

13234

No. _____

Supreme Court of Illinois

Ely et al

vs.

Eastwood et al

STATE OF ILLINOIS,

SUPREME COURT,

13234 ^{no 4}
Third Grand Division.

No. 139.

Eley
vs

Eastman

1861

Refused

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Lee Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Lee County, before the Judge thereof, between Martin Eastwood & Mary Eastwood his wife

plaintiff, and Ewartus Ely & Enoch L. Roberts

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

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

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 14th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

139

Quartus Ely & Ak

No.

vs.

Martin Eastwood

WRIT OF ERROR.

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

Gleek.

FILED

March 14 A. D. 1861

L. Leland

Gleek.



STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Lee

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Lee County, before the Judge thereof, between Martin Eastwood and Mary Eastwood his wife

plaintiffs and Quartus Ely & Enoch L. Roberts

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

as we are informed by their complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Martin Eastwood and Mary Eastwood his wife.

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Martin Eastwood and Mary Eastwood his wife

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 14th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one,

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

State of Illinois) Served the citation by reading the
 Lee County) same to and in the presence and
 hearing of the within named
 William \$1.00 Martin Eastwood and Mary
 Service 1.00 Eastwood the 24th day of March
 Return 10 A.D. 1861
 \$2.10
 Fees paid by J. H. Edsall atty for
 Coff in error Aaron L. Porter Sheriff
 by J. W. Hollenbeck Deputy

139

Quantis Ely et al

No. 139

Martin Eastwood et al

SCIRE FACIAS.

FILED CHL. 24th A. D. 1861

A. Deland

Clerk

2

State of Illinois
LaSalle County } Supreme Court of the
State of Illinois, Of the
April Term A.D. 1861

James E. Ray and
Ernest L. Roberts
}
Plffs in error

Martin Rankwood &
Mary Rankwood
}
Dfts in error

James K. Edsall
being duly sworn deposes & says
that he is acquainted with
Samuel C. Ellis; & knows
his pecuniary circumstances
; that he regards Samuel
Ellis as ample security
at least for the sum of
six hundred dollars

Subscribed & sworn to
before me this 14th day }
of March A.D. 1861 } Jas K Edsall
J. D. [Signature]

Supreme Court of the State
of Illinois, Of the April
Term A.D. 1861

Quortus & Enoch }
L. Roberts, Plaintiff in error }

Martin Eastwood & Co. }

I do hereby enter myself
accountable for costs in this case
& acknowledge myself
bound to pay or cause to be paid
all costs that may accrue
herein either to the opposite
party or to any of the officers
of this Court in pursuance
of the laws of this State.
Dated Ottawa Mich 14th 1861
Jas H. E. Hull

101
139
Lunters Ely
et al

4

Farwood et al

Rec for costs

Filed March 14. 1881

L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

QUARTUS ELY and ENOCH L. ROBERTS,
Plaintiffs in error.

vs.

MARTIN EASTWOOD and MARY EAST-
WOOD, Defendants in Error.

Error to Lee.

ABSTRACT OF RECORD.

1 Defendants in Error on the fourth of February 1860, filed
their bill in the Lee County Circuit Court against Plaintiff in
Error Ely, alleging that:

2 On the fourteenth day of January 1857, defendants in er-
ror made their promissory note payable to Quartus Ely, twelve
months after the date thereof for the sum of six hundred and
thirty-three dollars, for an indebtedness from said Martin East-
wood to said Ely; that to secure the payment of said note,
they, at the time of making the same executed and delivered
to said Ely, an instrument purporting to be a deed of trust, a
copy of which is attached to the Bill marked Exhibit A, and is
in the words and figures following to-wit:

10 "Whereas Martin Eastwood and Mary his wife party of the
first part, of the county of Lee and State of Illinois, have ex-
ecuted their one certain promissory note of even date here-
with, payable to Quartus Ely or order, twelve months after the
date thereof for the full sum of six hundred and thirty-three
dollars.

Now therefore, the said Martin Eastwood and Mary his
wife, party of the first part, to secure the payment of said note
according to its tenor and effect, in consideration of one dollar,
and the further sum of six hundred and thirty-three dollars,
the receipt whereof is confessed, doth grant bargain and sell
unto Quartus Ely of the County of Lee and State of Illinois
his heirs and assigns forever, the premises described as
follows: (here follows description of premises in question),
situated in the County of Lee, and State of Illinois, together
with all and singular the privileges and appurtenances there-
unto belonging. In trust nevertheless that in case default be
made in the payment of said note, or any part thereof, ac-
cording to the tenor and effect of said note, then, on the appli-
cation of the legal holder of said note, the said Quartus Ely, after
publishing a notice in a newspaper printed in the said County
of Lee, ten days before the day of such sale, to sell the said prem-
ises, and all right and equity of redemption of the said Martin
Eastwood and Mary his wife, party of the first part, their heirs
and assigns therein, at public auction at the Court House door
in said County of Lee to the highest bidder for cash, at the
time mentioned in such notice. And to make, execute and

deliver to the purchaser or purchasers thereof a deed or deeds for the premises so sold, and out of the proceeds of such sale to pay all costs and expenses incurred in advertising and selling said premises, also the principal and interest due on said note.

And the said Martin Eastwood and Mary his wife, party of the first part, for themselves, their heirs, executors, and administrators, covenant with the said Quartus Ely, that they are well seized of said premises in fee simple, and that they have good right and full power to grant, bargain and sell the same in form aforesaid, that the same are free from all incumbrance, and that they will, and their heirs, executors and administrators shall forever warrant and defend the same against the lawful claim of all persons.

Signed and sealed this fourteenth day of January, A. D. 1857.

MARTIN EASTWOOD [Seal]

WITNESS:

MARY EASTWOOD, [Seal]

Samuel C. Eells."

2 That at the time of the signing of said deed a certificate of acknowledgement was thereto attached in the words and figures following to-wit:

3 "STATE OF ILLINOIS, LEE COUNTY—ss.

I Samuel C. Eells, Notary Public in and for said County in the State aforesaid do hereby [certify] that Martin Eastwood and Mary his wife who is personally known to me as the same person whose name is subscribed to the within Trust Deed, as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth. And the said Mary Eastwood, wife of the said Martin Eastwood, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said Trust Deed, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

"Given under my hand and notarial seal this 14th day of January A. D. 1857." "SAMUEL C. EELLS."

4 That the said Ely procured the same to be recorded in the Recorder's Office of Lee County on the fifteenth day of January A. D. 1857 in Book "G" of Mortgages, page 159. That by the terms of said Deed, in default in the payment of said note said Ely was authorized to sell the real estate therein described to the highest bidder for cash after having given notice, &c.

That on the twenty-eighth day of September 1858, said Ely induced Def'ts in Error to appear before one Platt Townsend, a Justice of the Peace in and for said Lee County, and make

acknowledgement of the execution of the said deed at that time, which they accordingly did; and the said Townsend then and there attached to said Deed of Trust a certificate of which the following is a copy:

"STATE OF ILLINOIS, LEE COUNTY—SS.

On this 28th day of September, 1858, before me, Platt Townsend, a Justice of the Peace, personally appeared Martin Eastwood and Mary Eastwood, to me personally known to be the real persons whose names are affixed to the foregoing deed of conveyance and acknowledged that they executed the same for the purposes therein mentioned. And the said Mary Eastwood on examination apart from her said husband and having had the contents of the foregoing Deed fully explained to her by me, acknowledged that she executed the same freely and voluntarily, and without force or compulsion of her said husband, and that she does not wish to retract the same.

"In witness whereof I have hereunto set my hand and seal the day and year first above written."

"PLATT TOWNSEND,"

"Justice of the Peace. [Seal]."

That said Ely, also on that day procured said Eells, to attach his notarial seal to the certificate of acknowledgment by him attached to said Deed which said Eells had not done before that time; and that the said Ely thereupon procured said Deed together with the several certificates of acknowledgments thereof, to be again recorded &c.

That at the date of said Deed, and for a long time prior thereto, and up to the said 28th day of September 1858, the whole of the real estate mentioned and described in said Deed of Trust, was the property of the said Defendant in the Error, Mary Eastwood: that at the date of said Deed the said Martin Eastwood, was, and from thence has been a householder, having a family for which he provides: that the whole of said premises lie together in one tract, having a dwelling house situated upon the same in which the said Eastwood together with his family, resided at the time of the making of said Deed, and have continued to reside thereon: that the debt to secure which said deed was executed, was not incurred for the purchase price, or improvement of said premises; that said Defendants in error have never executed any release or waiver of the rights of either of them to said premises as a homestead.

That the said Ely had advertised the said premises for sale under the power in said Trust Deed contained, such sale to take place on the 7th day of February, 1860, and that unless restrained the said Ely was about to sell the said premises accordingly.

The Bill prays that said Ely may answer under oath, etc.—
And that he might be enjoined from all proceedings under

and by virtue of said Deed of Trust, and prays for general relief.

13 Afterwards on the 4th day of February, 1860, said Ely filed his answer to said Bill, which as subsequently amended, is as follows.

14 Saving and reserving, etc., admits that Defendants in error made and executed their certain promissory note as alleged in said Bill, drawing interest however at the rate of ten per cent., per annum after maturity; admits that Defendants in error at the same time execute and delivered the said Trust Deed to secure the payment of said note: Admits that the copy of the certificate of acknowledgement set out in said Bill made on the 14th of January 1857 is correct with the exception that the word "certify" is omitted in such copy, and with the further exception that an impression of the notarial seal of the said Notary Public before whom such acknowledgment was taken, was attached to the original certificate at the time the same was made; admits that he procured said Deed to be recorded as alleged in said Bill; and that by the terms of said Deed, in default of the dayment of said note, he was authorized to advertise and sell said premises as alleged in said Bill. 2

16 Avers the truth to be that it was the expressed intention object and purpose of said Defendants in error at the time of making said deed, as well as of himself, the said Ely, that the Defendants in error should convey to the said Ely all and singular the estate right and interest as, well of the said Martin as of the said Mary, in and to the said premises in said Trust Deed described, for the purposes in said Deed expressed, viz: to secure the payment of said note; admits that after the said Deed had been made the said Martin Eastwood applied to the said Ely to procure him to transfer the said note to Messrs. Kendall and Eggleston in order that the said Martin Eastwood might through some arrangement between himself and the said Kendall and Eggleston obtain further time for the payment of said note; that thereupon doubts arose as to whether said certificate of acknowledgement so attached to said deed at the time of the making thereof, was sufficient to convey the portion of the said lands, the title to which was vested in the said Mary Eastwood, wife of said Martin; and it being the original agreement that the said Ely should have conveyed to him the interest in the said estate of the said Mary Eastwood as well as of the said Martin, the defendants in error did agree with said Ely, to make, and did in fact make, such additional acknowledgment of said deed as alleged in said Bill. 3

18 Denies that he procured said Notary, who attached the original certificate of acknowledgment to said deed, to affix his notarial seal to said certificate as alleged in said bill, but avers that the same was done at the time said certificate of acknowledgment was made by said Notary Public on the 14th of January 1857; admits that he procured said deed together 4 5

with its several acknowledgments to be again recorded as alleged in said Bill.

19 Admits that at the time of the making of said deed the title to the said N E $\frac{1}{4}$ of the S W $\frac{1}{4}$ of said Section 27 being a part of said premises, was in the said Mary Eastwood except so far as the said Martin had rights therein arising from the fact of his then being the husband of the said Mary. But denies that the said Mary was the owner of the remaining portion of said premises viz: that portion of the W $\frac{1}{2}$ of the S W $\frac{1}{4}$ of said Section which lies north of the Road leading from Dixon to Lee Center, containing 57 66-100 acres: and on the contrary thereof avers that the title to the last mentioned tract was at the time of the execution of said deed, 20 in the said Martin, and that the only pretence of title that the said Mary had to the same, was derived through a deed executed to her, the said Mary, by the said Martin, during the period of their said relation of husband and wife.

Admits that the said Martin Eastwood was a householder and with his family resided on said premises as alleged in said Bill: that the debt to secure the payment of which said Trust Deed was given, was not incurred for the purchase money of said premises, but whether for the improvement thereof he knows not.

Admits that the defendants in error have not executed to him any waiver or release of any rights in said premises except as appears by said Deed of Trust, but avers that it was the agreement and understanding of the parties at the time said deed was made, that all the rights and interests of the said defendants in error, in and to said premises were to be conveyed, and were conveyed, to said Ely for the purposes in said deed expressed. Admits that he advertised said premises for sale and was about to sell the same under and by virtue of the power in said Trust Deed contained for the purpose of satisfying the portion of said note then unpaid; avers that the said Martin Eastwood on or about the ninth of November 1857, paid upon the said note the sum of \$250, which was duly endorsed thereon. 21

Avers that at the instance of the said Martin Eastwood as aforesaid on or about the 28th of September, 1858, he sold and assigned said note to said Messrs Kendall and Eggleston who paid him therefor the full amount then remaining due and unpaid thereon, after deducting said payment of \$250; and that, as he had since been informed and believes, the said Kendall and Eggleston afterwards transferred said note to Enoch L. Roberts, who owns the same; that upon the application of said Roberts said Ely proceeded to execute the power in said Trust Deed contained in the manner aforesaid, as he of right and in equity ought to do. 22

Denies all unlawful combination &c, and submits that there is no equity upon the face of the Bill and prays the same ben- 23

24 efit of such defence as if he had demurred thereto; which
 25 said answer was duly sworn to by said Ely.

26 On the 14th of February 1860, defendants in error filed
 their supplemental Bill, whereby, after stating the prayer of
 their original Bill, they aver that after the filing of the said
 original Bill, and before any further proceedings were had in
 said cause, on the 7th day of February 1860, the said Ely
 proceeded to sell the said premises and did sell the same to
 said Enoch L. Roberts, who was alleged in the answer of said
 Ely, to be the owner of said note, by virtue of the said
pretended Trust Deed, for the sum of \$460, and that said Ely
 thereupon executed a deed of said premises to said Roberts.
 Defendants in error claim the same relief against Roberts as
 they would have been entitled to against said Ely, had he not
 27 sold said premises, and pray that the said Roberts may be
 made defendant and required to answer the said Bills of com-
 plaint upon his corporal oath, &c., and that they may have the
 full benefit of the suit against Roberts and the same relief, as
 they might, or could have had, against the said Ely; and that
 the said deed executed by said Ely to said Roberts be declared
 void, and that the said Roberts his agents &c., be restrained
 from selling or in any way disposing of said premises, and for
 28 general relief, also prayer for process.

29 At the February Term 1860 of said Court, the Court or-
 dered that an Injunction issue as prayed for.

30 On the 21st day of February 1860, said Roberts filed his
 answer to said Bills.

31 So far as the allegations in the original Bill are concerned,
 35 the answer of Roberts is the same *mutatis mutandis*, as the
 answer of the said Ely; and as to the supplemental Bill ad-
 mits that the defendants in error filed their original Bill pray-
 ing for relief against said Ely as therein alleged; avers that
 before the said sale by the said Ely the said defendants in error
 presented their said original Bill to the Master in Chancery
 in and for said Lee County and made application to the said
 Master for an Injunction to be issued thereon in accordance
 with the prayer thereof; which said application the said Mas-
 36 ter refused: And that after such application had been so re-
 fused the said Ely, as such Trustee, on the 7th day of Februa-
 ry 1860, proceeded to sell, and did sell, the said premises, under
 and by virtue of said Trust Deed, and that he the said Rob-
 erts, who was the owner of the said note, became the pur-
 chaser at the price of \$460, which said sum was then and
 there endorsed on the said note; and that the said Ely as such
 trustee thereupon executed and delivered to him the said
 Roberts, a deed for said premises accordingly.

37 Denies all unlawful combination, &c. Submits to the Court
 that there is no equity upon the face of the said Bills, and
 prays the same benefit of such defence as if he had demurred
 thereto, and prays to be hence dismissed, &c.: which said an-
 38 swer is sworn to.

40 At the May Term 1860, leave was granted to the defendants (below) to withdraw stipulation filed in said cause, and to amend their answers on payment of costs; which was done.

41 Afterwards at the November Term 1860, complainants (below), entered their motion to strike Roberts answer from the files; and thereupon the said Roberts by his attorney entered his cross motion for leave to have answer sworn to, and filed in thirty days; which said cross motion was sustained; whereupon said complainants (below) entered their motion to strike said Ely's answer from the files,—and said Ely by his solicitor then entered his cross motion for leave to have his said answer again sworn to; which said cross motion was also sustained.

Afterwards at said November Term said complainants (below) had leave to withdraw their replication to the answers of said defendants (below) and to have said cause set for hearing on the bills and answers; which was accordingly done.

42 Afterwards at the February Term 1861, of said Court, said cause coming on for final hearing upon Bills and answers, as aforesaid, and upon the stipulation of the parties to said suit to the effect that no part of the debt, which the said Trust Deed was given to secure, was incurred for the purchase money or improvement of said premises, the court thereupon entered the following decree to-wit:

43 “It is declared by the court that the plaintiffs (defendants in error) are entitled to the premises in question during the lifetime of Martin Eastwood, and after his death, during the lifetime of the said Mary Eastwood, and until the youngest child shall become twenty-one years of age, some one of them continuing to occupy the same. It is therefore ordered, adjudged and decreed by the court that the defendants herein (plaintiffs in error) their agents, attorneys, executors, administrators and assigns be enjoined from proceeding in any manner whatever to obtain possession of said premises, described as follows to-wit: (here follows description of premises in controversy), during the lifetime of the said Martin Eastwood and after his death during the lifetime of his widow, and until his youngest child shall become twenty-one years of age, some one of them continuing to occupy the same; and that the defendant (below) pay the plaintiffs their costs in this suit to be taxed” &c.

The errors assigned are as follows:

1st. The Court erred in rendering decree for complainants below as entered.

2d. The Court erred in not dismissing Bill for want of equity on its face.

3d. The Court erred in enjoining plaintiffs in error from proceeding to recover possession of said premises in the manner specified in said decree.

4th. The Court erred in entering a decree against plaintiffs in error for costs.

JAS. K. EDSALL,
Att'y for Pl'tfs in error.

SUPREME COURT.

QUARTUS ELY
and
ENOCH L. ROBERTS } Plffs in Error.

VS

MARTIN EASTWOOD
and
MARY EASTWOOD. } Def'ts in Error.

ABSTRACT OF RECORD.

Filed Apr 15, 1861
C. Deland
Clerk

JAMES K. EDSALL,
Att'y for Plffs in Error.

State of Illinois Supreme Court

Third Grand Division

April Term 1861.

Quartus Ely & Enoch L Roberts
Plaintiff in Error

vs

Martin Eastwood & Mary Eastwood
Defendants in Error

} Error to Lee

Abstract of Record.

Page of Record 1 Defts in error on the fourth of February 1860 filed their bill in the Lee County Circuit Court against Plff in error Ely, alleging that:

2 On the fourteenth day of January 1857 Defendants in error made their promissory note payable to Quartus Ely, twelve months after the date thereof for the sum of Six Hundred and thirty three Dollars, for an indebtedness from said Martin Eastwood, to said Ely; that to secure the payment of said note, they at the time of making the same executed and delivered to said Ely an instrument purporting to be a deed of trust a copy of which is attached to the Bill marked Exhibit A. and is in the words and figures following to wit:

10 "Whereas Martin Eastwood & Mary his wife party of the

first part of the county of Lee and State of Illinois have executed their one certain promissory note of even date herewith, payable to ~~Quartus~~ Ely or order twelve months after the date thereof for the full sum of fit hundred and thirty three dollars.

Now therefore the said Martin Eastwood & Mary his wife party of the first part to secure the payment of said note according to its tenor and effect, in consideration of one dollar, and the further sum of fit hundred and thirty three dollars, the receipt whereof is confessed, doth grant bargain and sell unto Quartus Ely of the County of Lee and State of Illinois, his heirs and assigns forever, the premises described as follows: (here follows description of premise in question) situated in the County of Lee and State of Illinois; together with all and singular the privileges and appurtenances thereunto belonging. ~~On~~ Trust nevertheless that in case default be made in the payment of said note or any part thereof, according to the tenor and effect of said note then on the application of the legal holder of said ^{note}, the said Quartus Ely after publishing a notice in a newspaper printed in the said County of Lee, ten days before the day of such sale, to sell the said premises, and all right and equity of redemption of the

said Martin Eastwood & Mary his wife party
of the first part, their heirs and assigns
therein, at public auction of the Court
House door in said County of Lee to the
highest bidder for cash, at the time men-
tioned in such notice. And to make
execute and deliver to the purchaser or
purchasers thereof a deed or deeds for the
premises so sold; and out of the proceeds
of such sale to pay all costs and expenses
incurred in advertising and selling said
premises, also the principal and interest due
on said note."

And they ^{the} Martin Eastwood & Mary his
wife party of the first part, for themselves their
heirs, executors and administrators covenant
with the said Quarters Ely, that they are well
seized of said premises in fee simple, and
that they have good right and full power to
grant bargain and sell the same in form
aforesaid; that the same are free from all in-
cumbrance, and that they will, and their heirs
executors and administrators shall forever war-
rant and defend the same against the lawful
claim of all persons.

Signed and sealed this fourteenth day of January
A.D. 1857. "

"Witness

Saml C. Cell.

Martin Eastwood (Seal)
Mary Eastwood (Seal)

2 That at the time of the signing of said deed a certificate of acknowledgment was thereto attached in the words and figures following to-wit:

3 " State of Illinois Lee County - ss.

I Samuel C. Ellis, Notary Public in and for said County in the State aforesaid do hereby [certify] that Martin Eastwood and Mary his wife who is personally known to me as the same person whose name is subscribed to the within Trust Deed, as having executed the same, appeared before me this day in person, and acknowledged that they signed sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth. And the said Mary Eastwood, wife of the said Martin Eastwood, having been by me examined separately and apart, and out of the hearing of her husband, and the contents and meaning of the said Trust Deed, having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenement therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and Notarial seal this 14th day of January A.D. 1857.

Samuel C. Ellis "

That the said Ely procured the same to be recorded in the Recorder's Office of Lee County on the fifteenth day of January A.D. 1857, in Book 4 G. of Mortgages page 159. - That by the terms of said deed in default in the payment of said note, said Ely was authorized to sell the real estate therein described, to the highest bidder for cash, after having given notice &c

That on the twenty eighth day of September 1858, said Ely induced Deft in error, to appear before one Platt Townsend a Justice of the Peace in & for said Lee County, and make acknowledgment of the execution of said deed at that time, which they accordingly did; and the said Townsend then & there attached to said Deed of Trust a certificate of which the following is a copy.

" State of Illinois, Lee County. - ss.

On this 28th day of September 1858 before me Platt Townsend a Justice of the Peace personally appeared Martin Eastwood & Mary Eastwood, to me personally known to be the real persons, whose names are affixed to the foregoing deed of conveyance, and acknowledged that they executed the same for the purposes herein mentioned. And the said Mary Eastwood on examination apart from her said husband, and having had the contents of the foregoing deed fully explained to her by me, acknowledged that she executed the

same freely and voluntarily, and without force or compulsion of her said husband, and that she does not wish to retract the same."

In witness whereof I have hereunto set my hand and seal the day and year first above written.

"Platt Townsend."

Justice of the Peace (Seal)
That said Elyson that day procured said Eells to attach his notarial seal to the certificate of acknowledgment by him attached to said Deed which said Eells had not done before that time, and that the said Ely thereupon procured said Deed together with the several certificates of acknowledgment thereof to be again recorded &c

C. That at the date of said ^{deed}, and for a long time prior thereto, and up to the said 28th day of September 1858, the whole of the real estate mentioned and described in said Deed of Trust, was the property of the said Deft in error Mary Eastwood; that at the date of the said Deed, the said Martin Eastwood, was, and from thence has been a householder, having a family for which he provides; that the whole of said premises lie together in one tract, having a dwelling house situated upon the same, in which the said Eastwood together with his family, resided at

the time of the making of said Deed, and have continued to reside therein; that the debt to secure which said deed was executed, was not incurred for the purchase price, or improvement of said premises; that said Deft in error have never executed any release or waiver of the rights of either of them to said premises as a homestead.

7 That the said Elj had advertised the said premises for sale under the power in said Trust Deed contained, such sale to take place on the 7th February 1860, and that unless restrained the said Elj was about to sell the said premises accordingly. - The Bill prays that said Elj may answer under oath etc, And that he might be enjoined from all proceedings under and by virtue of said Deed of Trust, and prays for general relief.

13 Afterwards on the 14th day of February 1860 said Elj filed his answer to said Bill, which as subsequently amended is as follows:

14 Having and reserving etc admits that Deft in error made and executed their certain promissory note as alleged in said Bill, drawing interest however at the rate of ten per cent per annum after maturity; admits that Deft in error at the same time executed and delivered the said Trust Deed to secure the payment of

15 said note; Admits that the copy of the certificate

of acknowledgment set out in said Bill made on the 14th of January 1857, is correct with the exception that the word "Certify" is omitted in such copy and, with the further exception, that an impression of the Notarial seal of the said Notary Public before whom such acknowledgment was taken, was attached to the original certificate at the time the same was made; Admits that he procured said Deed to be recorded as alleged in said Bill, and that by the terms of said deed, in default of the payment of said note he was authorized to advertise and sell said premises as alleged in said Bill.

16 Aves the truth to be, that it was the expressed intention object & purpose of said Deft in error at the time of making of said Deed, as well as of himself the said Ely, that the Deft in error should convey to the said Ely all and singular the estate right and interest as well of the said Martin as of the said Mary in & to the premises in said Trust Deed described, for the purposes in said Trust Deed expressed viz; to secure the payment of said note; admits that after the said note had been made the said Martin Eastwood applied to the said Ely to procure him to transfer the said note to Messrs Kendall and Eggleston in order that the said Martin Eastwood, might through some arrangement between himself and the said Kendall & Eggleston obtain further time for the payment of

17 said note; that thereupon doubt arose as to whether said certificate of acknowledgment so attached to said Deed at the time of the making thereof, was sufficient to convey the portion of the said lands, the title to which was vested in the said Mary Eastwood, wife of said Martin; and it being the original agreement that the said Ely should have conveyed to him the interest in the said estate of the said Mary Eastwood, as well as of the said Martin the Deft in error did agree with said Ely, to make & did in fact make, such additional acknowledgment of said Deed as alleged in said Bill.

18 Denies that he procured said Notary who attached the original certificate of acknowledgment to said Deed to affix his notarial seal to said certificate as alleged in said Bill, but avers that the same was done at the time said certificate of acknowledgment was made by said Notary Public on the 14th of January 1857; admits that he procured said Deed together with its several acknowledgments to be again recorded as alleged in said Bill.

19 Admits that at the time of making of said Deed the title to the said NE 1/4 of the SW 1/4 of said Section 27, being a part of said premises, was in the said Mary Eastwood except so far as the said Martin had rights therein arising from the fact of his then being the husband of the said Mary. But denies

that the said Mary was the owner of the remaining portion of said premises, viz: that portion of the $\frac{W}{2}$ of the $\frac{S}{4}$ of said Section which lies north of the Road leading from Dixon to Lee Centre containing 57 $\frac{66}{100}$ acres; and on the contrary thereof avers that she little to the last mentioned tract was at the time of the execution of said Deed in the said Martin, And
20 that the only pretence of title that the said Mary had to the same, was derived through a deed executed to her the said Mary by the said Martin during the period of their said relation of husband and wife. Admits that the said Martin was a householder, and with his family resided on said premises as alleged in said Bill; that the debt to secure the payment of which said Trust Deed was given, was not incurred for the purchase money of said premises, but whether for the improvement thereof he knows not.

Admits that the Defts in error have not executed to him any waiver or release of any right in said premises except as appears by said Deed of Trust, but avers that it was the agreement and understanding of the parties, at the time said Deed was made, that all the rights and interests of the said Defts in error in & to said premises, were to be conveyed, and were conveyed to said Ely for the purposes in said Deed expressed. Admits that he advertised said premises for sale and was about to sell the same under

under & by virtue of the power in said Trust Deed, contained for the purpose of satisfying the portion of said note then remaining unpaid. Aves that the said Martin Eastwood on or about the ninth of November 1857 paid upon the said note the sum of \$250, which was duly endorsed thereon.

Aves that at the instance of the said Martin Eastwood, as aforesaid on or about the 28th of September 1858, he sold and assigned said note to said Messrs Kendall & Eggleston who paid him therefor the full amount then remaining due & unpaid thereon after deducting said payment of \$250, and that as he had since been informed & believes the said Kendall & Eggleston afterwards transferred said note to Enoch J. Roberts, who owns the same; that upon the application of the said Roberts said Ely proceeded to execute the power in said Trust Deed contained in the manner aforesaid as he of right & in equity ought to do.

23 Denies all unlawful combination &c and submits that there is no equity upon the face of the Bill, and prays the same benefit of such defence as if he had demurred thereto; which said answer was
24 duly sworn to by said Ely.

25 On the 14th of February Deft in error filed

their supplemental Bill, whereby ^{after} stating the prayer of
their original Bill, they aver that after the filing of the said
26 original Bill, and before any further proceedings were
had in said cause, on the 7th day of February 1860
the said Ely proceeded to sell the said premises and
did sell the same to said Enoch L. Roberts, who
was alleged in the answer of said Ely, to be the
owner of said note by virtue of the said pretended
Trust Deed, for the sum of \$460, And the said
Ely thereupon executed a deed of said premises
to said Roberts. Seft in error claim the same
relief against Roberts, as they would have been
entitled to against said Ely had he not sold said
27 premises and pray that the said Roberts may be
made defendant & required to answer the said
Bills of complaint upon his corporal oath
&c and that they may have the full benefit
of this suit against Roberts and the same
relief as they might or could have had against
the said Ely, And that the said Deed executed by
said Ely to said Roberts, be declared void, And
that the said Roberts his agents &c be re-
strained from selling or in any way disposing
of said premises, And for general relief also
28. prayer for proceff.

29 At the February Term 1860 of said
Court, the Court ordered that an injunction issue
as prayed for.

30

7

On the 21st day of February 1860, said Robert filed his answer to the said Bills.

31-35 So far as the allegations in the original Bill are concerned, the answer of Roberts is the same mutatis mutandis, as the answer of the said Ely; and as to the supplemental Bill, admits that the Defts in error filed their original Bill praying for relief against said Ely as therein alleged. Avers that before the said sale by the said Ely, the said Defts in error presented their said original Bill to the Master in chancery in & for said Lee County and made application to the said Master for an injunction to be issued thereon in accordance with the prayer thereof, which said application the said Master refused. And

36 that after the said application had been refused, the said Ely as such Trustee, on the 7th day of February 1860, proceeded to sell & did sell the said premise, under & by virtue of said Trust Deed, and that he the said Roberts, who was the owner of the said note, became the purchaser at the price of \$460; which said sum was then & there endorsed on the said note; and that the said Ely as such Trustee thereupon executed & delivered to him the said Roberts a deed for said premises accordingly.

37 Denies all unlawful combination &c Submits to the Court that there is no equity upon the face of the Bills, and prays the same benefit of

1. 1. 1. 1.

43 Court, said cause coming on for final hearing upon Bills and answers as aforesaid, and upon the stipulation of the parties to said suit, to the effect that no part of the debt which the said Trust Deed was given to secure, was incurred for the purchase money or improvement of said premises, the Court thereupon entered the following Decree, to wit:

"It is declared by the Court that the plaintiffs (Defts in error) are entitled to the premises in question during the lifetime of Martin Eastwood and after his death during the lifetime of the said Mary Eastwood and untilt the youngest child shall become twenty one years of age, some one of them continuing to occupy the same, It is therefore ordered adjudged and decreed by the Court that the Defendants herein (Plffs in Error) their agents, attorneys, executors, administrators and assigns be enjoined from proceeding in any manner whatever to obtain possession of said premises described as follows to wit (here follows description of premises in controversy) during the lifetime of the said

44 Martin Eastwood, and after his death during the lifetime of his widow, and untilt his youngest child shall become twenty one years of age, some one of them continuing to occupy the same, and that the defendants (below) pay the plaintiffs (below) their costs in this suit to be taxed (over)

The errors assigned are as follows:

- 1st The Court erred in rendering decree for complainants below as entered.
- 2nd The Court erred in not dismissing Bill for want of equity on its face.
- 3rd The Court erred in enjoining plaintiffs in error from proceeding to recover possession of said premises in the manner specified in said Decree.
- 4th The Court erred in entering a decree against plaintiffs in error for costs.

James K. Edsall.
Atty for Plffs in Error.

Supreme Court.

Quartus Ely & Enoch L. Roberts.

Plffs in Error

vs

Martin Eastwood et al.

Defts in error

Abstract of Record

Filed March 14. 1861
L. Leland
clerk

Jas. K. Estall.
Atty for Plffs in error.

1.
United States of America }
State of Illinois, County of Lee, S.S. } Pleas before the Honorable
John T. Eastace. Judge of the twenty second Judicial
Circuit, and sole presiding Judge of the Circuit
Court of Lee County in the State aforesaid, and
at a term thereof begun and held at the Court
House in the City of Dixon, in said County,
on the second Monday, (being the eleventh day) of
February in the year of our Lord one thousand
eight hundred and fifty one, and of the in-
dependence of the said United States the eighty
fifth.

Present, Hon. John T. Eastace Judge of the 22nd Jud Cir

David McCarter. States Attorney.

Saron L. Porter Sheriff of Lee County.

Attest Benjamin F. Shaw. Clerk.

Be it remembered, that heretofore to wit,
on the fourth day of February A.D. 1860, Martin
Eastwood and Mary Eastwood his wife, filed in
the office of the Clerk of the Circuit Court of Lee
County in the State of Illinois their certain bill
of complaint, against Laartus Eby as defend-
ant, which is in the words and figures following
to wit:

" State of Illinois)
Lee County 388

In the Lee County Circuit Court
February Term A.D. 1860
On the Chancery side thereof

Martin Eastwood }
 Mary Eastwood }
 vs }
 Quarters Ely }

To Honorable John V. Eastace
 Judge &c of the said Circuit Court & of the 22nd
 Judicial Circuit in & for the State of Illinois.

Humbly complaining shew unto your Honor
 your Orator and Oratrix, Martin Eastwood of said
 Lee County and Mary Eastwood his wife -
 that herebefore to wit on the fourteenth day
 of January A.D. 1857, your Orator and Oratrix
 of the County of Lee aforesaid, made their cer-
 tain promissory note in writing payable to
 Quarters Ely or order Twelve months after the
 date thereof, for the sum of ~~per hundred and~~
~~thirty three dollars for an indebtedness from~~
 your Orator Martin Eastwood to him the said ^{Quarters} Ely.

That to secure the payment of said prom-
 issory note, your Orator and Oratrix at the same
 time signed an instrument purporting to be a
 trust deed, and delivered the same to the said
 Quarters Ely, a copy of which said instrument
 is hereto attached, marked (Exhibit B) and which
 these complainants pray may be taken as a part
 of this their bill of complaint - That at the
 time of the signing the said trust deed, a cer-
 tificate was thereto attached, a copy of which is

3
Amended by agreement by inserting the word "Certify" after the words "do hereby"
and before "that Martin Eastwood"

as follows, to wit:

"State of Illinois Lee County f"

"I Saml C. Eells, Notary Public
"in and for said County in the State aforesaid
"do hereby [Certify]# that Martin Eastwood and
"Mary his wife who is personally known to me as the
"same person whose name is subscribed to the within
"Trust Deed, as having executed the same, appeared before
"me this day in person and acknowledged that they sign-
"ed, sealed and delivered the said instrument of
"writing as their free and voluntary act, for the uses
"and purposes therein set forth. And the said
"Mary Eastwood wife of the said Martin Eastwood
"having been by me examined separate and apart
"and out of the hearing of her husband, and
"the contents and meaning of the said Trust
"Deed, having been by me made known and fully
"explained to her, acknowledged that she had freely
"and voluntarily executed the same and relinquished
"her Dower to the lands and tenements therein mentioned
"without compulsion of her said husband, and that
"she does not wish to retract the same."

"Given under my hand and notarial seal this
"14th day of January A.D. 1857."

"Samuel C. Eells."

That the said Instrument together with said cer-
tificate thereto attached was by the said Quartus
Ely caused to be recorded on the fifteenth day of
January A.D. 1857, in the Recorder's office in the

paid County of Lee in Book G. of Mortgages Page 159

That by the terms of said deed, in default of the payment of the promissory note above mentioned & therein described - the said Quarters Ely, was authorized, to sell the real estate therein described, to the highest bidder for cash at the door of the Court House in said County after having given ten days notice of the time of such sale, by advertisement thereof in a newspaper printed in said County of Lee, ten days prior to such sale.

And these Complainants further show & aver the truth to be, that a long time after the recording of said instrument as aforesaid, to wit: on the 28th day of September A.D. 1858, the said Quarters Ely discovered that there were defects in the execution and acknowledgment of the said instrument, and induced these Complainants to appear before one Platt Townsend, Esq. a Justice of the Peace in & for said County and make acknowledgment of the execution of said instrument at that time - which these Complainants accordingly did. - And the said Platt Townsend, Justice of the Peace as aforesaid, then & there attached to said deed of trust a certificate of which the following is a copy to wit:

" State of Illinois Lee County ss "

" On this 28th day of September 1858, before me Platt Townsend, a Justice of the Peace

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" personally appeared Martin Eastwood and Mary
" Eastwood, to me personally known to be the real
" persons whose names are affixed to the foregoing
" Deed of conveyance and acknowledged that they
" executed the same for the purposes therein mentioned.
" And the said Mary Eastwood on examination apart
" from her said husband, and having had the con-
" tents of the foregoing Deed fully explained to her by me
" acknowledged that she executed the same freely and volun-
" tarily, and without force or compulsion of her said hus-
" band, and that she does not wish to retract the same.
" In witness whereof I have hereunto set my hand and
" seal the day and year first above written "

" Platt Townsend "

" Justice of the Peace. J.D. "

And that the said Quartus Ely also on the said
28th day of September 1858, also procured one Sam-
uel C. Eells, who attached the certificate first above
mentioned, to the said Trust Deed, to attach his
notarial seal to said certificate, which he had
not done at the time of the recording of the said
Deed of Trust as aforesaid; and that thereupon the
said Quartus Ely caused the said Trust Deed, and
the said first certificate with the said notarial seal
so attached together with the said last certificate made
by the said Platt Townsend, as aforesaid, to be recorded in
the said Recorder's office in the County of Lee aforesaid,
on the 29th day of September A.D. 1858, in Book 2 of
Mortgages, Pages 174 & 175.

And these Complainants further show and aver the truth to be, that at the date of the said Deed of Trust, to wit: on the 14th day of January AD 1857, & for a long time prior thereto and up to the said 28th day of September AD 1858, the whole of the real Estate mentioned and described in said Deed of Trust, was the property of your Oratrix Mary Eastwood, in whom the legal title was vested.

And these Complainants further show and aver the truth to be, that at the date of the making of the said Deed of Trust, and from thence hitherto, the said Martin Eastwood, was and now is a householder having then & from thence hitherto and now a family for which he provides, and that the whole of said premises, described in the said deed of trust, lies together in one tract, and that on the said fourteenth day of January AD 1857, and thence hitherto, and now, there was a house situated upon said premises, and occupied during the whole of said time, together with the whole of said premises thereon described, by your Orator and Oratrix and their family as a residence.

And these Complainants further show, and aver the truth to be, that the debt which the said trust deed was given to secure, was not incurred for the purchase money or improvement of said premises, or any part thereof and that no release or waiver of the right of either of these complainants to said premises as a homestead, has ever been

made by ^{either} your Orator or Oratrix.

And your Orator and Oratrix had well hoped, that no dispute would have arisen touching the said Trust Deed, &c, but that the said Quarters Ely, would have complied with the reasonable request of these complainants as in conscience and equity he ought to have done.

But now, so it is, that the said Quarters Ely, conspiring, combining and confederating with divers persons at present unknown to these complainants, whose names when discovered your Orator and Oratrix pray they may be at liberty to insert herein with apt words to charge them as parties hereto. - And contriving harts wrong and injure your Complainants in the premises, he, the said Quarters Ely, has advertised the premises in the said Deed of Trust named for sale, which advertisement is in the words and figures following to wit:

"Trustee's Sale."

"By virtue of a Trust deed executed to me by Martin Eastwood, and Mary Eastwood his wife, and recorded in the Recorder's Office in the County of Lee and State of Illinois in Book G. of Mortgage page 159, which said Trust Deed was made to secure the payment of a certain promissory note therein particularly described, a portion of which said note now remains due & unpaid, I shall proceed to sell at Auction to the highest bidder for

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cash, at the door of the Court House in Dixon
on Tuesday the seventh day of February A.D. 1860, be-
tween the hours of ten o'clock A.M., and four o'clock
P.M. of said day the following real estate, viz.

• The North East quarter of the South West
quarter of Section 27 Township 21 Range
10 East, containing 40 acres more or less;
also the portion of the West half of the said
South West quarter Section, which lies North
of the Road leading from Dixon to Le Centre
Containing $57\frac{66}{100}$ acres more or less,

Quartus Ely, Trustee

"Dated Dixon Jan 26. 1860."

That said Quartus
Ely disregarding the rights of these complain-
ants, is, about, unless restrained, to sell said
premises in the manner so advertised, without
regarding these Complainants' rights to their
homestead as aforesaid, or of the said Mary
Eastwood's right to the said premises as above
set forth - All which actings and doings
are contrary to equity and good conscience
and tend to the manifest wrong and injury
of these complainants.

And your Orator and Oratrix
being remedied in the premises except in a
Court of Equity, where matters of this sort are
only properly cognizable and relievable, pray
that the said Quartus Ely, be made a party defendant.

ant, to this bill, and that he be summoned to personally be and appear before this Honorable Court on the first day of the next term thereof, then & there to make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated and he thereunto distinctly interrogated.—

And may it please your Honor to grant unto these complainants the most gracious writ of injunction of the State of Illinois issuing out of and under the seal of this Honorable Court to be directed to the said Quarters Ely restraining and enjoining him, his agents and attorneys from all proceedings, by virtue of or under the provisions of said Deed of Trust, untill the further order of this Court— and that these Complainants may have such other and further relief, as in the judgment of this Court they are and may be entitled to.

And your Orator and Oratrix will ever pray &c

Martin Eastwood.

Mary Eastwood.

Wm E. Sheffield }
Complts Solr }

State of Illinois }

La County } ss.

The said Martin Eastwood and the said Mary Eastwood, each being duly sworn on their respective Oaths, say that they know the contents of the foregoing bill of Complaint and that the matters and things therein set forth, so far as

they purport to be stated on their knowledge and true, and as to all the other matters therein set forth they believe them to be true.

Subscribed and sworn }
to before me this 2nd day }
of February A.D. 1860. }

Martin Eastwood.

Mary Eastwood.

Chas. V. Tennay

(Exhibit B)

Whereas Martin Eastwood, & Mary his wife party of the first part of the County of Lee and State of Illinois have executed their one certain promissory note of even date herewith payable to Quarters Ely or order twelve months after the date thereof, for the full sum of six hundred and thirty three dollars. Now therefore the said Martin Eastwood, & Mary his wife party of the first part, to secure the payment of the said note according to its tenor and effect in consideration of one dollar and the further sum of six hundred and thirty three dollars, the receipt whereof is confessed, doth grant bargain and sell unto Quarters Ely of the County of Lee and State of Illinois his heirs and assigns forever, the premises described as follows. The North East quarter of the South west quarter of Section No twenty seven (27) Township Twenty one (21) Range Ten East containing Forty acres of land; also a part of the same section Town and Range described as follows - Situate and lying north of Road leading from

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Dixon to Chicago, commencing at the North
west corner of said lot, running thence east
nineteen chains (19) and eighty six links (86) to
the north east corner of said lot. Thence South
on the East line of said lot, thirty four chains
and forty six (46) links to a stone set in the
ground at the centre of the Dixon & Chicago Road.
Thence north fifty degrees west, twenty three chains
and six links in the centre of the Road to a stone
on section line; thence north twenty two (22)
chains and seventy eight (78) links to the place
of beginning, containing fifty seven ⁶⁶/₁₀₀ acres
more or less situate in the Town of China and County
of Lee and State of Illinois, - together with all and
singular the privileges and appurtenances thereunto be-
longing. - In Trust nevertheless that in case de-
fault be made in the payment of said note or any
part thereof according to the tenor and effect
of said note, then on the application of the legal
holder of said note, the said Quartus Ely, after
publishing a notice in a newspaper printed
in the said County of Lee, ten days before the
day of such sale, to sell the said premises and all
right and equity of redemption of the said Martin
Eastwood, and Mary his wife party of the first
part, their heirs and assigns therein at public
auction, at the Court House door in said County
of Lee, to the highest bidder for cash at the
time mentioned in such notice. - and to

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make execute & deliver to the purchaser or purchasers thereof a deed or deeds for the premises so sold, and out of the proceeds of such sale to pay all costs & expenses incurred in advertising and selling said premises; also the principal and interest due on said note. And the said Martin Eastwood, and Mary his wife party of the first part for themselves their heirs executors and administrators, covenant with the said Quarters Ely that they are well seized of said premises in fee simple and that they have good right and full power to grant bargain and sell the same in form aforesaid; that they are free from all incumbrances, and that they will, and their heirs executors and administrators shall forever warrant and defend the same against the lawful claims of all persons. Signed and sealed this fourteenth day of January AD 1857.

Witness Saml. C. Eells

Martin Eastwood (Seal)
Mary Eastwood (Seal)

State of Illinois

La County 388.

I Saml C. Eells, notary public in and for said County in the State aforesaid do hereby certify that Martin Eastwood, and Mary his wife who is personally known to me as the same person whose name is subscribed to the within Trust deed as having executed the same, appeared before me this day in person and acknowledged that they signed sealed and delivered the said in-

instrument of writing as their free and voluntary act, for the uses and purposes therein set forth. And the said Mary Eastwood wife of the said Martin Eastwood, having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said Trust Deed, having been by me made known and fully explained to her, acknowledged, that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband & that she does not wish to retract the same.

Given under my hand and notarial seal this 14th day of January A.D. 1857.

Samuel C. Ellis."

Endorsed as follows to wit:

"Filed Feb 4th 1860. J. S. Brandman."
Clerk."

"And afterwards to wit, on the said fourth day of February A.D. 1860, the said Quarters Ely by James K. Edsall, his Solicitor filed his certain answer to the said bill of complaint which is in the words and figures following, to wit: "

State of Illinois }
Lee County } ss

" In the Lee County Circuit Court of the
February Term A.D. 1860. "

144 The answer of Quarters Eby defendant to the Bill of Complaint of Martin Eastwood, and Mary Eastwood, Complainants.

"This defendant now and at all times saving and reserving unto himself all and all manner of benefit and advantage of exception to the many errors and inconsistencies in the said Complainants bill of complaint contained for answer, ^{or until he is advised as he is advised is necessary for make answer unto} ~~power, ^{answers} and says;~~ that he admits that on the 14th day of January A.D. 1857, the said complainants made and delivered to this defendant their certain promissory note in writing payable to the order of this defendant twelve months after the date thereof, for the sum of six hundred and thirty three dollars with interest at ten per cent per annum after due, which said note was given for an indebtedness from said complainant Martin Eastwood in the manner alleged in said bill."

"And further answering this defendant admits that, to secure the payment of said promissory note, the said Complainants at the same time of the making of said note, signed, sealed, and executed and acknowledged the said instrument purporting to be a Trust Deed, a copy of which is attached to said Complainants bill, marked Exhibit (A) and delivered at the same time to this defendant." - "That the copy of the certificate of acknowledgment set out in the Bill

and also attached to said Exhibit "A" made on the 14th day of January AD 1857. being the date of said Deed, is in all respects correct with the exception that the word "Certify" which occurs in such original certificate immediately after the words "Do hereby" and before the words "that Martin Eastwood" and "Mary his wife &c" is omitted in such copies, the same being in the original certificate, as will more fully appear by the said original Trust Deed and the acknowledgment thereof, being ready to be produced as this Court shall direct; and also with the exception that an impression of the notarial seal, of the said Samuel C. Ellis, a notary public, before whom such acknowledgment was taken, is, and was attached to such original certificate at the time the same was made by said Notary Public so far as this defendant has any knowledge, recollection or belief."

Further answering this defendant admits that he procured said Deed to be recorded in the Recorder's Office of said Lee County at the time alleged in said Bill. Further answering this defendant admits that by the terms of said Trust Deed in default of the payment of the said promissory note or any part thereof this defendant was authorized to sell the real estate therein described after having given ten days notice of the time of such sale, by advertisement thereof in a newspaper printed in the said County of Lee

ten days prior to such sale in the manner alleged in said Bill.

And further answering this defendant avers and alleges the truth to be, that it was the expressed intention, object and purpose of the said Complainants, as well as of this defendant at the time of making the said Trust Deed, that the said Complainants should convey to this defendant all and singular the estate, right and interest, as well of the said Martin Eastwood as of also the said Mary his wife in and to the said premises, in said Trust Deed described, for the purposes in said Deed expressed; to wit: to secure the payment of the said note.

And further answering this defendant says that sometime after the said Trust Deed had been so made and recorded, as aforesaid, the said Martin Eastwood, having applied to this defendant to procure this defendant to transfer the said note so secured by said Trust Deed, to certain Messrs Kendall & Eggleston (as near as this defendant can recollect the firm name) for the purpose of having the Messrs Kendall & Eggleston purchase the said note and through some arrangement between him the said Eastwood, and the said Kendall & Eggleston, to give to him the said Eastwood, further time for

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the payment, of the same, doubts arose as to whether the said certificate of acknowledgment, so attached to said deed at the time of the making thereof was sufficient to convey the portions of the title to said lands, which was vested in the said Mary Eastwood, wife of the said Martin Eastwood, other than her contingent dower interest therein, and it being feared that possibly such certificate might be construed as conveying nothing more than the estate in & to said lands which the said Martin Eastwood then had therein as the husband of the said Mary viz the contingent estate of the said Martin Eastwood as tenant by curtesy, the said Martin & the said Mary having had born to them divers issue during the period of their said relation as husband and wife, and also the right of the said Martin Eastwood, to the use, possession, rights, rents and profits of the said lands during the time he so remained the husband of the said Mary Eastwood. And it being the original agreement and intention of the said parties that this defendant should have conveyed to him the interest in the said estate of the said Mary Eastwood as well as the interest of the said Martin Eastwood in & to said premises: the said complainant did agree with this defendant to make, and did in fact make, such additional acknowledgment of said

at the time &
 deed in the manner in said bill alleged:
 and that the copy of such additional certificate
 set out in said Bill made on the 28th day of
 September A.D. 1858, is a true and correct copy
 of such original certificate with the exception
 that the word "first" in such copy occurring im-
 mediately after the words "day and year" and
 before the words "above written" is not in such
 original certificate.

And further answering this
 defendant denies that he procured said Samuel
 C. Eells, who attached the first certificate of ack-
 nowledgment to said deed, to attach his notarial
 seal to said certificate at the time and in the
 manner alleged in the said Bill: but avers
 that so far as this defendant has any knowledge
 whatever, of said seal's being attached to said deed
 the same was done at the time such certificate
 of acknowledgment was made by said Eells, on
 the 14th day of January A.D. 1857.

Further answering
 this defendant admits that after said second
 acknowledgment was so made of said deed by
 the said Complainants, this defendant procured
 said ^{deed} together with the several acknowledgments
 thereof to be again recorded in the said Record-
 er's Office in said Le County in the manner
 alleged in said Bill. - Further answering this
 defendant admits that at the time of the making

of the said deed to this defendant, by the said complainants as aforesaid, the title to the said [#][N.E. 1/4 of the S.W. 1/4 of said Section 27 being a part of said] premises was in the said Mary Eastwood, wife of the said Martin Eastwood except so far as the said Martin had rights and interests therein, arising from the fact of his then being the lawful husband of the said Mary Eastwood, in the manner herein before stated. [#][But this defendant denies that the said complainant Mary Eastwood, was the owner of the remaining portion of said premises viz that portion of the West half of the ^{said} South west quarter Section which lies North of the centre of the Road leading from Dixon to Lee Centre containing 57 ⁶⁶/₁₀₀ acres more or less; and on the contrary thereof this defendant avers, that the title to the said last mentioned tract was at the time of the making and delivery of said deed of Trust by the said Complainants to this defendant, in the said Complainant Martin Eastwood, and not in her the said Mary; that the pretended title of the said Mary Eastwood, to said last named tract was and is based upon a certain deed executed by the said Martin Eastwood to said Mary bearing date March 4th 1850, recorded in the Recorder's Office in and for said Lee County, in Book 6 of Deeds at Pages 347-8

[#] Amended by leave of the Court granted at the May Term 1860
by inserting the words in cluded in brackets thus []

And this defendant avers that at the time of the making and delivery of said pretended deed, the said Mary was and ever since has been the lawful wife of the said Martin, and as this defendant is advised by counsel and verily believes and therefore insists and charges the fact to be, was thereby rendered utterly incapable in law of receiving any title from her ~~paid~~ her said husband through said deed ~~pr~~ executed by him to her.]

Further answering this defendant admits that the said Martin Eastwood was a householder and with his family resided on said premises in the manner alleged in said Bill; that the debt to secure the payment of which said Trust Deed was given was not incurred for the purchase money of said premises, but whether for the improvement thereof this defendant knows not.

And further answering this defendant admits that said Complainants have not executed to this defendant any waiver or release of any homestead or other rights except such as appear in said Trust deed and the acknowledgments annexed thereto; but that it was the understanding and agreement at the time the said Trust Deed was ~~pr~~ given, that all the rights and interest of the said Complainants and each of them, in and to said premises were to be conveyed, and were conveyed to this

defendant for the purposes & prep'd in said deed of Trust.

Further answering this defendant admits that he has advertised for sale and is about to proceed to sell, the said premises under & by virtue of the power in said Trust deed contained for the purpose of satisfying the portion of said promissory note which yet remains unpaid.

And further answering this defendant says that said Martin Eastwood, on or about the 9th day of November A.D. 1857, paid upon said note the sum of \$250, which amount was then duly endorsed thereon as payment of said note.

Further answering this defendant says: that the said Martin Eastwood having so applied to this defendant in the manner hereinbefore stated to procure this defendant to sell and assign the portion of the said note yet remaining unpaid on or about the 28th day of September A.D. 1858, this defendant did sell and assign said note by endorsing the same with his name in blank, and delivered the said note to said Messrs Kendall & Eggleston, who paid this defendant the amount of said note then remaining and being due with interest after deducting said payment of \$250, so endorsed on said note as aforesaid.

That as this defendant has since been informed and verily believes said Messrs Kendall & Eggleston afterwards transferred and sold said note to one Enoch L. Roberts, of Janesville, in the State of Wisconsin, who now owns the same, and all the right both legal and equitable in and to said note. That it was upon the application of ^{the} said Enoch L. Roberts, so being the owner of said note, that this defendant proceeded to execute the power in said Trust Deed contained in the manner aforesaid, as he of right and equity ought to do. That this defendant doth not expect or intend to convey any greater interest in said premises, than was conveyed to him in and by said Trust Deed; but whatever interests were conveyed to this defendant, in and by said Trust Deed so executed by said Complainants this defendant insists that he has the right and it is his duty to sell and convey in pursuance of the power in said Trust Deed expressed, for the purpose of satisfying the portion of said note so remaining unpaid.

"And this defendant denies all unlawful combination and confederacy in the said bill charged; without this, that any other matter or thing, material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true

to the knowledge or belief of this defendant. And this defendant submits to this Honorable Court that all and every of the matters in the said Complainants' bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the said Complainants, are not entitled to any relief from a Court of Equity. And this defendant hopes he shall have the same benefit of this defence as if he had demurred to the said Complainants' bill. All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable Court shall direct, and humbly prays to be hence discharged with his reasonable costs ^{& charges} in that behalf most wrongfully sustained.

James K. Edrall }
Solicitor for Defendant }

Quartus Ely }
Deft. }

State of Illinois }
Lee County } ss.

Quartus Ely being duly sworn deposes and says: that he has heard the foregoing answer read and knows the contents thereof to be all matter ^{things} therein contained stated to be upon personal knowledge the same are true; that as to all other matters and things therein contained, he verily believes the same to be true.

Subscribed and sworn to before me }
Samuel C. Ellis, a Notary Public }

Quartus Ely.

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in and for said County
this fourth day of February
A.D. 1860.



Samuel C. Cell.

Notary Public.

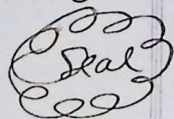
State of Illinois
Lee County

" Quartus Ely being duly sworn
doth depose and say: that he has
heard the foregoing amended Answer subscribed
by him read & knows the contents of the same; that
as to all matters therein stated to be upon personal
knowledge, the same as amended ~~the same~~ is true
and that as to all other matters & things therein
contained, as the same is amended, he verily
believes the same to be true. And further saith:

not.

" Subscribed and sworn to
before me a Notary Public
in and for said County
this 6th day of December
A.D. 1860.

Quartus Ely.



Samuel C. Cell

Notary Public

Endorsed as follows to wit:

" Filed Feb 4th - 1860 "

" J. S. Boardman "

" Clerk. "

" Re-filed Dec. 6th A.D. 1860 "

" B. F. Shaw. Clerk "

And afterwards to wit, on the 14th day of February A.D. 1860, the said Martin Eastwood and Mary Eastwood, by William E. Sheffield their said Solicitor, filed herein their supplementat Bill, which said Bill is in the words and figures following, to wit:

"State of Illinois }
Lee County } ss.

"In the Lee County Circuit Court
Of the February Term A.D. 1860 "

"Martin Eastwood }
and Mary Eastwood. }
vs.

"Supplemental Bill.

Quartus Ely. }

To the Hon John V. Eustace
Judge &c of the said Circuit
Court and of the 22nd Judicial Circuit
in and for the State of Illinois.

Humly complaining shew:
unto your Honor, your Oator Martin
Eastwood of said Lee County and Mary
Eastwood his wife - That these complainants
in or as of the February Term of this Court
exhibited their Original Bill of Complaint in
this honorable Court against Quartus Ely, of
the same place, praying that an injunction
might issue to restrain the said Quartus
Ely, from selling certain premises therein
described &c. And these complainants

ants. further show that the said Defendant appeared and put in his answer to ^{the} said bill, but before any further proceedings were had in said Cause, and on the seventh day of February A.D. 1860, the said Quarters Ely as these Complainants are informed and believe true an the application of one Enoch L. Roberts of Janesville in the State of Wisconsin proceed to sell the said premises as he had before threatened to do, and these Complainants are informed and believe true did sell the said premises to the said Enoch L. Roberts, who is alleged in the said answer of the said defendant to be the owner of the note mentioned in the said Bill of Complaint - by virtue of the pretended trust deed, a copy of which is attached to the original Bill of Complaint in this cause, - for the sum of four hundred and fifty dollars - and thereupon executed a deed of said premises to said Roberts - And therefore your Orator and Oratrix are advised that they are entitled to the same relief against the said Roberts, as they would have been entitled to against the said Quarters Ely, if he had not so sold the said premises &c.

To the end therefore that the said Roberts and the rest of the confederates when discovered may upon their several &

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respective corporal oaths, full, true, direct and perfect answer make to all and singular the charges & matters aforesaid as fully and particularly as if the same were hereinafter repeated, and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance but also as to the best of their several and respective information, hearsay and belief.

And that these Complainants may have the full benefit of the said suit and proceedings therein against the said Roberts, and may have the same relief against him as these complainants might or could have had against the said Quarters Ely, in case he had not sold the said premises, &c, And that the deed executed by the said Quarters Ely to the said Roberts may be declared void, and may be cancelled. And that the said Roberts, his agents & attorney be restrained from selling or in any way disposing of the said premises. And that these Complainants may have such further or other relief in the premises as to your Honor shall seem meet.

May it please your Honor to grant unto these complainants, not only the most gracious writ of Injunction of the State of Illinois issuing out of and under the seal of this Honourable Court to be directed to the said Roberts

28 restraining & enjoining him his agents and
attorneys from selling or in any way disposing
of the said premises until the further order of
this Court - But also the most gracious writ or
writs of subpoena of the said State of Illinois
to be directed to the said Enoch L. Roberts, and
the rest of the confederates when discovered then
by commanding them and every of them at a
certain day and under a certain pain therein
to be specified personally to be and appear before
your Honor in this Honorable Court, then & then
to answer all and singular the premises & to stand
to perform and abide such order and decree
therein as to your Honor shall seem meet and
these complainants will ever pray

Wm E. Sheffield. }
Compl't Sol. }

Martin Eastwood
Mary Eastwood.

State of Illinois }

Lee County }

ss. The said Martin Eastwood one of the
above complainants, being duly sworn on his oath
says: that he knows the contents of the foregoing
Bill of Complaint, and that the matters and
things therein set forth, so far as they purport
to be stated on his knowledge are true; and
as to all the other matter therein set forth he
believes them to be true

Subscribed and sworn to before }
me this 15th day of February 1860 }

Martin Eastwood.

James L. Camp. J.P.

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On the back of the said supplemental Bill is the following endorsement "Filed Feb 14th 1860."

"J. S. Boardman, Clerk"

And afterwards, at the said February Term of said Court, to wit on the fifteenth day of February (the same being one of the regular days of said term) the following entry appears to us of record;

"Martin Eastwood and Mary Eastwood	} Bill for Injunction
^{vs} Quartus Oly and Enock S. Roberts	

On this day come the said parties by their respective Counsel, and upon a hearing of this cause it is ordered by the Court that an Injunction issue as prayed for."

And afterwards at the said February Term A.D. 1860, to-wit: on the 21st day of February (the same being one of the regular days of the said Term of said Court) the said defendant Enoch L. Roberts, by James K. Edsall his Solicitor filed his certain answer herein which said answer is in the words and figures following:

Viz:

"State of Illinois }
Lee County } ss."

"In the Lee County Circuit Court
Of the February Term A.D. 1860."

"The separate answer of Enoch L. Roberts, impleaded with Quarters Ely, to the Original and Supplemental Bills of Complaint of Martin Eastwood, and Mary Eastwood, Complainants."

"This defendant now and at all times hereafter, saving and reserving unto himself all and all manner of benefit and advantage of exception to the many errors in the said Complainants Bills contained for answer thereunto, or unto so much, or such parts thereof, as this defendant is advised is necessary for him to make answer unto, he answers and says: he admits upon his best information and belief, that on the 14th day of January A.D. 1857, the said Complainants made and delivered to Quarters Ely, their promissory

note in writing, payable to the order of the said Ely, twelve months after the date thereof, for the sum of Six hundred and thirty three dollars, with interest at ten per cent per annum after due, which said note was given for a certain indebtedness as in said Complainants Bill alleged.

"And further answering this defendant, upon his best information and belief, admits that to secure the payment of the said note, the said Complainants at the same time of the making of said note, signed, sealed, executed and acknowledged the said instrument purporting to be a trust deed, a copy of which is attached to said Complainants Bill marked Exhibit "A" and delivered the same to said defendant Ely. That the copy of the certificate of acknowledgment set out in the bill and also attached to said Exhibit "A" made on the 14th day of January A.D. 1857, being the date of said Deed, is in all respects correct, with the exception that the word "certify" which occurs in such original certificate, immediately after the words "do hereby" and before the words "that Martin Eastwood and Mary his wife" is omitted in such copies, the same being in the original certificate as will more fully appear by the said original trust deed, and

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the acknowledgment thereof, being ready to be produced as this court shall direct and also with the exception that an impression of the Notarial seal of the said Samuel C. Exes, a Notary Public before whom such acknowledgment was taken, is and was attached to such original certificate at the time the same was made by said Notary Public so far as this defendant has any knowledge or belief."

Further answering this defendant upon his best information and belief admits, that said Deed was Recorded in the Recorder's office of said Lee County at the time alleged in said Bill."

"Further answering this defendant upon his best information and belief admits, that by the terms of said Trust Deed, in default of the payment of the said promissory note or any part thereof, the defendant Ely, was authorized to sell the real estate therein described, after having given ten days notice of the time of such sale, by advertisement thereof in a newspaper, printed in the County of Lee ten days prior to such sale in the manner alleged in said Bill."

"Further answering this defendant avers and alleges, upon his best information and belief, that it was the expressed intention, object and purpose of the said Complainants as well as of the said defendant Ely, at the time of ~~the~~ making the said Trust Deed, that the said Complainants should convey to the de-

Amended by leave of the court by inserting words quoted thus # included in brackets thus []

defendant Ely, all and singular the estate right and interest, as well of the said Martin Eastwood, as also of the said Mary his wife, in and to the said premises in said Trust Deed described for the purposes in the said Trust Deed expressed to wit: to secure the payment of the said note."

Further answering this defendant admits upon his best information and belief, that at the time of the making of the said Deed of Trust to said defendant Ely, by the said Complainants as aforesaid the title [to the N.E. 1/4 of the S.W. 1/4 of said section twenty seven being a part of] the said premises, was in the said Mary Eastwood wife of the said Martin Eastwood, subject however to all the right and interest of the said Martin Eastwood in and to said premises, arising from the fact of his then being the lawful husband of the said Mary Eastwood, in the manner hereinbefore alleged."

[# Amended by leave of Court by inserting words another thus # and included in brackets thus []

* ["But this defendant denies that the said Complainant Mary Eastwood, was the owner of the remaining portion of said premises viz: that portion of the west half of the said South west quarter section which lies north of the centre of the Road leading from Dixon to Lee Centre containing 57 ⁶⁶/₁₀₀ acres, more or less - And on the contrary thereof this defendant avers that the title to the said last mentioned tract was, at the time of the making and delivery of the said deed of Trust by the said Complainants to the said defendant Ely, in the said

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Complainant Martin Eastwood and not ^{her} the said Mary; that the pretended title of the said Mary Eastwood to said last named tract was and is based upon a certain deed executed by the said Martin Eastwood to said Mary bearing date March 4th 1850 recorded in the Recorder's Office in & for said Lee County in Book F of Deeds or Pages 347-8.

And this defendant avers that at the time of ^{the} making and delivery of said pretended deed the said Mary was and ever since has been the lawful wife of the said Martin, and as this defendant is advised by counsel and verily believes and therefore disavows and charges the fact to be, was thereby rendered utterly incapable in law of receiving any title from her said husband through said deed so executed by him to her.]

"Further answering this defendant admits that the said Martin Eastwood was a householder and with his family resided upon said premises in the manner alleged in said bill; that upon his best information and belief the debt to secure the payment of which the said Trust Deed was given was not incurred for the purchase money of said premises, but whether for the improvement thereof this defendant is not informed."

"Further answering this defendant, upon his best information and belief, admits that said Complainants have not executed to said defendant Ely any waiver or release of any home-

stead, or other rights except such as appear in said Trust Deed and the acknowledgments annexed thereto; but that it was the understanding and agreement at the time the said Trust Deed was so given that all the rights and interest of the said Complainants and of each of them in and to said premises were to be conveyed and were conveyed to said defendant Ely, for the purposes specified in said Deed of Trust."

"Further answering this defendant admits that said Quartus Ely did advertise said premises for sale, at his request in a newspaper printed in said Lee County in the manner the same was agreed by the terms of said Trust Deed to be advertised."

"Further answering this defendant admits that said Complainants exhibited their original Bill of Complaint against said Quartus Ely in this Honorable Court, as of the February Term 1860, praying said Court to enjoin and restrain the said Quartus Ely, as said Trustee as aforesaid from proceeding to sell the said premises in said Trust Deed described, for the purposes therein set forth. And this defendant avers that said bill was presented to Charles A. Levanway, Esq. of the Master of this Court, and that the said Charles A. Levanway, Esq. after hearing the cause aforesaid refused to grant an injunction as prayed for in said Complainants

Bill; And this defendant further avers, that after such application had been refused, the said Quartus Ely as such trustee, aforesaid to wit, on the seventh day of February A.D. 1860, proceeded to sell, & did sell the said premises, and all the right title and interest conveyed by the said Complainants to said defendant Ely in and by the said trust deed: and that this defendant Enoch L. Roberts who was then the legal holder of said note in said trust deed mentioned, became the purchaser at the price of \$460. which said sum was then and there endorsed upon said note.

And this defendant further admits; that afterwards to wit: on said seventh day of February A.D. 1860. the said Quartus Ely as such trustee aforesaid, made execute and delivered to this defendant by virtue of the power contained in said Trust Deed, his trustee's deed for said premises (which deed was afterwards on or about the seventh day of February filed for record in the Recorder's Office and duly recorded in Book of deeds Page) and this defendant is now the owner of the said premises.

And this defendant denies all unlawful combination and confederacy in the said bill charged without this, that any other matter or thing

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material or necessary for this defendant to make answer unto, and not herein or hereby well ~~and~~ or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. And this defendant submits to this Honorable Court that all and every of the matters in the said Complainant's Bill mentioned and complained of are matters which may be ^{tried and} determined at law; and with respect to which the said Complainants are not entitled to any relief from a Court of Equity. And this defendant hopes that he shall have the same benefit of this defence as if he had demurred to the said Complainant's bill. All which matters & things this defendant is ready to aver, maintain and prove as this honorable Court shall direct, and humbly prays to be hence discharged with his reasonable costs in this behalf most wrongfully sustained &c."

"Enoch L. Roberts.

James R. Edsall.

Sol for Defendants "

Roberts.

State of Wisconsin }
County of Rock } 388.

On this 11th day of December A.D. 1860 personally appeared before the undersigned a Justice of the peace in & for the said County of Rock in the State of Wisconsin, Enoch L. Roberts, to

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me personally known to be the real person whose name is subscribed to the foregoing answer; and the said Enoch L. Roberts being duly sworn deposes and says, that he has heard the answer read and knows the contents thereof; and that as to all matters & things therein stated to be upon personal knowledge, the same is true; and that as to all other matters & things therein contained he verily believes the same to be true"

"Subscribed and sworn to
before me this 11th day of
December A.D. 1860.

Enoch L. Roberts."

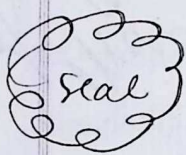
H. A. Patterson Justice of the Peace.
J.P.

Attached to the above acknowledged is a certificate from the clerk of the Circuit Court of said Rock County, which said certificate is in the words and figures following, viz:

"State of Wisconsin
Rock County 388.

I Levi Alden, clerk of the Circuit Court for the said County, do certify that H. A. Patterson, Esq. whose name is subscribed to the certificate of acknowledgment of the annexed instrument, and thereon written, was at the time of taking such acknowledgment an acting Justice of the Peace in and for said

County, duly elected, qualified and authorized to take the same, and further, that I am well acquainted with the hand writing of such Justice of the Peace, and verily believe that his signature to said certificate of acknowledgment is genuine. I further more certify that said instrument is executed and acknowledged according to the laws of this state.



" In testimony whereof, I have hereunto set my hand, and affixed the seal of the said Court, at the Clerk's Office in the City of Janesville this 11th day of December A.D. 1860.

Levi Alden. Clerk.

By A. G. Alden. Deputy. "

On the back of the foregoing answer of said defendant Roberts was the following indorsement:

" Filed Feb; 21st 1860

J. J. Boardman. Clerk. "

" Re-filed December 12th 1860.

B. F. Shaw. Clerk "

And afterward to wit; at the May Term A.D. 1860 of said Lee County Circuit Court to wit on the seventeenth day of May A.D. 1860. the same being one of the regular days of said Term the following proceedings were had in said cause and entered of record in said Court to wit;

Martin Eastwood and Mary Eastwood

Quartus Ely and Enock L Roberts

Supplication

Now on

this day comes the Defendant by Edward Meier
Solicitor, and on this motion leave is given
them to amend their answers, and to
withdraw the Stipulation herein filed, on
this condition however, that they pay the costs
herein made, which is now done ~ ~ "

And afterwards to wit at a regular Term
of the said Los County Circuit Court begun
and holden at the Court House in Dixon
aforesaid on the fourth Monday of November
Anno Domini One Thousand Eight Hundred
and Sixty his Honor John D. Eastace
Judge of said Court then and there presiding
and on the 27th day of November aforesaid
the same being one of the regular days of
said November Term the following
entry appears to us of Record to wit: -

"Martin Eastwood and Mary Eastwood
his wife

Quartus Ely & Enock L Roberts

Supplication

Now

On this day come the Complainants by Sheffield their Solicitor, and enter their motion to strike from the files Roberts answer to the Supplemental Bill herein filed: and thereupon come the Defendants by Edsall their Solicitor, and enter their cross motion, to have answer sworn to and filed in thirty days from the date hereof.

And afterwards on the fifth day of December A.D. 1860, the said cross motion coming on to be heard is by the Court sustained: and thereupon the Complainants by their Solicitor aforesaid, come and enter their motion to strike the Defendant Ely's answer from the files herein, and thereupon the said Defendants by their said Solicitor enter their cross motion to have said Ely's answer sworn to, which said cross motion is sustained.

And afterwards on the eighteenth day of December aforesaid, the said Complainants on their motion have leave to withdraw their application herein filed, and to have this cause set down for hearing upon the Bill, and answers herein filed: and this cause is thus set down for hearing upon the Bill and answers so on file as aforesaid.

And afterwards, to wit: at another regular Term of the said Lee County Circuit Court begun and holden at the Court House in the City of Dixon aforesaid on the second Monday of February in the year of Our Lord One Thousand Eight Hundred and Sixty one. His honor John V. Easture Judge of said Court then and there presiding:

And on the Twenty third day of February aforesaid, the same being one of the regular days of said February Term the following Record entries appear to us in this behalf that is to say:—

cc	Montin Eastwood, and Mary Eastwood his wife	} Imposition
	Quontus Ely and Enoch S. Roberts	

Now on this day this cause coming on for hearing upon the Bill and Answer herein filed, and the said Complainants appearing by Shepley their Solicitor, and the said Defendants by Cabell their Solicitor; and this cause being argued by the respective Counsel on the proceedings herein had as well as upon the following stipulation to wit:—

"It is hereby stipulated on the part of the respective parties hereto, that it is true, that no part of the consideration money or the Debt which the 'Greatest Debt mentioned in Complainant's Bill of Complaint, and in the Supplemental Bill

"was given to secure, was incurred for the purchase
 "money or improvement of the said premises,
 "described in said Bill of Complaint & Supplemental
 "Bill of Complaint." On consideration whereof
 It is decreed by the Court, that the Plaintiffs are
 entitled to the premises in question during the
 lifetime of Martin Eastwood, and after his
 death during the lifetime of the said Mary Eastwood
 and until the youngest child shall become twenty
 one years of age, ^{then} ~~some one~~ continuing to occupy
 the same; It is therefore ordered, adjudged and
 Decreed by the Court, that the Defendants herein
 their agents, attorneys, executors, administrators
 and assigns be enjoined from proceeding in any
 manner whatever to obtain the possession of the
 said premises described as follows to wit;— The
 North East Quarter of the South West Quarter
 of Section No Twenty Seven Township No
 Twenty one, Range ten East containing forty
 Acres, also a part of the same Section described
 as follows; Situate & lying North of the Road
 leading from Dixon to Chicago, commencing
 at the North West Corner of said lot, running
 thence East nineteen chains and Eighty six
 links to the North East corner of said lot,
 thence South on the East line of said lot, thirty
 four chains, and forty six links to a stone
 set in the ground at the center of the Dixon
 and Chicago road, thence North Sixty Degrees West

44 Twenty three Chains, and six Links in the center of the road, to a Stone on Section line thence North twenty two Chains and seventy eight Links to the place of beginning; containing fifty seven ⁶⁶/₁₀₀ Acres more or less situate in the Town of China and County of Lee and State of Illinois - during the lifetime of the said Martin Eastwood, and after his death during the lifetime of his widow, and until his youngest child shall become twenty one years of age some one of them continuing to occupy the same - And it is further ordered that the Defendants do pay the plaintiffs their costs of this suit to be taxed, and that they have Execution therefor -

State of Illinois }
Lee County } ss. J. Benjamin F. Shaw Clerk of the
Circuit Court within and for said County do hereby
certify that the foregoing is a full true and complete
exemplification of all the Records & papers in
and concerning as my Office -

In Testimony whereof I hereunto set
my hand, and the Seal of said Court
at Dixon this fifth day of March
A.D. 1861.

Benjamin F. Shaw Clerk
per Joseph Ball D.C.

Cost of this Transcript \$12.30 -
Clerks Fee in Case 9.10
Shriffs Fee in Case none)
\$21.40

State of Illinois }
Third Grand Division }

Supreme Court of the State of
Illinois, Of the April Term 1861.

Quartus Ely, and Enoch L. Roberts. }

Plaintiffs in error }

vs

Martin Eastwood and Mary Eastwood }

Defendants in error }

Error to Lee.

And now come the said
Plaintiffs in error by Jas. K. Edsall their Attorney
and say that in the Record and proceedings a-
foresaid and in the Decree aforesaid there is
manifest error in this to wit:

1st The Court erred in rendering decree for com-
plainants below as entered.

2nd The Court erred in not dismissing Bill
for want of equity on its face.

3rd The Court erred in enjoining plaintiffs in
error from proceeding to recover possession of
said premises in the manner specified in

said decree.

4th The Court erred in entering a decree for ~~against~~ plaintiffs in error for costs.

And the said plaintiffs in error pray that the decree aforesaid, for the errors aforesaid and for other errors in the said Record and proceedings being, may be reversed annulled, and altogether holden for naught, and that they may be restored to all things which they have lost by occasion of the said decree and final determination &c

James K. Ederell
Att'y for Plffs in error

Let a supersedeas issue. Bond
six hundred dollars. Sumner & Co
surety

J. D. Eaton

Supreme Court
State of Illinois

2d Error

Quartus Ely & Enoch S. Roberts
Plts. in Error

Martin Eastwood & Mary Eastwood
Defendants in Error

And hereupon afterwards to wit on the
17th day of April A. 1861 at being the 2nd day
of the April Term of this Court the said Martin East-
wood and Mary Eastwood by M. E. Sheffield their
Attys. & Counsel come into Court here and say
that there is no error, either in the record and
proceedings aforesaid, or in ^{the decree aforesaid} ~~the~~ judgment aforesaid
and pray that the decree aforesaid in mat-
ter aforesaid given may in all things be affirmed

M. E. Sheffield

Attys. for Plts. in Error

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Supreme Court

Lunta Ely & Enoch L. Roberts
Plffs in error.

vs.

Martin Eastwood et al
Defts in Error

Transcript of Record

Filed March 14. 1861

Leland
Clerk

Jas. K. Etoall.

Atty for Plffs in Error.