

14494

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

# Supreme Court of Illinois


Millett et al

---

vs.

Pease et al

---

71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 39

Millett

75

~~Pratt~~

1494

1003

863

Supreme Court

Justin L. Miller,

H. B. Janson and

Harriet Janson

vs

Asia Ross et al

Error to the Henry

Argument by Peff in Error

The only question in this case is whether the Court below acquired jurisdiction of the person of two defendants who were not personally served.

To acquire jurisdiction in a case like this it is necessary that a summons in the cause should be issued and returned, by the depts any of them are nonresidents and it is sought to bring them into Court by publication of a notice, this summons should be returned not found as to such depts, and an affidavit must be filed showing that the dept is a nonresident of the State, the affidavit must be filed and the summons issued, and then a notice may be given in a newspaper of the pendency of the suit, To give jurisdiction by this constructive notice these things must concur with the issue <sup>of return</sup> of the summons; The filing of an affidavit showing the fact that the dept resides out of the State and a

publication of the notice of the pending  
of the suit, and by any omission in respect  
to either of these prerequisites, the Court  
fails to acquire jurisdiction of the person  
of the debt.

In this case a summons was issued, but  
but no return of it was made in respect  
to the debts ~~of~~ ~~the~~ ~~debtors~~ ~~and~~ ~~Harriet~~ ~~Plaine~~  
son, the return the Court will find on  
the 9<sup>th</sup> Page of the record, and no men-  
tion is made in it of any debt but of  
S. Jameson. We insist that a return of  
that summons was necessary, as to all these  
debts, if they were not in the County it should  
have been returned not found.

This would have been an official dec-  
laration at least that the debts were not  
in the County, but the omission to ~~men-~~  
mention them in the return shows nothing, they  
may for aught that appears have been in  
the County all the while, subject to service  
and it was the Sheriff's duty to say whether  
or they were or not, nothing is more clear-  
ly settled by the case, than <sup>that</sup> there should be  
a summons and return to give jurisdiction  
of a person by publication. 1 Purple, Stat 139  
148. 14 Ill 359. 16 Ill 27. 17 Ill 276  
19 Ill 226. 26 Ill 507. 27 Ill 153

It is equally necessary that an affidavit should be filed showing that deft resides out of the State the requirements of the Statute are explicit as <sup>to</sup> its necessity See 1 Purples Stat 139 Sec 8.

The question in this case is does enough appear upon the records to show that such affidavit was ever filed; In the case of Tibbs vs Allen 27 Ills 125 this Court held, that if it is shown by the notice of publication that such affidavit was filed the fact of the affidavit will sufficiently appear, in that case the notice recites that affidavit had been filed that the defendants were nonresidents of the State of Illinois, and that recital was held sufficient to show that a proper affidavit had been filed, We insist that not only must an affidavit be filed but a sufficient affidavit must be filed, and if the notice is relied on to show the fact it must not only show that the affidavit was filed but it must also show that a sufficient one was filed, the notice in this case appears on page 10 of the records, the recital of the notice is "that affidavit of the nonresidence" of the deft had been filed with out saying or averring that the nonresidence

was of the State of Illinois, leaving it rather  
lent to infer more from the allegation  
than it actually expresses; and we in-  
sist that it fails to show, as the case  
of Tibbs vs Allen shows, that affidavits  
had been filed that the depts were non-  
residents of the State of Illinois, and then  
we fail to show that a sufficient affidavit  
had been filed, and we insist that  
even under the decision of Tibbs vs Allen  
~~that~~ there is no evidence that such of-  
ficial affidavit of non-residence as our Statute  
requires had been filed in our case.

Neither is there any entry of any pro-  
ceedings in Court showing that such affi-  
davit was filed.

I observe that the Winter City  
issue of publication on the 11<sup>th</sup> page of  
the record does not comply with the re-  
quirements of the Statute on that subject;  
it does not show the date of the last pa-  
per in which it was published. See 1<sup>st</sup>  
Section Chapter 3, ~~Purple~~ Stat 77.  
1 Purple Stat 77.

The Court will perceive by examining  
the record from page 8 to page 10<sup>th</sup> that  
there was no summons, correspondence or

one described in the notice, the notice  
seems to be deficient in not stating against  
whom the bid was filed or that the case  
was then pending in court

Respectfully Submitted

Jas. M. Wight

39-96

Supreme Court

H. L. Jamison et al

vs

Asia Press et al

Argument for  
app in error

Filed ~~May~~ 1. 1863  
H. L. Jamison  
Clerk

G. C. Walker

State of Illinois  
McHenry County

William H Stewart being duly sworn upon oath says that he is well acquainted with the true and correct circumstances of Thomas B. McKenna whose name appears in his own proper hand writing as occurring in a bond to obtain a Supersedeas from the Supreme Court of the State of Illinois in the case of Anna Reese & Miranda Reese vs Adm Jameson et al and that he is worth over ten thousand dollars a large part of which is real estate in said County and is unincumbered

W. H. Stewart

Subscribed & Sworn to  
before me this 20<sup>th</sup> day  
of October 1864  
Charles Russell Clerk  
Circuit Court


We the said Jamison Daniel P Jamison and  
Theodore B Makeman are held and firmly  
bound unto Asin Reese and Maranda Reese  
in the several sum of six thousand dollars  
for the payment of which well and truly to be made  
we bind ourselves our heirs and administrators jointly  
and severally by these presents

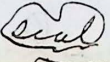
Witness our hands and seals this the 13<sup>th</sup> day of May  
1864

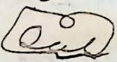
The condition of the above obligation is such that whereas  
the said Asin Reese and Maranda Reese did on  
the day of March 1864 before the Circuit Court of the  
County of McHenry and State of Illinois then being  
holders within and for said County obtain  
a decree against the said H D Jamison  
and one Gustavus Kuller for the sum of five  
hundred Monty <sup>59/100<sup>ths</sup></sup> Dollars and that a certain mortgage  
in said decree mentioned be foreclosed and that  
the lands in said mortgage mentioned be sold to satisfy  
said decree and that the said Daniel P Jamison  
be bound from any claims in and to said real  
estate arising after the execution of said mortgage  
from which said ~~land~~ the said H D

Jamison and Daniel P Jamison are about  
to sue out of the supreme court of the State of  
Illinois a writ of error to reverse said decree  
Now if the said H D Jamison or Daniel  
P Jamison shall prosecute the said writ  
of error to effect and shall pay and perform

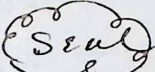
whenever or in or under ~~that~~ may be made  
by said court upon trial or dismissal of said  
unit of snow then the above obligation  
to be void otherwise to remain in full force  
and effect

H. D. Jamison 

Harriet P. Jamison 

By H. D. Jamison 

Her Attorney

Thaddeus B. Hallman 

39 #7  
Jamison Seal  
P. Jamison Seal  
P. Jamison Seal

Filed Feb. 13. 1862  
S. Ireland  
Clerk.

Handwritten notes in the top left corner, including vertical columns of numbers and letters.

# Supreme Court—State of Illinois:

APRIL TERM, 1861—THIRD DIVISION.

DUSTAN MILLETT, et. al.,  
vs.  
ASIA PEASE, et. al. } BILL.

- Page 2, 3, 4, This was a bill to foreclose a mortgage by Asia Pease and Miranda
- 5, 6, 7. Pease against Dustan Millett, H. D. Jameson ~~and~~ Harriet P. Jameson.  
*being made a party as claiming under the mortgage*
- 8. Summons issued and returnable at the March Term, inst.
- 9. Return—served upon H. D. Jameson by copy—no return as to the other defendants.
- 9. No affidavit of non-residence.
- 9, 10. Notice of pendency of ~~writ~~ <sup>deed</sup> recites that a summons was issued returnable on the third Monday of October next.
- 12. Default as to all of the defendants.
- 13. Report of Master.  
No proof to support the decree.
- 16, 17, 18  
19, 20. Usual order of sale of mortgaged premises.

# Supreme Court—State of Illinois:

APRIL TERM, 1861—THIRD DIVISION.

DUSTAN MILLETT, et. al., }  
vs. } ERROR TO McHENRY.  
ASIA PEASE, et. al. }

## Points of Error.

1. The Court erred in defaulting the defendants <sup>in court below</sup> without service of summons or return of not found as to those defendants not served, and affidavit of their non-residence and proper publication.

2. The Court erred in defaulting the defendants, Dustan Millett and Harriet P. Jameson without service of summons or return of not found, and affidavit of their non-residence and proof of publication.

3. The Court erred in defaulting the said defendants, Dustan Millett and Harriet P. Jameson, because the notice of the pendency of the suit was insufficient, because it ~~states~~ <sup>recites</sup> that a summons was issued returnable at the October Term, whereas the record shows it was returnable at the March Term.

4. The Court erred in rendering a decree against all the defendants when all were not served or brought into Court by publication.

5. The Court erred in rendering the decree without proofs.

6. The Court erred in rendering a decree against the defendants.

7. The Court erred in not rendering a decree for the ~~defendants~~ <sup>Plffs</sup>.

*H. P. Jameson*  
*for Plffs and Am.*

# Supreme Court—State of Illinois:

APRIL TERM, 1861—THIRD DIVISION.

DUSTAN MILLETT, et. al.,  
*vs.*  
ASIA PEASE, et. al. } BILL.

1. This was a bill filed in the McHenry Circuit Court, on the 2d day of March, 1860, by Asia Pease and Miranda Pease to foreclose a mortgage against Dustan Millett and H. D. Jameson, and to which bill Harriet P. Jameson was made a party as claiming under them.

2. Upon the filing of which bill a summons was issued returnable at the March Term, inst., and returned served upon H. D. Jameson, and no return as to the other defendants, Eustan Millett and Harriet P. Jameson. No affidavit was filed that the said Dustan and Harriet were non-residents.

Cost vs. Rose, 17th Ills., 276.

3. And the notice of the pendency of the suit was void, because it recites that upon the filing of the bill a summons was issued returnable at the October Term, whereas the record shows that the only summons issued in the case was returnable at the March Term.

Cook's Revised Stat., p. 129; Sec. 8.

4. The default of the defendants, Millett and Jameson, was erroneous, because they had not been brought into Court either by service of summons or publication.

Cost vs. Rose, 17th Ills., 276.

5. The decree was erroneous, because it was against all the defendants, whereas only one was served with process and no return as to the others, and the notice was irregular and void.

Swift vs. Green, et. al., 20th Ills., 173.



# Supreme Court of Illinois,

THIRD GRAND DIVISION.

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APRIL TERM, A. D. 1863.

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DUSTAN MILLETT ET AL.,

vs.

ASIA PEASE ET AL.

---

BILL.

2, 3, 4 This was a bill to foreclose a mortgage by Asia Pease and Miranda  
5, 6 Pease against Dustan Millett, H. D. Jameson and Harriet P. Jameson,  
7 being made a party by claiming under the mortgage.

8 Summons issued and returnable at the March Term, inst.

9 Return—served upon H. D. Jameson by copy—no return as to the  
other defendant's.

9 No affidavit of non-residence.

9, 10 Notice of pendency of writ recites that a summons was issued return-  
able on the third Monday of October next.

12 Default as to all of the defendant's.

13 Report of Master.

No proof to support the decree.

16, 17, 18, 19, 20 Usual order of sale of mortgaged premises.

## POINTS OF ERROR.

1. The Court erred in defaulting the defendants without service of summons or return of not found as to those defendants not served, and affidavit of their non-residence and proper publication.

2. The Court erred in defaulting the defendants, Dustan Millett and Harriet P. Jameson without service of summons or return of not found, and affidavit of their non-residence and proof of publication.

3. The Court erred in defaulting the said defendants, Dustan Millet and Harriet P. Jameson, because the notice of the pendency of the suit was insufficient, because it recites that a summons was issued returnable at the October Term, whereas the record shows it was returnable at the March Term.

4. The Court erred in rendering a decree against all the defendants when all were not served or brought into Court by publication.

5. The Court erred in rendering the decree without proofs

6. The Court erred in rendering a decree against the defendants.

7. The Court erred in not rendering a decree for the defendants.

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 B I L L .

1. This was a bill filed in the McHenry Circuit Court, on the 2d day of March, 1860, by Asia Pease and Miranda Pease to foreclose a mortgage against Dustan Millett and H. D. Jameson, and to which bill Harriet P. Jameson was made a party as claiming under them.

2. Upon the filing of which bill a summons was issued returnable at the March Term, inst., and returned served upon H. D. Jameson, and no return as to the other defendants, Dustan Millett and Harriet P. Jameson. No affidavit was filed that said Dustan and Harriet were non-residents.

*Cost v. Rose, 17th Ill., 276.*

3. And the notice of the pendency of the suit was void, because it recites that upon the filing of the bill a summons was issued returnable at the October Term, whereas the record shows that the only summons issued in the case was returnable at the March Term.

*Cook's Revised Stat., p. 129, sec. 8.*

4. The default of the defendants, Millett and Jameson, was erroneous, because they had not been brought into Court either by service of summons or publication.

*Cost v. Rose, 17th Ill., 276.*

14	"	359
16	"	27
19	"	226
26	"	507
27	"	153

*1 People Stat 139*

5. The decree was erroneous, because it was against all the defendants, whereas only one was served with process and no return as to the others, and the notice was irregular and void.

*Swift v. Green, et al., 20th Ill., 173.*

H. S. HANCHETT,  
*Attorneys for Plaintiff.*

39  
Supreme Court  
H. B. Jamison et al  
vs  
Asia Place et al  
Abstract & P. Y. Brief

Filed May 1, 1869,  
L. Leland  
C.R.

*SUPREME COURT OF ILLINOIS—THIRD GRAND DIVISION.*  
*APRIL TERM, A. D., 1863.*

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H. D. JAMIESON,

*vs.*

ASIA PAGE,  
MARANDA PEASE, and  
DUSTAN MILLETT.

---

BRIEF OF DEFENDANTS.

The objection that there was no return of the summons as to Dustan Millett and Harriet P. Jamieson, is disposed of by the Statute.  
*Sess. Laws, Feb. 12th, 1857, p. 51.*  
*Scates Stat., 164.*

The objection that the affidavit of non-residence is not preserved in the record, is not well taken.  
*Tibbs v. Allen, 27th Ill., 125.*

The objection that there is no proof to support the decree, is equally groundless. The master's report of the facts found before him supports the decree, and the bill was taken for confessed, which is sufficient of itself to support the decree; in such case it is not necessary to preserve the evidence in the record.

GLOVER, COOK & CAMPBELL,  
*Defendants' Attorneys.*

39

Jamison et al

vs

Paye et al

Defts. Brief

Filed May 6, 1863

L. L. and  
C. M.

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of McHenry - Greeting:

Because, <sup>& from</sup> In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of McHenry County, before the Judge thereof, between

Asia Pease & Maranda Pease Complainants

plaintiff, and A. J. Jamieson, Harriet P. Jamieson & Dustin Millitt

defendants, it is said manifest error hath intervened, to the injury of the aforesaid

A. J. Jamieson & Harriet P. Jamieson

as we are informed by them

complainants and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this thirteen day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Seland

Clerk of the Supreme Court.

39 117

*H. J. Jamison et al.*

No. *117* vs. *Asia Peace et al.*

**WRIT OF ERROR.**

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

*L. Seland*  
Clerk.

FILED *February 13<sup>th</sup>* A. D. 1862  
*L. Seland*  
Clerk.



*Faint handwritten notes in the left margin, including 'No. 117' and 'Asia Peace et al.'*

*Faint handwritten notes in the right margin, including 'No. 117' and 'Asia Peace et al.'*

Supreme Court of Illinois,  
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

DUSTAN MILLETT ET AL.,

vs.

ASIA PEASE ET AL.

B I L L .

- 2, 3, 4 This was a bill to foreclose a mortgage by Asia Pease and Miranda  
5, 6 Pease against Dustan Millett, H. D. Jameson and Harriet P. Jameson,  
7 being made a party by claiming under the mortgage.
- 8 Summons issued and returnable at the March Term, inst.
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other defendants.
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- 13 Report of Master.
- No proof to support the decree.
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7. The Court erred in not rendering a decree for the defendants.

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 B I L L .

1. This was a bill filed in the McHenry Circuit Court, on the 2d day of March, 1860, by Asia Pease and Miranda Pease to foreclose a mortgage against Dustan Millett and H. D. Jameson, and to which bill Harriet P. Jameson was made a party as claiming under them.

2. Upon the filing of which bill a summons was issued returnable at the March Term, inst., and returned served upon H. D. Jameson, and no return as to the other defendants, Dustan Millett and Harriet P. Jameson. No affidavit was filed that said Dustan and Harriet were non-residents.

*Cost v. Rose, 17th Ill., 276.*

3. And the notice of the pendency of the suit was void, because it recites that upon the filing of the bill a summons was issued returnable at the October Term, whereas the record shows that the only summons issued in the case was returnable at the March Term.

*Cook's Revised Stat., p. 129, sec. 8.*

4. The default of the defendants, Millett and Jameson, was erroneous, because they had not been brought into Court either by service of summons or publication.

*Cost v. Rose, 17th Ill., 276.*

15 " 357  
 16 " 27  
 19 " 226  
 26 " 507  
 27 " 153

1 *People Stat 189 408*

5. The decree was erroneous, because it was against all the defendants, whereas only one was served with process and no return as to the others, and the notice was irregular and void.

*Swift v. Green, et al., 20th Ill., 173.*

H. S. HANCHETT,  
*Attorneys for Plaintiff.*

39-96 31  
Supreme Court

H. B. Jamison et al  
vs

Asia Prase et al

vs et al P. P. B. et al

Filed May 1, 1863.  
T. L. and  
C. H.

Supreme Court - State of Illinois

April Term 1863

Asia Pease et al

vs

Dustin Millett et al } Error to M. Henry

And the said Defendants in error  
by Church & Kerr their attorneys  
come and defend the wrong and  
injury when &c and say that there  
is no error in the said record  
and proceedings as is in and  
by the said plaintiffs assign-  
ment supposed otherwise.

Church & Kerr

attys for Dfts in error

9 Court

Peace stal

Millett

in error

Apr. 24. 1868.  
Leland  
Ck.

L & Herr

Monday October 15. A.D. 1860  
United States of America  
State of Illinois  
McHenry County Sh. Pleas before  
the Honorable  
Isaac G. Wilson Judge of the Thirtieth  
Judicial Circuit of the State of  
Illinois and Presiding Judge of the  
McHenry County Circuit Court at  
a Circuit Court begun and held  
at Woodstock Court House in said  
County on Monday the fifteenth day  
of October in the year of our Lord  
one thousand Eight hundred and sixty

Present

Honorable Isaac G. Wilson Judge  
Edw. J. Durlyn States Attorney  
E. E. Thomas Sheriff

Attest

W. H. Kohn Clerk

Miss Pruss had

4

Dustin L. Millet had

} Bill.

And heretofore  
to wit on the 2<sup>d</sup>  
day of March A.D. 1860. was filed  
in the Office of the Clerk of said  
Circuit Court a Bill ~~return~~ of  
Complaint which is in words and

figures as follows to wit:

State of Illinois } McHenry Circuit  
 McHenry County } Court March  
 Term A.D. 1860  
 In Chancery

To the Honorable Isaac G.  
 Wilson Judge of the Thirteenth Judicial  
 Circuit of the State of Illinois

Humbly complaining your  
 Orators Asin Pease and Miranda  
 Pease shew unto your honor that on  
 the twenty fifth day of October in the  
 year of Our Lord one thousand eight  
 Hundred and fifty eight Justin J.  
 Miller and H. D. Jameson were  
 indebted to your Orator Asin Pease  
 in the sum of Seven thousand Sixty  
 six  $9\frac{3}{4}$  Dollars for the land here-  
 inafter described for which they  
 Executed and delivered to your  
 Orator Asin Pease their true  
 certain Promissory notes bearing  
 date on that day one for \$500.00  
 due January first 1859 one for \$500.00  
 due Jan first 1860 one for 1000.00  
 due Jan. first 1861 one for 1000.00  
 due January first 1862 one for 1000.00

due January first 1863 one for \$1000.00  
 due January first 1864 one for \$1000.00  
 due January first 1865 one for \$1000.00  
 due January first 1866 and one for  
 \$1109.3 due January first 1867 as by the  
 said notes ready to be produced by your  
 orators as this Court shall direct  
 will more fully appear.

And the said Justin L. Millet  
 to secure the payment of the said  
 notes above mentioned did at the  
 same time Execute under his hand  
 and Seal and deliver to your Orators  
 Ohio Pease and Miranda Pease  
 a Mortgage bearing even date with  
 said notes and conditioned for  
 the payment of the said sum of  
 Seven thousand Sixty Six <sup>93</sup>/<sub>100</sub> Dollars,  
 according to the conditions of the said  
 notes by which the said Mortgage  
 mortgaged unto your orators in fee  
 certain lands and real Estate a  
 description of which taken from said  
 Mortgage is as follows the South  
 West quarter of the North East  
 quarter Also the North West quarter  
 of the South East quarter a Section  
 of fourteen (14) Also the South West

4

quarter of the North West quarter  
and the East half of the North  
West quarter except twelve ~~acres~~  
and a half acres from the North ~~End~~  
of said half quarter Section Also  
the South West quarter of the North East  
quarter except Seventeen and one third  
acres from the North End of said  
Lot Also the South East quarter  
of the North East quarter except  
Seventeen and one third acres from  
the North End of said Lot all in  
Section No thirteen (13) Township forty  
Six North Range five East Also  
the South half of Lot No. two (2)  
of the North West quarter except  
fourteen ~~acres~~ and one third acres  
from the North End being in Section  
No Eighteen (18) Range Six (6.)  
Also the South East quarter of  
the North West quarter of Section  
nineteen (19.) range Six (6.) except ten  
acres from the West side of said Lot  
which Mortgage was duly acknowledged  
and was afterwards recorded as a  
Mortgage in the Recorder's Office  
of the County of McHenry and  
State of Illinois on the Eleventh day

of November 5<sup>th</sup> A.D. 1858 in Book  
Sixteen of Mortgages Page 159 as by  
the Said Mortgage and the certificates  
of acknowledgement and of the recording  
aforesaid Indorsed therein and ready  
to be produced as this Court shall  
direct with more fully appear.

And your Orator believes and  
states that the Sum of Five Hundred  
Dollars with interest from the first day  
of January A.D. 1860 is now due and  
unpaid to your Orator and that  
there will be due to your Orator  
one thousand Dollars on the first  
day of January A.D. 1861 one  
thousand on the first day of January  
A.D. 1862 One thousand Dollars on the  
first day of January A.D. 1863 and  
thousand dollars on the first day of  
January A.D. 1864 one thousand  
dollars on the first day of January  
A.D. 1865 One thousand Dollars on  
the first day of January A.D. 1866 and  
Sixty Six  $9\frac{3}{4}$  Dollars on the first day  
of January A.D. 1867 and that no  
proceedings at Law have been had  
to recover the Sum herein mentioned  
as being due or any part thereof

And your Orator believes, and States,  
 that Harriet P. Jameson has or  
 claims some interest in the said  
 mortgaged premises or in some part  
 thereof as purchaser mortgagee or  
 otherwise which interest if any has  
 accrued subsequent to the Lien of  
 the Mortgage of your Orator and  
 is Subject thereto.

Your Orator therefore asks  
 the aid of this Court in the premises  
 and that the above named Distingu-  
 shes H. P. Jameson and Harriet  
 P. Jameson the defendants in this  
 Suit may be summoned to appear  
 before this Honorable Court at  
 the next Term thereof to be holden  
 at the Court House in Woodstock  
 in said County on the third Monday  
 of March A.D. 1860 and answer  
 this your Orator's Bill according  
 to the Rules and practice of this  
 Court and that the usual decree  
 may be made for the Sale of the  
 mortgaged premises aforesaid and  
 for the payment of the amount due  
 to your Orator for principal and  
 interest upon the said notes and Mortgage.

7  
and their costs of this suit and that  
the said Defendants and all persons  
claiming under them subsequent  
to the commencement of this suit  
and all other persons although not  
parties to this suit who have any  
lien by judgment or Decree upon  
the mortgaged premises subsequent  
to the said Mortgage of your Orators  
or any lien or claiming thereon by  
or under any such subsequent  
Judgment or decree either as  
purchasers Incumbrances or  
otherwise may be barred and foreclosed  
of all Equity of Redemption in the  
said premises and that your Orators  
may have such further or such other  
relief as the nature of the case  
may require and as to this Court  
may seem proper and agreeable to  
Equity &c. Church & Key  
Tolice for Compt. &  
Indorsed filed Mar 2. 1860 J. D. Kaperon Clk.

And therefore on the same day was  
issued out of the Office of the Clerk of the  
Circuit Court of said County a writ  
of Summons which is in words.

8

and figures as follows to wit

State of Illinois }  
McHenry County }  
People of the State  
of Illinois to the Sheriff of said County  
greeting;

We command you that you  
Summon Dustin T. Millet, A.  
D. Jamison, Harriet P. Jamison  
if they shall be found in your County  
personally to be and appear before the  
Circuit Court of said County on the  
first day of the next Term thereof to  
be holden at the Court House in  
Woodstock in said County on the  
3<sup>rd</sup> Monday of March insto to  
answer unto said Pless & Miranda  
Pless in their certain Bill of Complaint  
filed in the said Court on the Chancery  
Side thereof. And have you show  
and then this writ with endorsement  
thereon in what manner you have  
Executed the Same

Witness G. H. Hallow Clerk of said  
said Court and the Seal thereof at  
Woodstock this 3<sup>rd</sup> day of March  
A. D. 1860 G. H. Hallow Clerk

Executed

(Endorsed) State of Illinois, & Woodbury County  
H. Signed this writ in the within named  
defendant H. D. Jamison by delivering  
to him a true copy of the same this  
9th day of March A. D. 1860

E. C. Thomas Sheriff  
Phy. Le. Patterson Deft.

Also served 50 copy 50 miles Return 10 1860  
Filed in the Circuit Court this 9 day of  
March A. D. 1860 T. P. Kelson clerk.

And thereafter to wit on the 14th day of  
October 1860 in the year last aforesaid  
being one of the days of the October  
Term of said Court aforesaid, the following  
proceedings were had in said cause  
and entered of Record to wit

Asin Pew  
Miranda Pew  
+  
Dustin D. Miller Esq. } Will  
And

and come  
The Complainant by Ken and  
files his proof of publication  
pursu by which it appears that  
a notice of the pendency this suit  
has been published in the Woodstock journal

a weekly newspaper published at  
 Woodstock McHenry County Illinois  
 for six weeks successively the first  
 publication of which was more than  
 sixty days prior to the first day of  
 the present Term of this Court. to  
 wit: McHenry County Circuit Court  
 October Term A.D. 1860 State of  
 Illinois McHenry County Ss.

Oliver Pease and Miranda Pease

vs

Dustin J. Millet N. S. Jameson and  
 Harriet P. Jameson

Bill in Chancery

Affidavit of the non-residence  
 of Dustin J. Millet and Harriet P. Jameson  
 of the above named Defendants having  
 been filed in the Office of the Clerk of  
 said Circuit Court notice is hereby  
 given to the above named Defendants  
 that the complainants have filed their  
 Bill of Complaint in said Court  
 and that a Summons was thereupon  
 issued out of said Court against said  
 Defendants returnable on the third Monday  
 of October next as is by Law required  
 Now unless you the said Defendants  
 shall personally be and appear before

Said Circuit Court of McHenry County  
 on the first day of the next Term thereof  
 to be holden at Woodstock in said  
 County on the third Monday of October  
 1860 and plead answer or demurrer  
 to the said Complainant's Bill of Complaint  
 the same and the matter and things  
 therein charged and stated will be taken  
 as confessed and a decree entered  
 against you according to the prayer  
 of said Bill

Dated at Woodstock this 2<sup>d</sup> day of  
 May 1860 Geo. Hapson Clerk.  
 Church & New Comp<sup>rs</sup> Solrs.

The undersigned Publishers of  
 the Woodstock Sentinel a Weekly newspaper  
 published at Woodstock McHenry County  
 Illinois hereby certify that the above  
 notice was published in said paper  
 four successive weeks the first publica-  
 -tion being on the second day of May  
 A.D. 1860 A. E. & W. C. Smith Publishers  
 Woodstock Ill. Oct. 17. 1860

Publishers Price \$3.00.

Filed Oct 17. 1860. Geo. Hapson Clerk

And thereafter on the 25<sup>th</sup> day of  
 October being one of the days of the



Asia Pease  
Miranda Pease

13

Dustin I. Millet  
A. D. Jameson  
Harriet P. Jameson

Pr. M.

And now  
Comes to pass  
Th. Coon Esq

Master in Chancery files his Report  
therein which is ordered to be read approved  
and confirmed. It is thereupon ordered  
that the usual Decree of Sale issue  
therein. (which said Report is, in word,  
a figure as follows to wit;

State of Illinois }  
McHenry County } W. McHenry County  
Circuit Court October

Term A. D. 1860  
Asia Pease

Dustin I. Millet et al

To the Honorable  
Isaac G. Wilson Judge of the 13<sup>th</sup> Judicial  
Circuit of this State and Presiding Judge  
of said Circuit Court

The undersigned Master in Chancery  
of this Court to whom it was heretofore  
referred to take and Report to this Court  
the proofs of the allegations of the

Complainant's Bill of Complaint filed herein would beg leave to report that having had such matters given to me in charge by the Solicitors of the Complainant and from the proofs so produced by them I find the following facts to wit That on 25 day of October A.D. 1858 Asin Pease the Complainant was the owner in fee of the land described in said Bill of Complaint and on the same day he sold the same to the Defendant Dustin D. Millet and as a part of the purchase money the said Millet at the same time made out executed and delivered to the Complainant nine several promissory notes two for five hundred Dollars each due January 1<sup>st</sup> 1859 & 1860 Six for one thousand dollars each due on the 1<sup>st</sup> day of January A.D. 1861. 62. 63. 64. 65 and A.D. 1866 and one for sixty six <sup>3</sup>hundred dollars due January 1<sup>st</sup> 1859 all without interest and at the same time in order to secure the payment of said notes the said Millet at the same time made out acknowledged executed and delivered to the Complainant a Mortgage

upon the lands described in said Bill of Complaint which Mortgage has been duly recorded in the Recorder's Office of said McHenry County. That there is now due upon said notes and mortgage as principal and interest the sum of five hundred and twenty four 5/100 Dollars <sup>(524.50)</sup> and on the first day of January each year hereafter until the 1<sup>st</sup> day of January A.D. 1859 there will become due one thousand Dollars more (1000) and on the 1<sup>st</sup> day of January A.D. 1861 there will be due Sixty Six 2/100 Dollars more due.

The Evidence upon which this report is based is hereto annexed marked (A.) and that I am of opinion that Complainant is Entitled to a Decree as prayed for in said Bill of Complaint All of which is Respectfully Submitted

A. P. Coon

Master in Chancery McHenry Co. Ill.

A.D. 1860. Dec. 5. 1860

(Endorsement) Filed Oct 24. 1860 J. W. H. Clerk

And thereafter to wit on the 12<sup>th</sup> day of November in the year last aforesaid

16

The Complamants by their Attorney  
file their Decree which is as follows  
to wit:

In Chancery  
Asin Pense and  
Miranda Pense  
vs.  
Dustin De Millet & al

At a Term  
of the McHenry  
Circuit Court  
begun and held  
at the Court House in Woodstock in said  
County on the 15<sup>th</sup>. day of October  
A. D. 1850. Present

Hon Isaac G. Wilson Judge  
C. J. Ashley States Atty.  
G. E. Kinross Sheriff  
George D. Kappan Clerk

On reading and filing the Report  
of Amos P. Coon Master in Chancery  
of this Court to whom by a former  
Decree order of this Court it was  
required to take and Report proofs of the  
allegations in the Bill of Complaint  
in this cause by which it appears  
that on the 25<sup>th</sup>. day of October  
A. D. 1850 Asin Pense the Complamant  
was the owner in fee of the land de-  
scribed in said Bill of Complaint  
and on the same day he said the same

day he sold the same to the defendant  
 Dustin D. Millet and as a part of  
 the purchase money the said Millet  
 and H. D. Jameson at the same time  
 made out executed and delivered to  
 the Complainant three several promissory  
 notes two for five hundred Dollars each  
 due January 1<sup>st</sup> 1859. & 1860 six for  
 one thousand Dollars each due on the  
 1<sup>st</sup> day of January 1861 - 62 - 63 - 64 - 65  
 and 1866 and one for fifty six  $9\frac{3}{4}$  Dollars  
 due January 1<sup>st</sup> 1867 all without interest  
 and at the same time in order to  
 secure the payment of said notes  
 the said Millet at the same time  
 made out acknowledged executed and  
 delivered to the Complainant a  
 Mortgage upon the lands described  
 in said Bill of Complaint which  
 Mortgage has been duly recorded  
 in the Recorder's Office of said  
 McHenry County - that there is now  
 due upon said notes and mortgage  
 as principal and interest the sum  
 of five hundred and twenty four  $59\frac{3}{4}$   
 Dollars (\$524.59) and on the first  
 day of January each year hereafter  
 until the first day of January A.D.

1867 there will become due one  
 thousand Dollars (\$1000.) and on  
 the 1<sup>st</sup> day of January A.D. 1867  
 there will be due fifty six 95/100 Dollars,  
 and it appearing to the Court that  
 Summons has been regularly served  
 upon H. D. Jameson and due publication  
 of notice as to the other Defendants  
 who are not resident, of the State  
 of Illinois and that all the  
 proceedings to take the Bill in this  
 case as confessed against the said  
 Defendants have been regular  
 thereupon on motions of Church &  
 Kerr Solicitors and Counsel for  
 Complainant it is ordered adjudged  
 and decreed by the Court that  
 the said Report and all the matters  
 and things therein contained do  
 stand approved, ratified and  
 confirmed and it is further ordered  
 adjudged and decreed by the  
 Court that all and singular the  
 several and respective mortgaged  
 premises be sold by and under  
 the direction of the Master in  
 Chancery of McHenry County  
 the said Master first giving due notice

of the time and place of Sale  
according to the Law regulating  
Such Sales on decrees of this  
Court and out of the proceeds of  
Said Sale to pay to the Complainant  
or his Solicitors the Said Sum  
of Five Hundred and twenty  
four <sup>54</sup> 1/2 Dollars and interest  
from the 28<sup>th</sup> day of October  
A.D. 1860 the date of said Report  
and all the costs to be taxed in  
this cause and that he execute  
a Deed to the purchaser unless the said  
premises should be redeemed according  
to the Statute in such case made and  
provided and that the purchaser be  
put in possession of the said land  
and premises on receiving his Deed

And it is further ordered adjudged  
and decreed by the Court that the  
Said Sale of said land be made subject  
to the amount yet to grow due upon  
Said notes and Mortgage and that  
if said land should not sell for  
sufficient to pay Said indebtedness  
that the Complainant have judgment  
for the balance and that he have  
Execution therefor

which said Mortgaged premises are  
 described as follows to wit the South  
 West quarter of the North East quarter  
 Also the North West quarter of the  
 South East quarter of Section fourteen  
 (14.) Also the South West quarter  
 of the North West quarter and the East  
 half of the North West quarter except  
 twelve and a half acres from the North  
 End of said half quarter Section  
 Also the South West quarter of the  
 North East quarter except fifteen  
 and one third acres from the North  
 End of said lot Also the South East  
 quarter of the North East quarter  
 except seventeen and one third acres  
 from the North End of said lot all  
 in Section thirteen (13) Also the  
 South half of Sublot two of the  
 North West quarter except fourteen  
 and one third acres from the  
 North End being in Section Eighteen  
 (18.) Range Six also the South East  
 quarter of the North West quarter  
 of Section nineteen (19.) Range Six  
 Except ten acres from the West side  
 of said lot all in town forty Six  
 North of Range five East except

<sup>20</sup>  
 The two last described pieces which  
 are in Town forty Six & North Range  
 Six all in the County of McHenry  
 and State of Illinois. And it is  
 further ordered adjudged and decreed  
 by the Court that all the rights title  
 and interest of the said defendants  
 and their assignees in said land  
 and of all persons claiming under  
 or through them be forever barred and  
 foreclosed from all claims to Equity  
 of Redemption and be held and  
 considered subject to the Complainant's  
 mortgage and the title which the  
 purchaser under this decree shall  
 acquire by said Sale. Filed for record 12<sup>th</sup> 1860

State of Illinois }  
 McHenry County } G. J. Charles W.  
 Rufell Clerk  
 of the Circuit Court in and for  
 said County in the State aforesaid  
 do hereby certify that the above &  
 foregoing is a true & complete copy of  
 the Records of this Court in the above  
 Entitled cause. Witness my hand  
 and seal of said Court  
 at Woodstock this 8<sup>th</sup>  
 April A.D. 1860  
 C. P. Rufell Clk.

\$  
 Frs. 4.29



State of Illinois } Third Division  
Supreme Court } April Term 1865

Duncan P. Elliott et al  
vs  
Miss Reese et al

Comme now the  
said paper by W. H. Caldwell their atty  
and say that in this record and  
proceedings there is manifest error  
in this writ

- 1 The Court erred in defaulting the defendants  
in the court below without service of summons  
or return of not found as to these defendants not  
served and affidavit of their non  
residence and proper publication
- 2 The Court erred in defaulting Duncan  
P. Elliott and Account P. Jameson without  
service of summons or return of  
not found and affidavit of their non  
residence and proof of publication
- 3 The Court erred in defaulting the defts. Elliott  
and Account P. Jameson because the return  
of the pendency of the suit was insufficient
- 4 The Court erred in rendering a decree  
against all the defendants in the court  
below when all were not served with  
writ process or brought into court

by publication

- 5 the court erred in rendering a decree against the defendants without proof
- 6 The court erred in rendering a decree against the defendants
- 7 The court erred in not rendering a decree for the profits

H S (Hundred)  
for diff in law

Let a supersedeas issue  
in this cause bond \$6000 six  
thousand dollars, the said  
B. W. M. surety

Feb 10 1862

J. H. Eaton

~~117~~ 11.20  
39

Alia Pease Wal  
atts.  
Dustin I. Miller  
Wal

Filed Feby. 13. 1862  
L. Veland  
Clerk.

Filed by Hancock  
L. L.  
per Name

Supreme Court of Illinois,  
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

DUSTAN MILLETT ET AL.,

vs.

ASIA PEASE ET AL.

B I L L .

2, 3, 4 This was a bill to foreclose a mortgage by Asia Pease and Miranda  
5, 6 Pease against Dustan Millett, H. D. Jameson and Harriet P. Jameson,  
7 being made a party by claiming under the mortgage.

8 Summons issued and returnable at the March Term, inst.

9 Return—served upon H. D. Jameson by copy—no return as to the  
other defendants.

9 No affidavit of non-residence.

9, 10 Notice of pendency of writ recites that a summons was issued return-  
able on the third Monday of October next.

12 Default as to all of the defendants.

13 Report of Master.

No proof to support the decree.

16, 17, 18, 19, 20 Usual order of sale of mortgaged premises.

## POINTS OF ERROR.

1. The Court erred in defaulting the defendants without service of summons or return of not found as to those defendants not served, and affidavit of their non-residence and proper publication.

2. The Court erred in defaulting the defendants, Dustan Millett and Harriet P. Jameson without service of summons or return of not found, and affidavit of their non-residence and proof of publication.

3. The Court erred in defaulting the said defendants, Dustan Millett and Harriet P. Jameson, because the notice of the pendency of the suit was insufficient, because it recites that a summons was issued returnable at the October Term, whereas the record shows it was returnable at the March Term.

4. The Court erred in rendering a decree against all the defendants when all were not served or brought into Court by publication.

5. The Court erred in rendering the decree without proofs

6. The Court erred in rendering a decree against the defendants.

7. The Court erred in not rendering a decree for the defendants.

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 B I L L .

1. This was a bill filed in the McHenry Circuit Court, on the 2d day of March, 1860, by Asia Pease and Miranda Pease to foreclose a mortgage against Dustan Millett and H. D. Jameson, and to which bill Harriet P. Jameson was made a party as claiming under them.

2. Upon the filing of which bill a summons was issued returnable at the March Term, inst., and returned served upon H. D. Jameson, and no return as to the other defendants, Dustan Millett and Harriet P. Jameson. No affidavit was filed that said Dustan and Harriet were non-residents.

*Cost v. Rose, 17th Ill., 276.*

3. And the notice of the pendency of the suit was void, because it recites that upon the filing of the bill a summons was issued returnable at the October Term, whereas the record shows that the only summons issued in the case was returnable at the March Term.

*Cook's Revised Stat., p. 129, sec. 8.*

4. The default of the defendants, Millett and Jameson, was erroneous, because they had not been brought into Court either by service of summons or publication.

*Cost v. Rose, 17th Ill., 276.*

13 " 359  
 16 " 27  
 19 " 226  
 26 " 507  
 27 " 153

*1 People Stat 139 do 8*

5. The decree was erroneous, because it was against all the defendants, whereas only one was served with process and no return as to the others, and the notice was irregular and void.

*Swift v. Green, et al., 20th Ill., 173.*

H. S. HANCHETT,  
*Attorneys for Plaintiff.*

Supreme Court

H. B. Jamison et al

vs

Asia Place et al

Abstract & P. L. P. Brief

Filed May 1<sup>st</sup> 1863.  
Melan  
Ch

# Supreme Court of Illinois,

THIRD GRAND DIVISION.

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APRIL TERM, A. D. 1863.

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DUSTAN MILLETT ET AL.,

vs.

ASIA PEASE ET AL.

---

## BILL.

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5, 6 Pease against Dustan Millett, H. D. Jameson and Harriet P. Jameson,  
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9 Return—served upon H. D. Jameson by copy—no return as to the  
other defendant's.

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12 Default as to all of the defendant's.

13 Report of Master.

No proof to support the decree.

16, 17, 18, 19, 20 Usual order of sale of mortgaged premises.

## POINTS OF ERROR.

1. The Court erred in defaulting the defendants without service of summons or return of not found as to those defendants not served, and affidavit of their non-residence and proper publication.

2. The Court erred in defaulting the defendants, Dustan Millett and Harriet P. Jameson without service of summons or return of not found, and affidavit of their non-residence and proof of publication.

3. The Court erred in defaulting the said defendants, Dustan Millet and Harriet P. Jameson, because the notice of the pendency of the suit was insufficient, because it recites that a summons was issued returnable at the October Term, whereas the record shows it was returnable at the March Term.

4. The Court erred in rendering a decree against all the defendants when all were not served or brought into Court by publication.

5. The Court erred in rendering the decree without proofs

6. The Court erred in rendering a decree against the defendants.

7. The Court erred in not rendering a decree for the defendants.

---

 B I L L .

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2. Upon the filing of which bill a summons was issued returnable at the March Term, inst., and returned served upon H. D. Jameson, and no return as to the other defendants, Dustan Millett and Harriet P. Jameson. No affidavit was filed that said Dustan and Harriet were non-residents.

*Cost v. Rose, 17th Ill., 276.*

3. And the notice of the pendency of the suit was void, because it recites that upon the filing of the bill a summons was issued returnable at the October Term, whereas the record shows that the only summons issued in the case was returnable at the March Term.

*Cook's Revised Stat., p. 129, sec. 8.*

4. The default of the defendants, Millett and Jameson, was erroneous, because they had not been brought into Court either by service of summons or publication.

*Cost v. Rose, 17th Ill., 276.*

14 ~~14~~ 359

16 " 27

19 " 226

26 " 507

27 " 153

1 *People's Stat 139* *lv 8*

5. The decree was erroneous, because it was against all the defendants, whereas only one was served with process and no return as to the others, and the notice was irregular and void.

*Swift v. Green, et al., 20th Ill., 173.*

H. S. HANCHETT,

*Attorneys for Plaintiff.*



~~Jamison~~ ~~petition of the Court, dated~~  
 A  
 That

Mr. Chief Justice Latou delivered the opinion  
 of the Court.

~~Latou C.J.~~ It is first objected to the jurisdiction as to those <sup>defendants</sup> not personally served, that no summons was returned not served before publication as to them. Formerly, this was a good objection, but the act of 12<sup>th</sup> Feb., 1857, expressly declares that this shall not be ground for reversal, and <sup>it</sup> practically dispenses with this requirement of the old law.

It is next objected, that there is, in the record, no affidavit of the non residence of these defendants, which the statute requires, previous to the publication of notice. This objection is precisely answered by the statements of the record, and the decision in the case of Libbs v. Allen, 27 Ill. 117. In this case, as in that, the decree recites that the affidavit was filed, <sup>and</sup> due publication made; and the clerk in the notice officially certifies that the requisite affidavit was filed. This, we hold, in the case referred to, was sufficient, and so we hold here, the decree is affirmed.

~~Justice Walker and~~  
 The whole Court ~~for~~

Decree affirmed.

37-70-21

Jamison  
M  
Pease

Opinion  
Caton