums, for the time aforesaid*, was corrupt, *usurious*, &c. Record pp. 11 to 15.

There are no allegations that any other agreement, express or implied, has ever been made in regard to interest on, or forbearance of said sums mentioned in said notes, or either of them.

It is respectfully submitted that these allegations do not make a case obnoxious to the laws of the State of Illinois against usury.

The forbearance alleged had already expired and passed away, before the alleged usurious agreement was made or conceived. It could not, therefore be given again for any consideration or promise whatsoever. All laws against usury have reference to loans "in presenti," or to forbearance "in futuro," of past loans, and not to past loans or past forbearance.

All contracts and agreements must, in their nature and essence, have reference to the future; acknowledgements and vouchers may be given as evidence of what has already past, but for a man to agree that he had done nothing (forborn) IN THE PAST, would be a mere nullity, as containing no element of a legal contract.

The sole object and spirit of our usury laws is to protect the necessitous borrower or debtor against his own improvident acts or promises, induced by such necessity, whereby he gives, or promises to give, an unconscionable consideration, either for the loan of money or property for a specified length of time to come, or for the forbearance, for a specified time to come, of the

creditor's right of action against him upon a prior loan or a pre-existing debt. But the *allegations in this bill* wholly fail to show any such relation and agreement between these parties. It is true that complainant *alleges* that Carter, about that time, "*threatened*" to take possession of and sell the lands *pledged* for the payment of the money secured by said \$3,000 note, but there is *no allegation* that he, Carter, *agreed to forbear* for a single moment his right of action on said notes, or either of them, or to *forbear for any length of time* whatever to sell said premises by virtue of said trust deed, but, on the contrary, there are *other allegations* in said bill which *conclusively show* that *no further time* was asked or expected on said loan notes, for it is therein alleged that Wadhams, at or before the date of said alleged usurious agreement, March 2, 1855, had already paid Carter one-half of each of said notes; and that he, Moses, at that time, assigned to Carter bank checks and notes to the amount of \$4,888 81, with an expressed agreement that he, Carter, should immediately collect and apply the same, so far as should be necessary, in payment of the balance, (the other half,) then due thereon, and that he, Carter, *did shortly* thereafter, in fact collect from said assigned notes, *more than enough to pay in full* such balance on said loan notes. Record pp. 15 to 20.

Wadhams also, in his answer, *denies that further time or forbearance* was agreed to be given upon said loan notes. Record p. 68.

The only *items of evidence* in the case, either direct or inferential, *bearing upon the question of usury*, are the pencil marks and letter of Carter to Moses. Record p. 148 to 150.

But these items of evidence have exclusive reference to interest computed on sums *from and after* March 2, 1855 (the date of the alleged usurious agreement) and to nothing else. Had there been any allegations in the bill, that an agreement had been made on March 2, 1855, to *forbear* said loans, or either of them, for any *specified length of time from and after that date*, this evidence would have been *pertinent*, to establish such allegations. But there are *no such allegations or charges*

in the *bill*, and the only allegation in said bill to which this evidence is in any way pertinent, are the *allegations of payment* of said notes.

"Allegations and proofs in chancery must correspond ; and however clear the evidence may make a case in favor of a complainant, unless the bill has proper averments, he cannot recover."

21 Ill. R., 17.

If the complainant, Moses, or his solicitor, relies upon the *statements of Carter or Wadhams* in their respective answers touching a PROPOSAL made by Moses and Wadhams to Carter, at the time the said 3,000 note was made and delivered (record pp. 46, 47, 48, 64, 65 and 66,) as evidence of an usurious agreement, he is *equally at fault for want of any such averments in his bill*. The only agreement of which he complains is one which he alleges was made and entered into on March 2, 1855. He makes no complaint in regard to any agreement or proposition made on March 2, 1853.

But, had there been any *averments* in the *bill* to which *those statements* would, or might have been *responsive*, yet the *statements themselves* do not make a case that is in any sense obnoxious to the laws of Illinois against usury.

The substance of *those statements* is, that Carter borrowed the \$3,000 *for them* (Moses and Wadhams,) *without fee or reward*, for a period of 90 days from and after March 2, 1853, upon their positive promise to repay the same to him *without defalcation*, within said period of 90 days. And in the (possible) event that they should not repay the same in said 90 days, they (M. and W.) *proposed*, or (to put it in the *strongest light*) *agreed* to pay him, Carter, 2 per cent. a month until the same should be fully paid.

That proposition, had it been reduced to a formal and written agreement, or *incorporated into the note itself*, would not have been, in *letter and form*, *usurious* under the laws of Illinois.

13 Ill. 577. 25 Ill. 218. 26 Ill. 54.

Was it the *intention* of the *parties* in that *proposition* or (supposed) *form of agreement* to *EVADE* the *laws of Illinois against usury*? The only *evidence* of *INTENTION* in the matter, is derived from the *statements themselves*, which positively *deny* any *such intention*, and the character and calling of the parties. Moses with seeming impartiality *groups himself* with Carter and Wadhams, in a *general and sweeping charge of fraud and violence against the statutes of usury*, but it is not sustained by a particle of proof, and the *presumption* is that they are *all* of them *loyal and law-observing men*. As a matter of fact, Carter is not, nor was he at that time, a *money-lender*, nor had he at that time, as he alleges in his answer, any money to loan, but he was then, and still is, a *wool-merchant* in the city of Chicago, a business that required and requires all the money that he could, or can control, to purchase, every summer, as much of the wool-crop of the country as he could obtain, immediately after the clip, commencing about the first of June, in each year. Hence the *propriety and necessity*, on the part of Moses and Wadhams, of *their promise faithfully and without defalcation to pay said \$3,000 in 90 days*; for at the expiration of that period, Carter *himself* would become a *heavy borrower* in the *money market* to *carry on his season's business*. Consequently, it would be ruinous to him and his business to suffer his own paper to be protested. The fact of the endorsement upon said note, at its date of 90 days interest thereon, (see record page 137,) and the further fact, (see record page 138,) of his delay for 90 days, in filing said chattel mortgage for record *strongly corroborate* said statements of Carter and Wadhams in their respective answers, on that point, and also of the earnest and honest *INTENT and expectation* of *all the parties* that said \$3,000 *should and would be paid at the expiration of 90 days after the date of said note*, and consequently as strongly negative, the *inference* of an *INTENT* of the parties to *cover up an usurious transaction, and evade the statutes against usury*, for if the *motive and intent* was to *evade the usury laws, why endorse the 90 days interest upon the notes, and why defer for so long a time, to fix the chattel security by putting the mortgage on file pursuant to the directions of the*

statute. That is not the way *money sharpeners* do their business, but it was *just the way* for *Carter* to do in pursuance of his alleged friendly proposal to *Moses and Wadhams* "*to get the money for them if he could without fee or reward.*" Hence his formal endorsement (without receiving the same) of 90 days' interest upon the note at its date; for *Carter* frankly states in his answer, (see record page, 45, 46,) that he got from *Swift* and paid to *M. and W.* \$3,000, less 90 days interest thereon, which was reserved by *Swift*.

The said statements, therefore, of *Carter* and *Wadhams*, in their respective answers, even had they been responsive to any material allegations in the bill, do *not show*, either in form or intent, an *usurious transaction*. The question of usury, then falls back upon the *allegations* and *proof* of the complainant, and stands thus: The *allegations* charge an agreement, made March 2, 1855, to *pay usury* for *forbearance* on certain specified sums, before, and up to, and not after, the date of the alleged agreement. The *proof* shows (if anything) simply a computation in figures at 2 per cent a month on a part only of the sums specified in the charges for periods of time from and after March 2, 1855, the date of said alleged agreement, to May 21st, A. D. 1856.

There are no *allegations* to meet this proof. There is no proof to meet those *allegations*. Nor are the *allegations* themselves repugnant to the laws of the State against usury.

II.

The finding of the court below, that said notes for \$3,000, and for \$1,500, and for \$2,367, so far as the same had any legal foundation, *had been fully paid*, and that the balance which was paid thereon was paid out of moneys belonging to *Moses*, (See record page 155) was against the law and the evidence in the case.

There is no *allegation* in the bill which in the least *impugns* the legal foundations of said notes, or either of them, unless it be the aforesaid allegation of *usury*.

The averments in the bill, in regard to the *time and amount of payments made by Wadhams* to Carter, and Carter's endorsements thereof on said notes; and also in regard to the *time and amount of collections made by Carter from said assigned notes, and his endorsements thereof* on said \$3,000, \$1,500 and \$2,367 notes, are *on information and belief*, and refer the court to the answer of Carter and Wadhams for the full and exact particulars thereof. See Record p. 15 and 16.

Those answers, both, positively state that Wadhams paid \$1,650 to Carter on March 2, 1856, to be applied on said \$3,000 note, and that Carter endorsed the same thereon at that date, and that Wadhams also paid, March 9, 1855, \$750 to Carter, to be applied on said \$1,500 note, and that Carter endorsed the same thereon accordingly, and Carter further states in his answer the exact time and amounts of his collections upon said collateral notes, and the endorsements thereof upon said secured notes, and that the last of his collection upon said collateral notes was \$584.15, which was May 7, 1855, and the same was endorsed, as at that date, upon said \$3,000 note, and upon which said note there is still a large sum due, (See Record pp. 54, 55, 69), and those statements are fully verified by the exhibits called for by the said Moses, and are in evidence by stipulation, and show conclusively, in opposition to said finding by the court below, that said notes are not fully paid, and that (in any aspect of the matter), if any balance has as yet been paid on said notes it must have been by the last payment thereon, which was made, as above shown, by Wadhams, in said \$1,650 paid by him, on the 2d of March, 1856, and nearly a year after the last collection and endorsement made by Carter from "funds belonging to said Moses;" wherefore, if any one is entitled to recover any surplus which may have been overpaid to Carter, on said notes, it is Wadhams, for it was he who made such overpayment.

The deposition of Walkers, offered by Moses in support of the allegations of payment and surrender of said notes to Wadhams, is clearly incompetent so far as the witness gives the statements of Wadhams, one of the payors of said notes, in

regard to their having been paid; and it really amounts to nothing more than the opinion of the witness, as to his client's title to some of the land embraced in this suit; yet if *Wadhams' statement* were admissible upon that point, *against Carter*, they *in fact show that said notes were not paid.*

III.

But suppose said transaction was *rightfully decreed* to be, and have been, *usurious*, and that the *legal amounts due* on said notes have *all of them* been *fully paid*, (as the Court below found in said decree,) yet the rule is *well settled* by this Court, that when an usurious contract has been once *fully paid*, the party paying it has no *remedy* to recover back the usury.

24 Ill., 381; 28 Ill., 519; and 29 Ill., 184.

Wherefore the *decree below*, that *Carter* should *pay back* to *Moses* \$570, of the *alleged usury* before paid, was *clearly erroneous.*

IV.

The appellant was entitled below to the specific relief prayed for in his *cross bill*.

The circumstances under which said Trust Deed and Mortgage were executed; and the consideration and record thereof respectively, (the *mortgage having priority* by virtue of its having been given to secure the *purchase money* of the land, and the *trust deed having priority of record*,) necessarily cause each, to *cloud any title derived* from the *other*, which cannot be removed without a *judicial finding of facts* in relation to the same, and *decree thereon*, or else by a full release from the parties to whom they were respectively given.

The relief sought is therefore necessary to avoid multiplicity

of suits between the same parties ; and is also for the best interests of *all* the *parties*, in consideration that the property would sell for a better price upon the adjustment of *both*—than it would upon the adjustment of *either one* of said liens.

A. E. WOLCOTT,

Solicitor for Plaintiff in Error.

177-173

Quater
by
mosses }

~~pepps~~ Angewand

Since May 12, 1864
Leland etc

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

ROSWELL CARTER, ET AL, }
vs. } *Appeal.*
HIRAM P. MOSES.

ADDITIONAL ABSTRACT.

Record, p.

11 (186 Bill states "that appellant held \$1,500 note till May 21, 1856, and
13 until it was fully paid, as stated below:" "That the said Moses not being
able to pay the amounts actually due on said notes, (the \$3,000 note
and \$1,500 note,) according to the tenor and effect thereof, then and
there (at Chicago, March 2, 1855,) agreed to enter into, and did enter
into (and agree to and with the said Wadhams, in) an usurious and cor-
rupt contract, wherein and whereby, for the forbearance of the money
secured by said notes, including the interest reserved by said notes, they,"
(the said Moses and Wadhams,) "would pay at the rate of two per cent.
per month, or twenty-four per cent. per annum, to be compounded with
annual rests, at what is known as compound interests; and after the
computation of said interest, as aforesaid, the said Carter, and the said
Moses and Wadhams, agreed that it was twenty-three hundred and sixty-
seven dollars; and thereupon the said Moses and Wadhams made their
note, promising to pay said \$2,367," but whether on interest or not, or at
what interest, is unknown to complainant, and he calls for production of
note.

14 Bill shows "that the *said* contract and agreement, whereby Moses
and Wadhams agreed to pay two per cent. per month, or twenty-four
per cent. per annum, for the use and forbearance of the sums of money
mentioned for the time the money had been loaned by said Carter to
said Moses and Wadhams, to-wit, from the 2d of March, 1853, to the 2d
of March, 1855, was more than the highest legal rate, and was usurious;
and that the contract aforesaid, whereby the said Moses and Wadhams
agreed to pay two per cent. per month, or twenty-four per cent. per an-
num, for the time said Carter had held the Flagler, or \$1,500 note, from
about June 7, 1853, to March 2, 1855, was usurious, and provided for
the paying and receiving a greater rate for the forbearance and interest

of money than was allowed by law; and thus the last note for \$2,367, which was, on no other, different or further consideration than such usurious and unlawful contract, was also, without consideration, usurious and void, and against Moses and Wadhams of no effect."

15 Bill charges that all the said payments made by said Wadhams, of \$750, \$1,500, and \$1183.50, or thereabouts, amounting to at least \$3,444.75, "were paid on, or about, or before March 2, 1855, and before any payments had been made thereon by Moses."

19 Bill states that said \$3019.15, collected prior to May 8, 1855, on said collaterals, together with the sums paid by Wadhams, greatly exceed the amount equitably due said Carter May 21, 1856, on said \$3,000 and \$1,500 notes, and were, by agreement, to have been endorsed, so far as necessary, thereon, and charges that *the balance of said money, after the payment of the \$3,000 and \$1,500 notes, together with the uncollected collaterals, if any there be, the said Carter held "equitably for the use, benefit and in trust for the said Moses, and Carter ought to pay and return the same, together with interest, to said Moses."*

31 Prays special relief and perpetual injunction, "or that" the complainant "have such other further or different relief as to equity," &c.;

45, 48 Carter's answer states Wadhams is Carter's brother-in-law; also "that the said Carter, at the earnest solicitation and request of the said Moses and Wadhams, upon their often repeated assurances and promises, and liberally to pay and reward said Carter therefor, did thus carry said original loan for them, at an average rate of damage and expense to Carter of more than 2 per cent. a month, for a period of two years, for their exclusive use and benefit." Also, that during this time "*the land was doubling in value every six months*:" that having said respectfully to Moses and Wadhams, "*that they must not ride a free horse to death,*" "Moses and Wadhams acknowledging their obligations for past assistance and forbearance of Carter, and their great profit and benefit," did, of their own accord, and not at the solicitation or demand of the said Carter, make and deliver to him the said \$2,367 note, the consideration thereof, according to Carter's "best recollection and belief," being the
50 endorsement of the receipt of the legal interest on the \$3,000 note to March 2, 1855, and on the \$1,500 note to March 8, 1855, and a promise to forbear to take possession and sell under the chattel mortgage, and "also for what they, said Moses and Wadhams, at that time regarded as a fair and deserved equivalent for the services and past indulgence of Carter toward them, the said Moses and Wadhams." "But whether said amount of \$2,367 was, in any part thereof, ascertained by computing any particular sum at 2 per cent. a month, or at any other rate per cent. per month, Carter don't know, and cannot, therefore, admit the same."

51

But Carter "avows that whatever the mode for obtaining the said amount was, or may have been, no part or portion of the consideration of the \$2,367 note was for usurious interest on any sum of money, or for forbearance of any pre-existing debt, and that the amount did not exceed what was in honor and equity due from said Wadhams and Moses to said Carter."

Wadhams' answer states that Wadhams was, at the time of the negotiation of the \$3,000 loan, "*Agent and outside manager*" for Moses; states, also, "that the said plaintiff (Moses), and the said defendant (Wadhams), assuring said Carter that the said sum of \$3,000 should be repaid in ninety days, if they could do it, and that if they should fail to pay the same in ninety days, that they would pay him, said Carter, 2 per cent. a month thereon, if he should require it, until the same should be fully paid; and the said Carter, in pursuance of said understanding and agreement, as soon as said \$3,000 note was made, endorsed a receipt of the interest thereon for ninety days."

137

"EXHIBIT No. 1."

"\$3,000.

CHICAGO, March 2, 1853.

"Six months after date, for value received, we promise to pay Roswell Carter, or order, the sum of three thousand dollars, with interest at ten per cent., this note being for money loaned.

"H. P. MOSES,

"SETH WADHAMS."

138

Warrant to confess judgment.

139

Endorsements on Note.—"Without recourse; Roswell Carter." "*Chicago, March 2, 1853.* Interest paid on the within for ninety days." "Received on this note interest to date March 2, 1855." "Received on this note five hundred dollars; ALSO, EIGHTY-FOUR 15-100. ⁵⁰⁰84.15. *Chicago, May 7, '55.*" "Received of Seth Wadhams, on this note, sixteen hundred and fifty dollars—\$1,650. March 2, 1856."

"EXHIBIT No. 2.

"\$1,500.

CHICAGO, March 8, 1853.

"Two years after date, for value received, we, or either of us, promise to pay to Frederick T. Flagler and Charles D. Flagler, or order, the sum of fifteen hundred dollars, with interest at six per cent. per annum.

H. P. MOSES,

"SETH WADHAMS."

Endorsements.—"Frederick T. Flagler, Charles D. Flagler." "Received the interest due on this note. March 8, 1855." "Received of Seth Wadhams, on this note, seven hundred and fifty dollars. March 9, 1855."

149

Warrant to confess judgment.

"EXHIBIT No. 3.

142 "2,367.

CHICAGO, March 2, 1855.

"Ten days after date, for value received, we, or either of us, promise to pay to the order of Roswell Carter, at his office in Chicago, the sum of twenty-three hundred and sixty seven dollars, *with interest at and after the rate of ten per cent. per annum, being for money loaned.*

"H. P. MOSES,

"SETH WADHAMS."

143 Power to confess judgment.

144 *Endorsements.*—"Received on this note two hundred and forty-five 26-100 dollars, (\$245.26.) Chicago, March 2, 1855." "Received two hundred and fifty-four 74-100 dollars. March 5, '55. \$254.74." "Received five hundred dollars on this note. \$500. April 14, 1855." "Received on this note fourteen hundred and thirty-five dollars. Chicago, May 2, 1855. \$1,435."

147 "EXHIBIT A."—Filed January 3, 1863. (In Carter's handwriting. *See stipulation, p. 151.*)

Half of \$1,500 note,	\$750	2220.29	
Int. at 2 per cent.,	2	163.85	
			1500
	1,500	580.44	750
	12		
		2225	2250
1 y.,	180.00	584.15	500
	750		
	930	1630.85	
	2	1500	
		1183	
	1,860	750	
	3 mos.,		
		3433	
	55.80		
	930		
Due June 2, '56,	\$985.80		

Half of \$3,000 note,	1,500		
Indorsed May 7,	500		
	<u>1,000</u>		
Int. on \$500 from March 2, 2 mos.,	20		
	<u>10.20</u>		
	2		
	<u>20.40</u>		
	12		
	<u>244.80</u>		
Less 2 mos int. on \$20,	.80	272 $\frac{1}{4}$	272 $\frac{1}{4}$
	<u>244.00</u>	40	40
	1,000	<u>10890</u>	<u>10890</u>
			4
Due March 2, '56,	1,244.00	329422	
3 mos., to June 2	74.64	4	43560
	<u>1,318.64</u>	<u>1317688</u>	<u>1500</u>
Bro't down,	985.80	2	1183
	<u>2,304.44</u>	<u>1317690</u>	<u>83</u>
Less	84.15		2220
	<u>\$2,220.29</u>	1500	1183
Due June 2d, '56		1183	
		750	3403
		<u>3433</u>	<u>1500</u>
			750
			<u>5653</u>

"EXHIBIT B;" filed January 3, 1863. (In Carter's handwriting.
See stipulation, p. 151.

1855. March 2. Note for	2367
" " 2. Indorsed,	500
	<u>1,867</u>
April 14. Indorsed,	500
	<u>1,367</u>
Add 43 days' int. on \$500,	14.32
do 60 d'ys' on \$1,367	54.68
	<u>1,436.00</u>
Indorsed on note May 2,	1,435.00
	<u>1.00</u>
Mistake,	
Indorsements,	2,435
May 7, on note,	500
	<u>2,935.00</u>
amt rec'd,	3,019.15
	<u>84.15</u>
In my hands, May 7, over in-	
dorsements,	84.15

Money received to apply on H. P. Moses' and Seth Wadhams' notes :
1855.

March 2.	2 Checks \$110.08, \$135.18,	\$245.26
" 5.	of Abbott & Kingman's note,	254.74
" 23.	P. F. Rofinot's note,	90.45
	Int. on same,	50
		90.95
April 3.	Abbott & Kingman's note,	254.74
" 14.	Wilson & Conant's,	250
	Int. on same,	2.76
		252.76
" 21.	Kenedy & Stockbridge, on note,	205.05
	Int. do.,	5.34
		210.39
" 24.	J. Early,	60.
" 25.	P. F. Rofinot,	60.56
	Int.,	.62
		61.18
May 2.	John S. Reed,	200.
"	Scripps, Bross & Spear,	583.30
	G. Herbert & Co.,	350.
		2,563.32
" 5.	Abbott & Kingman,	258.55
"	S. F. Sutherland,	197.28
		3,019.15

" CARTER."

150 "EXHIBIT C" is abstracted by plaintiff in error, (*Abst.*, p. 10,) and is also in Carter's handwriting. *Stipulation*, p. 151.

Joinder in error.

164, 165 Cross error. That decree was for too small a sum.

N. B.—*The Abstract by plaintiff in error only gave Abstract of Bill and plaintiff in error's case, with a view to his argument, and an index of the rest, and compelled this additional abstract, which should be at the cost of the plaintiff in error, not coming within the rule.*

*Geo. Herbert
Solr for Appella*

¹⁷⁷
Supreme Court.
Third Grand Division
Roswell Carter
vs
Hiram P. Moses.

Assignee of Abigail
by appellee.

Filed May 11, 1824
L. Leland
Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Record 13 page 527

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

Present, The Honorable

John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Vaughan Higgins

Grant Goodrich

Judges.

Joseph Knox

Prosecuting Attorney.

David S. Hammond

Sheriff of Cook County.

Attest,

Thomas R. Carter Clerk.

Be it remembered that heretofore, to wit,
on the thirtieth day of January, in the Year of
our Lord one thousand eight hundred and
sixty one, Hiram P. Moses, by his Solicitor
George Herbert, filed in the Office of the Clerk
of the Superior Court of Chicago aforesaid, on
the Chancery side thereof, his certain Bill
of Complaint, which Bill is in the words and
figures as follows, to wit:

Chancery

To the Honorable Judges of the Superior Court
of Chicago.

Humbly complaining Shows unto
your Honors, Hiram P. Moses of Chicago, in the
County of Cook and State of Illinois, that on or
about the second day of March A.D. eighteen
hundred and fifty three at said Chicago in the
said County, being indebted with Seth Wadhams
to Roswell Carter of said Chicago, in the sum
of three thousand Dollars, for money actually
loaned by the said Carter to the said Hiram
P. Moses and one Seth Wadhams of said
Chicago they the said Hiram P. Moses and
Seth Wadhams made their promissory note
to secure the said sum of money so loaned for
the sum of three thousand Dollars, with interest

at ten per cent, payable to said Roswell Carter or order in six months from the date aforesaid, and afterwards, on or about said second day of March A. D. eighteen hundred and fiftythree to secure the payment of the said note, the said Hiram P. Moses and Mary Moses his wife, and the said Seth Wadhams and Elizabeth Wadhams his wife made their certain deed of trust bearing date of the day and year last aforesaid (which said deed was filed for record March 8th A. D. 1853. in the Office of the Recorder of said Cook County, and recorded, Book 61, page 183, (to which as recorded your orator for greater certainty craves leave to refer), Conveying, upon, certain trusts therein contained and set forth unto J. Young Scammon of said Chicago in said County, the following described premises situate, lying and being in the County of Cook and State of Illinois, to wit, "all that part of the North half of Block Seventythree (73) in the School section addition to Chicago that lies East of Collworth Street and also all the interest of said party of the first part "as said deed mentioned to wit, of said Hiram P. Moses, Mary Moses, Seth Wadhams and Elizabeth Wadhams in and to all the premises lying East of and between said above described premises and the middle of the main channel of the South Branch of Chicago River, together with all the buildings and improve-

at ten per cent, payable to said Roswell Carter or order in six months from the date aforesaid, and afterwards, on or about said second day of March A. D. eighteen hundred and fiftythree to secure the payment of the said note, the said Hiram P. Moses and Mary Moses his wife, and the said Seth Wadhams and Elizabeth Wadhams his wife made their certain deed of trust bearing date of the day and year last aforesaid (which said deed was filed for record March 8th A. D. 1853. in the Office of the Recorder of said Cook County, and recorded, Book 61, page 183, (to which as recorded your orator for greater certainty craves leave to refer), Conveying, upon, certain trusts therein contained and set forth unto J. Young Scammon of said Chicago in said County, the following described premises situate, lying and being in the County of Cook and State of Illinois, to wit, "all that part of the North half of Block Seventythree (73) in the School section addition to Chicago that lies East of Collworth Street and also all the interest of said party of the first part "as said deed mentioned to wit, of said Hiram P. Moses, Mary Moses, Seth Wadhams and Elizabeth Wadhams in and to all the premises lying East of and between said above described premises and the middle of the main channel of the South Branch of Chicago River, together with all the buildings and improve-

ments situated on any part of said premises together with all and singular the tenements hereditaments and appurtenances thereunto belonging, or in, any wise appertaining and the reversions, remainders, rents, issues and profits thereof - and also, all the estate right title, interest, dower and right of dower property, possession, claim & demand whatsoever as well in law as in equity of the said party of the first part in and to the same, and any and every part thereof with the appurtenances, and among other trusts therein expressed in trust in case default shall be made by the said Hiram P. Moses and Seth Wadhams of the party of the first part, their heirs, executors administrators or assigns to pay the said promissory note or the money secured thereby above mentioned according to the tenor and effect thereof or if default shall be made in whole or part in the performance of any of the covenants or agreements herein (to wit, in said deed contained) then on application of said Roswell Carter or the legal holder or holders of said note and first having given notice of thirty days (30) by publishing the same in some newspaper printed in the City of Chicago aforesaid or by posting up written or printed notices in three public places in the County where said premises are situated, then it shall and may be lawful for the said party of the second

part, to wit the said J. Young, Scammon "his personal representatives or his, Attorney duly authorized by virtue hereof to enter into and upon all and singular the premises herein" to wit, in said deed, granted or intended to be granted and to sell and dispose of the same or any part or portion thereof and all right benefit and equity of redemption of the said party of the first part" to wit of the said Hiram P. Moses, Mary Moses, Seth Wadham and Elizabeth Wadham their heirs or assigns therein at public sale at such time and place as said party of the second part" to wit the said Scammon "his legal representatives or Attorney may appoint, or to adjourn the said sale from time to time, as said party of the second part, his legal representatives or Attorney may think proper. and as the attorney of the said party of the first part for such purposes, duly constituted irrevocable or in the name of said party of the said part his executors or administrators or in such manner as the said party of the second part his legal representatives or Attorney may think proper, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law of the same in fee simple and out of the money arising from said sale after first paying all costs Charges fees or other

expenses growing out of the management and sale of
 said premises including all travelling expenses &
 time spent going to and from said sale and all
 taxes, assessments and all other prior liens thereon
 to pay to the said Roswell Carter his representatives
 or assigns or to the legal holder or holders thereof
 the amount which may be their due on said
 promissory note above mentioned for principal
 and interest - rendering the overplus of the proceeds
 of said sale (if any there should be) unto the said
 party of the first part or their assigns at the
 office of said party of the second part in Chicago
 aforesaid, to which sale so made as aforesaid
 shall for ever be a perpetual bar both in law
 and equity against the said parties of the first
 part their heirs and assigns and all other
 persons claiming by from or under them or
 any of them and it shall not be the duty of the
 purchasers to see to the application of the pur-
 chase-money and upon this further trust that
 after said promissory note and all costs, fees &
 charges accruing by virtue, to wit, by virtue of
 said deed shall be fully paid and satisfied, then
 to re-convey back to the party of the first part
 their executors, administrators or assigns all the
 right of the said party of the second part ac-
 quired by virtue hereof "to wit of said deed" to the
 above described premises or such part thereof

as should remain unsold after the satisfaction & discharge of the trust first mentioned aforesaid, said re-conveyance to be made at the cost and charge of the said party of the first part the certainty of all which by the said deed and said note now as your orators are informed and believe being in the hands, possession or controul of the said Carter, Wadhams, Scammon and one Henry Howland hereafter named or some one of them when by them or either of them produced will more fully and at large appear.

And your orator further shows unto your Honore that prior to the record of said Deed of Trust the said deed was duly acknowledged by the several parties thereto of the first part and that from the making and delivering of said note up to and untill and on the twentyfirst day of May A.D. 1856 the said Roswell Carter was in possession of the said note as its legal holder and that long prior to that time the said note was fully paid both principal and interest according to the tenor and effect of said note, and that while the said note was in the hands and possession of said Carter the said Carter received to apply and with the agreement to apply & endorse as far as was necessary for its payment on said note prior to said twentyfirst day of May A.D. 1856, more money from the said defendant Moses

and the said Seth Wadhams than the whole amount due upon said note both principal and interest in way and manner hereinafter stated.

And your orators further shew unto your Honors that they are informed and believe that for a long time after the said twenty first day of May A.D. 1856 the said Roswell Carter continued to hold said note, but that more recently and long since the said note was paid to the said Carter as aforesaid one Henry Howland of said Chicago whom your Orators pray may be made a party defendant to this Bill of Complaint has pretended in some way and manner to have some right title and interest and claim in the same but the particular way and manner is to your orators unknown and whether by the payment of any sum or sums of money and what sum or sums or simply by delivery from the said Carter or from Seth Wadhams or from some other person for or in behalf of the said Carter or said Seth Wadhams (to whom the said note your Orators charge has been long since surrendered and given up as paid by said Carter without consideration paid out or given by said Howland therefore long after said note was due and payable and your orators therefore charge on information and belief that the same is held if held at all by Henry Howland or any other

party or parties subject to all equities & payments made and existing between the said Roswell Carter and the said Hiram P. Moses and therefore wholly discharged and paid and that the same by whomsoever held ought to be given up to the makers thereof to be cancelled and is or ought to be no charge or incumbrance on the real estate in said Trust Deed above described.

And your Orators further show unto your Honors that the said Roswell Carter after the date & delivery of said note and said Trust deed as above set forth and prior to the second day of March A.D. (1855) eighteen hundred and fifty five, the particular day and time being to your Orators unknown, the certainty of which by the answer of the said Roswell Carter will appear of material but as your Orators are informed and believe about June (7th) seventh (1853) became possessed of and the holder of a certain other promissory note bearing date on or about the eighth day of March A.D. 1853 given by the said Hiram P. Moses and Seth Wadhams for the payment of the sum of fifteen hundred dollars \$1500 payable to the order of Frederick & C. D. Flagler due with interest at the rate of six per cent per annum by assignment or transfer which said note last mentioned the said Roswell Carter continued to hold until the twenty first day of May A.D. (1856)

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eighteen hundred and fifty six, and until the same was fully paid by the said Wadhams and the said Moses in the way and manner herein after mentioned.

And your orator further shows unto your honor that the note last mentioned was duly secured to the said Flaglers the payees by a mortgage of real estate with a power of sale whereby the said Flaglers had in default of payment of the said note at maturity power on giving a public notice as prescribed in said mortgage to sell the real estate therein described together with all the equity of redemption of your orator in said real estate last mentioned, as by the said mortgage deed reference where to when produced will if material fully appear and the said Carter as your orator submits in equity had the right to compel the holder of said mortgage to execute said power of sale for his benefit as holder of said note.

And your orator further sheweth unto your honors that afterwards on or about the second day of March A.D. Eighteen hundred and fifty five (1855) at said Cook County in the State of Illinois your orator being at that time greatly embarrassed in his pecuniary affairs and unable personally by reason of ill health to attend to his business and collect moneys due and

becoming due and payable to him and to raise moneys required to meet the notes above described was required by the said Carter to pay the same and the said Carter threateningly told your orator that he would cause his property to be sold under the deed or deeds aforesaid unless your orator should either pay the amount due on said notes or would agree to pay him the said Carter interest for the money so loaned and the other note since the same came into his said Carter's hands at the rate of two per cent per month or twenty four per cent per annum up to the time of payment thereof — And that your orator not being able to pay the amounts actually due on said notes according to the tenor & effect thereof then and there agreed to enter into and agreed and did enter to and with the said John Wadhams into usurious and corrupt contract wherein and whereby for the forbearance of the moneys secured by the said notes including the interest reserved by said notes they would pay at the rate of two per cent per month or twenty four per cent per annum to be computed with annual rests at what is known as compounded interest; and after the computation of the said interest as aforesaid the said Carter and the said Moses and Wadhams agreed that it was twenty three hundred and sixty

seven dollars and thereupon the said Moses & the said Seth Wadhams made their note or writing dated of the date last mentioned promising to pay to the said Roswell Carter the said sum of Twenty three hundred and sixty seven dollars (2367\$) but the particular time on which the same was made due and payable and the terms and tenor of the same whether on interest or not and if on interest at what interest is to your Orator unknown, but the certainty thereof will appear by the said note last mentioned when produced by the said Roswell Carter Seth Wadhams, J. Young Scammon & Henry Howland in whose hands possession or Controul or in the hands or Controul of one of them your Orator hereby Charges the same to be.

And your Orator further shews unto your Honors that the said Contract and agreement whereby the said Moses, Wadhams agreed to pay that rate of two per cent per month or twenty four per cent per annum for the use & forbearance of the sums of money mentioned for the time the money had been loaned by the said Carter to the said Moses and Wadhams to wit from the second day of March A.D. 1853 the second day of March A.D. 1855 was more than at the rate of ten per cent per annum for the said time, which is the highest legal rate

of interest on such contract at that time allowable under the Statutes of Illinois — And that the same was, corrupt, usurious and void and that the contract aforesaid whereby the said Moses and said Wadhams agreed to pay two per cent per Month or twenty four per cent per annum for the time during which the said Carter had held the said note so given to the said Flaglers as aforesaid, to wit, from about the seventh day of June A.D. 1853, to the said (2nd) second day of March A.D. 1855 was, corrupt, usurious and unlawful and void and provided for the paying and recovering a greater rate for the use, forbearance and interest of money than the highest rate allowed by the Statutes of the State of Illinois, and that thus the last note for the said sum of twenty three hundred and sixty seven dollars which your orator shows unto your honor was on no other different or further consideration than such corrupt, usurious and unlawful contract was also without consideration corrupt, unlawful, usurious and void — and as your orator submits as against your orator and said Wadhams of none effect.

And your Orators further show unto your Honor that either prior to ^{or} subsequent to the second day of March A.D. Eighteen

hundred and fiftyfive (1855) the said Seth Wadhams had paid the full sum of fifteen hundred (\$1500) upon the note first herein referred to as principal and the further sum of seven hundred and fifty dollars upon Magle's note mentioned above and the further sum of eleven hundred and eighty three dollars and fifty cents (\$1183.50) or thereabouts being one half of the note last above described & interest on one half of the said note last mentioned at the rate as your orator believes of two per cent per month thereon And your orator expressly charges on information and belief that the said payments by said Wadhams were made upon said notes or a large part of them the precise amount thereof being to your orator unknown on or about or before the said second day of March A.D. (1855) eighteen hundred and fiftyfive and before any payments had been made by the said Moses thereon either out of collateral security deposited by said Moses with said Carter or otherwise which payments so made by said Wadhams amount in the aggregate to the sum of at least of thirty four hundred and forty four dollars and seventy five cents ($3444\frac{75}{100}$) but the precise sum and where and at what time paid by

16th the answers of the said Defendants Roswell Carter and Seth Wadhams will fully and particularly appear.

And your orator further shews that at the time of the giving the note last above described and for the security thereof and also of the balance remaining due on the notes first hereinbefore described your orator delivered to said Carter with the express agreement that all collections to be made thereon should be endorsed and applied so far as necessary to the payment of said two notes first above mentioned by the said Roswell Carter two checks one for the sum of (\$110 $\frac{8}{100}$) One hundred and ten dollars and eight cents and one for the sum of \$135 $\frac{18}{100}$ one hundred and thirty five dollars and eighteen cents, amounting to two hundred and forty five dollars twenty six cents (\$245 $\frac{26}{100}$) which amount was afterwards received as cash and also the following notes duly assigned to said Carter to wit, Note of Abbott & Kingman for \$254.74 dated Feb 1, 1855 due in sixty days from date upon which the said Carter thereafter about the second day of April then next (1855) collected and received the sum of (\$254.74) two hundred and fifty four dollars and seventy four cents, also two other

notes against Abbott and Kingsman dated
February 1st 1855 for the like sum of (\$254.⁷⁴/₁₀₀)
two hundred and fifty four dollars and seventy four
cents each upon which the said Carter received
respectively when they fell due on the fifth of March
A.D. 1855 (\$254.⁷⁴/₁₀₀) two hundred and fifty four dollars
and seventy four cents, and on the fifth of May
A.D. 1855 (\$258.⁵⁵/₁₀₀) two hundred and fifty eight
dollars and fifty five cents, also note against
P. H. Rafinet dated Feb'y 15th 1855 due in 30 days
for ninety dollars and forty five cents on which
note afterwards on the twenty third day of March
A.D. 1855 the said Carter collected and received
the sum of (\$90.²⁵/₁₀₀) ninety dollars and ninety five cents,
also another note against the said P. H. Rafinet for
sixty dollars and fifty six cents dated ~~dated~~
February (15th) fifteenth A.D. 1855, upon which
the said Carter afterwards collected and received
sixty one dollars and eighteen cents (\$61.¹⁸/₁₀₀) April
(25th) twenty fifth A.D. 1855 — also note against
Jacob Bailey for the sum of seven hundred dollars
dated Feb'y 19th 1855, due in sixty days upon which
the said Roswell Carter collected the sum of sixty
dollars (\$60) April 24th 1855, also note of A.
Wilson dated February 16th 1855 due in thirty days
for sixty nine dollars and fifty cents (69.⁵⁰/₁₀₀) also
note of J. H. Sutherland dated twenty fourth of Feb-
-ruary A.D. 1855 for one hundred and ninety seven

18th

dollars twenty eight Cents (\$197 $\frac{28}{100}$) upon which the said Carter afterwards on Seventh day of May A.D. 1855 collected and received the said sum of one hundred and ninety seven dollars and twenty eight Cents (\$197 $\frac{28}{100}$) also note of G. Herbert & Co dated Feb'y 26th 1855 for three hundred and fifty dollars payable in sixty days \$350 upon which the said Carter collected and received said sum of three hundred and fifty dollars May 2nd 1855 Also note of John S. Read dated Feb 27 1855 for (\$200) two hundred dollars payable in sixty days upon which note said Carter collected and received May 2nd 1855 two hundred dollars also note against Scripps, Bross & Spear due in sixty days for (\$583 $\frac{30}{100}$) five hundred and eighty three dollars thirty Cents upon which said Carter May 2nd 1855 collected the sum of five hundred and eighty three and thirty Cents (\$583 $\frac{30}{100}$) also note dated January nineteenth A.D. 1855 against Kennedy and Stockbridge payable in ninety days for two hundred and five dollars and five cents and interest (\$205.05) April 21 1855, collected and received the sum of two hundred and ten dollars and thirty nine cents (\$210 $\frac{39}{100}$) and also note of Wilson Conant & Co dated March 2nd 1855 for (\$250) two hundred and fifty dollars and interest due in forty days on which the said Col-

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well Carter, collected and received two hundred and fifty two dollars and seventy six cents (\$252.76) also note dated Oct 3 A.D. 1854 against Peter Crum & Co due in nine months from date for seven hundred and twenty eight dollars and forty five cents (\$728⁴⁵/₁₀₀) also two notes against Hoag & Smith, one payable in two months and one payable in three months each for three hundred and forty five dollars (\$345) dated March 1, 1855. Said notes amounting in all to the sum of four thousand eight hundred and eighty eight dollars and eighty one cents (\$4,888⁸¹/₁₀₀) All which were received as collateral security as aforesaid to the said notes given to said Carter and Magler and the interest falling due thereon described above and were by agreement to have been endorsed thereon so far as was necessary to pay the same, which receipts and collections above set forth amounted prior to May 8th A.D. 1855 as stated above in the aggregate including amounts received upon the checks aforesaid to three thousand and nineteen dollars and fifteen cents (\$3,019¹⁵/₁₀₀) or thereabouts which together with said sum of thirty four hundred and forty four dollars and seventy five cents, so paid by said Seth Wadham as aforesaid greatly exceed the sums of money equitably due the said Carter before or on the said twenty first day of May A.D. 1856 upon the said notes of three thousand dollars (\$3,000) and fifteen hun-

-dred dollars, first therein above named for principal and interest and should have been in equity and good conscience as agreed by said Carter endorsed upon and applied so far as necessary to the payment of the same both principal and interest according to the tenor and effect of said notes last mentioned, and not otherwise, and the balance of the money by him the said Carter collected, after deducting the amount necessary to fully pay off the two notes last mentioned principal and interest which had not been paid by said Seth Wadham together with the uncollected notes of those delivered to said Carter as collateral security as aforesaid if any there be your orator charges the said Roswell Carter holds equitably for the use and benefit and interest for your orator and ought to return and repay the same together with interest thereon to your orator.

And your orator further shows unto your Honors, that he had well hoped that the said Roswell Carter would have done equity and justice to your orator in the premises and to that end your orator charges that the said Carter has been requested by your orator to state an account and settle up all the above matters equitably and fairly and to render an account for all the several notes which were delivered as aforesaid as collateral security, as aforesaid and of all

collections made thereon and all moneys by him received on account thereof and that he pay over to your orator any balance due to him therefor, and in case any of the said notes yet remain uncollected to transfer and deliver up to said Hiram P. Moses your orator, the same - and that he would cause the said J. Young Scammon to reconvey the said real estate described in said Trust deed to your Orator, and to deliver up both the said notes for (\$3000) and for (\$1500) first therebefore mentioned and also the said notes of (\$2369) to your orator to be cancelled but on the contrary the said Carter has neglected and refused to comply with these reasonable requests of your Orator, and has as your orator is informed and believes at the instigation and advice of the said Seth Wadhams minding and intending to wrong, injure and defraud, your Orator in the premises notwithstanding the payments aforesaid, attempted since the same were made on or about the first day of December A.D. 1858 to transfer, assign and set over the said note of three thousand dollars to Henry Howland above named or some other party or parties to your Orators unknown as your Orators is informed and believes with the purpose and design in some way by means of a sale of said real estate to enable the said Wadhams at said sale to buy the interest in said real estate of your orator

and appropriate the proceeds thereof against your orator, or that he the said Carter may thereby appropriate them to his own use.

And your orator further shows unto your Honor that as your orator is informed and believes at the request of the said Seth Wadhams and at his instigation the said J. Y. Scammon has been requested by the said Roswell Carter, the said Howland or some other person or persons who have or claim to be the holder or holders of said note for three thousand dollars or to act for and in behalf of some person claiming to have possession of or hold the same by delivery long since its maturity and long since the same has been fully paid as aforesaid (the particular person so requesting the said Scammon and claiming to possess and hold said note being to your orator unknown but whose name and tenure by which he holds said note whether upon due consideration paid therefor or on trust for others

The persons through whom he claims or holds said note and for whose benefit will appear by the answers of the Seth Wadhams, Roswell Carter, J. Young Scammon and Henry Howland to advertise and sell said note and have caused by the said J. Young Scammon or otherwise the following advertisement to be inserted in the Chicago Daily Democrat, a public Newspaper

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printed and published in the City of Chicago
to wit,

Trustee's Sale

"Whereas Hiram P. Moses, and Mary Moses wife
of the said Hiram P. Moses, and Seth Wadhams
and Elizabeth Wadhams, wife of the said Seth
Wadhams, all of the City of Chicago, County of Cook
and State of Illinois, did on the second day of March
A.D. 1853 by their certain deed of trust of that date
convey to the undersigned the following described
premises situated, lying and being in the County
of Cook and State of Illinois, to wit: All that
part of the north half of block seventy three (73)
in the School Section Addition to Chicago, that
lies to the East of Ellsworth street, and also all the
interest of the said first party to said deed of trust
in and to all the premises lying east of, and between
said above described premises, and the middle
of the main channel of the south branch of the
Chicago River, together with all buildings and
improvements situated on any part of said premises,
to secure the payment of a certain promissory note
of even date with said deed of trust given by the
said Hiram P. Moses and Seth Wadhams
to me Roswell Carter or Order, to secure the pay-
ment of three thousand dollars, with interest at
ten percent, and due six months after date, the
said Note being given for money loaned, which said

deed of trust (was filed for record on the eighth day of March A.D. 1853, in the Office of the Recorder of Cook County in the State of Illinois, and duly recorded in book 61 of Deeds, page 183.

And whereas default has been made in the payment of said Note, and there now remains due and unpaid on said Note the sum of one thousand three hundred and seventy nine dollars and sixty one Cents (\$1,379.61) and whereas application has been made to me by the legal holder of said Note to sell the said premises conveyed by said deed of trust, with the improvements thereon, under the power of sale contained in said trust deed.

Now therefore, public notice is hereby given, that by virtue of the powers and provisions in said trust deed, I, the undersigned, the trustee mentioned in said deed, shall sell at public Auction, at the north door of the Court house in the City of Chicago, on Monday the fourth day of February A.D. 1861 at ten o'clock in the forenoon of said day, to the highest bidder for cash, the premises above described and all the right and equity of redemption of the said Hiram P. Moses, Mary Moses, Seth Wadams and Elizabeth Wadams, their heirs and assigns, of in and to the same.

Chicago December 31st 1860.

J. Young, Seammon
Trustee

And your orator has reason to fear that the said J. Young Sammon will proceed to sell and convey said real estate described in said trust deed according to the foregoing advertisement notwithstanding the same is fully paid as stated above and that your orator will otherwise be greatly wronged and injured in the premises:—

And your orator hereby offers to do equity and is ready and willing and offers to allow full and legal interest upon the notes first herein above described for (\$3000) three thousand dollars and for (\$1500) respectively and the full amount equitably due thereon according to the tenor and effect of said notes after deducting the amount paid by the said Wadhams (as stated above) in the account with the said Carter. Called for above.

And your orator further shows unto your honor, that he has reason to fear and does fear that the said Roswell Carter, Henry Howland and Seth Wadhams or one of them will further negotiate transfer or deliver the said notes of three thousand dollars (\$3000), and fifteen hundred dollars (\$1500) first herein above, described to some other party or parties with a view further to harass, wrong & injure and defraud your orator in the premises.

But now, so it is, may it please your Honor that the said Roswell Carter, Seth Wadham, Henry Howland and J. Young Searimon combining and confederating together with divers other persons to your Orator unknown, whose names when discovered, your orator prays he may be at liberty to insert herein with apt words to charge them as parties defendants hereto, and contriving how to wrong and injure your orator in the premises pretend that there is a large amount, to wit, the sum of thirteen hundred and eighty dollars or thereabouts (\$1380) due and unpaid upon said Note of three thousand dollars (\$3000)

F
And that the same is a just and equitable
Charge and incumbrance upon said Real estate
in said trust deed described and that the
party to whom the said Roswell Carter may
have delivered the same or who may hold the
same has a good right and claim under said
trust deed to require the said J. Young Sam-
mon, to sell and convey the same to raise and
pay the amount so pretended to be due on the
said note, to all which your orator expressly
charges the contrary, and that any party
who may or does hold the said note last men-
tioned, holds it subject to all the equities
which existed at the time they may have
taken or received delivery or possession of
the same which existed between your orator
and the said Roswell Carter and not otherwise
and with full notice thereof.

All which actings
and doings pretences and refusals are contrary
to equity and good conscience, and tend to
manifest wrong and injury of your orator
in the premises.

In Consideration whereof and
inasmuch as your orator is remediless in the
premises by the rules of the Common Law and can
only have adequate relief in equity where matters
of this kind are only properly cognizable and re-

-Pleasable -

To the end therefore that said Roswell Carter, Seth Wadhams, J. Young Scammon, Henry Howland and their Confederates when discovered to the utmost of their respective knowledge, remembrance, information and belief (their answer under oath being hereby under the statute expressly waived) full perfect and direct answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto & that the said Roswell Carter may render a full perfect and exact account of the payments and when made by the said Seth Wadhams or your Orator or any other party or parties in and upon the respective notes first named above, to wit, the Note of three thousand dollars (\$3000) and the note of (\$1500) fifteen hundred Dollars, and the Note of (\$2367) twenty three hundred and sixty seven dollars so held by him as above set forth and the time or times when made on the respective notes, and also of the collateral Security which was at any time been delivered to him by any party therefor, and of any and all sums of Money Collections, and Receipts derived therefrom and of his application and disposition of the same &

of any and all the notes matters and things held by him as Collateral Security so delivered by him as aforesaid, and that he be decreed to apply the same so far as may be necessary to the liquidation and discharge of the said note for (\$3000) three thousand dollars, and note for (\$1500) fifteen hundred dollars and the interest due thereon according to the terms of said notes and that he further be decreed to deliver up the said note of twenty three hundred and sixty seven (\$2367) Dollars together with the two other notes last mentioned to be cancelled if in his possession or controul, and in case there is a balance remaining in his hands after the application of the above named payments, receipts, collections and sums of money to the said note of (\$3000) three thousand dollars and note of (\$1500) fifteen hundred dollars, then and in that case that he be decreed to pay over the said balance to your orator with interest as may be just and equitable, and that he re-deliver to your orator any notes matters or things which may have been delivered to him the said Carter as Collateral Security as aforesaid which may still remain uncollected with and under due and proper assignment or assignments or transfers thereof, and that in case said note for (\$3000) three thousand dollars, and

note for (\$2367) twenty three hundred and sixty seven dollars, and note for (\$1500) fifteen hundred dollars or either of them are in or under the controul of or in the hands and possession of the said Henry Howland or Seth Wadhams, or in whomsoever hands the same may be declared and decreed to be cancelled, paid and of none effect and to be delivered up to your orator. - and that the said J. Young Scammon be by this Honorable Court decreed to reconvey the said real estate in said trust deed described according to the terms of the trust created thereby, or that your orator have such other further or different relief as to equity and good conscience may appertain. And that mean time the said Roswell Carter, Seth Wadhams, Henry Howland and J. Young Scammon may be restrained and enjoined from in any way or manner transferring, assigning, selling, conveying, intermeddling, needlessly with or delivering over any of these notes first herein above, described, or the real estate in said trust deed described, or procuring or aiding others so to do.

May it please your honors to grant me to your orator not only the peoples writ of injunction to be issued under the Seal of your Honorable Court directed to the said Roswell Carter

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Seth Wadhams, Henry Howland and J.
Young Scammon, to restrain them touching the
matters above set forth according to the above
prayer of your Orator, but also a writ of
Summons commanding them the said Ros-
well Carter, Seth Wadhams, Henry Howland
and J. Young Scammon and each of them to
be and appear before your Honorable Court at
such term of the Court as shall be therein
named, then and there to make full true direct
and perfect answer to all and singular the
premises and further to stand to perform,
abide and keep such further order, decree
and decision of this Honorable Court as to
your Honors may seem meet and shall to equity
and good conscience appertain.

And your Orator shall ever pray.

H. P. Moses.

Geo. Herbert Sol^r.
and of Counsel.

State of Illinois } ss.
County of Cook }

Hiram P. Moses above named
being first duly sworn deposes and says that he
is the complainant in the foregoing Bill of

Complaint, and that he has heard the same, read and fully understands the same, and that the matters and things therein stated are true of his own knowledge, except those stated on information and belief, and as to them he believes them to be true.

H. P. Moses.

Subscribed and sworn to
before me this 29th day of
January A.D. 1861: --

Ira Scott, Master
in Chancery of Superior Court of Chicago

State of Illinois }
County of Cook } ss.

Let the Writ of Injunction issue pursuant to the prayer of the foregoing Bill of Complaint upon Complainant filing his injunction bond with Erastus Rawson as surety, in the penalty of five hundred dollars - January 30th 1861.

John M. Wilson

Chief Justice Superior Court of Chicago

To the Clerk of the
Superior Court
of Chicago }

And afterwards, to wit, on the day and Year
aforesaid, said Complainant, Hiram P. Moses
filed in the Office of the Clerk of said Court
his Injunction Bond, which Bond is in the
words and figures as follows, to wit:

Know all men by these presents that
we Hiram P. Moses, as principal, and Erastus
Pawson of Chicago as sureties are holden and
stand fairly bound and obliged unto Roswell
Carter, Seth Wadhams, Henry Howland and
J. Young Scammon in the full and just sum of
five hundred dollars to be paid to the said Ros-
well Carter, Seth Wadhams, Henry Howland
and J. Young Scammon, their executors, ad-
ministrators or assigns. To which payment
well and truly to be made we bind ourselves, our
heirs executors and administrators firmly by
these presents, sealed with our seals and
dated this thirtieth day of January A.D. 1861.

The Condition of the foregoing
obligation is such that whereas the said Hiram
P. Moses has filed in the Superior Court of
Chicago, his bill of complaint against the
said Carter, Scammon & Wadhams & Howland
and the judge of the ^{said} Court hath ordered that

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an Injunction issue thereon, as by the record and files of said Court will appear. Now if the said Hiram P. Moses shall pay or cause to be paid all such costs and damages as shall be awarded against said Complainant in case the said injunction shall be dissolved, then this obligation shall be void, otherwise of full force and virtue.

H. P. Moses Seal
E. Rawson Seal

And, afterwards, to wit, on the day and year aforesaid, there issued out of the office of the Clerk of said Court, the People's Writ of Injunction directed to, defendants Roswell Carter Seth Wadhams et al., which Injunction, with the endorsement of service thereon, is in the following words and figures to wit

State of Illinois }
County of Cook } ss

The People of the State of Illinois
To Roswell Carter Seth Wadhams, Henry Howland
and J. Young Scammon, and to your Attorneys,
Solicitors, Agents and Servants, and each and every
of them Greeting.

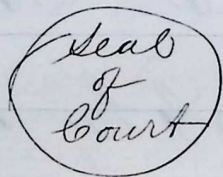
Whereas it hath been represented to the Honorable John M. Wilson one of the Judges of the Superior Court of Chicago, in said County and State aforesaid, on the part of Hiram P. Moses Complainant in his certain Bill of Complaint exhibited before said Judge, and filed in said Court, against you, the said Roswell Carter, Seth Wadhams Henry Howland & J. Young Scammon to be relieved, touching the matters and things therein complained of. In which said Bill, it is stated, among other things, that you are combining, and

confederating with others to injure the Complainant,
 touching the matters set forth in said Bill, and that
 your actings and doings in the premises are contrary
 to equity and good Conscience. And the said
 Judge, having under his hand endorsed upon
 said bill an order that a writ of Injunction issue
 out of said Court, according to the prayer of said bill;
 We, therefore, in consideration thereof, and of the
 particular matters in said bill set forth, do strict-
 ly Command you, the said Roswell Carter Seth
 Wadhams, Henry Howland & J. Young Scammon
 and the persons before mentioned, and each and
 every of you, that you do absolutely desist and
 refrain from in any way or manner transfer-
 ring, assigning, selling, conveying, intermeddling
 with or delivering over three certain notes in said
 Bill of Complaint, first described, to wit, Note for \$3000
 dated March 2nd A.D. 1853 signed by Seth Wadhams
 and Hiram P. Moses, payable in six months to
 Roswell Carter with interest at ten per cent; Note
 dated on or about the 8th March A.D. 1853 for \$1500.
 with interest at six per cent. signed by said
 Moses and Wadhams and payable to Frederick
 H & C. D. Taylor, and Note dated on or about March
 2nd A.D. 1853 for \$2367. signed by said Moses and
 Wadhams and payable to said Roswell Carter.
 or the real estate in said Bill described and
 set forth, to wit, all that part of the north half

of Block seventy three (73) in ^{the} School Section Addition to Chicago, that lies east of Ellsworth Street, and also all the interest in said Bill described lying east and between the real Estate above described and the middle of the main Channel of Chicago River, or any part thereof, or any buildings situate thereon, or any interest therein whatsoever, until this Honorable Court in Chancery sitting, shall make other order to the contrary). Hereof fail not, under the penalty of what the law directs.

To the Sheriff of said County to execute and return in due form of law.

Witness Walter Kimball, clerk of our said Court and the Seal thereof, at Chicago in said County this 30th day of January, A.D. 1861



Walter Kimball
Clerk

(Endorsement of Service)

I accept service of this writ by delivering of a Copy thereof to me this 31 Jan^y 1861

J. Young Scammon

And afterwards, to wit, on the day and year
aforesaid, Geo: Herbert, Solicitor for Complain-
ant Hiram P. Moses, filed in the office of
the Clerk of said Court, a certain Precipe
for Summons, which Precipe is in the words
and figures as follows, to wit,

State of Illinois } Superior Court of Chicago
County of Cook } ss March Term A.D. 1861

Hiram P. Moses
vs
Roswell Carter
Seth Wadham
Henry Howland &
J. Young & Cammon } In Chancery

The Clerk of said Court
will issue a Summons in the above entitled
cause, directed to the Sheriffs of Cook and
Sangamon Counties returnable at the
March Term of said Court A.D. 1861, and
also a writ of Injunction as ordered.

Chicago Jan'y 1861

G. Herbert

Compt. Clk.

To Walter Kimball Esq, Clerk.

And afterwards, to wit, on the day and year a-
foresaid, there issued out of the Office of the
Clerk of said Court, the Peoples writ of Sum-
mons, which summons ^{with the return of service thereon} is in the words and
figures following, to wit,

State of Illinois }
County of Cook } ss

The People of the State of Illin-
ois to the Sheriff of the County of Sangamon
greeting:

We command you that you summon
Roswell Carter, Seth Wadhams, Henry Howland
and J. Young Leamon, if they shall be
found in your County, personally to be and
appear before the Superior Court of Chicago,
of said County of Cook, on the first day of
the term thereof, to be holden at the Courthouse
in the City of Chicago, in said County, on the
first Monday of March next, to answer unto
Hiram P. Moses in his, certain Bill of Com-
plaint, filed in the said Court on the Chan-
cery side thereof. And have you then
and there this writ, with an endorsement thereon
in what manner you shall have executed the
same. Witness Walter Kimball

ADH.

Clerk of our said Court, and the Seal thereof
at the City of Chicago aforesaid this 30th
day of January A.D. 1861.



Walter Kimball, Clerk

(Return)

Served this writ on the within named J. Young
Scammon, Jan. 31st 1861. by delivering a
copy thereof to him the 31st day of Jan. 1861
J. Young Scammon

And afterwards, to wit, on the ^{Fourth} 4th day of March
in the Year aforesaid, Defendant Roswell Carter
by his Solicitor A. E. Wolcott filed in the Office
of the Clerk of said Court, his, certain Separate
Answer, which answer is in the words and
figures following, to wit

(Copies of Notes & Receipts)
 prefixed to Russell Carter's answers.

List of Notes

1854 Oct. 3	Peter Crum & Co	9 months	\$728.45
1855 Jan. 19 th	Kennedy, Votockbridge	90 days	205.05
Feb. 1 st	Abbott & Kingman	" "	254.74
" "	" "	60 "	254.74
" "	" "	30 "	254.74
" 15	P. St. Rafuit	" "	90.45
" "	" "	60 "	60.56
" 19	Jacob Early	" "	700.00
" 16	A. Wilson	30 "	69.50
" 24	S. F. Sutherland	70 "	197.28
" 26	P. Herbert & Co	60 "	350.00
" 27	John S. Reed	" "	200.00
Mar. 1 st	Harry & Smith	3 Mos	345.00
" "	" "	2 "	345.00
" "	Scrips Bros & Spear	60 days	583.30
"	B. Wilson, Banant & Co	40 "	250.00
			<u>\$4888.81</u>

Received of St. P. Moses the Notes mentioned above, amounting to four thousand eight hundred and eighty eight $\frac{81}{100}$ Dollars (\$4888.81) for Collection and as Collateral and further Security to the payment of certain Notes which I hold against said St. P. Moses and Seth Wadham amounting to five thousand three hundred and sixty seven dollars (\$5367)

And I hereby agree that as often as I shall receive the sum of five hundred dollars (\$500) on the said notes left with me as collateral and for collection, that I will the same on the note or notes I have against the said H. P. Moses and Seth Wadham. I have this day received of H. P. Moses Checks amounting to two hundred and forty five $\frac{26}{100}$ dollars and have endorsed the same amount on one of the Notes which I hold against said Moses and Wadham. Dated Chicago March 2nd 1855.
(Signed) "Roswell Carter"

Received of Roswell Carter, Peter Brum H's Note for \$728⁴⁵ due April 4th 1855, said note having been left with said Carter as collateral security for the payment of monies due - Chicago March 22/55.
(Signed) "H. P. Moses"

Received of Roswell Carter a Note of Jacob Barleys for \$700, which was deposited with said Carter as collateral security for the payment of certain notes held by said Carter against H. P. Moses and Seth Wadham, - Note \$700, - also A. Wilsons Note for \$69 $\frac{50}{100}$ for same as the above \$700. \$700 Note dated 19th 1855.
(Signed) "H. P. Moses"

Received of Roswell Carter the following notes for and
"on account of H. P. Moses, said notes, two of which are
"dated March 1st 1855, drawn by Hoyt & Smith of Batavia
"Ill., and for \$345. each, one payable three months after
"date, and one two months from date, also one note which
"was made by Hoyt & Smith for \$356⁹⁴ dated May 1st
"for the purpose of ^{taking up a renewal of the first named} note of \$345, Chicago
"August 7th 1855.

(signed)

"H. P. Moses" by
Norman Ward.

The separate answer of Roswell Carter, one
of the Defendants to the Bill of Complaint of Hiram
P. Moses complainant in the Superior Court of
Chicago In Chancery, sitting.

This, Defendant now and at all times here-
after, saving to himself all and all manner of
benefit or advantage of exception or otherwise,
that can or may be had or taken to the many errors
uncertainties and imperfections in the said Bill
contained, for answer thereto, or to so much there-
of as this Defendant is, advised it is material
or necessary for him to make answer to, Answer-
ing, said.

That on or about the 2nd day of March
43d A.D. 1855, the said Plaintiff, Moses and the

defendant Wadhams, (who at that time was engaged in same business matters with said Moses), came to this defendant, and representing to him that they had got the refusal of a piece of land (described in the plaintiff's Bill), on terms which they regarded as entirely safe, and highly advantageous to them to purchase and secure, and stating to this defendant, the terms upon which the same could be purchased & secured by them, one of which said terms was, the immediate payment of \$3000 thereon, which sum the said Moses and Wadhams represented to this defendant, they could not raise without the assistance of their friends and also representing to this defendant that they could procure said \$3000 upon their joint note for that sum payable in 90 days, and by paying the usual discount thereon for said 90 days at ten per cent. per annum, provided they could get the name of J. V. Scammon as endorser thereon, and that said Scammon had agreed for the consideration of \$100 to indorse such note provided they the said Moses & Wadhams would get this defendant to sign such note also with them as maker thereof, and requested this defendant to sign such note with them for the purpose aforesaid, which request this defendant promptly and positively declined to grant, but this defendant

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being the brother-in-law of said Wadhams and being desirous and willing to aid said Moses & Wadhams in securing what seemed to him as well as to said Wadhams and Moses a very desirable, safe and profitable purchase, said to said Moses & Wadhams, that he would do what he could to procure said \$3000 for them; that he had no money of his own or subject to his control for such purpose, but that if he could negotiate the same for them, he would freely do so, without fee or bonus, provided that they could & would without defalcation meet & pay the same promptly at the expiration of said 90 days, which said Wadhams and Moses expressing their ability therefor promised to do, stating to this defendant that the said Moses had over \$6000 worth of tools and machinery in his Machine Shop adjoining said land, on which they would give this defendant a Chattel Mortgage with a power to take immediate possession of and to sell the same in case of failure to pay said sum at the time, and that they would also give this defendant a Trust Deed on said land to secure the ^{prompt} payment of said sum as aforesaid whereupon this defendant went to the Bank of R. K. Swift in said City of Chicago and represented to said Swift that he this defendant wanted \$3000, for 90 days, which said Swift

said he would loan to this defendant at the usual discount thereon for 90 days at the rate of 10 per cent per annum, provided this defendant would make his note therefor payable in the City of New York, whereupon this defendant did then and there make and deliver to said Swift, his promissory note for the payment of said sum of \$3000, in the City of New York in 90 days after the date thereof, and received from said Swift therefor the said sum of \$3000, less the discount of \$75 thereon for 90 days, and proceeded immediately with and paid the same to said Wadhams & Moses, whereupon they afterwards, upon the same day executed and delivered to this defendant their Note and trust deed therefor as in said Bill mentioned and described; that the time of payment mentioned in said Note and trust deed was at the urgent solicitation of said Wadhams and Moses extended to 6 months instead of for 90 days, as was before agreed upon by them; they the said Moses and Wadhams nevertheless assuring this defendant, that they would do their best to pay said Note in 90 days according to their aforesaid agreement, and also proposed of their own accord, that in case the same should not be paid in said 90 days to pay to this defendant 2 per cent a month thereon

until the same should be fully paid, and the said Moses & Wadhams also then and there executed and delivered to this defendant a Chattel Mortgage of said tools and machinery as further security for the repayment of said \$3000 according to the tenor and effect of said note in 6 months from the date thereof as aforesaid, and on the delivery as aforesaid of said Chattel Mortgage, said Moses and Wadhams requested this defendant not to put the same on record for said 90 days, as such record might affect their credit and ability to raise said sum within the time last aforesaid, to which this defendant, in consideration of the premises assented and promised. Whereupon ^{this defendant} in consideration of the premises endorsed upon said note the receipt of 90 days interest thereon, and refrained from putting said Chattel Mortgage on record for the same period of time. This defendant further says that said Wadhams and Moses failed to pay said sum of \$3000, or any part thereof within said 90 days, and this defendant having no means of his own to meet his said note to Swift, called upon said Swift a few days before the same became due and requested a renewal of the same for another period of 90 days on payment of a like sum of \$75 for discount thereon, but said Swift, on

being informed by this defendant that the original loan was made not for himself but for third parties refused to renew the same, whereupon this defendant was, compelled in order to to save his own credit, to go into the market and borrow the money upon the terms then usual and current among money lenders (which ranged from 15 to 33 per cent per annum) ^{in order} to take up his said note with exchange on New York according to the tenor and effect thereof. And this defendant at the earnest solicitation & request of said Moses & Wadhams, and upon their often repeated assurances and promises, honorably and liberally to pay and reward this defendant therefor, did thus, carry said original loan for them at an average rate of damage & expense to this defendant of more than 2 per cent a month for a period of two years, and for their exclusive use and benefit.

This defendant further answering says that soon after the expiration of the 90 days first aforesaid, to wit, on the 11th day of June A.D. 1853, he put said Chattel mortgage on record, and the same is recorded in Book 15 of Mortgages in the Recorder's office of said Cook County on page 188, the particulars whereof will more fully appear on inspection of said Chattel Mortgage, which this defendant

proposes to and will bring before the Court at the hearing herein.

This defendant further answering says that on or about March 2nd 1855, he Till carrying without fee or reward said, debt for said Moses & Wadhams, and being anxious to be relieved therefrom and having in the mean time become the assignee and owner of a Note given by said Moses and Wadhams to F. S. & H. D. Hagler (from whom said land was purchased as aforesaid) for the payment of \$1500 in two years from the date thereof with interest at the rate of 6 per cent per annum thereon & dated March 8th 1853 for a part of the purchase money of said Land and secured by a Mortgage on the same, which was also assigned to this defendant at the same time as an incident to said \$1500 Note and the lien of this defendant upon the aforesaid tools and machinery by virtue of said Chattel Mortgage being about to expire by limitation of the Statute Creating the same, did (not threateningly as the plaintiff in his Bill alleges, but) in a respectful and sincere manner, say to said Moses and Wadhams that they "must not ride a free horse to death and that they must pay said \$1500 Note, and that if they did not do it, he this defendant would be under the necessity of taking possess-

-ion of and selling their said tools & machinery
 in accordance with the provisions of said Chattel
 Mortgage to reimburse himself and to pay and
 satisfy said \$3000 note and the said Moses &
 Wadhams not having, as they alleged the
 money to spare, and being still anxious to
 hold said land which at that time, current
 was more than doubling in value every six
 months and still acknowledging their ob-
 -ligations to this defendant for his past as-
 -sistance and for bearance to them as well
 as the great profit and benefit they had
 received therefrom and desiring to save said
 tools and machinery from seizure and sale
 under and by virtue of said Chattel Mortgage
 and to have the lien of this defendant there-
 -on by virtue of said Chattel Mortgage ex-
 -tinguished and suffered to expire by limita-
 -tion of the Statute creating the same, did
 of their own accord and not at the solicitation
 or demand of this defendant, make and
 deliver to him, the said \$2367 note in said
 Bill mentioned, the consideration of which
 said \$2367 note according to the recollection &
 belief of this defendant, was the endorsement
 by this defendant of the receipt of the legal
 interest on said ^{\$3000} note up to the date last aforesaid
 and also a like endorsement by this defendant

of the receipt of the legal interest on said \$1500 note from the date thereof up to the 8th day of March 1855, when that same would become due and payable, and also for the promise & agreement of this defendant then and there made to and with said Moses & Wadhams to forbear to take possession of and to sell said tools and machinery under and by virtue of said Chattel Mortgage and to permit his lien thereon by virtue of said Chattel Mortgage to expire by limitation of the statute creating the same, and also, for what they the said Wadhams and Moses at that time regarded as a fair and deserved equivalent for the services expenses and past indulgence of this defendant for, and towards them, the said Moses and Wadhams, but whether said amount of \$2367 was in any part thereof ascertained by computing any particular sum at 2 per cent per month, or at any other rate per cent, this defendant don't know, and cannot therefore admit the same. ~~But~~ ^{And} this defendant, avers that, whatever ^{the} mode for obtaining said amount was or may have been, no part or portion thereof was for usurious interest on any sum of money loaned, or for forbearance of any pre-existing debt that said amount did not exceed

what was in law or equity, due from said Wadhams and Moses to this defendant for the considerations aforesaid,

And this defendant further says, that on the delivery of said last mentioned note (which was made payable in 10 days after the date thereof, with interest thereon at the rate of 10 percent per annum) he endorsed the receipt of interest on said notes for \$3000, and for \$1500, in accordance with the aforesaid Considerations and understanding, and gave up and suffered to expire his lien on said tools and Machinery by virtue of said Chattel Mortgage as aforesaid.

This defendant further answering says that instead of there having been any agreement, corrupt or otherwise (as charged in said Bill) between this defendant and said Moses and Wadhams whereby this defendant, for any consideration whatsoever agreed to loan any sum of money to, or to forbear the payment of any preexisting debt due from said Moses & Wadhams the contrary thereof ^{was} is true and the said Moses and Wadhams were by this defendant required to and did immedi-

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-ately set about and, commenced the pay-
-ment of their said indebtedness to this
defendant upon and by virtue of the
aforesaid Notes, for \$3000, \$1500 & \$2367.
respectively and to that end they did immediately
assign and deliver to this defendant two bank
Checks amounting to the sum of \$245.26 which am-
-ount this defendant immediately endorsed by
the direction and agreement of said Moses & Wadhams
upon said \$2367. Notes, and the said Moses at
the said time assigned and delivered to this de-
-fendant a number of promiscory Notes due, and
shortly maturing, from sundry persons in various
Sections of the Country, to be by this defendant
collected and the Collections thereof to be (as fast
as the same should amount to the sum of \$500) endors-
-ed on either of said Notes at the option of
this defendant; but with the expectation and
understanding that such collections would
first be endorsed on said \$2367 Note until the
same should be fully paid, a list of which said
assigned notes by said Moses to this defendant,
and this defendant's Receipt therefor to said
Moses is hereto attached and made a part of
this answer.

This defendant further answering
says that it was not the understanding, expect-
-ation or agreement, when said notes were as-

signed to this, defendant for, collection as aforesaid, that this, defendant was to ~~and~~^{or} should apply such, collections first upon said Notes for \$3000 and \$1500, as alleged and charged in the plaintiffs Bill, but that such collections should be first applied and endorsed upon said \$2367 Note as hereinbefore stated, and in pursuance of which, this, defendant endorsed on said last mentioned note \$245.26 the amount of said Bank Checks at the date thereof as aforesaid and as appears from said list and receipt of Assigned notes as aforesaid.

This, defendant further answering says that on the 5th day of March 1855 he collected on said assigned Claims \$254.74, and endorsed the same on said \$2367 Note, and on the 14th day of April 1855, having collected on said Claims the sum of \$500, he endorsed the same on said \$2367 Note, and that on the 2nd day of May 1855, having collected on said Claims the sum of \$1435, he endorsed the same on said \$2367 Note, which fully paid, and liquidated the amount due thereon, and that on the 7th day of May 1855 having collected on said Claims \$584.15, he endorsed the same as of that date on said \$3000 Note, that the aforesaid sums mentioned as collected on said assigned Claims are all the collections made

or received thereon by this defendant and that all the balance of said assigned claims were afterwards re-delivered by this defendant to said Moses or his Agents as per receipts therefor, copies of which are hereto attached as a part of this Answer will more fully appear, and the same have been by him since collected and appropriated to his own use, as this defendant is informed and believes

This defendant further answering, says that on the 7th day of March A.D. 1855, said Wadhams paid to this defendant, to be endorsed on said \$1500 Note the sum of \$750. and the same was endorsed thereon accordingly and that there is now justly due to this defendant on said \$1500 Note the sum of \$750, with interest thereon at the rate of 6 per Cent per annum, from the 8th day of March A.D. 1855, and that on the 2nd day of March 1856 said Wadhams paid to this defendant to be endorsed on said \$3000 Note the sum of \$1650 which this defendant endorsed thereon accordingly and that there is justly due to this defendant on said \$3000 Note the said sum of \$3000 with interest thereon at the rate of 10 per Cent per annum from the 2nd day of March A.D. 1855, less the payments thereon endorsed as aforesaid since the time last aforesaid, and interest thereon

at the same rate since the dates thereof respectively.

This defendant further answering says that the said Moses & Wadhams being in default of payment of the amount aforesaid due on said \$3000 note, this defendant being the owner and legal holder of said \$3000 note did apply to said Trustee J. V. Scammon named in said Trust Deed to sell said land under the power contained in said trust deed and fully to execute the trusts therein specified and created for the payment of said sum due on said \$3000 note, and that said trustee did advertise the sale of said land as set forth in the plaintiff's Bill, and would have proceeded to sell the same in pursuance of said advertisement but for the injunction of this Court in this cause allowed and ordered.

This defendant further answering says that some time in the ^{fall} ~~spring~~ of A.D. 1858 said Wadhams represented to him that he, Wadhams wanted said notes paid and satisfied out of said real estate security therefor; that said Moses had become insolvent and would not, for a long time if ever be able to pay his share of said notes for said land, and requested this defendant to have said land sold under said trust deed and mortgage to pay and satisfy the

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same respectively, but this defendant objected to said request, that Scammon the trustee named in said Trust deed was then in Europe and that nothing could be done therein until his return, and that he this defendant had no taste for law-suits of any kind, if he could avoid them, and that nothing could be done under the Mortgage aforesaid without instituting proceedings in Court to foreclose the same (there being no power of sale given in said Mortgage as represented in the plaintiff's Bill) to which this defendant was utterly averse; to which said Wadhams in reply suggested that said \$3000 note might be assigned to some one through whom, as the legal holder thereof a change of trustees could be obtained, and the land sold to pay said \$3000 note, at which suggestion of said Wadhams this defendant did afterwards for the purpose aforesaid and without consideration endorse and deliver said \$3000 note to the defendant Henry Howland who was recommended to this defendant as a fit and proper person for that purpose and proceedings were thereupon instituted in the Cook County Court of Common Pleas for such change of trustees, but before the same were brot to a final hearing, said Scammon returned to said Chicago, and said proceedings were

discontinued, and said note was redelivered to this, defendant who now holds the same as the original payee and owner thereof and that said Howland never had any interest whatsoever in said note and trust deed except in the manner and for the purpose aforesaid.

This defendant further answering positively denies that said notes for \$3000 and for \$1500, or either of them have ever been given up or surrendered to said Wadhams as paid, by this defendant, as the plaintiff in his said Bill alleges and charges against him this defendant. And this defendant also positively denies that the whole or any part of said notes or either of them have been paid by said Moses and Wadhams or either of them, except to the extent and in the manner hereinbefore stated; but that on the contrary there is now justly due to this defendant on said notes the amount as hereinbefore stated, and that the same ought to be and is a just charge and incumbrance on said land, and that the said land ought & be sold to pay and satisfy the same, in accordance with the provisions of said Mortgage and trust deed, for such purpose executed and delivered as aforesaid.

And this defendant further denies that he has ever contracted for or taken usurious or illegal interest for the loan or forbearance of said sums and indebtedness or for either of them, as the

plaintiff in his said Bill charges against him.
This, defendant further answering denies
all fraud combination confederation and Con-
spiracy to injure or oppress the said plain-
tiff, as charged or suggested by the plaintiff
in his said Bill, This, defendant also denies
all the several other matters and things in
said Bill charged and set forth (if any such
there be) which was^{re} not herein before fully and
particularly answered denied or explained,
and he avers that the foregoing is a full state-
ment of the truth concerning the matters and
things in said Bill alleged and set forth so
far as he is advised, it is necessary for him to
answer, or that is material in the case to be an-
swered, to the best and utmost of his memory
knowledge information and belief. and
he asks that whatever there be in said Bill
to the contrary, the plaintiff be required
fully to prove.

And now having fully answered
he asks to be hence dismissed with his costs
in this behalf most wrongfully sustained

Roswell Carter
By A. E. Walcott
Solicitor

And afterwards, to wit, on the day & year
aforesaid, defendant Seth Wadham by his
Solicitor A. E. Wolcott filed in the Office of the
Clerk of said Court his certain Separate Answer
which answer is in the words and figures follow-
ing, to wit,

The Separate Answer of Seth Wadhams and of the defendants to the Bill of Complaint of Hiram P. Moses Complainant in the Superior Court of Chicago in Chancery setting

This defendant now and at all times hereafter, saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had, or taken to the many errors uncertainties and imperfections in said Bill contained for answer thereto, or to so much and to such parts thereof as this defendant is advised it is necessary or material for him to make answer thereto, ^{un} Answering saith That on or about March 2nd A.D. 1853 this defendant ascertained that the parcel of land mentioned in plaintiffs said Bill could be purchased and obtained from H. S. & C. D. Hager the then owners thereof for the sum of \$6000, \$3000 thereof to be paid in hand and the ballance of \$3000 to be paid in one and two years thereafter in two equal instalments of \$1500 each with interest thereon at 6 per cent per annum, And this defendant regarding the purchase of said land on the terms aforesaid as a good bargain and highly desirable for profit, obtained the refusal thereof on the terms aforesaid from said owners thereof for 24 hours, and

immediately there after Communicated said proposition to the plaintiff (with whom this defendant was at that time engaged as an outside agent and manager in carrying on said Plaintiff's Machine Shop situated on a lot of land adjoining said parcel of land in said Bill mentioned and who at that time was largely indebted to this defendant for money before that time loaned to him, and also for personal services bestowed by this defendant in and about the business aforesaid of the plaintiff) wherefore this defendant and the plaintiff then agreed to make an equal effort to raise said sum of \$3000 by borrowing the same if possible, and to purchase said land on the terms aforesaid and to hold the same jointly and in Company until such time as the same could for the best interest of both parties be disposed of or equally divided between them, and this defendant and the plaintiff in their said efforts to raise said sum of \$3000 found that with the name of J. Young Scammon (one of these defendants) upon a note with them this defendant and the plaintiff for the payment in 90 days of the sum of \$3000 they could obtain said sum of \$3000, less the discount thereon for said 90 days at the rate of 10 per cent per annum whereupon they applied to said Scammon for his name with them upon

such note as aforesaid, and the said Scammon agreed for a bonus of \$100, to sign such note with them provided they would fully indemnify him for the payment thereof, and provided also they would get the name of Roswell Carter (one of these defendants) also upon such note with them whereupon this defendant and the plaintiff applied to said Carter, stating to him their wants as well as their ways and means in the premises as aforesaid, and requested him to sign such note with them, which he the said Carter positively refused to do, but said to this defendant and the plaintiff that he would see what he could for them, and that if he could he would get the said sum for them without any bonus, provided that they should promptly repay the same in 90 days, which this defendant and the plaintiff agreed to do, and also agreed in order to secure to him such repayment to execute a deed of Trust on said land for that purpose and also to give him a Chattel Mortgage on about \$6000 worth of tools and Machinery then in the plaintiff's said Machine Shop and owned by said plaintiff, and the said Carter did afterwards procure for and deliver to this defendant and the plaintiff the said sum of \$6000, less the discount thereon for 90 days at

10 per cent per annum, upon the distinct understanding and agreement between this defendant and plaintiff, and the said Carter that the said sum of \$3000 should be repaid to him in 90 days, and that a note and trust deed upon said land should be executed and delivered therefor accordingly as soon as the deed of purchase as aforesaid, should be procured by them for said land on the terms aforesaid from the owners thereof. And this defendant and the plaintiff (as soon as they had completed said purchase and had obtained from said Flagler a deed in fee simple therefor) proceeded to execute their note and deed of trust and Chattel Mortgage for the repayment to said Carter of said \$3000, in accordance with their agreement as aforesaid but before the same were executed this defendant suggested that possibly something might occur to prevent them, this defendant and the plaintiff from paying said sum at the end of 90 days, and to provide against disappointment in such a contingency, this defendant on behalf of himself and the plaintiff requested that said papers should be made out to be due and payable in 6 months instead of 90 days, as before agreed upon, And the said Carter finally consented that

said papers should be respectively drawn to be due and payable in 6 months, and the same were accordingly made and executed in manner & form as alleged in the plaintiff's said Bill, the said plaintiff and this defendant at the same time assuring said Carter that the said sum of \$2000 should be paid in 90 days if they could do it, and that if they should fail to pay the same in said 90 days they would pay him said Carter 2 per cent a month thereon if he should require it until the same should be fully paid; and the said Carter in pursuance of said understanding and agreement as soon as said \$2000 note was made and delivered to him endorsed a receipt of the interest thereon for 90 days, and this defendant and the plaintiff at the same time and in pursuance of their agreement with said Carter as aforesaid executed and delivered to him a Chattel Mortgage of the plaintiff's aforesaid tools & Machinery as additional security for the payment of said \$2000, but they requested said Carter to defer placing said Chattel Mortgage on record until after the expiration of said 90 days, alleging that such record might affect their credit and ability to raise said sum within the period last

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aforesaid

This defendant further answering says, that he and said Moses, did not, nor did either of them pay said sum of \$3000, or any part thereof within said 90 days, and the said Carter soon after that period, urged this defendant to pay the amount of said Note and informed this defendant that he had placed said Chattel mortgage on record.

This defendant further answering, says that on or about the second day of March A.D. 1855 and when the lien by virtue of said Chattel Mortgage ^{upon} said tools and machinery was about to expire by limitation of the statute, said Carter informed this defendant, and said Moses that said note must be paid; that otherwise, he said Carter would be under the necessity of taking possession of and selling the tools and machinery specified in said Chattel mortgage to satisfy said note also that he said Carter was then the assignee and owner of a note and mortgage given by this defendant and said Moses to said H. J. & C. D. Hagler for the payment of the purchase-money of said land which said note was given for the payment of \$1500 in two years from the date thereof with interest thereon at the rate of 6 per cent

per annum and dated March 8th 1853
whereupon this defendant and said Moses
on the 2nd day of March 1855, in and for the
consideration (in part) of the past services
trouble and expense of said Carter in carry-
ing said debt for them up to that time (last
aforesaid) and for the further consideration
and agreement of and on the part of said
Carter to forbear to take possession of and to
sell said tools & machinery under and by vir-
tue of said Chattel mortgage and to let his
lien thereon by virtue of said Chattel mortgage ex-
pire and also for the further consideration of
the endorsement by said Carter of the legal
interest for twenty one months which had accr-
ued on said \$3000 note up to the date last
aforesaid, and also for the further consideration
of the endorsement by said Carter of the le-
gal interest for two years on said \$1500 note
which would accrue and become payable in
6 days thereafter, to wit, on the 8th day of
March 1855, made and delivered to said Carter
the \$2367. note in the plaintiffs bill mentioned
which said last mentioned note was made pay-
able in 10 days after the date thereof, with
interest thereon at the rate of 10 per cent per
cent per annum, and dated March 2/55
And this defendant further answer-

-ing, avers that it was no part of the agreement, understanding or consideration or condition for the making and delivering of the last aforesaid note that the said Carter should forbear for a single moment to have sue for and collect without delay the said \$3000, due on said \$3000 note, nor to forbear to enforce the collection and payment of the said \$1500 mentioned and secured in and by said \$1500 note immediately after the same should become due and payable according to the tenor and effect thereof; but that on the contrary the whole and only consideration for the making and delivery of said \$3367 note as aforesaid was as hereinbefore stated, and the said Carter did, agreeably with the aforesaid consideration, then and there endorse on said \$3000 note a receipt for the interest thereon up to said date of March 2nd 1855 and did also then and there endorse on said \$1500 note a receipt for the interest there would be due thereon at and up to the 8th day of March 1855 according to the legal tenor and effect of said notes respectively, and did also forbear to take possession of and to sell said tools & machinery, and gave up his lien thereon by virtue of said Chattel Mortgage and suffered the same to expire by limitation of the Statutes

thereon, and this defendant and said Moses then and there agreed to, and did commence immediately to pay up and liquidate each & all of said three notes for \$3000, \$1500 & \$2367 respectively as fast and as soon as they could do the same, and to that end they did in fact then and there assign and deliver to said Carter two bank checks amounting to the sum of \$245.26, which amount was then and there by agreement endorsed by said Carter on said \$2367. note, and the said Moses did also then and there assign and deliver to said Carter a number of promissory notes which he held against various persons in different sections of the country, amounting in the aggregate to the sum of \$4888.81 to be by said Carter collected, and the collections thereof (as often as the same should amount to the sum of \$500) to be endorsed on said 3 notes or on either of them at the option of said Carter, and this defendant and said Moses did also then and there verbally assure said Carter that the whole amount of said 3 notes for \$3000, \$1500 and \$2367. as aforesaid would and should be paid within 3 months from that date, and also that said Carter should and might for his services and trouble in making and applying such collections from said assigned claimant.

retain therefrom what would be equal to 2 per cent a month upon the whole amount that should appear to be due on said 3 notes at the time of such endorsements respectively and that if any portion of said 3 notes should remain due and unpaid after said 3 months the said Carter should have and receive from said Moses and this defendant what would be equal to 6 per cent thereon quarterly or 24 per cent per annum due and payable quarterly. But this defendant avers in further answer to said Bill that said Carter has never deducted demanded or received said proffered percent, nor any other per cent as interest on the amount of said 3 notes or either of them or any part thereof except the lawful interest thereon according to their tenor and effect, as this defendant is informed and believes.

This defendant further answering says that on the 9th day of March 1855 he paid to said Carter to be endorsed on said \$1500 note the sum of \$750, the same being this defendants share of one half the amount due on said last mentioned note, which said sum said Carter then endorsed on said \$1500 note, and that on the 2nd day of March A.D. 1856 this defendant paid to said Carter to be endorsed on said \$3000 note the sum of \$1650, the same being this defendants

share of one half^L the amount then due on said \$3000 note, which said last mentioned sum of 1650, said Carter at the date last aforesaid endorsed on said \$3000 note.

This defendant further answering says that it was agreed between this defendant and said Moses in consideration of said indebtedness of said Moses to this defendant at the time said promissory notes were assigned to said Carter for collection and application as aforesaid, that whatever amount said Carter should collect of said Claims and endorse on said 3 notes or either of them if such endorsements (from said Collections) on either of said Notes should exceed one half of the amount due thereon respectively, such excess should go to the credit of said Moses on account of which said Moses was owing this defendant as aforesaid.

This defendant further answering says that the said Moses was then and from that time hitherto has been and still is indebted to and owing this defendant a much larger sum of money than the aforesaid excess over one half that was paid and endorsed on said Note for \$2367 from collections received on said assigned Claims, and this defendant is and always has been ready and willing

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to have such excess put to the credit of said Moses and applied towards the payment of said indebtedness of said Moses to this defendant in accordance with the aforesaid agreement between them.

This defendant further answering, says that from information and belief, there has been no payments on either of said notes for \$3000 and \$1500, except what has been paid by this defendant as aforesaid and that there is now justly due to said Carter thereon the sum of \$750 with interest thereon from the 8th day of March A.D. 1855 at the rate of 6 per cent per annum upon said \$1500 note and also the further sum of \$1500 with interest thereon from the second day of March A.D. 1855, at the rate of ten per cent per annum upon said \$3000 note.

This defendant further answering, says that in the Summer of A.D. 1856, this defendant and said Moses were offered and could have sold said land for the sum of \$50000 of which \$10000 cash to be paid in hand and the balance of \$40000, in well-secured notes on short time, and this defendant was ready & anxious on his part to sell and have sold said land on the terms aforesaid and out of said \$10000 cash payment to pay and cancel all their aforesaid joint liabilities therefor; but said

Moses wilfully and unreasonably refused to join with this defendant in such sale alleging that said land was worth much more than \$50000, and preferring to "thin along" their debt therefor at 2 per cent a month if they could not do better than to sell said land upon the terms last aforesaid. And this defendant avers that in consequence of the unreasonable conduct and refusal to sell said land as aforesaid of said Moses the best offer and opportunity for the sale of, and realisation of profits on said land was lost to this defendant, and that this defendant has sustained great pecuniary loss and damage by reason of the unreasonable conduct and refusal of said Moses as aforesaid and that since the offer and opportunity aforesaid for the sale of said land, this defendant has not hitherto (by reason of the aforesaid incumbrances on said land and by reason of the pecuniary of said Moses and the complicated and conflicting liens and claims of the creditors of said Moses thereon) been able to disentangle & dispose of the share and interest of this defendant in said land without submitting to and suffering great loss and sacrifice thereon and that said land has in the mean time greatly depreciated in its fair cash value, and is at the present time worth not to exceed \$30000.

And this defendant avers that in justice and equity he is entitled to have, and he therefore asks, that for whatever amount there may be found to be due on said notes for \$3000 and for \$1500 as aforesaid, for the payment of which said land is held as security by virtue of said Mortgage and trust deed, the joint interest of said Moses which he acquired and holds with this defendant as aforesaid in said land, be first sold to satisfy and liquidate said amount, and that the interest of this defendant in said land be relieved therefrom except in case the said interest of said Moses should not sell for enough to pay and satisfy said amount.

And this defendant further claims in this behalf, and submits the same to Your Honor, that in justice and equity, the interest of said Moses (as Co purchaser and owner thereof with this defendant as hereinbefore stated) in said land, is, and should be taken and held to be (as between this defendant and said Moses, subject to one half the loss and damage to said Company property, or to all the damage and loss to this defendant as Co purchaser & owner of said property, which the same or this defendant has suffered and sustained, by reason of the aforesaid unreasonable conduct and refusal of said Moses, and of his aforesaid rela-

-tion (as an insolvent debtor) thereto, and that in justice and equity this defendant should be and is entitled to hold the equal and undivided half of said Moses in and to said land for the liquidation and payment of one half the loss and damage thereon as aforesaid.

This defendant further answering, says that in the fall of 1858 said Moses having (as this defendant supposed) become hopelessly insolvent, this defendant became very desirous that said \$3000 and \$1500 Notes should be paid up and this defendant be discharged and said land relieved therefrom, and this defendant having as aforesaid paid his full share thereof, urged said Carter to resort to the sale of said land under and by virtue of said Trust Deed and Mortgage to make and satisfy the amount due thereon respectively, but said Carter expressed great aversion to the vexations and expense of legal proceedings either for the foreclosure of said Mortgage or for getting a change of trustee to sell said land under said Trust Deed (the said J. W. Scammon in said trust deed named as trustee thereof being in Europe and it not being known when he would return to the State of Illinois) whereupon this defendant, in order to obviate the aforesaid objections of said Carter, sug-

-gested that he could assign said note to some one through whom as the legal holder of said \$3000 note, a Change of trustees could be obtained and the land sold to pay the amount due on said note, and this defendant, at that time, regarding said defendant Henry Howland as a fit and proper person through whom such Change and sale as aforesaid could in a lawful and proper manner, ^{be} accomplished, did suggest to said Carter that he assign said \$3000. note to said Howland for the purpose aforesaid and this defendant also offered to attend to the business himself for said Carter in order to relieve said Carter from all the trouble and vexation thereof, and the said Carter having been advised that it would be right and safe for him so to do, did for the purpose aforesaid assign said \$3000, note to said Howland, whereupon proceedings by petition were instituted in the name of said Howland as the legal holder of said note, in the Cook County Court of Common Pleas for the removal of said J. Y. Scammon, the trustee named in said trust deed and for the appointment of some other fit and proper person to execute the provisions of said trust deed but before said proceedings were bro't to a final hearing the said Scammon

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returned and said proceedings were discontinued and the said Note was returned to said Carter to whom the same in fact belonged & So far as this defendant has any knowledge, information or belief, the said Howland never otherwise held or had or now has any interest in said Note and trust deed or either of them whatsoever.

And this defendant further answering avers, that the part which he, took in the matter last aforesaid was not with any design intent or motive in any manner or form whatsoever to injure oppress, damage or defraud the said Moses, but that the only motive and object of this defendant in the premises, was to get himself relieved and disentangled from his said liabilities and relations with said Moses as far and as fast as he could, in a fair and legal manner.

This defendant further answering, denies all fraud, confederation, combination and Conspiracy in said Bill charged or suggested and he denies all the several other matters and things in said Bill charged and set forth (if any there be) which are not hereinbefore fully and particularly answered denied or explained, and he avers that the foregoing is

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a full statement of the truth concerning the matters and things in said Bill alleged & set forth, so far as he is advised it is necessary for him or is material in the case to answer or to be answered, to the best and utmost of his memory knowledge information and belief, and he asks that whatever there be in said Bill to the contrary the plaintiff be required fully to prove.

And now having fully answered, he asks to be hence dismissed with his costs in this behalf most wrongfully sustained.

Seth Madhames

A. E. Wolcott

Solicitor

And afterwards, to wit, on the twenty fifth day of March in the year aforesaid, defendant Henry Howland by his solicitor, A. E. Wolcott filed in the office of the clerk of said Court his certain separate Answer, which answer is in the words and figures following, to wit.

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The Separate Answer of Henry Howland
one of the Defendants to the Bill of Complaint of Hiram
P. Moses Complainant in the Superior Court of
Chicago. In Chancery Sitting

This defendant now and at all times here
- after saving to himself all and all manner of
benefit or advantage of exception or otherwise that
can or may be had or taken to the many errors
uncertainties and imperfections in said Bill
contained for answer thereto, or to so much
thereof as this defendant is advised it is neces-
- sary or material for him to make answer to
answering says.

That he has no knowledge of the several
matters and things in said Bill set forth and
charged, save that in the month of December
A.D. 1858 he was requested by the said Carter
and Wadhams or by one of them (but by which
one, or whether by both, he does not remember and
cannot therefore say) to permit his name to
be used for the purpose of getting a Change of
Trustee in a certain Trust Deed that had been
executed and delivered by said Wadhams and
Moses to J. Y. Scammon (who was at that time
sojourning in Europe) to which request this
defendant (as a matter of friendship and personal
accommodation only to said Carter and being also

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assured that it should be at no risk or expense of this defendant). assented but this defendant cannot of his own knowledge, say whether or not said request was made with reference to the Trust Deed and \$2000 note in the Plaintiff's Bill mentioned but from information he believes it to be and have been the same. This defendant has now no recollection of ever having seen or in fact had possession of said note and Trust Deed, but his best impression and belief is that the same were handed by said Carter directly to E. B. McCagg Esq^r for the purpose of enabling him to institute, in the name of this defendant (as the legal holder of said note) proceedings in Chancery to get a trustee appointed by the Court to take the place of said Scammon (Trustee in said Deed named) with power and authority to execute the Trust in said Deed specified and declared.

This defendant further answering, says that proceedings were thereupon instituted in the Cook County Court of Common Pleas, for the purpose of getting a change of Trustee as aforesaid but that before said proceedings were brought to a final hearing, the said J. V. Scammon returned to the City of Chicago again to reside whereupon said proceedings were discontinued and said note and trust deed transferred back

to said Carter.

This defendant further answering says that he has not now nor did he ever have any interest whatever in said note and trust deed or either of them except in the manner and for the purpose aforesaid and that he has now no interest whatever in this cause nor has he any knowledge or information concerning any of the matters set forth in this cause except as hereinbefore stated and he denies all fraud, Confederation combination and conspiracy in said Bill charged or suggested and he denies all the several other matters and things in said Bill alleged except as hereinbefore admitted.

And now having fully answered, he prays to be hence dismissed with his reasonable costs in ^{this} behalf sustained.

Henry Howland

A. C. Wolcott

Solicitor

And afterwards, to wit, on the day and year aforesaid, said day being one of the days of the March Term of said Court, the following among other proceedings, was had and entered of record in said Court, to wit.

Heiram P. Moses

v.

Roswell Carter

Seth Wadham

Henry Howland &

J. Young Scammon

Bill

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This day comes the said defendant Henry Howland by A. E. Wolcott his solicitor, and on his motion, leave is hereby given said Henry Howland to file his answer in this cause

And afterwards to wit on the (9th) Ninth day of April in the year aforesaid, said Roswell Carter by his solicitor, A. E. Wolcott filed in the office of the clerk of said Court his certain Cross Bill of Complaint, which Bill is in the words and figures as follows to wit.

To the Honorable Judges of the Superior Court of Chicago in the County of Cook and State of Illinois, In Chancery, Sitting

Your Orator Rodwell Carter of said County Respectfully represents,

That
on or about the 20th day of January A.D. 1861, Hiram P. Moses of said County Exhibited and filed on the Chancery side of said Court his certain Original Bill of Complaint against your orator, impleaded with Seth Wadhams, J. Y. Scammon and Henry Howland, stating among other things that on or about March 2^d 1853 he and the said Wadhams, being indebted to your orator in the sum of \$3000 for money actually loaned by your orator to said Moses and Wadhams, made their promissory note to secure the said sum of \$3000, with interest at 10 per cent, payable to your orator or order in six months from the date last aforesaid and at the same ^{time} to secure the payment of said note according to its tenor and effect, that they, and their wives Mary Moses and Elizabeth Wadhams, executed and delivered to the said J. Y. Scammon as trustee for them, their certain Trust Deed conveying to said Scammon certain lands and tenements therein described

in trust, with the ordinary and usual powers and provisions for selling said lands and tenements to pay said note in case the same should not be paid according to the tenor and effect thereof by said Moses and Wadhams; Stating also that your orator on or about the 7th of June A.D. 1853 became possessed, and was the holder by transfer and assignment of a certain other promissory note bearing date on or about the 8th of March A.D. 1853 given by said Moses and Wadhams for the payment of \$1500. to Frederick S. and Charles D. Flagler, due with interest at the rate of 6 per cent, which said last mentioned note was duly secured to said Flagler by a mortgage of the same lands and tenements in said trust deed mentioned, which said mortgage the said Carter (your orator) would, as the holder of said \$1500 note, have a right at any time to avail himself of for the payment and satisfaction of said \$1500 note; Stating also that both of said promissory notes have long since been fully paid; Stating also that said Scammon as trustee as aforesaid had advertised and was about to sell as said trustee said lands and tenements to pay a pretended and alleged balance due on said \$3000 note, and praying that said trustee might be enjoined from selling said

real estate under and by virtue of said trust deed, also praying that said trustee be ordered to re-convey said lands & tenements and that both of said promissory Notes may be given up and cancelled, all of which with many other things therein alleged, charged and prayed for, will, by reference to said Original Bill, ^{more} fully and at large appear.

Your Orator further represents that afterwards on the fourth day of March A.D. 1861 (the return day of the summons in said cause issued and served upon him,) he filed his separate answer in said cause to said Bill of Complaint admitting the execution and delivery of said \$3000 note by said Moses and Wadhams to him, and also the execution and delivery of said trust deed as in said Original Bill stated; and stating that he (your orator) was and is the bona-fide assign-ee of the \$1500 promissory note mentioned in said Bill and which was given by said Moses and Wadhams to said Haglers, for the payment in two years after the date thereof of \$1500 with interest at the rate of 6 per cent per annum, and dated March 8th 1853 and that said \$1500 Note was given by said Moses and Wadhams to said Haglers as aforesaid in consideration, and as a part

of the purchase money of the lands and tenements in said Bill and trust deed mentioned, and that ~~the~~ your orator was and is the assignee and holder of the Mortgage executed and delivered to said Flaglers by said Moses & Wadhams with their respective wives Mary Moses and Elizabeth Wadhams to secure the payment of said \$1500 note according to its tenor and effect, denying that said notes or either of them were or had been fully paid as alleged in said original Bill, and alleging that on the contrary there was and still is justly due to your orator upon said \$1500 note the sum of \$750 with interest thereon at the rate of 6 per cent per annum from the 8th day of March A.D. 1855 and that there was and still is justly due to your orator upon said \$3000 note the amount of \$2000 with interest at the rate of 10 per cent per annum from the 5th day of March 1855 less the legal deduction therefrom by virtue of two payments made and endorsed on said note as follows, one of \$584.15 made and endorsed May 7th A.D. 1855, and one of \$1650 made and endorsed March 2nd 1856, admitting that said Scammon as trustee as aforesaid was about to sell said lands and tenements to pay

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and satisfy with the avails thereof, the amount of such balance due on said \$3000 note when he was enjoined therefrom by the order of this Court in accordance with the prayer of said Moses in said original Bill; and denying all and singular the other statements and charges contrary thereto in said original Bill contained and fully answering all and singular the material facts and interrogatories therein stated and filed.

Your Orator further represents that the said Seth Wadhams in his separate answer to said original Bill admits the just indebtedness of himself and said Moses to your Orator upon and by virtue of said promissory notes for \$3000 and \$1500 as hereinbefore stated as, claimed by your orator in his aforesaid answer and also admits, the due execution and delivery of said Trust Deed and Mortgage as security for the payment of said notes respectively as therein more particularly stated and set forth and in accordance with the claims and statements of your Orator herein.

Your orator further represents that said Henry Howland in his separate answer to said original Bill disclaims that he has any interest in the cause, and denies any knowledge touching the origin or consideration

of said promissory notes or of said Trust Deed and Mortgage or either of them, or of the amount that has been paid or is still due thereon.

Your Orator further represents that it is true as he has in his said answer alleged and set forth, that he is the bone-fide holder and owner of each of said Notes for \$3000 and for \$1500 and that said Notes were each of them given for the original purchase money of said lands and tenements, - that there is justly due to your orator upon said \$3000 note the amount of \$3000, with interest thereon from the second day of March A.D. 1855 at the rate of 10 per Cent per annum, less the amount of two payments made and endorsed on said note with interest at the same rate upon said endorsements from the dates thereof respectively, as follows, to wit, one of the date of May 7th 1855 for \$584.15 and one of the date of March 2nd 1856 for \$1650.00, the payments of which said amount is secured to your orator by a Deed of Trust, as stated in said original Bill of the lands and tenements therein mentioned and described, which said Deed of trust although executed as of the date of March 2nd 1853 as in said original Bill stated was not in fact acknowledged by the grantors thereof until the 8th day of March A.D. 1853

on which last mentioned day the same was
filed for record in the office of the recorder
of Cook County Illinois. - That there is justly
due to your orator upon said \$1500 note the
sum of \$750 with interest thereon from March
8th 1855 at the rate of 6 per cent per annum.
That the payment of said \$1500 and interest
is secured by a mortgage upon the same lands
and tenements in said trust deed mentioned
and described and was executed acknowledged
and delivered by the said Moses & Wadhams
and their respective wives Mary Moses and
Elizabeth Wadhams to H. S. & Co. D. Flagler
on the 8th day of March A.D. 1853 at the same
time that said trust deed was acknowledged
as aforesaid and was filed for record in the
office of the Recorder of Cook County Ill. on
the 9th day of March A.D. 1853 and recorded
in Book No 14 of Mortgages, page 368, a copy
of which said note and mortgage and assignment
is hereto attached and made a part of this Bill,
that your orator, is the legal assignee and holder
of said mortgage and that the first note in said
mortgage mentioned for the payment of \$1500
in one year after the date thereof with inter-
est at 6 per cent has been paid and taken up
by said Moses and Wadhams.

Your orator further represents, that he

is, advised by legal Counsel that regarding the facts relating to the consideration, execution, acknowledgment and filing for record of said Trust Deed and Mortgage respectively, as herein-before stated there are reasonable grounds for doubt and of uncertainty as to the priority of lien (under the provisions of the Conveyance and registry Acts of the Legislature of Ill.) upon said lands and tenements by virtue of said Trust Deed and Mortgage respectively executed, acknowledged and filed for record as (and under the circumstances) aforesaid and whether or not, a sale of said lands and tenements, under the legal and equitable provisions of either of said Conveyances for the payment and satisfaction of the amount due thereon respectively, would reach behind and cut off the lien, created by the other upon said lands and tenements, so that in either case the only safe course for your orator would be to invoke the aid of a Court of Equity, to direct that after the payment and satisfaction of the amount due upon the instruments under which sale should be made (out of the avails thereof) the surplus (if any) of such avails, or so much thereof as might be necessary therefor, be applied to the payment & satisfaction of the amount due upon the

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other of said instruments

Your Orator therefore in view and Consideration of the premises, and in as much as he has been brought into Court by the said Moses in this cause, respectfully exhibits this his Cross Bill, as well for the purpose of avoiding multiplicity of suits between the same parties in substance, as of obtaining more speedy sure and complete justice in the premises and for specific and general relief on his part, touching the matters and things contained and set forth in said original Bill and asks that the same may be filed and taken into Consideration at the final hearing in said Cause,

And your Orator further prays that the said Hiram P. Moses, Seth Wadhamer J. G. Scammon and Henry Howland may be made parties defendant hereto, and that they be required severally to answer without oath (which is hereby expressly waived) all and singular the parties. — that an account may be taken of what is justly due to your Orator upon said \$3000 Note, and also of what is justly due to your Orator upon said \$1500 Note, and that on the final hearing of the Cause the Injunction hereinbefore allowed and issued, may be ^{reversed} disallowed, and the said J. G. Scammon Trustee as aforesaid be directed

and ordered, when he shall sell said lands and tenements by virtue of and in accordance with the powers and provisions in said Trust Deed, specified and declared, and after paying the amount due upon said \$3000 Note in accordance with the aforesaid finding thereon by the Court, to your orator, together with the proper costs and charges of such sale, out of the avails thereof, to pay the surplus of such avails (if any there shall be) or so much thereof as may be necessary to pay and satisfy the amount due upon said \$1500 Note if the same be not before that time otherwise paid in accordance with the aforesaid finding by the Court thereon to your orator.

And that your Orator may have such other and further process and relief in the premises as the rules and principles of equity and good conscience may warrant and require.

Roswell Carter

A. E. Walcott

Solicitor

Copies

This Indenture made this Eighth day of March in the year of our Lord one thousand eight hundred and fifty three, Between Stiram P.

Moses and Mary, his wife, and Seth Wadham & his wife, all of the City of Chicago, County of Cook and State of Illinois, party of the first part, and Frederick F. Flagler and Charles D. Flagler of the town of Newburgh in the County of Orange and State of New York, 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 three thousand dollars (\$3000) secured to be paid by two promissory Notes bearing even date herewith, one for fifteen hundred dollars payable in one year from the date thereof, and one other for the same amount of fifteen hundred dollars payable in two years from the date thereof, each Note bearing interest at six per cent per annum, said notes being in part payment of the purchase of the property hereinbefore described.

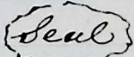
Now therefore this Indenture witnesseth that the said party of the first part for the better securing the payment of the money aforesaid with interest thereon according to the tenor and effect of said two promissory Notes above mentioned and also in consideration of the further sum of dollar to us in hand paid by the said party of the second part at the delivery of these presents the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed and by these presents doth grant bargain sell and convey

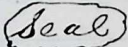
unto the said party of the second part, their
 and assigns for ever all the following, described
 premises situate lying and being in the City of
 Chicago, Cook County and State of Illinois, to wit:
 all that part of Block number Seventy three (73)
 in the School Section, addition to Chicago, that
 lies East of Ellsworth Street and also all the
 right title and interest of the said parties of
 the first part in and to all the premises lying
 East of and between said above described
 premises and the middle of the Main Channel
 of the South branch of the Chicago River (the
 said parties of the first part hereby covenants to
 and with the said parties of the second part
 their heirs and assigns, that if default shall
 be made in the payment of the first Note com-
 -ing due within thirty days after the same shall
 become due and payable, then in that case both
 Notes above mentioned shall become due and pay-
 -able together with all interest thereon, any thing
 therein contained to the contrary, notwithstanding)
 Do Have and Do Hold the same, together with
 all and singular the tenements hereditaments
 privileges and appurtenances thereunto belong-
 -ing, 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 have in and to the premises hereby con-

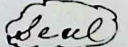
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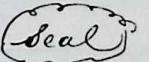
-veyed unto the said party of the second part
their heirs and assigns and to their only proper
use benefit and behoof, provided always, and
these presents are upon, this express Condition
that if the said party of the first part their
heirs executors or administrators shall well and
truly pay, or cause to be paid to the said party of
the second part their 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 notes according
to the true intent and meaning thereof, and 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.

(Signed) H. P. Moses 

" Mary Moses 

" Seth Wadhams 

" Elizabeth Wadhams 

Sealed and delivered }
in presence of }

State of Illinois

County of Cook

City of South Chicago

95th

I, John Foreythe, a Notary

Public in and for the Town of South Chicago in the said County in the State aforesaid. Do hereby Certify that Hiram P. Moses and Mary Moses his wife and Seth Wadhams and Elizabeth Wadhams his wife personally known to me as the real persons whose names are subscribed to the annexed mortgage, appeared before me this day in person and acknowledged that they signed sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth, and the said Mary Moses wife of the said Hiram P. Moses and Elizabeth Wadhams, wife of the Seth Wadhams having been by me examined separate and apart and out of hearing of their husbands, and the contents and meaning of the said instrument of writing having been by me made known and fully explained to them acknowledged that they had freely and voluntarily executed the same and relinquished their dower to the lands and tenements therein mentioned, without compulsion of their said husbands, and they do not wish to retract the same.

Given under my hand and Notarial Seal this 8th day of March A.D. 1853

(signed) John Forsythe

Notary Public

South Chicago

Seal

(40728) State of Illinois Cook County Filed
for Record March 7th 1853 and recorded in book
No 14 of Mortg^s page 368. L. D. Hoard, Clerk

Know all men by these presents that I
Charles D. Flagler, one of the Mortgagees herein
mentioned for a Valuable Consideration to me in
hand paid by Roswell Carter the receipt whereof
I do hereby acknowledge do ^{hereby} grant, assign,
transfer and set over unto the said Roswell
Carter and his assigns all my right title in-
terest claim or demand whatsoever of in
or to the premises within conveyed to myself
and one Frederick S. Flagler by Mortgage and
all my right title and interest to the several
Notes of hand in the condition thereof specified
now remaining due and unpaid or hereafter to
become due thereon subject however to all
right of redemption provided law To Have and
to Hold the same to the said Roswell Carter
his heirs and assigns to his and their use in fee
and in mortgage. Witness my hand and Seal
this 7th day of June A.D. 1853

(Signed) Chas. D. Flagler Seal

970 State of Illinois } ss
Cook County } I Henry M. Clarke

98th

a Notary Public in and for said County in the State
aforesaid do hereby Certify that Charles D. Flagler
who is personally known to me to be the same person
whose name is subscribed to the annexed assign-
ment appeared before me this day in person and
acknowledged that he had signed sealed and
delivered the said instrument of writing as his
free act and deed for the uses and purposes therein
expressed. Given under my hand & official
Seal this Seventh day of June A.D. 1853.

Henry M. Clarke
Notary Public

Seal

No 42771, State of Illinois County of Cook the
within Mortgage and assignment filed for re-
cord June 7th 1853 and recorded in book No
15 of Mortgages on page 155.

L. D. Hoard, Clerk

(Copy of Note)

\$1500

Chicago March 8th 1853.

Two years after date for Value received
we or either of us promise to pay to Frederick S.
Flagler and Charles D. Flagler or Order the sum
of Fifteen hundred Dollars with interest at
six per cent per annum.

St. P. Moses
Seth Wadham

N

(Endorsements)

Frederick T. Flagler, Charles D. Flagler
received the interest due on this note March 8th 1855

Received of Seth Wadhams on this note seven hun-
dred and fifty dollars March 9th 1855.

And afterwards, to wit, on the day and year
aforesaid, said Complainant H. P. Moses by his
Solicitor Geo. Herbert filed in the office of the
Clerk of said Court, his certain Replication
to the Answer of defendants Seth Wadham
^{Roswell Carter & Henry Howland}
which Replication is in the words and figures
following, to wit,

Superior Court of Chicago
 Hiram P. Moses, Compt
 vs
 Roswell Carter
 Seth Wadhams
 Henry Howland &
 J. Young Scammon Respondents
 In Chancery

The Replication
 of Hiram P. Moses, Complainant to the answer
 of Seth Wadhams defendant

This Repliant saving and reserving to him-
 self all and all manner of advantage of except-
 ion to the manifold insufficiencies of the said
 answer, for replication thereunto saith
 that he will aver and prove his said bill
 to be true and certain and sufficient in
 law to be answered unto, and that the said
 answer of the said defendant is uncertain, un-
 true and insufficient to be replied unto by
 this Repliant, without this that any other
 matter or thing whatsoever in the said an-
 -swer contained material or effectual in
 law to be replied unto confessed avoided tra-
 -versed or denied is true; all of which mat-
 -ters and things this Repliant will be ready
 to aver and prove as this honorable Court
 shall direct and humbly prays as in &
 by his said bill he hath already prayed

Geo. Herbert
 Solicitor for Compt

The Replication of Hiram P. Moses Complainant to the answer of Roswell Carter defendant.

This Repliant saving and reserving to himself all and all manner of exception to the manifold insufficiencies of the said answer for replication saith, that he will aver and prove his said Bill to be true certain and sufficient in law to be answered unto and that the said answer of the said defendant is uncertain untrue and insufficient to be replied unto by this Repliant; without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied to unto, confessed & avoided is true, all which matters and things this Repliant is and will be ready to ^{aver &} prove as this honorable Court shall direct and humbly prays as in & by his said bill he hath already prayed.

The Replication of Hiram P. Moses Complainant to the answer of Henry Howland Defendant

And this Repliant saving and reserving to himself all and all manner of exception to the manifold insufficiencies of the said answer for replication saith

that he will aver and prove his said bill to be true certain and sufficient in law to be answered unto and that the said defendant is uncertain and untrue and insufficient to be replied to by this Repliant, without this that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto confessed or avoided is true, All which matters and things this repliant is and will be ready to aver & prove as this honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

And afterwards, to wit on the twenty third day of May in the year aforesaid A.E. Wolcott Solicitor for all the defendants herein filed in the office of the Clerk of said Court a certain Notice of Motion, which Notice is in the words and figures following to wit

Hiram P. Moses

v.s

Roswell Carter et al.

Superior Court of Chicago
In Chancery

The said Hiram P. Moses will take Notice that the said Carter on the opening of said Court tomorrow morning or as soon thereafter as he can be heard, move for an order requiring said Moses to plead answer or demur to the Cross Bill filed in said Cause by the said Carter.

Chicago May 22nd /61.

By A. E. Wolcott his Solr

Recet. a Copy of the above Notice this 22nd of May 1861

And afterwards, to wit, on the day and year aforesaid said day being one of the days of the May Term of said Court the following, among other proceedings was had and entered of record in said Court, to wit:

Hiram P. Moses

v.

Bill

850

6242

Roswell Carter, Seth Wadhams, Henry Howland & J. Young & Cannon

This day comes the said defendant ^{Roswell} ~~Henry~~ ^{Carter} ~~Howland~~ by A. E. Wolcott his Solicitor, and on his motion it is ordered that the said Complainant plead, answer or demur to the Cross Bill filed in this Cause, by the first day of the next term of this Court.

Record 5 page 508

And afterwards, to wit, on the Twentyninth day of May in the Year aforesaid, said Hiram P. Moses by Geo. Herbert his Solicitor filed in the office of the Clerk of said Court, his Answer to the Cross Bill, to which Answer is attached the Replication thereto of said Roswell Carter, which Answer and Replication are in the words and figures following, to wit

The answer of the defendant Hiram P. Moses to the Cross Bill of Complaint of Roswell Carter filed in the Chancery suit now pending wherein the said Hiram P. Moses is, Complainant and the said Roswell Carter & Young Scammon, Seth Wadhams and Henry Howland are defendants:—

And the said defendant now and at all times hereafter saving and preserving to himself all benefit and advantage of exception to the manifold errors uncertainties and imperfections in the said Complainant's said Cross bill contained for answer thereunto and to so much thereof and to such parts thereof as this defendant is advised is, or are material for this defendant to make answer unto this defendant answering saith—

That true it is that this defendant on or about the 30th day of January A. D. 1861 Exhibited and filed his bill of Complaint against the said Roswell Carter, J. Young Scammon Seth Wadhams and Henry Howland and that thereafter the said Roswell Carter, Seth Wadhams and Henry Howland filed their several answers to said original Bill of Complaint but as to the contents of said original Bill and the matters and things therein stated and charged this defendant for

greater certainty Craves leave to refer to his original bill upon file under oath which he prays as to all the matter of the contents of said original bill therein stated and charged or stated and charged in the said cross bill as therein contained he may hereby make the same a part of this answer as fully as if the same were copied and set forth at length herein.

And as to all matters in said Cross bill stated and charged as stated and set forth in the said several answers of the said Roswell Carter Seth Wadhams and Henry Howland so far as it is necessary for this defendant to answer the same, this defendant craves leave to refer to the said several answers of the said several defendants and hereby traverses and denies the same or any of them to be true and calls for proof thereof if material as this Court may order thereupon except as to those matters charged and stated in said bill and admitted in answer, and particularly this defendant denies that the said Roswell Carter has justly due him on the note for three thousand dollars, or on the note for fifteen hundred dollars in said original bill described and mentioned any sum or amount whatever but this defendant on the contrary says

that a large amount of money was at the time of the filing of said original bill due and ought to have been paid to this defendant as stated in said original Bill and still remains unpaid the amount whereof by the account to be taken under the direction of this honorable Court will fully appear in the said proceedings under said original Bill of complaint.

And this defendant further answering admits that the said Mortgage and note in said cross bill described by the said Hiram P. Moses and Seth Wadham given to the said Frederick St Charles D. Flagler were duly made and executed and acknowledged and recorded in the month of March A.D. 1853 and at or about the respective times when these acts respectively bear date, but this defendant says that the said Mortgage was in fact made executed acknowledged before the said Deed of Trust and that at the time said deed of Trust was executed the said Roswell Carter well knew of the existence of said Mortgage deed of the said notes secured thereby given for the purchase money of the said lands and tenements in said Mortgage described and had full

notice thereof and that in fact and law the said Mortgage was a prior lien upon the said lands and tenements therein described at the time the said Trust Deed went into effect and was executed and delivered

And this defendant further answering denies and traverses all and singular all matters and things in said Cross Bill stated and charged not stated and charged by him in his said Original Bill of Complaint and admitted by the said defendants to said original bill in their answers thereto. — And thus having fully traversed and denied and answered all matters and things in Complainant's bill of Complaint set forth so far as he is advised it is necessary or material for him to answer or traverse the same, he prays that he may be hence discharged with his reasonable costs in this behalf most wrongfully sustained

Shiram P. Moses

by Geo. Herbert his Solr

Geo. Herbert Solr for

(Deft. Sh. P. Moses and of Counsel)

The Replication of Roswell Carter Com-
plainant (by Cross Bill) to the answer of
Hiram P. Moses one of the defendants thereto

This Replieant saving and reserving to
himself all and all manner of advantage of
exception to the manifold insufficiencies of
the said answer, for Replication thereunto
saith, That he will aver and prove his said Cross
Bill to be true, certain and sufficient in the
Law to be answered unto; and that the said
answer of the said defendant Hiram P. Moses
is uncertain, untrue and insufficient to be
replied unto by this Replieant; without this
that any other Matter or thing whatsoever
in said answer contained material or
effectual in the Law to be replied unto, con-
fessed and avoided traversed or denied
is true; all which matters and things this
Replieant is and will be ready to aver and
prove as this Honorable Court shall direct;
and prays as in and by his said Cross Bill
he hath already prayed.

Roswell Carter
By A. C. Wolcott
his Solr

11216

And afterwards, to wit on the Eleventh day of December in the Year of Our Lord one thousand eight hundred and Sixty two, Said day being one of the days of the December Term of said Court, the following among other proceedings was had and entered of record in said Court to wit

William P. Moses

25

Roswell Carter

Leth Wadhams

Henry Howland &

J. Young Scammon

Bill

And now comes said Com-
plainant by George Herbert his Solicitor, and
A. E. Wolcott appears for said Defendant Henry
Howland and by agreement of parties now here
in open court it is ordered that proofs by both
parties on Bill and Cross Bill be closed by first day
of ^{the} next Term of this Court.

And afterwards, to wit, on the Fifth day of January, in the year of our Lord one thousand eight hundred & sixty three there was filed in the office of the Clerk of said Court the Deposition of James M. Walker, which is in the words and figures following, to wit,

The Deposition of James M. Walker of the City of Chicago taken ^{before} me J. Howland Thompson a Notary Public in and for the City of Chicago on Saturday the 3rd day of January A.D. 1863 at the office of Walker, Van Arman & Dexter in said City of Chicago, to be used and read in evidence on the hearing of a certain Cause now pending and undetermined in the Superior Court of Chicago, wherein Hiram P. Moses is, Complainant and Roswell Carter Seth Wadhams, Henry Howland and J. Y. Scammon are, Defendants, said Cause being on the Chancery side of said Court. The said parties being present by their Counsel. The said James M. Walker being first duly sworn deposed and testified as follows, to wit.

Interrogatory First. Do you know Seth Wadhams one of the defendants

Answer I do

Interrogatory Second. What conversation have you had at any time with him, if any relative to the ownership, possession, or Control of the note or Notes which are the subject matter of this suit, and of the Trust Deed held in the name of J. Y. Scammon by which said note or notes are secured, or of the mortgage called the Flagler Mortgage set up in defence by said Carter and Wadhams.

to this Interrogatory.

Answer A client of mine, Martin Ryerson, has an interest in the premises or a part of them covered by the Trust Deed and Mortgage referred to in the Interrogatory, and I have always claimed that that trust deed and mortgage constituted no lien on the premises as against the interest of M^r. Ryerson. M^r. Wadhams who represented the Notes, trust deed and mortgage referred to, claimed that the notes were not fully paid and this has led to a good many conversations between myself and Wadhams relative to the notes, trust deed, and mortgage, during the last two or three years, and in those conversations M^r. Wadhams always represented himself as owning and controlling that interest, the note and the mortgage or trust deed, securing it and has many times made various propositions for a settlement of it. I stated to him in those conversations that the trust deed and note constituted no lien on the premises as against M^r. Ryerson, that still M^r. Ryerson might be willing to give something to avoid controversy. I cannot fix the time and dates of these conversations. There have been a good many of them. I have never had any conference with M^r. Carter. He has

Never written me or been to see me on the subject

Cross Examination Waived

J. M. Walker

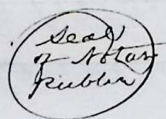
Subscribed and sworn to
before me this 3rd day of January
A.D. 1863.

J. Howland Thompson
Notary Public

State of Illinois —
Cook County, City of Chicago } I, J. Howland Thompson
Notary Public in and for the City of Chicago, County
of Cook and State of Illinois, do hereby Certify
that the foregoing Deposition of James M. Walker
was taken by me at the time and place in the
Caption to this Deposition mentioned to be read in
evidence on the hearing of the cause in said
Caption mentioned; and I further Certify that
said parties were present at the taking of this
deposition by their Counsel, the Complainant
by George Herbert Esq., and the defendants by
A. E. Wolcott Esq., and that said Deposition was
taken in due form and was subscribed by the
Witness in my presence and that said Witness
was duly sworn previous to the taking of said

deposition.

In witness whereof I have hereunto set
my hand and Notarial Seal this 3rd day of
January A.D. 1863.



J. Howland Thompson
Notary Public

And afterwards, to wit, on the twenty seventh day
of March in the year aforesaid, there was filed in
the office of the clerk of said Court, the appearance
in said cause of J. Young Scammon which appear-
ance is in the words and figures following, to wit.

Superior Court of Chicago March Term 1863
Hiram P. Moses
v^t
Roswell Carter, Seth Wadhams
Henry Howland & J. Young Scammon
} Appearance of J. Young
Scammon one of the Defts

And now comes the said
J. Young Scammon in his own proper person, and enters his
appearance in this cause as of the above entitled Term
J. Young Scammon

And afterwards, to wit, on the twenty eighth day of October in the year aforesaid, George Herbert Jobe for Complainant filed in the office of the clerk of said Court a certain Notice of Motion for Decree which Notice is in the words and figures following, to wit:

In the Superior Court of Chicago
 Hiram P. Moses
 vs
 Rowell Carter et al } In Chancery

To the Defendants or A.C.
 Wolcott Esq: their Solr.

Please take Notice that
 at the opening of the Court tomorrow morning
 or as soon thereafter as Counsel shall be heard
 I shall move the Court to enter a decree in
 the above entitled cause.

Geo Herbert
 Compts Solr.

Chicago Oct 27th 1863

And afterwards, to wit, on the thirtieth day of October in the year aforesaid there was filed in the office of the clerk of said court the certain Exhibits marked AA BB & CC and also ^{Exhibits} numbered 1, 2, 3, 4 & 5, which Exhibits are as follows to wit

u

"Exhibit A" A

This Indenture Made, the Second day of March in the Year of Our Lord one thousand eight hundred and fifty three. Between Hiram P. Moses and Mary - his wife and Seth Wadhams and Eliza - his wife, all of the City of Chicago, in the County of Cook and State of Illinois of the first part and J. Young Scammon of the same place of the second part Witnesseth that the said Seth Wadhams and Hiram P. Moses are justly indebted unto Roswell Carter also of said City of Chicago in the sum of three thousand dollars (\$3000) Secured by their promissory note bearing even date herewith for said sum of three thousand dollars (\$3000) payable to the said Roswell Carter or order, six months after date, with interest at ten per cent, said note having been given, and upon its face being expressed to be given for money loaned

Now therefore these presents witness, that the said party of the first part, in order to secure the prompt and punctual payment of the said promissory note herein before specified, according to its tenor and effect, and in consideration of one dollar and for other good and valuable considerations, to the said party of the first part paid, the receipt whereof is hereby confessed, have and do hereby bargain, sell, alien, release convey and confirm, unto the said party of the second

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part and to his heirs executors, administrators and assigns for ever all the following described premises situate, lying and being in the County of Cook and State of Illinois to wit: all that part of the North half of Block Seventy three (73) in the School Section addition to Chicago that lies East of Ellsworth Street, and also all the interest of said party of the first part in and to all the premises lying East of, and between said above described premises, and the middle of the main Channel of the South Branch of the Chicago River together with all buildings and improvements situated on any part of said premises.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion, remainders, & issues, and profits thereof and also all the estate right title interest dower right of dower property, possession, Claim and demand whatsoever, as well in law as in equity of the said party of the first part of in and to the same and any and every part thereof, with the appurtenances. To have and to hold the above described premises and appurtenances unto the said party of the second part and his assigns; In trust nevertheless for the following purposes to wit, In trust, in case default shall be made by the said Hiram P. Moses and Seth Wadham of the party of the first part

their heirs, executors, administrators or assigns,
to pay the said promissory Note, or the money secured
thereby above mentioned, according to the tenor and effect
thereof, or if default shall be made in whole or in part
in the performance of any of the Covenants or agreements
herein contained, then on application of the said Roswell
Carter or the legal holder or holders of said prom-
issory note, and having first given thirty (30) days
notice, by publishing the same in some newspaper
printed in the City of Chicago aforesaid, or by post-
ing up written or printed notices in three public places
in the County where said premises are situated, then
it shall and may be lawful for the said party of the second
part, his personal representatives, or his attorney, duly
authorized by Virtue hereof to enter into and upon all
and singular the premises herein granted, or intended
to be, and to sell and dispose of the same, or any
part, share or portion thereof and all right benefit,
and equity of redemption of the said party of the first
part their heirs or assigns therein at public sale,
at such hour and place as said party of the second
part, his legal representatives or attorney, may ap-
point or to adjourn said sale from time to time as
said party of the second part, his legal represent-
atives or attorney may think proper, and as the
attorney of said party of the first part, for such pur-
pose duly constituted irrevocable, or in the name
of said party of the second part, his executors or

administrators, or in such manner as the said party of the second part, his legal representatives or attorney may think proper, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee-simple; and out of money arising from such sale after first paying all costs, charges, fees or other expenses growing out of the management and sale of said premises, including all travelling expenses and time spent going to and from said sale and all taxes assessments and all other prior liens thereon to pay the said Roswell Carter his representatives or assigns or to the legal holder or holders thereof, the amount which may be then due on said promissory Note above mentioned, for principal and interest, rendering the over plus of the proceeds of such sale (if any there should be) to the party of the first part or their assigns, at the office of said party of the second part in Chicago aforesaid, which sale so made as aforesaid, shall for ever be a perpetual bar, both in law and equity, against the said party of the first part their heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from or under him, them or any of them, and it shall not be the duty of the purchaser to see to the application of the purchase-money; and upon this further trust, that after said promissory Note and all costs, fees and charges ac-

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- coming by virtue hereof, shall be fully paid and
satisfied, then to reconvey back to the said party
of the first part their executors, administrators or
assigns, all the right of the said party of the second
part, acquired by virtue hereof to the above described
premises, or such part thereof as shall remain un-
- sold, after the satisfaction and discharge of
the trust first mentioned aforesaid; said re-
- conveyance to be made at the cost of said party
of the first part. In witness whereof the
said party of the first part have hereunto set their
hands and seals this day and year first above
written.

Signed, Sealed & delivered,
in presence of

A. P. Moses	Seal
Mary Moses	Seal
Seth Wadhams	Seal
Elizabeth Wadhams	Seal

State of Illinois } ss
County of Cook }
Town of South Chicago

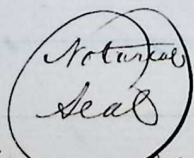
I John Forsythe a Notary
public in and for the town of South Chicago in
said County, in the State aforesaid, do hereby
Certify, that Hiram P. Moses and Mary Moses
his wife and Seth Wadhams and Elizabeth
Wadhams his wife who are personally known

to me as the real persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they executed and delivered the said deed as their free and voluntary act, for the uses and purposes therein set forth. And the said Mary Moses wife of the said Hiram P. Moses and Elizabeth Wadhams wife of Seth Wadhams having been by me examined, separate and apart, and out of the hearing of their said husbands and the contents and meaning of the said deed having been by me made known and fully explained to them they acknowledged that they had freely and voluntarily executed the same, and relinquished their dower to the lands and tenements therein mentioned, without compulsion of their said husbands and that they did not wish to retract the same.

Given under my hand and official seal this eighth day of March in the year of our Lord one thousand eight hundred and fifty three. (1853)

John Forsythe

Not- Pub South Chicago



State of Illinois, No. 40, 673 — Filed for Record March 8th
Cook County — 1853 and recorded in Book 61 of Deeds
Page 183. L. D. Hoara, Clerk

"Exhibit B" B

This Indenture made this Eighth day of March in the Year of our Lord One thousand, eight hundred and fifty three. Between Hiram P. Moses and

Mary his wife and Seth Wadhams & his wife all of the City of Chicago, County of Cook and State of Illinois party of the first part and Frederick T. Flagler & Charles D. Flagler of the Town of Newburgh in the County of Orange and State of New York 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 Three thousand (\$3000) Dollars secured to be paid by two certain promissory notes bearing even date herewith, one for fifteen hundred dollars payable in one year from the date thereof, and one other for the same amount of fifteen hundred dollars payable in two years from the date thereof, each note bearing interest at six per cent per annum, said notes being in part payment of the purchase of the property herein below described.

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 two promissory notes above mentioned. And also in consideration of the further sum of one dollar to us in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged hath granted bargained, sold and conveyed, and by these presents doth grant bargain, sell and convey unto the

126th

said party of the second part their heirs and assigns forever, all the following described premises, situate lying and being in the City of Chicago Cook County and State of Illinois to wit All that part of Block Number Seventy three (73) in the School Section addition to Chicago, that lies east of Ellsworth street, and also all the right title and interest of the said parties of the first part in and to all the premises lying east of and between said above described premises and the middle of the main Channel of the south branch of the Chicago River.

(The said parties of the first part hereby covenants to and with the said parties of the second part their heirs or assigns, that if default shall be made in the payment of the first note coming due within thirty days after the same shall become due and payable, then in that case both notes above mentioned shall become due and payable together with all interest thereon, anything therein contained to the contrary notwithstanding) To have and to hold the same, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto 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 have in and to the premises hereby conveyed unto the said party of the

second part, their 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 their heirs, Executors or administrators shall well and truly pay, or cause to be paid, to the said party of the second part their 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 notes according to the true intent and meaning thereof, and 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 herewith set their hands and seals the day and year first above written.

	H. P. Moses	Seal
Sealed and delivered in presence of	Mary Moses	Seal
	Seth Wadhams	Seal
	Elizabeth Wadhams	Seal

State of Illinois }
County of Cook }
Town of South Chicago }

I John Forsythe a Notary Public in and for the town of South Chicago in the said County, in the State aforesaid, do here

- by Certify, that Hiram P. Moses & Mary Moses his wife, and Seth Wadhams & Elizabeth Wadhams his wife personally known to me as the real persons whose names are subscribed to the annexed Mortgage appeared before me this day in person and acknowledged that they signed sealed and delivered the said instrument of writing as their free and Voluntary act for the uses and purposes therein set forth, And the said Mary Moses wife of the said Hiram P. Moses and Elizabeth Wadhams wife of the said Seth Wadhams having been by me examined, separate and apart, and out of hearing of their husbands and the Contents and meaning of the said instrument of writing having been by me made known and fully explained to them, acknowledged that they had freely and Voluntarily executed the same and relinquished their dower to the lands and tenements therein mentioned without Compulsion of their said husbands and they do not wish to retract the same. Given under my hand and Notarial Seal this 8th day of March in the A.D. 1853.



John Forsythe
Not Pub South Chicago

Know all Men by these presents that I
Charles D. Hagler one of the Mortgagees here
in mentioned, for a Valuable Consideration to me
in hand paid by Roswell Carter, the receipt
whereof I do hereby acknowledge, do hereby
grant, assign, transfer and set over unto
the said Roswell Carter and his assigns all
my right, title, interest, claim or demand
whatsoever, of, in, and to the premises within
conveyed to myself and one Frederick F. Hagler
by Mortgage, and all my right title & interest
to the same, with all my right title
and interest to the several Notes of hand in this
Condition thereof specified now remaining due
and unpaid or hereafter to become due thereon,
subject however to all rights of redemption pro-
vided by law. To have and to hold the same
to the said Roswell Carter his heirs & assigns
to his and their use in fee and in Mortgage.

Witness my hand and Seal this 7th
day of June A.D. 1858.

Chas. D. Hagler (Seal)

State of Illinois } ss
Cook County }

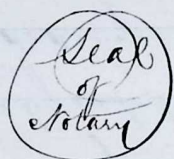
I Henry M. Clarke a

130th

Notary Public in and for said County in the State aforesaid, do hereby Certify that Charles D. Haglor who is personally known to me to be the same person whose name is subscribed to the annexed assignment appeared before me this day in person and acknowledged that he had signed, sealed and delivered the said instrument of writing as his free act and deed for the uses and purposes therein expressed

Given under my hand and official Seal this Seventh day of June A.D. 1853.

Henry W. Clarke
Notary Public



No 42771

State of Illinois
County of Cook

The within Mortgage and assignment filed for record June 7th 1853. and Recorded in Book No 15 of Mortgages on page 155.

L. D. Hoard

Clerk

No 40728

State of Illinois
Cook County

Filed for Record March 9th 1853 and Recorded in Book No 14 of Mortgages - page 368.

L. D. Hoard

Clerk

X

"Exhibit CC"

I now all men by these presents that Hiram P. Moses and Seth Wadhams of the City of Chicago in the County of Cook and State of Illinois in Consideration of the sum of three thousand Dollars to us paid by Roswell Carter of the same place, the receipt whereof is hereby acknowledged have granted bargained and sold, and by these presents do grant bargain and sell unto the said Roswell Carter the following described goods and Chat

three iron planing machines one of which planes eighteen feet, and the other six feet. One Slide lathe swings seventy eight inches, one Lathe twenty feet long, in an iron frame swings thirty two inches. Two Slide lathes, wooden frames and one Slide Lathe iron frame. Two small lathes with side rests, one iron frame hand Lathe. Two polishing or drill lathes. Two Vertical drills. Two Screw Cutters, one Steam Engine and boiler, all of the said property being in the shop of said Hiram P. Moses on the North end of Block seventy three (73) in the School Section addition to Chicago, together with all and singular the appurtenances thereunto belonging, or in any wise appertaining, To have and to hold

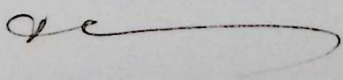
all and singular the said Goods and Chattels unto the said Roswell Carter his executors administrators and assigns to his and their sole use forever. And the said Hiram P. Moses and Seth Wadham for themselves, their executors and administrators do Covenant to and with the said Roswell Carter his executors, administrators and assigns, that they are lawfully possessed of the ^{said} Goods and Chattels as their own property that the same are free from all incumbrances and that they will and their executors and administrators shall warrant and defend the same to the said Roswell Carter his executors, administrators and assigns against the lawful claims and demands of all persons.

Provided nevertheless, that if the said Hiram P. Moses and Seth Wadham their heirs, executors, administrators, or assigns shall well and truly pay unto the said Roswell Carter his executors administrators or assigns a certain promissory note with the interest thereon of which the following is a copy.

"\$3000

Chicago March 2^d 1853

"Six Months after date for Value received we promise to pay to Roswell Carter or Order the sum of three thousand Dollars with interest at ten per cent, this note being given for money loaned".

Signed 

then, and from thenceforth these presents & every thing therein contained shall cease and be null and void.

And provided also, that for the space of two years after the date of this instrument, it shall and may be lawful for the said Abram P. Moses & Seth Wadham, their executors or administrators to keep possession of the said granted property, and to use and enjoy the same, unless the said Roswell Carter his executors administrators or assigns, shall before the expiration of said two years, at any time, after default in the payment of the said promissory note or any part thereof, at the time and in the manner herein before provided elect to take possession of the said property.

And at the expiration of said two years or at any time after default in the payment of the said promissory note or any part thereof as herein provided or any of the costs and charges accruing by virtue hereof, that then, and from thenceforth, it shall and may be lawful for the said Roswell Carter his representatives, assigns, or agent or any of them at said Moses and Wadham costs and charges with or without process of law, to travel after said property, goods Chattels and effects hereinbefore described wherever the same or any part thereof may be supposed

to be, and to enter with or without force any of said Moses & Wadhams premises, and search for the same, and to take possession of, & remove carry away, and to sell, and dispose of the same or any part thereof, at public Auction after ten days notice either by publication in some Newspaper in Chicago, or by three notices posted up in the vicinity of said sale or at private sale without notice, for Cash, or on Credit as said Roswell Carter, his representatives, assignee or agent or any of them, may think proper; and out of the money arising from such sale to retain first, all costs and charges for travelling, after, searching, taking, removing, keeping, storing, advertisement and sale of such property goods Chattels and effects, and all prior liens thereon together with the amount due and unpaid upon the said promissory Note rendering the over plus of the money arising from such sale (if any there shall be) unto said Moses and Wadhams or their assignees, at the office of the said Roswell Carter in such funds as may be received at such sale.

And provided further, that in case the said property or any part thereof shall be attached, at any time before the payment of the said promissory Note by any other Credit-
or or Creditors of the said Hiram P. Moses

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or Seth Wadhams or of either of them or if the said Roswell Carter his executors, administrators or assigns, shall sell, remove or attempt to sell or remove any of the property aforesaid, or suffer any part thereof to be removed or waste for want of proper care; or if the said Roswell Carter his representative or assignee, agent or agents, or any of them shall at any time before said Note shall become due, think the said property described as aforesaid, or any part thereof will be in danger of being sold, removed, or wasted then the said ~~Roswell~~ Carter Note shall forthwith become due and payable; and it shall in such case be lawful for the said Roswell Carter his representatives agent or agents, or any of them, to enter with or without process of law, at said Moses & Wadhams costs and charges, any of their or either of their premises, wherever the said property described as aforesaid, or any part thereof, may be supposed to be, and search for and take possession of and carry away and hold possession of, or keep in store the whole or any part of the goods chattels and effects, and sell and dispose of the same in manner aforesaid.

In testimony whereof the said Seth Wadhams & Abram P. Moses have hereunto set their hands and seals this second day of

March in the year eighteen hundred and
fifty three.

Seth Wadham's Seal
H. P. Moses Seal

Signed sealed and delivered
in presence of
J. A. Howe

State of Illinois
Cook County } ss

I Frederick A. Howe a
Justice of the peace in and for said County
do hereby certify that this mortgage was
duly acknowledged before me by the above
named Seth Wadham and H. P. Moses
this 8th day of March A.D. Eighteen hundred
and fifty three.

F. A. Howe J.P. Seal

No 42893

State of Illinois
County of Cook } ss

Filed for Record June 11th
1853 and recorded in Book No 15 of Mortgages
page 188.

L. D. Hoard
Clerk

"Exhibit No 1"

\$3000

Chicago March 2nd 1853

Six Months after date, for Value received we promise to pay to Roswell Carter or order, the sum of Three thousand Dollars with interest at ten per cent, this note being given for Money loaned.

H. P. Moses

Seth Wadham

Know all men by these presents, that whereas the Subscribers are justly indebted to Roswell Carter upon a certain promissory note bearing even date herewith, for the sum of three thousand dollars, and interest at ten per cent made payable to the said Roswell Carter or order, and due six months after from date

Now therefore in consideration of the premises and of the sum of one dollar to us in hand paid, by the said Roswell Carter, the receipt whereof is hereby acknowledged, we do hereby make, constitute and appoint E. B. McCagg or any attorney in any Court of Record to be our true and lawful attorney, irrevocably for us and in our name place and stead to appear before any justice of the Peace or in any Court of Record in term time or vacation

of the States or Territories of the United States, and at any time after the said Note becomes due to waive service of process and confess a judgment in favor of the said Roswell Carter or his or their assignee or assignees, upon the said Note for the above sum or for as much as appears to be due according to the tenor and effect of said Note, with interest thereon together with costs; also for twenty five dollars Attorneys fees, to be added to the amount due on entering up judgment; also to file a cognovit for the amount that may be so due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judgment entered, by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such judgment, and to release all errors that may intervene in the entering up of such judgment or issuing the execution thereon, and also to consent to immediate execution upon such judgment. Hereby ratifying and confirming all that our said Attorney may do by virtue hereof.

Witness our hands and Seals this Second day of March A.D. 1858.

In presence of { St. P. Moses Seal
Seth Wadham Seal

Endorsements on Exhibit No. 1

without recourse

Roswell Carter

Chicago March 2nd 1853

Interest paid on the within note for ninety days

Received Interest to date on this note, March 2nd 1855.

Received on this note five hundred dollars also

Eighty four $\frac{15}{100}$

⁵⁰⁰_{84.15} Chicago May 7/55

Received of S. Wadham on this note sixteen hundred and fifty dollars

\$1650

March 2nd 1856

"Exhibit No. 2"

\$1500

Chicago March 8th 1853

Two Years after date, for value

Received We or either of us promise to pay
to ~~Frederick K. Flagler~~ ^{Charles D. Flagler} or order the sum of
Fifteen hundred dollars with interest at six
per cent per annum.

A. P. Moses

Seth Wadham

Now all men by these presents that whereas the Subscriber Hiram P. Moses & Seth Wadhamo justly indebted to F. J. Hagler & Chas. D. Hagler upon a certain promissory note bearing even date herewith, for the sum of fifteen hundred dollars + $\frac{00}{100}$ cents made payable to the said F. J. Hagler & Chas. D. Hagler or order, and due two years after date.

Now therefore in consideration of the premises and of the sum of one dollar to us in hand paid by said F. J. & Chas. D. Hagler the receipt whereof is hereby acknowledged do hereby make, constitute and appoint Grant Goodrich or an Attorney in any Court of Records to be our true and lawful attorney, irrevocably for us and in our name place and stead, to appear before any Justice of the Peace or in any Court of Record in term time or Vacation, in any of the States or Territories of the United States at any time after the date hereof to waive service of process, and Confess a judgment in favor of the said F. J. & Chas. D. Hagler or his or their assignee or assignees, upon the said note for the above sum or for as much as appears to be due, according to the tenor and effect of said note, with interest thereon together with costs; also for — attorneys fees, to the amount of ten dollars, to be added to the amount due on entering up judgment; also to file a Cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted

upon the judgment entered by virtue hereof, nor
any bill in equity filed, to interfere in any manner
with the operation of such judgment, and to re-
-lease all errors that may intervene in the entering
up of such judgment, or issuing the execution
thereon, and also to consent to immediate execution
upon such judgment. Hereby ratifying and
confirming all that our said attorney may do
by virtue hereof.

Witness our hands and seals this (8)
eight day of March A.D. 1855.

Seth Wadhams Seal
J. T. Moses Seal

In presence of {
James Crow

(Endorsements on Exhibits No 2)

Received the interest due on this Note March
8th 1855.

Received of Seth Wadhams on this Note
Seven hundred and fifty dollars.
\$750. March 9th 1855

Federick T. Hagler

Chas. D. Hagler

\$2367

Chicago March 2nd 1855.

Ten days after date for Value received we or either of us promise to pay to the order of Roswell Carter at his office in Chicago the sum of Twentythree hundred & sixty seven Dollars with interest at and after the rate of Ten per cent per annum, being for money loaned.

H. P. Moses
Seth Wadham

Know all men by these presents that whereas the subscribers are justly indebted to Roswell Carter of Chicago in the sum of Twentythree hundred & sixty seven dollars for which sum of the subscribers have executed a promissory note of even date therewith, bearing interest at the rate of Ten per cent per annum, payable ten days after date, to the order of said Roswell Carter.

Now therefore in Consideration of the premises and of the sum of one dollar to us in hand paid, by the said Roswell Carter the receipt whereof is hereby acknowledged, we do hereby make constitute and appoint H. W. Clarke or an attorney in any Court of Record to be our true and lawful

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attorney, irrecoverably, for us and in our names place and
stead, to appear before any Justice of the Peace or in
any Court of Record, in term time or vacation, in any
of the States or Territories of the United States, at
any time after the date hereof, at the option of
Roswell Carter, to waive service of process, and
confess a judgment in favor of the said Roswell
Carter or his assignee or assignees, upon the
said note for the above sum or for as much as ap-
pears to be due, according to the tenor and effect
of said note, with interest thereon, together with costs;
also for Attorney's fees to the amount of two dollars,
to be added to the amount due on entering up
judgment; also to file a Cognovit for the amount
that may be so due, with an agreement therein
that no writ of error or appeal shall be prosecut-
ed upon the judgment entered by virtue hereof
nor any bill in equity filed, to interfere in any
manner with the operation of such judgment,
and to release all errors that may intervene in
the entering up of such judgment or issuing
the execution thereon, and also to consent to im-
mediate execution upon such judgment
Hereby ratifying and confirming all that our
said attorney may do by virtue hereof.

Witness our hands and Seals this second
day of March A.D. 1855.

144th

Received on this Note Two hundred & forty five $\frac{26}{100}$ dol-
lars. \$245 $\frac{26}{100}$ Chicago March 2nd /55

Received Two hundred fifty five $\frac{74}{100}$ Dollars. March
5th /55. \$254 $\frac{74}{100}$

Received Five hundred dollars on this note.
\$500⁻ Apl. 14th 1855.

Received on this note fourteen hundred and thirty
five dollars. \$1435. Chicago May 2nd /55

"Exhibit No 4"

Received of Roswell Carter, Peter Crum & Co
note for \$728 $\frac{45}{100}$ dated Apr 4th 1855. Said note having
been left with said Carter as Collateral security
for the payment of moneys due —
Chicago March 22nd /55.

H. P. Moses

Received of Roswell Carter a note of Jacob Carley
for \$700, which was deposited with said Carter
as Collateral security for the payment of certain
notes held by said Carter against H. P. Moses
& Seth Wadham. Note \$700. Also A. Wilson's
note for \$69.50 for same as the above \$700 \$700 Note
dated 19th 1855 H. P. Moses

Received of Roswell Carter the following notes
for and on account of H. P. Moses, said Notes, two of
which are dated March 1st 1855, drawn by Hoyt & Smith
of Batavia Ill. and for \$345, each, one payable three
months after date, and one two months from date, also
one note which was made by Hoyt & Smith for \$556.⁷⁴
date May 1st for the purposes of taking up and
renewal of the first named note of \$345.
Chicago August 7th 1855.

H. P. Moses
by Norman Ward

"Exhibit No 5"

List of Notes

1854 Oct 3	Peter Crum & Co	9 months	728.45
1855 Jan 7 19 th	Kenedy & Stockbridge	90 days	205.05
Feb 1 st	Abbott & Kingman	" "	254.74
" "	Do Do	No 60 "	254.74
" "	" "	No 30 "	paid 204.74
" 15	P. H. Rofuit	" "	90.45
" "	Do "	60 "	60.56
" 19	Jacob Early	" "	700.00
" 16	A Wilson	No 30 "	69.50
" 24	J. F. Sutherland	No 70 "	197.28
" 26	G. Hubert & Co	No 60 "	350.00
" 27	John S. Reed	No 60 "	200.00

14611	March 1,	Hog & Smith	" 3 mo.	\$45.00
"	"	D. D.	" 2 m	\$45.00
"	"	Scripps Bros & Spurr Co	"	583.30
"	2	Wilson & Conant & Co	4 days	250.00
				<u>\$4888.81</u>

Received of H. Moses the notes named above amounting to Four thousand eight hundred & eighty eight $\frac{81}{100}$ dollars (\$4888.81) for collection and as collateral and further security to the payments of certain notes which I hold against said H. P. Moses and Seth Wadhams amounting to five thousand three hundred and sixty seven dollars (\$5367 $\frac{1}{2}$). And I hereby agree that as often as I shall receive the sum of five hundred dollars \$500 $\frac{1}{2}$ on the said notes left with me as collateral and for collection, that I will endorse the same on the note or notes held against the said H. P. Moses and Seth Wadhams. I have this day received of H. P. Moses "cups" amounting to two hundred and forty five $\frac{26}{100}$ dollars, and have endorsed the same amt. on one of the ~~said~~ notes which I hold against said Moses & Wadhams.

Dated Chicago March 2^d 1855

Roswell Carter

Exhibit A filed January 3rd 1863

Half of 1500th Note - 750

Int. at 2 per ct. 2

1500
12
14 - 180 00
750
930
2
1860

3 mos
55 80
930

Due June 2nd/56 \$985.80

2220.29

1500

44

2225

1630.85

1500

750

2250

500

1500

1183

750

3433

272 1/4

40

10890

272 1/4

40

10890

4

43560

Half of 3000th Note - 1500

Indorsed May 7 500
1000

Int on 500th from 2nd March 20 mos 20

1020

2

20.40

12

244.80

80

244.00

1000

Less 2 Mos. Int on \$20

Due March 2nd/56 \$1244.00

3 mos to June 2nd 74.64

1318.64

Brought down 985.80

2304.44

Less 84.15

Due June 2nd/56 \$2220.29

~~Long figures~~
~~here~~
~~accounted~~

329422

4

1317688

2

1317690

1500

1183

750

3433

1500

1183

83

2220

1183

3403

1500

750

5653

Exhibit B filed January 3rd 1863

1855
 March 2 Note for 2367.00
 " " Indorsed $\frac{5.00}{1867.00}$
 April 14 Indorsed $\frac{5.00}{1367.00}$
 Add 43 days Int. on \$500 124.32
 2^d. 60 Dys on \$1367 $\frac{54.68}{1436.00}$
 Indorsed on Note May 2^d $\frac{1435}{1435}$
 Mistake - 1.00

Indorsements 2435
 May 7 on note $\frac{6.00}{2935.00}$
 Amt Rec^d 3019.15
 In my hands } 84.85
 May 7 overindorsements }

1855
 March 2^d Money paid to app^y on H.P. Moes^r & S. Hadham's Notes
 " 2 2 Checks 110² 125¹³ 245.26
 " 5 of Abbott & Kingman 254.74
 " 23 on P.F. Refint Note 90.45
 Int on same 50 90.95
 Apr 3 Abbott & Kingman Note 254.74
 " 14 Wilson & Conant 250.00
 Int on same 2.76 252.76
 " 21 Kennedy & Stockbridge
 on Note 205.05
 Int on 5.34 210.39
 " 24 S. Early 60.00
 " 25 B.F. Refint 60.51
 Int 62 61.18

May 2	John S. Reed	200.00
" "	Scripps, Brood & Spear	583.30
" "	G. Herbert & Co	350.00
		1563.32
" 5	Abbott & Kingman	258.55
" "	S. F. Sutherland	197.28
		\$3019.15

Carter

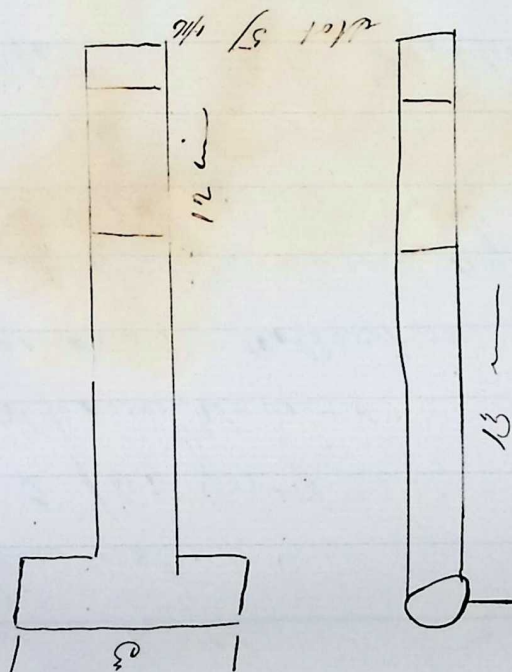


Exhibit C filed January 3rd 1863Chicago May 21st /56M^r. A. P. Moses

Dear Sir

M^r. Seth Wadhams has paid one half of the \$3000⁰⁰ Note, also one half of the \$15.00⁰⁰ Note which I hold against you and M^r. W. and the same is indorsed on the notes, he has also paid the Interest as was agreed by the parties on the 2nd March 1855

Now Sir the Note which you & Seth gave me March 2nd /55 for \$2367⁰⁰ is paid by money which I have received on Notes which you put in my hands for collection over

Also interest on the same agreeable to the understanding had at the time the Note was given.

Now taking this together with the figures I gave S. W. which I suppose you have the whole matter is before you, and I hope you will not allow this matter to run much longer for I am suffering for the want of ^{the} money and compelled to pay more Interest than I receive from you.

Yours truly

R. Carter

And afterwards, to wit on the day and year aforesaid, there was filed in the office of the Clerk of said Court, a certain Stipulation, which is in the words and figures following to wit.

In Superior Court of Chicago
 Hiram P. Moses
 v.
 Roswell Carter
 Seth Bradshaw
 Henry Howland &
 J. Young Scammon
 In Chancery

It is stipulated & agreed that the execution of the three several deeds marked "AA" "BB" & "CC", and the several other Exhibits marked, 1, 2, 3, 4, & 5 severally and filed this day in this cause were duly proved, and that the receipt for the Peter Crum & Co Note has reference to the Note against Peter Crum & Co described in exhibit No 5, and that a judgment on this Peter Crum & Co Note has been entered in the name of said Carter in the County of Berrien in the State of Michigan, to which judgment said Carter has exhibited a full release to Compt. and that the exhibits marked "A" "B" & "C" respectively, filed on the part of the Complainant, January 23rd 1863, are in the handwriting through-

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out of the said Roswell Carter.

Geo. Herbert, Compt. Solr.

A. E. Wolcott Respondants Solr.

Chicago Oct 30th 1863.

X And afterwards, to wit, on the Thirtieth day of October in the Year aforesaid, said day being, one of the days of the October Term of said Court the following, among other proceedings was had and entered of record in said Court to wit:

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Hiram P. Moses

✓

Rowell Carter

Seth Wadhams

Henry Howland

J. Young Scammon

Bill to them as Confessed

Recor'd 13 page 591

And now comes said Complain-
-ant by George Herbert his Solicitor and it appearing
to the Court that the said J. Young Scammon one of
the defendants in above entitled cause; has been
duly served with process of Summons issued in
said cause as appears by his endorsement thereon,
and that he did, thereupon at the March Term of
this Court A.D. 1863 enter his appearance in
writing in said cause, and file the same but
has failed to answer in said cause, whereupon
on motion of the Solicitor of said Complainant
it is ordered that said Defendant J. Young Scammon
be and he is hereby required to plead, answer
or demur to the bill of complaint on file in
said cause instant, and he being thereupon the

times solemnly called in open Court, comes not nor does any one for him, but herein he makes default, and interposes no plea, answer, demurrer or other defence thereto, and it is ordered that his default be taken and is hereby entered herein of record, and that the bill of Complaint in said cause be taken as confessed by and against said defendant J. Young Scammon for want of his answer.

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6242
Hiram P. Moses

v.

Roswell Carter
Seth Wadham
Henry Howle &
J. Young Scammon

Decree

Record 16 page 591
This cause having come on to be heard upon the bill of Complaint filed herein taken as confessed against the said defendant J. Young Scammon, and upon answers of the other defendants as well as upon the Cross Bill of the said Roswell Carter, and the answer of the said Hiram P. Moses and exhibits & proofs and the following facts appearing from the evidence to the Court, that is to say, that the several papers marked "Exhibits A B C" respectively filed January 3rd 1863, are all in the handwriting

of the said ^{defendant} Roswell Carter and that the pencil figures and writing contained in said Exhibits "A" & "B" are the figures referred to in the said Letter Marted "Exhibit C" signed by said Carter, that the money and interest in the several notes for three thousand dollars and fifteen hundred dollars described in said Trust Deed made by said Hiram P. Moses & wife and Seth Wadhams & wife to said J. Young Scammon recorded in the Office of the Recorder of Cook County Book 61 page 183 and in said mortgage made by said Hiram P. Moses & Seth Wadhams to Charles D. Flaglor & Frederick V. Flaglor dated March 8th 1853, and recorded in Office of the Recorder of Cook County Book 14, page 368, and the note for twenty three hundred and sixty seven dollars made by said Hiram P. Moses and Seth Wadhams so far as the same had any legal foundation have been fully paid and ought to be given up to be cancelled the balance upon them due from said Moses having been paid out of the moneys collected by said Carter upon demands assigned to him by said Moses as in said bill alleged.

And it further appearing to the Court from the evidence that upon an account duly taken after the application of the moneys collected as aforesaid to the payment of said notes there was and is now a balance due from the said Carter

156th to the said Hiram P. Moses amounting to five
\$570 hundred & seventy Dollars growing out of said
assigned demands and that divers of said de-
mands as stated below have been redelivered
to the said Hiram P. Moses.

It is thereupon ordered adjudged and
decreed by the Court that the said J. Young
Scammon within five days make execute
acknowledge and deliver to the said Complainant
a good and sufficient deed of release releasing
to the said Moses & Wadhams all the interest
conveyed to him by said trust deed in and to
the premises, described in said Bill of Complaint
and said trust deed to wit all that part of the
north half of Block Seventy three (73) in School
Section, addition to Chicago which lies east
of Ellsworth Street and also in and to all the
premises lying east of and between the said
above described premises and the middle of
the Channel of the South Branch of Chicago River
together with all the buildings & improvements
thereon. And that within the like five days
the defendant Roswell Carter either discharge
the said Mortgage on the Margin of the Record
of the same in the office of said Recorder of said
County as by statute provided or make execute
and acknowledge and deliver to the said
Complainant a full and good and sufficient

deed of release to discharge the said Mortgage
 and the premises therein described therefrom,
 And that he also deliver up the three Notes
 above mentioned respectively, described in said
 bill of Complaint for three thousand dollars,
 for fifteen hundred dollars and for Two
 thousand three hundred & Sixty seven dollars
 to be cancelled and henceforth taken of none
 effect. And in case the said Common
 of the said Carter shall fail to make, execute &
 acknowledge & deliver the said discharges
 in manner aforesaid or either of them within
 the said five days respectively as above order-
 ed after the date of the entry of this decree, then
 at the option and on the request of the said Com-
 plainant or his Solicitor, it is hereby ordered that
 Hiram F. Mather Esq one of the Masters of this
 Court do make execute acknowledge and deliver
 to the said Complainant or his Solicitor the
 said releases and discharges or such of them
 as the said defendants have failed to make which
 said releases and discharges so made & executed
 shall have the same and all the effect which
 they would & should have if executed by the
 respective defendants as above described
 and ordered, And the said defendants and
 each of them, their heirs executors ad ministrators
 and all parties who do or may claim

under them, by any conveyance or transfer made since the filing said bill of complaint, any right title or interest in and to the said premises or said notes as against the Complainant and each and every of them & their agents, Solicitors and attorneys are for ever and perpetually debared, restrained and enjoined from in any way or manner Making or setting up or attempting to make or set up, any collection claim title sale or conveyance under or by virtue of said Mortgage or said Trust Deed or either of said Notes of three thousand dollars & of fifteen hundred dollars or of twenty three hundred and sixty seven dollars or the other Notes mentioned in this decree or either of them or any judgment founded thereon.

And it is further ordered adjudged and decreed that the said Defendant Roswell Carter pay to the said Complainant the sum of five hundred and seventy ^{\$570.} dollars aforesaid together with costs of this suit to be taxed against him and that execution issue therefor.

And it further appearing to the Court from the evidence that certain Notes among which were the following, to wit, Note of Jacob Early, dated February Nineteenth A.D. 1855 for seven hundred dollars, Note of

\$570.

A. Wilson, dated February Sixteenth A.D. 1855 for Sixty nine, dollars and fifty cents, and two notes against Hoy & Smith each for the sum of three hundred and forty five, dollars, dated March 1st 1855 and due respectively, in two and three months also Note of Peter Crum ^H dated October 3rd 1854 for seven hundred and twenty eight dollars and forty five cents were duly assigned to the said Carter by the said Moses as stated in said bill of Complaint and that prior to the filing of said bill the said five notes were redelivered by said Carter to said Moses. It is further ordered ~~and~~ adjudged and decreed that by such redelivery the said five notes last above described vested in the said Hiram P. Moses as his own property - free and discharged from all claim of the said Roswell Carter

And thereupon the said Roswell Carter and Seth Wadham pray an appeal herein to the Supreme Court of this State from the judgment and decision of this Court which is allowed to them upon condition that they file their appeal bond in the penalty of eight hundred dollars with security to be approved by one of the judges of this Court, and to be filed within twenty days from this date.

And afterwards, to wit, on the Eighteenth day of November in the Year aforesaid, Defendants Roswell Carter & Seth Wadhams filed in the Office of the Clerk of said Court, their Appeal Bond, which is in the words and figures following to wit,

Know all men by these presents that we Roswell Carter, Seth Wadhams and Honoré J. Willard of the County of Cook and State of Illinois are held and firmly bound unto Hiram P. Moses also of the same County and State in the penal sum of Eight hundred dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs executors and administrators, jointly, severally and firmly, by these presents. Witness our hands and seals, this — day of A.D. 1863

The Condition of the above obligation is such, that whereas the said Hiram P. Moses did on the 31st day of October A.D. 1863 in the Superior Court of Chicago, in and for the County of Cook, and State aforesaid, and of the October Term thereof A.D. 1863 obtain a Decree against the above bounden Roswell Carter enjoining upon him certain acts therein specified, and

for the sum of five hundred and seventy Dollars besides Costs of suit; from which said Decree of the said Superior Court of Chicago, the said Roswell Carter has prayed for and obtained an appeal to the Supreme Court of said State.

Now therefore, if the said Roswell Carter shall duly prosecute his said appeal with effect, and moreover perform and pay the amount of the Decree, Costs interest and damages rendered, and to be rendered against him in case the said Decree shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise to remain in full force and virtue.

Roswell Carter Seal
Seth Wadham Seal
A J Willard Seal

Taken and entered before me
at my office in Chicago this
day of } A.D. 1863
Clerk }

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And afterwards, to wit, on the Eighteenth day of November in the year aforesaid, said day being one of the days of the November Term of said Court the following among other proceedings was had and entered of record in said Court to wit

Hiram P. Moses

v.^s

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Roswell Carter

Seth Wadham

Henry Howland

J. Young Scammon

Order Approving Bond

This day appeared the said



the Seal of said Court at Chicago
this 23rd day of February A.D. 1864
Thomas P. Carleton Clerk

the Appellant,
And the said Russell Carter, now
comes & says, that in the record & proceedings
aforesaid, there is manifest Error in this writ:
I. The Court rendered a Decree, against
the said Russell Carter, when by the
allegations, facts & Law of the Land
they should have rendered one in his
favor.

page 162.2 } II. The Court decreed that said Carter
should pay to said Moses the sum

144 of five hundred & seventy dollars. And as to
to the Law: "Evidence in the Case,
III. The finding of facts as well as the
decree of said Court is contrary to the
evidence, the Law & Equity, in the case,
wherefore the said Russell Carter prays
that a citation may issue that said
Decree may be reversed, annulled &
be of no effect, & that he may be restored
to all things that he has lost thereby
by reason thereof.

By Affidavit of the said

And the said appeller Hiram P. Moors
now comes & says that as to the matters & things
by the said appellants offered for error there
is no error in the said record and proceedings.

And further the said appeller prays
leave upon said record to assign the following
error to wit

That the decree upon the evidence and
record is for too small a sum and that it
should have been entered for a much larger sum
in favor of the said appellee.

Whereupon he prays the Court to affirm

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the said judgment & decree for such sum
as the court may find upon the record the
said Superior Court should have adjudged
and decreed the said appellant &c.

by Geo. Herbert two to 1.

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Suzanne Coeur & Grand Division

Prosser Carter impugning Affirmance
vs.
Gideon P. Mares, appellee }

Verdict & Assignment of Errors

From the Superior Court of Chicago

Filed Apr. 19. 1864
L. Seland
Clerk.

Fees of Transp. \$41.00
paid
J. B. Carter
Clerk

Abel & Co. attys
Plffs attys }