

13758

No. _____

Supreme Court of Illinois

White

vs.

Morrison et al.

71641  7

John White
vs.
James D. Morrison
Lydia his Wife &
J. B. & Butler

Appeal from Circuit
Court in Chancery
In the Supreme
Court in & for the
State of Illinois
of Dec. 2. 1857
at Springfield

The Appellant John White
alleges the following errors on
the Record in this case

First The Court erred in desuperseing
the Bill in Chancery in this case
Second The Court erred in entering
a Decree for Costs in favor of
Defendants in this case

Third There is manifest Error in
the Decree and proceedings in
said cause.

Fourth The Court erred in not entering
a Decree in favor of the Appellant
in this cause.

Wm. A. J. Garrison

Dec 2. 1857

Atty for Appellant

State of Illinois }
Pike County } S.S.

Plea held before the Honorable William A. Minshall Judge of the fifth Judicial Circuit of the State of Illinois. at a Circuit Court begun and held in the County of Pike and State of Illinois on the Sixth day of October one thousand eight hundred and fifty one in a cause wherein John White is Complainant and James & Lydia Morrison and J. B. V. Butler are defendants.

At the March Term A.D. 1851 of the Pike Circuit Court an order was made and entered of record in words and figures as follows to wit:

John White
vs

James L Morrison Lydia his Wife
& J. B. V. Butler

This day again came Complainant by his Solicitors files the record & opinion of the Supreme Court herein & also his amended Bill & moves the Court to reinstate this cause upon the docket and defendants be ordered to answer said Amended bill within sixty days from the rendition of this decree which motion is sustained & it is ordered that defendants answer said Amended bill within sixty days from the rendition of this decree or that their default be entered.

And afterwards to wit at the same term the following order was made and entered of record as follows to wit:

" It is ordered in the above cause that defendant Butler have leave to take the deposition of James L Morrison subject to exception

And afterwards to wit: on the first day of April A.D. 1851 same Com-
-plainants and files his amendment to the Bill in this cause to be
read as if inserted after words in Said original Bill "are Still Subject
to your Orators lien as Mortgages.

"
Your Orator charged that at or about the time of
the conveyance of Said Mortgaged premises to Said Butler by Said Morrison
Said Butler and Morrison entered into and executed the following agreement. Mem-
-orandum of an agreement made and entered into this 24th day of June 1843
by and between James D Morrison and Joseph B V Butler both of the County of
Pike and State of Illinois Agreement as follows that the Said Joseph B V Butler
doth agree to deliver to the Said Morrison ninety three thousand Seven hundred
and fifty Cents at four dollars per thousand yet on this condition that is to
Say that the Said Morrison shall well and truly pay off and discharge
all the demands as an incumbrance against lots number thirty Six and thirty
Seven in Peter Addition to the town of Pittsfield being the same property
this day deeded to the Said Joseph B V Butler by the Said Morrison and
Wife the Said Prick to be delivered by the first day of November 1844
if Said incumbrances shall be removed from off Said property by the Said
first day of November 1844 and not otherwise though the Said Butler is
bound to turn out a part of Said Cents or all if required at any time when
called on after the same become due in discharge of any of the demands
which is an incumbrance against the above mentioned property

Witness our hands and Seals this 24th day of June 1843

Attest

Wole Butler

James D Morrison 

Joseph B V Butler 

Your Orator charged that the Stipulations contained in Said agreement
formed the terms or mode of payment by Said Butler to Said Morrison
and was the consideration or a portion of the consideration to be paid by Said
Butler to Said Morrison for Said Mortgaged premises. Your Orator charged
that the judgment aforesaid in favour of James H Johnson against Said
Morrison in the Pike Circuit Court Illinois and also your Orators Mortgage
lien or incumbrances on Said Mortgaged premises at the time Said

agreement was entered into Your Orator charged that afterwards on the day of _____ in the year 184_____ the Sheriff of Pike County, Illinois by virtue of an Execution then in his hands issued upon Saia Judgment of Johnson against Saia Morrison sold the mortgaged premises promised to Jackson Grimshaw, for the sum of fifty eight dollars and executed and delivered to Saia Grimshaw a certificate of his (Saia Grimshaw purchase) and that afterwards on or about the 31st day of December 1846. Saia Grimshaw assigned Saia Certificate of purchase to Saia Butler and after the expiration of the time of redemption fixed by law Saia Butler obtained from the Sheriff of Pike County aforesaid as the assignee of Saia Grimshaw, a Sheriff's deed for the mortgaged premises aforesaid under & by virtue of the Saia Sale under Saia Johnson's judgment, against Morrison

Your orator charged that the amount paid to Saia Grimshaw for the Saia assignment was about the amount necessary to redeem Saia premises to wit: the sum of about \$56.44. Your Orator charged that subsequent to the assignment of Saia Certificate of purchase by Saia Grimshaw to Saia Butler and before the filing of the original Bill in this cause. Sometime in the early part of the year 1847. Saia Morrison repaid to Saia Butler the amount paid by Saia Butler to Grimshaw for the assignment of Saia Certificate of purchase

Your Orator charged that on a Settlement between Saia Butler and Morrison in respect of their mutual dealings arising out of the purchase by Saia Butler of the mortgaged premises aforesaid from Saia Morrison, Saia Morrison refunded to Saia Butler the amount that Saia Butler had paid to Saia Grimshaw for the assignment by Grimshaw to Saia Butler, of the Saia Sheriff's Certificate of purchase. Whereby as Your Orator charged the title acquired through the sale of Saia mortgaged premises under Saia Judgment in favour of James H. Johnson against Morrison to Grimshaw & the assignment of the Certificate of purchase to Butler by Grimshaw & the subsequent Sheriff's deed to Saia Butler inured to the benefit to your Orator, the Mortgagor or Grantee in Mortgage of Saia Morrison. And Your Orator charged that to permit Saia Butler to set up the title acquired through Saia Johnson judgment would be contrary to Equity and in fraud of your Orator's rights. Your Orator charged that Saia Butler at the time of filing the original bill herein occupied with respect to your Orator the same attitude that he did on 30th June 1843.

when he signed the agreement before set forth in original bill, Your Orator charges that his Mortgage is still a valid & subsisting lien upon said premises against said Morrison and said Butler & all persons claiming under them,

Your Orator waived the answer to this amended bill being under oath
Grimshaw Solr.

And afterwards to wit: on the Second day of September A.D. 1850 the defendants filed their answer to complainant Amended Bill in words and figures following to wit:

"

The separate answer of Joseph B. Butler to the amended bill filed herein. This respondent having reserved as in his answer to the original bill filed herein for answer to said Amended Bill says it is true that this respondent & the said Morrison did at the time said mortgaged premises were conveyed by said Morrison to this respondent did enter into and execute the agreement set out in said Amended bill. This respondent admits that said agreement formed the terms & mode of payment by this respondent to said Morrison and was a portion of the consideration to be paid by this respondent to said Morrison for said mortgaged premises. This respondent admits that the said judgment of Johnson against said Morrison & the said Mortgage in said amended Bill mentioned were liens & incumbrances as on said mortgaged premises at the time said agreement was entered.

This respondent states that at the time of making said agreement he was a brickmaker and carrying on the business and could much more conveniently pay for said lots in brick than in money and by the terms of said agreement he was to pay in brick and not in money, he was not bound to pay said Morrison even in brick till Morrison should remove all incumbrances from said lots. Yet he did at various times and at the request of said Morrison make payments thereon to the said Morrison, and this respondent states that he offered to pay to said Johnson said judgment if he would take it in brick but he refused to do so. This respondent states that at the time he purchased the said Certificate of purchase of the said Grimshaw, as stated in said Amended bill he had paid to said Morrison nearly the whole amount of the aforesaid agreement. This respondent admits that the said Sheriff did by virtue of an execution issued upon said judgment sell the said premises to Jackson

57

Grimshaw for fifty eight dollars and did execute and deliver to said Grimshaw a Certificate of purchase and that said Grimshaw did assign said certificate of purchase to this respondent as stated in said Amended Bill, and that this respondent did receive from said Sheriff a deed conveying said premises as stated in said Amended Bill. This respondent admits that the amount paid by him to the said Grimshaw was the sum required to redeem from said Sale which this respondent thinks was about sixty five or six dollars. This respondent was not bound to pay said Judgment of Johnsons or to redeem from said Sale but as the time of redemption was about to expire he bought said Certificate of said Grimshaw as he had a right to do. to protect his own rights as if he had not done so Grimshaw would in a few days have become the absolute owner of the said premises and the same would have been lost to this respondent as well as to the said White & Morrison. This respondent by his contract with said Morrison was not bound to pay money or any thing but bricks which he had and could furnish without inconvenience he raised the money which he paid said Grimshaw for said purchase at great inconvenience and loss to save the land to himself and not for the benefit of said White. Said White had the same right to purchase the said Certificate of purchase of said Grimshaw as this respondent and neither of them was under any obligation to the other to redeem said land from said purchase and the only inducement for either of them to do so was to prevent his interest in said land from being lost. And this respondent charges that having bought said Certificate of purchase fairly and bona fide and procured a conveyance thereon from the said Sheriff he was thereby substituted to all the rights of the said Grimshaw and holds the land in all respects as the said Grimshaw would have done had the conveyance been made to him.

This respondent positively denies that the said Morrison ever refunded to him the amount paid by him to said Grimshaw for the assignment of said Certificate of purchase, but this respondent charges the facts to be that said Morrison having failed to pay said judgment which was a lien upon said premises at the time of said purchase thereof of said Morrison and the said premises having been sold for the satisfaction thereof he was under no obligation to pay said Morrison any part of the price agreed by this respondent to be paid therefor what said incumbrance should be removed. Yet as this respondent by making said

purchase of said Grimshaw had acquired title to said premises he was willing and did after the said conveyance to him by the said Sheriff make a Settlement with the said Morrison and paid to him the full amount which he had agreed to pay him for said premises deducting therefrom the said amount paid by this respondent for said Certificate of purchase on said Settlement there was a small sum over and above the sum paid as aforesaid by this respondent to said Grimshaw due to the said Morrison which this respondent then paid him, This respondent charged that the said Settlement and payment so made was on his part a voluntary gratuity as he was under no obligation to make the same and cannot impair or affect his title acquired by the purchase of said Certificate of purchase. And now having fully answered he prays to be dismissed hence with his reasonable costs &c.

Joseph B V Butler

By Williams his Solicitor

And afterwards to wit on the 3^d day of September A.D. 1850 the plaintiff filed his replication to answer of Butler to amended bill in words and figures as follow to wit

" Replication of Complainant to separate answer of J. B. V. Butler to complainant's Amended Bill. Replicant saving &c. all and all manner of advantage of exceptions to said answer saith that he will use and prove his said bill to be true certain & sufficient in the law to be answered unto and that said answer is untrue and insufficient to be replied unto all of which applicant will use and prove as this court shall award & pray as in said bill he hath prayed

Grimshaw p. q.

And afterwards to wit at the 16th day of July 1851 a decree was filed and entered to be entered of record in the foregoing cause in words and figure as follows to wit.

" This day came complainant by his Solicitors and defendant Butler by his Solicitors and no answer being filed by said James D Morrison & Lygia his wife to the amended bill filed herein and said James D & Lygia Morrison being called came not but made default therefore it is considered

7

and adjudged by the Court that Said Amended bill be taken as confessed against them Whereupon the cause come on for hearing upon the bill, the answer of Joseph B. V. Butler to Said Bill and Complainant's replication thereto also the amended bill herein and Said Butler answer thereto and Complainant's replication to Said answer and the exhibits filed with Said bill and answer the depositions filed in the cause, the Original note and Mortgage referred to in Said bill and record of the judgment and execution in a suit on the common law side of this Court in which James H. Johnson is plaintiff and James H. Morrison defendant also Sheriff's deed for Sale thereon And was argued by counsel and by consent of parties the Court takes the case under advisement to be decided in vacation and a decree entered of this term, Saving to either party the right to Appeal to the Supreme Court on filing an Appeal Bond with such securities & upon such terms as may be prescribed by this Court at the next term. in the meantime all proceedings toward execution of decrees which may be rendered in vacation are suspended until the further order of this Court. And now at this day the Court having fully examined and duly considered the matter therein, doth order adjudge and decree that the Said Bill stand dismissed with costs And that the Complainant pay the same within twenty days or in default thereof execution issue therefor as upon Judgments at law.

July 9th 1857

Minshall Judge

And afterwards to wit at the October term of Said Circuit Court A.D. 1857 a decree was made and ordered to be recorded in the foregoing cause in words and figures as follows to wit:

"

It is agreed between Said parties that the decree rendered herein during the last vacation shall be treated held and considered as a decree of this present term and of this date, for all purposes. It is further agreed that the judgments execution, levy, Sale, assignment of the certificate of purchase and Sheriff's deed referred to in the answer & amended answer of the Said defendant Joseph B. V. Butler were produced and proven upon the hearing of this cause & that the original note & mortgage & endorsements thereon referred to and

exhibited with said bill ^{were} ~~has~~ produced & proved upon the hearing and that the same were & are in the form prescribed by law and that no exception shall be taken on writ of error or appeal to the defence of said Butler because said documents & evidence are not embraced in the record of this cause. And thereupon the Complainant prays an Appeal to the Supreme Court which is allowed upon condition that the said Complainant do within 30 days from the date hereof enter into an Appeal Bond in the form prescribed by law with Jackson Grimshaw as surety in the penalty of One Hundred dollars And it is agreed between the parties that the record now on file in the Supreme Court in this cause may be used upon the hearing in the Supreme Court & that it shall be a sufficient record in Supreme Court to take a certified copy of all the proceedings & files of the Circuit Court which have taken place & been filed since this cause was remanded by the Supreme Court And this order is by consent to be entered of record as of Oct^r 18 1851

W^m A & J. Grimshaw Attorneys & Solicitors for
Complainant.
R. S. Bristow Solicitor for defendants.

And afterwards to wit: on the Seventh day of November A^d 1851 the Complainant filed an Appeal Bond in words and figures as follows to wit:

"
Know all men by these presents that we John White and Jackson Grimshaw are held and firmly bound unto James D Morrison, Lydia Morrison his wife and Joseph B T Butler of the County of Pike and State of Illinois in the penal sum of One Hundred dollars, current 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 at the Clerk's Office in Petrosfeld this fourteenth day of October A^d 1851.

The condition of the above obligation is such that whereas the said James D Morrison and Lydia Morrison his wife and Joseph B T Butler did on the eighteenth day of October in the year of our Lord One thousand eight hundred and fifty one in the Circuit Court in and for the County of Pike and State of Illinois receive a judgment & decree for costs against the above bounden John White

for the sum of Three dollars costs from which ^{said} judgment & decree of the said Circuit Court the said John White has prayed for and obtained an Appeal to the Supreme Court of said State. Now if the said John White shall duly prosecute his said Appeal with effect, and shall moreover pay the amount of the judgment decree costs interest and damages rendered, and to be rendered against him in case the said judgment shall be affirmed in the Supreme Court, then the above

judgment shall remain in full force and value
 sealed and delivered in the presence
 of Approved

John White
 J. Grunshaw

A. Starnes Clerk Circuit Court Pike Co Ill.

State of Illinois }
 Pike County } 88

A. Starnes Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing pages contain a full true and complete record of all the record proceedings filed in above entitled cause which have taken place been made or filed since said cause was remanded by the Supreme Court of State of Illinois to said Circuit Court

In testimony whereof I have hereunto set my hand and affixed the Seal of said Circuit Court this 26th day of November A.D. 1851
 A. Starnes Clerk.

Clerk's fees
 Making record 44 folios 10^m. 4.40.
 Cost Seal 35
 \$4.75

Mr. White

no.

W. de Morrison

Others

Append

Filed Mar. 1. 1837.

J. S. M. Pa. W. B. Harris Clk

State of Illinois }

Pike County } ss.

Pleas held before the Hon.^{ble} William A. Minshald
Judge of the Circuit Court within and for said County, in the fifth Judicial
Circuit in the State of Illinois at the Court House in Pittsfield on the 8th
day of September A.D. One thousand Eight hundred and forty nine being the
fifth day of the September Term of the Circuit Court for said County in the
year aforesaid.

On the ^{Eighth} ~~fifth~~ day of February A.D. 1848. a bill in Chancery was filed in words
and figures as follows to wit:

To the Hon. W. H. Purple one of the Justices of the Supreme
Court of the State of Illinois now pending in the Circuit Court
in and for the County of Pike and State of Illinois In Chancery
of April Term A.D. 1848

Humblly complaining unto your Honor your Orator John
White respectfully sheweth that one James M. Monson being
largely indebted to your Orator on the 26th day of March A.D.
one thousand eight hundred and forty two. made executed and
delivered to your Orator his said Monson promissory note
dated the day & year aforesaid for the sum of two hundred and
sixty five dollars payable on the 26th day of March A.D. 1843
to your Orator with twelve per centum per annum interest from
date untill paid. a copy of which is hereunto filed Marked A

Your Orator states that for the purpose of securing to your
Orator the payment of the sum of money mentioned in the pro-
missory note aforesaid said Monson and Lydia Monson his
wife on the twenty sixth day of March in the year of our Lord
One thousand eight hundred and forty two. made executed and
delivered to your Orator his the said Monsons & Lydia his wife
Deed of Mortgage conveying to your Orator his heirs and as-
signs the following described real estate in the County of Pike
& State of Illinois to wit, Lots Number Six and thirty Seven

in Peter's addition to the town of Pittsfield Pike County Illinois
 To Have and to hold Said premises with the appurtenances
 to the only proper use benefit and behoof of your Orator his heirs
 and assigns forever

Your Orator States that the Said Conveyance was subject to
 the following conditions thereunto written that if the Said James
 S. Morrison his heirs executors administrators or assigns shall
 well and truly pay or cause to be paid to the Said party of the
 second part (to wit your Orator) his heirs executors, administrators
 or assigns the just and full sum of two hundred and forty
 five dollars, on or before the twenty sixth day of March in the
 year of our Lord One thousand eight hundred and forty three
 with interest thereon at the rate of twelve per cent per annum
 untill paid then this deed of Mortgage as also a certain
 promissory note bearing date the 26th day of March A. D.
 1842 and given by the Said James S. Morrison to the Said John
 White as collateral Security for the Same sum of money as
 above Specified and payable to the Said John White to be void
 and of no effect, but otherwise to remain in full force and
 virtue, Your Orator States that the promissory note in Said
 condition described was the one first above referred to a copy
 of which is hereunto filed Marked A.

Your Orator States that Said Mortgage deed was duly
 acknowledged by Said Morrison and Lydia his wife on the 26th
 day of March in the year of our Lord One thousand eight hun-
 -dred and forty two, Your Orator States that Said Mortgage deed
 & certificate of Acknowledgement & an agreement hereinafter referred
 to were duly recorded in the Recorder's Office in and for Pike
 County Illinois on the thirtieth day of June in A. D. 1843, all
 of which will more fully appear by reference to the copy of
 Said Mortgage deed with the certificate of acknowledgement & Said
 agreement and of the recorder of Pike County Illinois thereupon

3

Said Copy being herewith filed and marked B. (the original ready to be produced upon the hearing of this cause)

Your Orator States that the said James D Morrison after the execution and delivery to your Orator of the Mortgage deed aforesaid. Conveyed the premises mortgaged to one Joseph B. V. Butler said Butler having as your Orator charges then actual notice and knowledge of the existence of said Mortgage and making his purchase from said Morrison with full knowledge of its existence, and said Butler being indebted to said Morrison agreed & promised to your Orator to pay your Orators Mortgage off, and so promised often times thereafter & to withhold of the amount therefrom said Morrison for your Orator,

Your Orator charges that said Butler and said Morrison being then unable to pay off said Mortgage to your Orator and being desirous of obtaining from your Orator indulgence for the payment of the sum of money secured by said Mortgage and in order to show said Butler notice and knowledge of said Mortgage, said Butler executed upon said Mortgage deed then in your Orators hands unsatisfied, the following agreement said agreement being written by said Morrison and signed by said Butler "

"June 30th 1843. I do hereby acknowledge that I was well apprised of the existence of this Mortgage deed being in the hands of John White of Scott County previous to the purchase which I made of the same property from James D Morrison known and described in this Mortgage. Also in my deed known as Lots number 36 & 37 in Peter addition to the town of Pittsfield and I admit the same to be put on record and to the purpore of my deed.

Joseph B. V. Butler

As will appear more fully by the copy of said Memorandum and Mortgage deed and certificates herewith filed marked B.

Your Orator States that relying on the good faith of said Butler, upon said Butlers promise to pay your Orator and said Morrison, he has for a long time indulged them in

relation to the payment of the Sum of money due upon the note described in and secured by Said Mortgage; Your Orator States that Said Butler now gives out that he has purchased Said Mortgaged premises under a title derived from the Sheriff of Pike County Illinois by virtue of a Sale made by Said Sheriff under an Execution issued from the Circuit Court in and for the County of Pike and State of Illinois issued upon a Judgment in favor of one James H. Johnson and against Said James M. Morrison rendered Senior to your Orator Mortgage, the Sale being long subsequent to your Orator Mortgage.

Your Orator charges that it would be inequitable & in fraud of your Orator rights as Mortgagee of the premises aforesaid that Said Butler should set up such purchase to defeat the lien of your Orator Mortgage of which Said Butler had actual knowledge and had promised to pay the same to your Orator.

Your Orator charges that the purchase of the title derived through the Sale upon Said Johnsons Judgment was made with the express understanding & undertaking, upon the consideration & condition by Said Butler that it should not prejudice your Orator rights, and that the premises aforesaid are still subject to your Orator lien as Mortgagee.

Your Orator charges that the condition of Said Mortgage deed hath not been kept and performed by Said Morrison and that the estate created by Said Mortgage Deed hath become and is absolute at Law in your Orator. Your Orator charges that there is due to your Orator the principal Sum of money in the promissory note in Said condition described and a large amount of interest thereon.

Your Orator having no adequate remedy at Law now makes Said James M. Morrison, and Said Lydia Morrison his wife and Said Joseph D. V. Butler (and all other persons interested in the Subject matter of this Suit when discovered) parties

5

to this Suit and pray the People writ of Subpoena for them to appear and answer this bill as if Specifically interrogated (Complainant waives Said answers being under oath)

Your Orator prays that upon the hearing of this cause your Honor will order and decree that the Said defendants do pay to your Orator whatsoever may be found due to your Orator upon the promissory note in the condition of Said Mortgage described upon some short time to be fixed by your Honor, or in default thereof that the equity of redemption of Said defendants of in and to the premises aforesaid be cut off and foreclosed absolutely and forever, And that the Mortgaged premises or so much as may be required be sold to pay the debt aforesaid and your Orator costs herein expended and in the event of such sale that the Said defendants or whosoever may be in possession of Said premises by title derived from Said defendants, be ordered to deliver to the purchaser or purchasers possession thereof or in default thereof that the Court will issue such process as will put such purchaser or purchasers in possession thereof or grant such other and further relief as may be necessary in the premises and your Orator &c

John White

Grimshans Solr.

Copy.

A \$245.00 On the 26th day of March A. D. 1843. I promise to pay John White the Sum of two hundred and forty five dollars for value received to bear twelve per cent per annum interest from date till paid

March 26th 1842

James D Morrison

Copy.

B. This Indenture made this twenty sixth day of March in the

year of our Lord one thousand eight hundred and forty two, witnesses that James D Morrison & Lydia Morrison his wife of the County of Pike and State of Illinois parties of the first part in consideration of the sum of Two Hundred and forty five dollars, to them paid by John White of the County of Scott and State of Illinois party of the second part, the receipt of which is hereby acknowledged have Granted, Bargained and Sold and by these presents do grant, Bargain, Sell, convey and confirm unto the said party of the second part his heirs and assigns forever certain lots of land known and described as Lots thirty six (36) & thirty seven (37) in & to the Town of Pittsfield, Pike County Illinois

To Have and to hold the said premises with all the appurtenances thereto belonging or in any wise appertaining to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever,

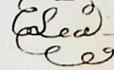
And the said parties of the first part Covenant with the party of the second part his heirs and assigns, That they are lawfully seized in fee of the said premises and have a good right to convey the same, that they are free from all incumbrance; and that for the consideration above named the title thereof to the said party of the second part his heirs and assigns against all lawful claims whatsoever will Forever warrant and defend.

The condition of the foregoing conveyance is Such That if the said James D Morrison his heirs executors, administrators or assigns shall well and truly pay or cause to be paid to the said party of the second part, his heirs executors, administrators or assigns the just and full sum of Two Hundred and forty five Dollars on or before the Twenty sixth day of March in the year of our Lord One thousand eight hundred and forty three with interest thereon at the rate of twelve per cent per annum untill paid, then this deed of Mortgage

as also a certain promissory note bearing date the 26th day of March A.D. 1842 and given by the said James D Morrison to the said John White as collateral security for the same sum of money as above specified and payable to the said John White to be void and of no effect, but otherwise to remain in full force and virtue

In witness whereof the said grantors have hereunto set their hands and seals the day and year first above written

Signed, Sealed and delivered
in the presence of

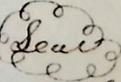
J. D. Morrison 
Lydia Morrison 

D. H. Gilmer 

State of Illinois }
Pike County } ss.

Be it remembered that on the twenty sixth day of March in the year of our Lord one thousand eight hundred and forty two James D Morrison & Lydia Morrison his wife who are personally known to the undersigned D. H. Gilmer a Justice of the Peace of said County to be the identical persons who executed and whose names are subscribed to the foregoing deed of conveyance as having executed the same came before me and acknowledged the same to be their voluntary act and deed for the purposes therein expressed. And the said Lydia Morrison wife of the said James D. having been by me made acquainted with the contents of the aforesaid & examined separate and apart from her said husband acknowledged that she had executed same freely & voluntarily and without the compulsion of her said husband and that she did not wish to retract. Given under my hand & Seal the day and year above written

June 30th 1843.

D. H. Gilmer J. P. 

I do hereby acknowledge that I was well apprised of the existence of this Mortgage Deed being in the hands of John White of Scott County previous to the purchase which I made of the same property from James D Morrison known and described in this mortgage - Also in my deed known as Lot Number 36 & 37.

to J. B. V. Butter. March 20th 1848. & by delivering of the same to James D Morrison & leaving a copy of the same for Lydia Morrison at her place of residence with James D Morrison a white person above the age of 10 years and residing with Lydia Morrison & explaining the contents to him this 21st day of March 1848

D. D. Hicks Sheriff P. Co. Ill

And afterwards to wit on the 6th day of April 1848. J. B. V. Butter filed his answer in words and figures as follows to wit

James D Morrison. Lydia Morrison
and Joseph B V. Butter
At
John White

The Separate answer of Joseph B V. Butter to the bill exhibited in the above case. This Respondent saying all manner of benefit of exception to the many errors in the said bill for answer thereto says that he admits the execution of the said note and Mortgage by the said Morrison to the said Complainant in the manner stated in the said bill. he also admits the conveyance of the said mortgaged premises to this respondent as therein stated and that this respondent purchased the same with knowledge of the said Mortgage and that he signed the memorandum endorsed thereon and copied into said bill, but this respondent most positively denies that he ever promised to pay the said Mortgage debt or any part thereof to the said Complainant. This respondent says that he purchased and paid for the said premises the full value thereof. This respondent further shews that before the execution of the said Mortgage to wit; at the September term 1840 of this Court one James H Johnson received a Judgment in said Court against the said James D Morrison for the sum of two hundred & fifty nine dollars & seventy cents, and afterwards on the 8th day of November 1845 said Judgment being then in full force and a lien upon the said premises, a writ of fieri facias, was issued out of said

Court directed to the Sheriff of the Said County directed of Pitts
 Commanding him that of the Goods & Chattels, lands and tenements
 of the Said James H Morrison he should make the Said Judgement
 &c. and the Said Sheriff levied the Same on the Said premises on
 the day of 184 the Said Sheriff by virtue of said
 writ exposed the Said premises to sale having duly advertised the
 Said Sale and the Same were then struck off and sold to one
 Jackson Grimshaw he being the highest & best bidder therefore for
 the Sum of fifty eight dollars and executed to him a certificate
 of Said purchase and afterwards the Said Grimshaw assigned Said
 Certificate of purchase to this respondent and afterwards on the day
 of 184 the Said Sheriff in pursuance of Said Sale and as-
 signment conveyed the Said premises to this respondent by deed a
 copy of which is herewith filed marked A & prayed to be taken
 as part of this answer - This respondent most positively denies that
 he ever agreed to pay to the Complainant the amount due from
 the Said Morrison to Complainant on Said Mortgage or to withhold
 the money from Said Morrison but has in good faith paid the
 Said Morrison all of the purchase money for Said premises -

This respondent expressly denies that the purchase of all the
 title derived through the Sale on Said Judgement was under
 any consideration, understanding, undertaking or condition upon
 the part of this respondent that it should not prejudice the
 claim of the Complainant or that the Said premises should be
 subject to the claim of the Complainant, and this defendant
 having fully answered pray to be dismissed hence with his costs

J. B. V. Butler

by Gelmer & Williams

Solicitors

Copy of Exhibit A filed with answer

Whereas James H. Johnson did at the September Term A.D. 1840
 of the Circuit Court of Pitts County Illinois receive a Judgment

against James D Morrison for the Sum of Two Hundred fifty nine Dollars and Seventy cents and costs of Suit upon which Judgment and Execution was issued dated the eighth day of November A.D 1845 and directed to the Sheriff of Pike County to execute and by virtue of said execution the said Sheriff levied upon the Real Estate hereinafter described and the same was struck off and sold to Jackson Grimshaw for the sum of Fifty eight dollars he being the highest and best bidder therefor, and the time and place of the Sale thereof having been duly advertised according to law. And afterwards to wit on the 31st day of December 1846 the said Jackson Grimshaw for value received did assign his certificate of purchase for the Real Estate hereinafter described to Joseph P V Butler, by his written endorsement on the back of said certificate (for further particulars in relation to said assignment reference is made to the same being on file in the Sheriff Office)

Now therefore know all by this deed that I Daniel D Hicks Sheriff of said Pike County Illinois in consideration of the premises have granted, bargained and sold and do hereby convey to the said Joseph P V Butler assignee as aforesaid and to his heirs and assigns the following described tracts of land or lots of ground to wit; Lot numbered thirty six (36) containing one & twenty one hundredths of an acre - also Lot numbered thirty seven (37) containing two acres and both being in Wm B. Peter addition to the Town of Pittsfield in Pike County Illinois - To have and to hold the said above described premises with all the appurtenances thereto belonging to the said Joseph P V Butler his heirs and assigns forever.

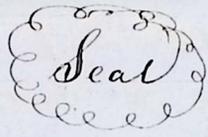
Witness my hand and Seal this sixth (6) day of April one thousand eight hundred and forty seven (1847)

Daniel D Hicks *(Seal)* Sheriff Pike County Illinois

State of Illinois }
Pike County } ss.

J Ozias M Hatch Clerk of the Circuit Court

of Said County hereby certify that on this 6th day of April Eighteen hundred and forty seven Daniel D Hicks Sheriff of Said County of Pike and whose Signature appears to the within deed of Conveyance, and who is known to me to be the identical person described in the within deed, appeared before me and acknowledged that he executed Said deed freely and voluntarily for the purposes as therein expressed,



Given under my hand and the Seal of Said Court this day and date above written

Ozias M Hatch Clerk

State of Illinois }
Pike County }

I P. N. O. Thompson Recorder of Said County hereby certify that the within and foregoing deed of conveyance was filed for record on the 7th day of April 1847. and duly recorded in Volume 25 pages 375 + 376

P. N. O. Thompson Recorder
per Wm B Archer D. R.

And afterwards to wit on the 7th day of April 1848 the following replication to answer of Butler. in words and figures as follows to wit;

John White
vs
James D. Morrison Joseph B.
V. Butler et. als.

Circuit Court in for the
County of Pike and State of
Illinois April Term 1848

The replication of Complainant to the Seperate answer of Said defendant Joseph B. V. Butler.

This repliant saving to himself all and all manner of advantage of exceptions to Said answer Saith that they will aver and prove there Said bill to be true, certain and sufficient in the law to be answered unto and that Said answer is uncertain untrue and insufficient to be replied unto all of which matters & things they

upliant will and prove as this Court shall award humbly
 prays as in his said bill he has already prayed
 Gurnshaws
 for plaintiff

And afterwards to wit At a Circuit Court began and held
 at the Court House in Pittsfield Pike County Illinois on the third
 day of April A.D. 1848 the Court sitting as a Court of Chancery
 the following order was entered of record as follows to wit:

John White
 vs Bill to Foreclose Mortgage
 James D. Morrison, Lydia
 Morrison & J. B. V. Butler }

At this term came Complainant by Gurnshaws
 his solicitors and said defendants James D Morrison & Lydia Morrison
 his wife having been served with process and being called came
 not and no answer being filed by them, it is ordered that Com-
 =plainants Bill be taken as confessed as to them. On motion of
 Butler one of defendants by Gilmer & Williams his Sol's leave is
 given to take depositions of James D Morrison defendant which
 is granted Subject to exception & this cause is continued.

St H Purple

And afterwards to wit on the 28th day of October A.D. 1849. a notice
 with the accompanying interrogatories proposed thereto
 for taking the deposition of James H Johnson was filed in words and
 figures as follows to wit:

John White
 vs Circuit Court in and for the
 County of Pike and State of Illinois
 Jas. D. Morrison, & wife and
 J. B. V. Butler }

To J. H. Gilmer Solicitor for def.

You are hereby notified that on the 28th day of October A.D. 1848

I will see out of the Clerk's office of said Circuit Court in the above entitled cause a *dedimus potestatem* directed to Edwin Draper or to any Judge or Justice of the Peace of Pike County Missouri to take the deposition of James H Johnson upon the foregoing interrogatories to be read in evidence in said suit. When and where you can attend and file cross interrogatories if you see fit

Grimshaw

John White

Solo p. q.

State of Illinois }
Pike County } ss.

Jackson Grimshaw having been duly sworn doth depose and say that on the 17th day of October A.D. 1848. he served a copy of the foregoing interrogatories & notice upon D. H. Gilmer Esq^r Solo therein named.

J Grimshaw

Copy of Interrogatories

John White

vs

Jas D Morrison & Lydia his wife

& Joseph P V Butler

In the Circuit Court in & for
Pike County & State of Illinois

Interrogatories propounded to and to be answered by James H Johnson a witness to be examined on behalf of Complainant

First Are you or not acquainted with the parties to this suit or any of them? If yea state with whom

Second Had you or not once a Judgment in the Circuit Court of Pike County & State of Illinois against Jas D Morrison? if yea state whether you remember the amount thereof and whether you ever had more than one judgment against said Morrison in said Court?

Third Did or did not Joseph P V Butler ever promised to pay

you Said Judgment or any part thereof, and did he pay you the Same or any part thereof?

Fourth Why did Butler pay you part of Said Judgment? Was it or not because James D Morrison had Sold property Subject to your Judgment to Said Butler, & was or was not an agreement made that Butler should pay your judgment?

Fifth Did or did not Said Joseph B. V. Butler and J^d D Morrison or either or both of them inform you that Butler was to pay you? And that such was part of the condition of the Sale to Butler.

Sixth Did Butler pay you all of Said Judgment or was it paid by himself or Morrison to you without Sale on Execution? or what part of it did Butler pay?

Seventh Did you or not ever hear Joseph B. V. Butler say that he would pay & was bound to pay you Judgment and all liens on the Brick House & out Lots west of Pittsfield Pike County, built by, and formerly occupied by Morrison? Did you or not also hear Butler say that he was to pay a Mortgage made by Morrison to one John White of Naples for money borrowed to pay off an older judgment than your judgment?

Eighth Was or was not Said Brick House & out Lots aforementioned as Morrison's Sold on an Execution on your judgment? or have you been so informed?

W. A. & J. Grimshaw

Sols. p. q.

And afterwards to wit on the Same day the following Commission was issued in words and figures as follows to wit;

State of Illinois }
Pike County } S.S.

The People of the State of Illinois

To Edwin Drafer or to any Judge or Justice of the Peace of Pike County Missouri

Know you that trusting to your fidelity and circumspection, we do hereby authorize and require you, to cause to come before you at such time and place as you may designate James H. Johnson a witness on the part of the Complainant in a certain matter of controversy now depending in our Circuit Court of Pike County in which John White is complainant and James D Morrison & Lydia his wife and J B V. Butler are defendants and then and there diligently examine the same witness on his corporal oath touching the said controversy upon all and singular the interrogatories hereto attached, as well on the part of the plaintiff as the defendants, that you reduce to writing each of the said interrogatories in the order in which they are propounded together with the answers of said witness and certify the same to our said Court under your hand and Seal returning also this writ



Given under my hand and the Seal of our said Court this twenty eighth day of October A-D. 1848.

A. Starnes Clerk

(2) Interrogatories propounded to and to be answered by James H. Johnson a witness to be examined on behalf of Complainant

First Are you or not acquainted with the parties to this Suit or any of them? If yea State with whom

Second Had you or not once a Judgment in the Circuit Court of Pike County & State of Illinois against James D Morrison if yea State whether you remember the amount thereof and whether you ever had more than one Judgment against said Morrison

in Said Court

Third Did or did not Joseph B. V. Butler know as Varnum, Butler ever promise to pay you Said Judgment or any part thereof, and did he pay you the same or any part thereof?

Fourth Why did Butler pay you part of Said Judgment? Was it or not because James D. Morrison had sold property subject to your judgment to Said Butler & was or was not an agreement made that Butler should pay your judgment?

Fifth Did or did not Said Joseph B. V. Butler and James D. Morrison or either or both of them inform you that Butler was to pay you, and that such was part of the condition of the Sale to Butler?

Sixth Did Butler pay you all of Said Judgment or was it paid by himself or Morrison to you without Sale or execution or what part of it did Butler pay?

Seventh Did you or not ever hear Joseph B. V. Butler say that he would pay, & was bound to pay your Judgment and all liens on the brick house & out lots west of Pittsfield Pitt County, built by and formerly occupied by Morrison? did you or not also hear Butler say that he was to pay a mortgage made by Morrison to one John White of Staples for money borrowed to pay off an older judgment, than your judgment?

Eighth Was or was not Said Brick House & out lots aforesaid as Morrisons Sold on an Execution on your judgment? or have you been so informed.

Wm. A. & J. Grimshaw?
Sols. p. q.

And afterwards to wit on the 14th day of December A. D. 1848. the deposition of James H. Johnson was filed of record in words & figures as follow to wit;

Depositions of James H Johnson a witness taken on the 20th day of November 1848. between the hours of ten O'clock in the forenoon and five O'clock in the afternoon, at Louisiana in the County of Pike and State of Missouri by Edwin Drapeau a Commissioner and upon the enclosed interrogatories, and by virtue of the enclosed Commission, to be read in evidence in a certain Suit now pending in the Circuit Court of Pike County in the State of Illinois, described in Said Commission and interrogatories wherein John White is complainant and James D Morrison and Lydia his wife and Joseph B V Butler are defendants

And afterwards to wit on the 14th day of December 1848 the deposition of James H Johnson ^{of record as follows to wit;} Deposition of James H Johnson
^{was filed in order and figures}

The Said James H Johnson having been first duly sworn doth depose and say in answer to the several interrogatories as follows to wit;

Interrogatory first - Are you or not acquainted with the parties to this Suit or any of them? If yea State with whom

Answer I am acquainted with Mr Joseph B V Butler and with James D Morrison and his wife

Interrogatory Second -

Had you or not once a Judgment in the Circuit Court of Pike County State of Illinois against James D Morrison? If yea State whether you remember the amount thereof and whether you ever had more than one judgment against Said Morrison in Said Court?

Answer I had one Judgment against Said Morrison in Said Court, and but one for the sum of two hundred and forty five dollars principal the interest not recollected, but the record of the Court will show.

Interrogatory third

Did or did not Joseph B V Butler known as Varnum Butler ever promised to pay you said judgment or any part thereof, and did he pay you the same or any part thereof?

Answer Joseph B V Butler or Varnum Butler as he was usually called

did pay me on Said judgment the Sum of One hundred and fifteen dollars, which was all that he paid to me directly

Interrogatory fourth.

Why did Butler pay you part of Said Judgment? Was it or not because James D Morrison had Sold property Subject to your judgment to Said Butler, and was or was not an agreement made that Butler should pay your judgment?

Answer Butler paid the Judgment, as I understood him, because the property was bound by the lien of my judgment, and he could not have a clear title without paying the judgment Butler did agree to pay the judgment if I would take any kind of trade in payment,

Interrogatory fifth

Did or did not Said Joseph B V Butler and James D Morrison or either or both of them inform you that Butler was to pay you; and that such was part of the condition of the Sale to Butler?

Answer Butler and Morrison both told me that Butler was to pay me but I do not know any thing about the condition mentioned in the interrogatory.

Interrogatory Sixth - Did Butler pay you all of Said Judgment or was it paid by himself or Morrison to you without Sale on Execution, or what part of it did Butler pay?

Answer Butler paid me the Sum of One hundred and fifteen dollars, and Morrison paid me Fifty Dollars, and the remainder I received through Mr Grimshaw, who collected it for me, I believe Butler paid it

Interrogatory Seventh

Did you or not ever hear Joseph B V Butler say that he would pay your Judgment and all liens on the best house and out lots west of Pittsfield Pitts County, built by and formerly occupied by Morrison? Did you or not also hear Butler say that he was to pay a Mortgage made by Morrison to one John White

of Naples for money borrowed to pay off an older judgment than your judgment }
 Answer

Butler said he would pay me the judgment in trade for the reason stated in answer to interrogatory fourth, but did not say he was bound to pay it. I did not hear Butler say that he had to pay any other liens on the Buck House and out lots, nor did I hear said Butler say that he was to pay off the mortgage made by Morrison to White.

Interrogatory eighth

Was or was not said Buck House and out lots aforesaid as Morrison's sold on an execution on your Judgment, or have you been so informed?

Answer I was informed and believe the House and lots were so sold, or were to have been sold under my judgment, but do not know it, William A Grimshaw Esq^r collected and paid me the balance on the judgment.

Jas H Johnson

State of Missouri } ss
 County of Pike }

I Edwin Draper Commissioner appointed by the enclosed decessus potestatum do hereby certify that the said witness James H Johnson prior to the taking of said deposition and on the said 20th day of November A.D. 1848. was by me duly sworn to testify the truth in relation to the matter in controversy in the suit mentioned in the caption of these depositions and in the enclosed commission so far as he might be interrogated in relation thereto, and that said deposition was on the 20th day of November A.D. 1848. in the County of Pike and State aforesaid taken and reduced to writing by me, and signed and sworn to by said witness in my presence. Given under my hand and seal this 20th day of November A.D. 1848.

Edwin Draper 
 Commissioner

And afterwards to wit on the 9th day of December A.D. 1848, the following interrogatories & notice was filed in words and figures as follows to wit;

John White
vs
James D Morrison Lydia
Morrison his wife and Joseph B V Butler

In the Circuit Court in & for
Pike County & State of Illinois
In Chancery.

Interrogatories to be propounded to and answered by
Daniel D Butler a witness to be produced and sworn on behalf of Com-
-plainant

- First Do you or not know the parties Complainant and Defendants? If you state whether you were acquainted with said parties and which of them on or about the 26th day of March A.D. One thousand eight hundred and forty two? State particularly which of them you know?
- Second Were you or not present when a certain Mortgage bearing date March 26th A.D. Eighteen hundred and forty two executed by James D Morrison and Lydia his wife was made and executed unto John White Com-
-plainant
- Third State whether you have or not any knowledge of said Mortgage and how you obtained the same?
- Fourth Was or was not said Mortgage given by said Morrison to said White upon a certain Tract House & Lots in Peter addition to the town of Pittsfield Pike County Illinois formerly owned and occupied by said Morrison and is that property not known by following descriptions viz Lots 36 & 37 in Peter addition to the Town of Pittsfield?
- Fifth Do you or not recollect the amount or sum for which said Mortgage was given, or about the sum if you state? Did you ever know more than one Mortgage executed between said parties
- Sixth Did or did not your Brother Joseph B V Butler men a defendant

in this suit purchased Said Mortgaged premises from Said James D Morrison the Mortgagor of yca State whether Said purchase was or was not after the execution of Said Mortgage, and whether or not your brother Joseph aforesaid knew of Said Mortgage and bought Subject to the Same.?

Seventh Were you or not present at the Sale of Lots aforesaid by Morrison to your Brother Joseph B. V. Butler if yca. State what passed at the time of the Sale, how the trade was made, to whom your Brother was to make payments and in what Sums or amounts and when payable if you remember.

Eighth. Did you or not ever hear your Brother Joseph B. V. Butler and James D Morrison say or agree between themselves that Joseph B. V. Butler was to pay a judgment rendered in favour of James H Johnson in the Circuit Court of Pike County and State of Illinois against Said Morrison, which was a lien on Said Real Estate sold to Butler or that Said Butler was to retain or keep back enough to pay Said Judgment, in consideration of his purchase from Morrison?

Ninth Do you or not know that Joseph B. V. Butler paid a Horse and Buggy and turned over Bricks to Lewis Bates which were credited by agreement of your brother Joseph B. V. & Morrison & Johnson on Johnsons judgment, and that there still remained a balance after Said payments for which said lots and the brick house aforesaid were sold on Execution and that Said Sale was owing to your brother Josephs neglect to pay the Said judgment to Johnson?

Tenth. Did you or not hear your brother Joseph say that he was to retain by his agreement with Morrison or to hold back enough to pay John White his Mortgage on the Said lots & Brick House? If yca State particulars or what he did say about this?

Eleventh Do you or not know that Joseph B. V. Butler did pay one or two small orders of John White pursuant to said agreement last.

aforenamed to be credited on Said Mortgage to him by Said Morrison

Twelfth. Do you or not know that it was his intention and so declared by Joseph B. V. Butler to hold back enough of pay from Morrison to pay John White, and that such intention was only changed after Joseph pretended that Morrison had got too many tickets from Joseph and that he would after that save himself by refusing to pay Johnson & White?

Thirteenth. Do you or not know that Butler (Joseph B. V.) consulted counsel as to whether he could cut White off from his lien by allowing a sale on the Judgment Johnson judgment, and that said Joseph then refused to pay Johnson his balance on said judgment?

Fourteenth. State particularly all that you have heard Joseph B. V. Butler say about said judgment & mortgage? State what you have heard Butler & Morrison say about the same when both together before the sale on said judgment to Jackson Gurnshaw in execution by Sheriff of Pitt County?

Fifteenth. Did or did not Joseph B. V. Butler owe Morrison for several years part of the purchase money of the property aforenamed - and did he not retain the same to pay Johnsons judgment and Whites Mortgage?

Sixteenth. Had or had not Joseph B. V. Butler informed Johnson & White or lead them to believe that he was to pay them or either of them? And did not Joseph B. V. Butler consent in writing that said Mortgage might be recorded agreeing or intending to pay the same?

Seventeenth. Did you or not hear Joseph B. V. Butler offer to pay James Harrison Johnson his judgment against Morrison and say that he would pay in Cash or other trade and that such was his agreement with Morrison.

Eighteenth. State whether or not you know any thing further about the premises material to the parties, if you do state?

Gurnshaw Solu per Comp!

John White
vs
Jas D. Morrison, & Wife &
J B V. Butler.

Circuit Court in & for the County
of Pike and State of Illinois

To D^r Gilmer Esq^r Solicitor for defts.

You are hereby notified that on the ninth day of December A.D. 1848 I will see out of the Clerk's office of said Circuit Court in the above entitled cause a *dedimus potestatem* directed to Stephen C. Paine of Platteville Grant County State of Wisconsin, a Commissioner or to any Judge or Justice of the Peace in & for said County of Grant, State of Wisconsin to take the deposition of Daniel J. Butler upon the foregoing interrogatories, when and where you can attend and file cross interrogatories if you see fit.

Gresham

John White

Solu p^o q. Nov^r 25 1848.

We accept Service of the within notice & Interrogatories this 25th day of November A.D. 1848.

Gilmer & Williams

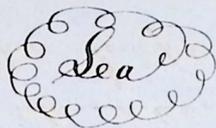
Left Butler, atty.

And afterwards to wit on the same day being the 9th day of December A.D. 1848. a Commission was issued in words and figures as follows to wit;

State of Illinois }
Pike County } ss. The People of the State of Illinois
To Stephen C. Paine Platteville, Grant County State of Wisconsin a Commissioner or to any Judge or Justice of the Peace in and for said County of Grant and State of Wisconsin.

Now know you that trusting to your fidelity and circumspection we do hereby authorize and require you to cause to come before you at such time and place as you may designate Daniel J. Butler witness on the part of the plaintiff in a certain matter of controversy, now depending in our Circuit Court of Pike County in which

John White is plaintiff and James D Morrison & Lydia his wife and P B V Butler are defendants, and then and there diligently examine the said witness on his corporal oath touching the said controversy upon all and singular the interrogatories hereto attached, as well on the part of the plaintiff as the defendants, that you reduce to writing each of the said interrogatories in the order in which they are propounded together with the answers of said witness and certify the same to our said Court under your hand and Seal returning also this writ



Given under my hand and the Seal of our said Court this 9th day of December A.D. 1848
 J. Starne Clerk

Interrogatories

- 1st Do you or not know the parties Complainant and Defendants? if you state whether you were acquainted with said parties and which of them on or about the 26th day of March A.D. one thousand eight hundred and forty two? State particularly which of them you knew?
- 2nd Were you or not present when a certain Mortgage bearing date the March 26th A.D. Eighteen hundred and forty two executed by James D Morrison and Lydia his wife was made and executed unto John White Complainant
- 3rd State whether you have or not any knowledge of said Mortgage and how you obtained the same?
- 4th Was or was not said Mortgage given by said Morrison to said White upon a certain Brick House & lot on Peter addition to the town of Pittsfield Pike County Illinois formerly owned and occupied by said Morrison, and is that property known by following description viz Lot 36 & 37 in Peter addition to the Town of Pittsfield?
- 5th Do you or not recollect the amount or sum for which said Mortgage was given, or about the sum, if you state? Did you ever know more than one Mortgage executed between said parties?
- 6th Did or did not your Brother Joseph B V Butler now a defendant

in this Suit, purchase Said Mortgaged premises from Said James D Morrison the mortgaged if yea, State whether Said purchase was or was not after the execution of Said Mortgage and whether or not your brother Joseph aforesaid knew of Said Mortgage and bought Subject to the same?

7th " Were you or not present at the Sale of lots aforesaid by Morrison to your Brother Joseph B. V. Butler of yea. State what passed at the time of the Sale, how the trade was made, to whom your brother was to make payments and in what Sums or amounts and when payable if you remember

8th " Did you or not ever hear your Brother Joseph B. V. Butler and James D Morrison say or agree between themselves that Joseph B. V. Butler was to pay a judgment rendered in favour of James H. Johnson in the Circuit Court of Pike County and State of Illinois against Said Morrison, which was a lien on Said Real Estate sold to Butler or that Said Butler was to retain or keep back enough to pay Said Judgment, in consideration of his purchase from Morrison

9th " Do you or not know that Joseph B. V. Butler paid a Horse and Buggy and turned over Bricks to David Pates which were credited by agreement of your Brother Joseph B. V. & Morrison & Johnson on Johnsons judgment, and that there still remained a balance after Said payments for which Said lots and the Brick House aforesaid were sold on Execution and that Said Sale was owing to your Brother Joseph neglect to pay the Said judgment to Johnson?

10th " Did you or not hear your brother Joseph say that he was to retain by his agreement with Morrison or to hold back enough to pay John White his Mortgage on the Said Lots & Brick House? if yea State particulars or what he did say about this?

11th " Do you or not know that Joseph B. V. Butler did pay one or two small orders of John White pursuant to Said agreement last

afornamed to be credited on said Mortgage to him by said Mortgage?

12th " Do you or not know that it was his intention and so declared by Joseph B V Butler to hold back enough of pay from Morrison to pay John White, and that such intention was only changed after Joseph pretended that Morrison had got to many Bricks from Joseph and that he would after that save himself by refusing to pay Johnson & White

13th " Do you or not know that Butler (Joseph B V) consulted counsel as to whether he could cut White off from his lien by allowing a sale on the Johnson judgment, and that said Joseph then refused to pay Johnson his balance on said Judgment?

14th " State particularly all that you have heard Joseph B V Butler say about said Judgment & Mortgage? State what you have heard Butler & Morrison say about the same when both together before the sale on said Judgment to Jackson Grimshaw, on execution by Sheriff of Pitt County?

15th " Did or did not Joseph B V Butler owe Morrison for several years part of the purchase money of the property afornamed - and did he not retain the same to pay Johnsons Judgment and Whites Mortgage?

16th " Had or had not Joseph B V Butler informed Johnson & White or lead them to believe that he was to pay them? And did not Joseph B V Butler consent in writing that said Mortgage might be recorded agreeing or intending to pay the same?

17th " Did you or not hear Joseph B V Butler offer to pay James Harrison Johnson his judgment against Morrison and say that he would pay in Bricks or other trade and that such was his agreement with Morrison?

18th " State whether or not you know any thing further about the pre-
-mises material to the parties of you? Do State. }

Grunshaw

John for Compⁿ

And afterwards to wit on the 27th day of March A.D. 1849 the deposition of
Daniel T. Butler was filed of record in words and figures as follows to wit;

Depositions of witnesses taken the 10th day of March A.D.
1849 between the hours of 9 O'clock in the forenoon and 4 O'clock
in the afternoon of said day in the Town of Platteville, in the County
of Grant and State of Wisconsin by Stephen O. Paine a Commissioner
upon the enclosed interrogatories, and by virtue of the enclosed com-
-mission to be read in evidence in a certain Suit now pending
in the Circuit Court of Pike County in the State of Illinois
described in said Commission and Interrogatories wherein John
White is Complainant and James D. Morrison and Lydia his
wife and D. B. V. Butler are defendants

Deposition of Daniel T. Butler

Interrogatory first being first duly sworn doth depose and say in answer
to the several interrogatories as follows to wit;

Interrogatory first

Do you or not know the parties Complainant and defendants?
if you, State whether you were acquainted with said parties
and which of them on or about the 26th day of March A.D.
one thousand eight hundred and forty two? State particularly
which of them you knew?

Answer 1st " I am acquainted with James D. Morrison and D. B. V. Butler
two of the defendants and was about the time mentioned (March
26th 1842) I have seen John White the complainant once but have
not, nor ever had any particular acquaintance with him?

Interrogatory 2nd "

Were you or not present when a certain Mortgage bearing date

March 26th A.D. Eighteen hundred and forty two executed by James D Morrison and Lydia his wife, was made and executed unto John White Complainant ?

Answer 2nd I was not present when any Mortgage was made and executed between the parties mentioned ?

Interrogatory 3rd

State whether you have or not any Knowledge of Said Mortgage and how you obtained the Same ?

Answer 3rd I was informed by J B V Butler that there was such a Mortgage in existence and the only information I have on the Subject of the existence of such a Mortgage was derived from that Source ?

Interrogatory 4th

Was or was not Said Mortgage given by Said Morrison to Said White upon a certain Brick House and Lots in Peters addition to the Town of Pittsfield Pike County Illinois formerly owned and occupied by Said Morrison, and is that property not known by following description viz Lots 36 & 37 in Peters addition to the Town of Pittsfield ?

Answer 4th

I was informed by J B V Butler that there was a Mortgage on the house & Lots purchased by him of Said Morrison and I know that Said House and Lots was situated in Peters addition to the town of Pittsfield, and I know that Said House and Lots was formerly owned and occupied by Said Morrison, But I never knew the numbers of Said lots or if I did I do not now recollect ?

Interrogatory 5th

Recard not State Do you or not recollect the amount or sum for which Said Mortgage was given or about the sum if yea State, did you ever know more than one Mortgage executed between Said parties ?

Answer 5th

I cannot now state positively the amount my brother said the

Mortgage was given for, but my impression is that it was three or four hundred dollars. I never knew but the one Mortgage executed between said parties nor of that except in the manner I have mentioned

Interrogatory 6th Did or did not your Brother Joseph B. V. Butler now a defendant in this Suit purchase said Mortgaged premises from said James D. Morrison the Mortgagor if yea, State whether said purchase was or was not after the execution of said Mortgage, and whether or not your brother Joseph aforesaid knew of said Mortgage and bought Subject to the same?

Answer 6th

I do know that my brother purchased the premises. I have above described from the said James D. Morrison, and that sometime after said purchase he the said Joseph B. V. Butler informed me that there was a Mortgage in existence to John White from said Morrison upon the premises he had so purchased of said Morrison, and that he should be careful how he paid Morrison or should withhold payment untill he Morrison relieved the premises of said Mortgage, ~~when he first~~ purchased of said Morrison encumbrance. I do not know whether my said Brother knew of said Mortgage when he first purchased of said Morrison or not or whether he purchased Subject to said Mortgage or not?

Interrogatory 7th

Were you or not present at the Sale of Lots aforesaid by said Morrison to your brother Joseph B. V. Butler if yea State what passed at the time of the Sale, how the trade was made to whom your brother was to make payments, and in what Sums or amounts and when payable, if you remember?

Answer 7th

I was not present at said Sale and know nothing on that Subject except what my brother J. B. V. and said Morrison may have told me on that Subject, my information on that Subject being mostly

from my said Brother and from him I learned that he was to pay Morrison in Bricks to the value (I think of Seven hundred and fifty dollars for said premises, which payment was to be in several installments, but when I cannot distinctly remember.,

Interrogatory 8th

Did you ever hear your Brother Joseph B. V. Butler and James D. Morrison say or agree between themselves that Joseph B. V. Butler was to pay a Judgment rendered in favour of James H. Johnson in the Circuit Court of Pike County and State of Illinois against said Morrison which was a lien on said real estate sold to Butler or that said Butler was to retain or keep back enough to pay said judgment in consideration of his purchase from Morrison

Answer 8th

I never did hear my brother and said Morrison say or agree between themselves that he the said J. B. V. Butler was to pay a Judgment as described in the last interrogatory, nor that he was to retain or keep back enough to pay said judgment in consideration of his purchase from Morrison or otherwise.

Interrogatory 9th

Do you or not know that Joseph B. V. Butler paid a Horse and Buggy and turned over Bricks to Lewis Bates which were credited by agreement of your Brother Joseph B. V. Butler Morrison & Johnson on Johnsons judgment, and that there still remained a balance after said payments for which said Lots and the Brick House aforesaid were sold on Execution, and that said Sale was owing to your Brother Josephs neglect to pay the said Judgment to Johnson?

Answer 9th

I know that my brother J. B. V. aforesaid did let Johnson have a Buggy on said Judgment and that he left Lewis Bates have a quantity of Bricks which he (the said J. B. V.) informed me was with said Morrisons consent to be credited on said judgment I do not remember whether my Brother let Johnson have a Horse on that Judgment or not, nor do I know whether there was any

balance still remaining due on said judgment or not I never understood that my brother was under any obligation to pay said judgment only as he received orders from Morrison nor do I know that there ever was a sale on Execution of said Brick House and Lots or by whose neglect such sale occurred, if there has been any such sale,

Interrogatory 10th Did you or not hear your Brother Joseph say that he was to retain by his agreement with Morrison, or to hold back enough to pay John White his Mortgage on the said Lots & Brick House? if yea. State particulars, or what he did say about this?

Answer 10th

I never did hear my Brother say that by his agreement with Morrison he was to hold on in payments, or withhold any payments to pay said John White or any other person, nor that he was under any obligation whatever according to his contract with Morrison in relation to said Mortgage to said White, but I did frequently hear him say that he would keep back, or withhold payments to Morrison until the property was relieved from said Mortgage encumbrance

Interrogatory 11th

Do you or not know that Joseph B. V. Butler did pay one or two small orders of John White pursuant to said agreement last aforesaid to be credited on said Mortgage to him by said Morrison?

Answer 11th

I do not know that my said brother ever paid any orders of John White to be credited on said Mortgage, though he may have done so, yet not in pursuance of any such agreement aforesaid as I always understood from my brother as far as I understood any thing that Morrison was to relieve the said property of the encumbrance of that Mortgage,

Interrogatory 12th

Do you or not know that it was his intention and so declared by Joseph B. V. Butler to hold back enough of pay from Morrison to pay John White, and that such intention was only changed after Joseph

pretended that Morrison had got too many Bucks from Joseph and that he would after that save himself by refusing to pay Johnson & White?

Answer 12th " I do not know that my Brother Joseph ever changed his intention in relation to either Said judgment or Mortgage, nor if he did so what were his reasons for so doing, I do know however that my brother J. B. & Butler did declare that he would withhold payments to Morrison on account of the aforesaid Mortgage untill he should be made safe against that encumbrance on the property.

Interrogatory 13th "

Do you or not know that Butler (Joseph B V) consulted counsel as to whether he could cut White off from his lien by allowing a Sale on the Johnson judgment and that Said Joseph then refused to pay Johnson his balance on Said Judgment?

Answer 13th "

I do not know whether he consulted counsel or not nor whether he refused to pay the Johnson judgment or not, nor what his reason was for so doing if he did so, nor do I know that he ever was under any kind of obligation to pay Said judgment or not.

Interrogatory 14th "

State particularly all that you have heard Joseph B V Butler say about Said judgment & Mortgage? State what you have heard Butler & Morrison say about the same when both together before the Sale on Said judgment to Jackson Gurnshaw on execution by the Sheriff of Pitt County?

Answer 14th "

I have frequently heard my brother say that he would save or keep back enough of the payments due to Morrison as would save him harmless untill such time as he (Morrison) should remove the encumbrance of Said Mortgage from the property he purchased, I do not think I ever heard him say much or any thing about the Johnson judgment except what I have stated in my answer to former interrogatories, nor do I ~~know~~ now recollect to have ever heard my brother and Morrison converse together in relation to either Said Mortgage or Said

judgment. In fact on the whole Subject I know but little and that principally from my Said brother's Statements to me.

Interrogatory 15th

Did or did not Joseph B. V. Butler ^{ever} ~~and~~ Morrison for several years part of the purchase money of the property aforesaid, and did he not retain the same to pay Johnson's judgment and White's Mortgage?

Answer 15th

I do know that for the space of 18 months or two years my brother did owe to Morrison a part of the purchase price of said premises, which I always understood him to hold back until the property should be relieved from the aforesaid mortgage encumbrance, but think nothing was said by him of keeping back payments on account of said judgment though it might have been his intention to do so.

Interrogatory 16th

Had or had not Joseph B. V. Butler informed Johnson and White or led them to believe that he was to pay them or either of them? And did not Joseph B. V. Butler consent in writing that said Mortgage might be recorded agreeing or intending to pay the same?

Answer 16th

I do not know that my Brother Joseph B. V. Butler ever informed Johnson & White or either of them or any other person or led them or either of them or any other person to believe that he would pay said judgment or Mortgage or either of them, nor do I know that he ever did consent in writing or otherwise that said Mortgage should be recorded, nor do I know or believe that it ever was his intention to pay them or either of them further than as Morrison should from time to time order and direct.

Interrogatory 17th

Did you not hear Joseph B. V. Butler offer to pay James Morrison Johnson his judgment against Morrison and say he would pay in Buck's or other trade, and that such was his agreement with Morrison?

Answer 17th " I never did hear my Brother J. B. V. Butler offer to pay Said Johnson in Pricks or in any other manner, nor did I ever hear him say that he had any such agreement with Morrison, In fact I always understood him that his contract with Morrison was to pay him in Pricks and any other payments made by him to any other person or in any other way, whatever had to be done by Special arrangement with Morrison.

Interrogatory 18th "

State whether or not you know any thing further about the premises material to the parties? if yea State?

Answer 18th "

I do not now recollect of any thing else material to the said parties

Daniel J. Butler

State of Wisconsin } ss.
County of Grant }

I Stephen O. Paine of Platteville, Grant County Wisconsin, Commissioner do hereby certify that the said witness Daniel J. Butler prior to the taking of said deposition and on the said 10th day of March A.D. 1849, was by me duly sworn to testify the truth in relation to the matter in controversy in the Suit mentioned in the caption to these depositions and in the enclosed commission so far as he might be interrogated in relation thereto; and that said deposition was on the said 10th day of March A.D. 1849 at Platteville in said County and State taken down and reduced to writing by me and signed and sworn to by said witness in my presence

Given under my hand and Seal this 10th day of March
A.D. 1849.

Stephen O. Paine 
Commissioner as aforesaid

And afterwards to wit, At a Circuit Court begun and held at the Court House in Pittsfield Pike County Illinois, on the first Monday in

September A.D. 1848. the Court sitting as a Court of Chancery, the following order was made and entered of record as follows to wit;

John White
vs Bill to Foreclose Mortgage
James D. Morrison & al

It is ordered by the Court that the cause be continued

And afterwards to wit; on the 31st day of January 1849. a notice was given to defendants Solicitor of the taking of the deposition of James D. Morrison in words and figures as follows to wit;

John White
vs Circuit Court in and for the County of Pike and State of Illinois
and J^r D Morrison & Wife
and J^r P. V. Butler In Chancery.

D^r D. H. Gilmer Esq^r Sol^r for Deft.

You are hereby notified that on the 12th day of February A.D. 1849 the Said Complainant will take the deposition of James D Morrison before R. W. Seantana Esq^r a Justice of the Peace in and for the County aforesaid at his office in Pittsfield between the hours of ten O. clock A.M. and nine O. clock P.M. of said day, to continue from day to day if needed - Said depositions when so taken to be read in evidence in above entitled cause on behalf of Said Complainant. When and where you can attend if you see fit

W^m A. J. Grimshaw
Sol^r p. p.

Jan 31st 1849

Service of this notice by copy accepted Feb^y 1st 1849
Gilmer & Williams
Atty for Butler

And afterwards to wit on the 4th day of April 1849. the following depositions, ^{notice & Exhibit} were opened and filed by the Clerk of said Court in words and figures following to wit;

Deposition of James M Morrison produced and Sworn and examined before me Reuben W. Scanland a Justice of the Peace within and for Pike County Illinois on the (3) third day of April 1849 at my office in Pittsfield in the County and State aforesaid, in a certain suit wherein John White is plaintiff and the said James M Morrison and J. B. V. Butler are defendants the said Morrison being first duly Sworn by me to answer questions,

Interrogatory 1st

Did you or not in the year 1843. Sell to the defendant J. B. V. Butler Lots 36 and 37 in Peter addition to the town of Pittsfield in the County of Pike and State of Illinois, If you please State for what price and whether the same has or has not been paid to you

Answer I did in or about that time Sell 36 & 37 to Mr Butler. Seven hundred and fifty dollars. a full settlement has been made between Butler and me and full payment.

Int 2

Was or was not said Butler by the terms of said Sale to pay any judgments or mortgages which other persons held against you?

Answer He was not - that is he was ^{not} bound to pay any.

Int 3: Look at the paper now shown you marked exhibit A and State whether or not it was executed at the time of said Sale?

Answer Yes Sir it was. that is the mind of the agreement written by myself at the time, that is written on the day of the execution of the deed to the best of my knowledge it was written and dated the same day of the deed if I mistake not.

Int 4 Is or is not ^{that} the only agreement that there was between you and Said Butler respecting the terms of payment for Said Lots

Answer To the best of my knowledge the only legal agreement that ever existed between us in that case

Cross Interrogatory by J. Grimsshaw

1st " In what manner and at what time or times did Said Butler pay you the consideration for Said Lots:

Answer At the executing the deed he paid me one carriage at one hundred and fifteen dollars. At a settlement at the time that existed between us some several dollars. the next payment was about thirty two thousand bucks delivered to George W. Porter. The next payment (I believe the next payment) was one hundred dollars worth delivered to David Bates for the use of James Harrison Johnson. The next payment according to my recollection was forty nine dollars paid in cash to me which I paid to John White of Scott County. Well then there was some several small payments the amounts nor time not recollected, then on final settlement between Butler and me he closed up the concern and paid me the balance, the balance was settled making a full completion of the contract

Inty. 2 State when you had such final settlement with Butler

Answer Well I am not positive as it respects the time it is within two years and not much short of two years I think from this present time

Inty. 3 How did Said Butler pay you the balance spoken of in Cross interrogatory first?

Answer A part in cash a part in Auditors Warrants and a part in Cash notes on other persons

Int 4 Had James Harrison Johnson a Judgment against you in the Pitts Circuit Court Illinois,

Answer He had

Int 5 Was not the Carriage and the One hundred dollars worth of Pricks delivered to Dorus Bates paid to said Johnson and credited by him on his judgment against you.

Answer They were.

Int 6 How was the balance of said Judgment paid and when?

Answer The balance of the judgment was paid by the Sale of the property. I sold to Butler and bid off by Mr. J. Grimshaw here himself for the use of said Johnson

Int 7 Was said Sale under Execution?

Answer I suppose it was tho I had no knowledge of the time of the Sale

Int 8 Did you not state when informed by said J. Grimshaw of said purchase by him that Butler was to pay the bid or redeem the property, but if he did not you would?

Answer I have no recollection of the conversation tho it may have taken place.

The last question objected to.

Int 9 Did ^{not} you and said Butler ask or obtain extension of time or indulgence on said judgment before said Sale

Answer I know nothing of Butler, I did myself ask further time and I got it

Int 10 Did you not ask for and get such indulgence on the ground that Butler was to pay the balance of said Judgment.

Answer I asked for and got indulgence to get the money from Butler and pay it myself.

Int 11 State if you know what amount Said Butler paid Grimshaw for the assignment of the Certificate of purchase of the property you sold Butler

Answer Well to say that I know it I seen nothing paid. I understood there was fifty or sixty dollars paid - I understood this from both parties

Int 12 What was the value of the property you sold to Butler at or about the time he got the assignment of the Certificate of purchase from Grimshaw?

Answer I think property had come down. I sold for Seven hundred and fifty. Well I would say the property then would range from five to six hundred dollars.

Int 13 Have you not repaid to Said Butler the amount paid by him to Said Grimshaw for the assignment of the certificate of Purchase for the property you sold Butler?

Answer I did refund to him on Settlement the amount.

Int 14 In your answer to cross interrogatory first you speak of John White of Scott County, do you mean the Complainant in this Suit.

Answer I mean the same White

Reexamination by M^r Williams

Int 1st Did or did not Said Butler deliver Said Bonds to Morrison Dons Bates upon your order or by your direction

Answer He did

James D Morrison

State of Illinois }
County of Pike }

J Reuben W. Sealand a Justice of the

peace within and for Pike County aforesaid do certify that the foregoing deposition was taken by me at my office in Pittsfield on the third day of April 1849. according to the notice hereunto, that the witness was first duly sworn by me as aforesaid and then the same was carefully read to the witness and signed by him and that he was again sworn to their correctness - Dated the day and date of April 3^o 1849.

Reuben W. Scantland J.P. Seal

Copy of Notice

John White
 vs
 Jas. D. Morrison & Wife
 and vs B. V. Butler

Circuit Court in and for the County
 of Pike and State of Illinois
 In Chancery

To Wm. A. & J. Grunshaw Esqrs Solicitors for Complainant

You are hereby notified that on the third day of April A.D. 1849 between the hours of ten O'clock A.M. and ten O'clock P.M. of said day the defendant Joseph B. V. Butler will take the deposition of D. H. Gilmer and others before R. W. Scantland Esq. one of the justices of the peace in and for the County aforesaid at his office in Pittsfield to be read in evidence in the above entitled Suit. And you can there and there attend and cross examine the witnesses if you see fit

Gilmer & Williams

February 23^o 1849.

Atty for said deft Butler

Copy of Exhibit Marked A

Memorandum of Agreement made and entered into this 24th day of June 1843 by and between James D. Morrison and Joseph B. V. Butler both of the County of Pike and State of Illinois Agreement as follows that the said Joseph B. V. Butler did agree to deliver to the said Morrison, twenty three thousand Seven hundred and fifty (\$23,750) at five dollars per thousand, yet on this condition that is to say that the said Morrison shall well and truly pay off and discharge all the demands as are incumbrance against lot number 36 & 37 in Peter, addition to the

Town of Pittsfield being the same property this day deeded to the said Joseph B. V. Butler by the said Morrison and wife the said Brick to be delivered by the first day of November 1844 if said incumbrance shall be removed from off said property by the said first day of November 1844, and not otherwise though the said Butler is bound to turn out a part of said Brick or all if required at any time when called on after the same becomes due in dis charge of any of the demands which is as an incumbrance and against the above mentioned property

Witness our hands and Seals. the 24th day of June 1843.

Attest

Wole Butler

James D Morrison *(Seal)*

Joseph B V. Butler *(Seal)*

And afterwards to wit At a Circuit Court began and held at the Court House in Pittsfield Pike County Illinois, on the first Monday of April A.D. 1849. the following order was made and entered of record in words and figures as follows to wit;

John White

vs *vs*

Bill to Foreclose Mortgage

James D Morrison. A. al.

This day came said Complainant by his Solicitors and said defendant Butler by his Solicitors, and this cause is submitted to the Court for its consideration during vacation to be fully heard and argued at the next term of this Court.

And afterwards to wit at the A Circuit Court began and held at the Court House in Pittsfield Pike County Illinois, on the first Monday of September A.D. 1849 the Court sitting as a Court of Chancery the following order was made and entered of record in words and figures as follows to wit;

John White

vs

James D. Morrison and others

And now at this term this cause coming on for hearing upon the Bill answer of Joseph B. V. Butler one of defendants replication thereto and exhibits and depositions. Said bill at a former term of this Court having been taken for confessed against James D. Morrison and Lydia his wife two of defendants, and the Court having heard the same doth order and decree that Complainant's bill be & is hereby dismissed - Whereupon Said Complainant prays an Appeal to the Supreme Court of the State of Illinois which is granted, and by consent of parties by their counsel the Appeal Bond to be executed by Complainant in the penal sum of \$ 200. Conditioned according to law, may be filed within thirty days with security to be approved by the Clerk of this Court.

Wm. A. Minshall

And afterwards to wit on the 17th day of September A.D. 1849 the Complainant filed his Appeal Bond in words and figures as follows to wit,

I know all men by these presents that we John White and Jackson Grimshaw are held and firmly bound unto James D. Morrison and Lydia Morrison his wife and Joseph B. V. Butler in the penal sum of Two Hundred Dollars for the payment of which well and truly to be made we bind ourselves jointly severally and firmly by these presents, sealed with our seals and dated this 18th day of September A.D. One thousand eight hundred and forty nine.

The Condition of this obligation is such that whereas the above bounden John White heretofore to wit on the 8th day of February A.D. 1848 filed his bill of complaint on the equity side of the Circuit Court in and for the County of Pike and State of Illinois against the said James D. Morrison and Lydia his wife and said Joseph B. V. Butler and whereas upon the hearing of said cause by the Court aforesaid at the ~~Sept~~^{September} Term A.D. 1849 said Circuit Court in and for said County of Pike

did order and decree that said bill of complaint of said John White be dismissed from which decree said John White then and there prayed an Appeal to the Supreme Court of the State of Illinois which said appeal was allowed by the Circuit Court aforesaid upon said White entering into bond conditioned according to law in the penal sum of two hundred dollars. Now if the said John White shall duly prosecute his said appeal to said Supreme Court of the State of Illinois and shall pay all costs in said cause in case the said decree of the Circuit Court in and for the County of Pike aforesaid is affirmed and shall abide by and perform all the orders and decrees of the Supreme Court aforesaid, to be made and entered in such cause then this obligation shall be void otherwise shall be and remain in full force and virtue

Taken and approved by me this
 17th September A.D. 1849.
 J. Starnes Clerk

John White
 J. Grimshaw



State of Illinois } ss.
 Pike County }

J. Starnes Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing forty three and half pages contains a true perfect, and full transcript of the record in the foregoing entitled cause wherein John White is Complainant and James W. Morrison and Lydia his wife and Joseph B. V. Butler are defendants

In Testimony whereof I have hereunto set my hand and affixed the Seal of said Circuit Court this thirteenth day of November One Thousand Eight hundred and forty nine
 J. Starnes Clerk

Clerk's fees Mak Recora 186 folio 127- 23.50

Costs recd 50
 #24-00.

John White } Appeal from Pike
James D. Morrison } Supreme Court 2^d Division
Lydia Morrison & } Dec. term 1849
Joseph B. V. Butler }

And now comes the Appellant John White by his Attorneys and says that in the foregoing Record there is manifest error in this -

The Court Erred in dismissing Appellants Bill when by the Equity therein contained and the testimony in the case the said Appellant was entitled to a decree in accordance with the prayer of his bill for the Foreclosure of his Mortgage and sale of the mortgaged premises.

Wherefore and for other errors apparent in said record said Appellant prays that the same be reversed set aside and for nungit held and this he is ready to verify &c

Wm. A. J. Grimsbaw
Attys for Appellant -

And now comes the said defendant Butler by his Attys. Williams & Lawrence and says that in the said record there is no error and this

Williams Lawrence
Attys for Butler.

John White Comptroller

vs
James D. Morrison &
Lydia his wife & Joseph
B. B. B.

In the Supreme
Court of the State
of Illinois Second
Grand Division
The County

and Comptroller ~~Shaming~~ in
Error assigns following Error in the fore
going Record and proceedings in the above cause:

The Circuit Court erred in dismis-
ing the Bill of Complaint entered by
the Equity therein ^{and the evidence in the cause} was entitled to a
decree in his behalf for the foreclosure
of his mortgage and sale of the mortgaged premises
and this he is ready to verify

John White
vs.
James M. Morrison & al.

Copy of Record

13758

Repaired

~~13758~~

Filed Sept 10th 1847

W. B. Powell