due four Months from date hereof.
93 Payable to the order of L. B Otis. Now
in case of default in payment of said
note. or any part thereof. on application
of the legal holders of said note. the
said Grantee or his legal representatives.
after having advertised said sale ten (10)
days in a daily newspaper. published
in the City of Chicago. or by posting
up written or printed notices in four
public places in the County where
said premises are situated. shall sell
the said premises. or any part thereof.
and all right and equity of redemption
of the said Grantor his heirs. Executors.
administrators or assigns. therein at public
vendue to the highest bidder. for cash
at the Court House at the North
door in said City at the time appoin-
-ted. in such advertisements. or may
adjourn the sale from time to time
at discretion. and as the Attorney of
the said Grantor for such purpose
hereby constituted irrevocable. or in
the name of the said Grantee. or
his legal representatives. shall execute
and deliver to the purchasers. deeds for
the conveyance in fee of the premises

sold and shall apply the proceeds of sale to the payment of (1) expenses of advertising selling and conveying as aforesaid. including Attorney fees. and (2") the amount due on said note. (3") rendering the Overplus if any to the said grantor or his assigns. at the Office of said Grantee in Chicago aforesaid. and it shall not be the duty of the purchaser to see to the application of the purchase money. Provided that the said Grantor and his heirs and assigns may hold and enjoy the said premises. and the rents thereof until sale as aforesaid. and that when the said note and all expenses accruing hereby shall be fully paid. the said grantee or his legal representatives. shall reconvey all the Estate acquired hereby in said premises. or the part thereof then remaining unsold to (and at the costs) of the said grantor. or his heirs or assigns. And the said Fordhams and Eames Grantors. covenants with the said Grantee and his legal representatives and assigns that he is seized in fee of the said premises. and has good right to convey the same as aforesaid. that they are free from all incumbrances. and

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that he will Warrant and Defend the same against the lawful claims. and will pay all taxes and afsessments. levied or afsess=ed on said premises. or any part thereof. during the continuance hereof. and pay the same ten days before the day of sale thereof. Witnefs the hand and seal of the said grantor. this sixteenth day of June 1857.

Caroline A. Fordham (L.S.)
W. Fordham (L.S.)
J & T Eames. (L.S.)
E B Eames (L.S.)

This certifies that on the seventeenth day of June. Eighteen hundred and fifty seven. before Charles K. Holden a Notary Public of the County of Cook of the State of Illinois. appeared William Fordham & Caroline A. Fordham his wife. and J & T Eames. and Elizabeth B his wife. who are personally known to me to be the Real persons whose names are subscribed to the annexed deed as having executed the same. and then acknowledged the execution thereof as their free act and deed. And the said Caroline A. and Elizabeth B. wives of said Fordham & Eames

who are personally known to me to be the same persons who subscribed to the said instrument of writing, having had the contents of the said instrument made known and explained to them. and being by me examined, seperate and apart from their said husbands. did acknowledge said instrument to be their act and deed. and that they executed the same and relinquish their Dower in the lands and tenements therein mentioned voluntarily and freely. and without the compulsion of their said husband, and that they did not wish to retract. Given under my hand and Notarial Seal. L S

Charles T. Holden
Notary Public.

State of Illinois. County of Cook ss:
I William L. Church Clerk of the Circuit Court. and Ex-Officio Recorder in and for said County. in the State aforesaid do hereby certify that the annexed is a true and correct copy of a certain Instrument filed in my Office on the 17. day of June AD 1857. and Recorded in Book No. 138 of Deeds on page 328. the parties to the same

being Dr Hardham 2nd Chief. J. H. Eames 2nd Chief
97 of the first part and James Otis of
the second part
L. S. In Testimony whereof. I have here=
=unto set my hand. and affixed
the seal of our said Court at
Chicago this 11th day of January
AD 1860.

Wm. L. Church Clerk
of the Circuit Court and
Ex Officio Recorder of Cook County.

The Examination of the Witness James L.
Otis resumed. by Defts:
I am familiar with the Real Estate
in question. it is situated on Harrison
Street. on West side of the River. near
the crossing of Jefferson Street.
Q. How much was that property
worth on the 6 day of January 1858,
Question objected to by Dept for irreli=
=vancy. objection overruled. exception
thereto taken and noted and Question
answered. My Occupation at that
time was dealing in Real Estate
Securities. I think the property could
have been sold for $1500. that was
its cash value. and that is the way
I determine values. The note described

in the trust deed was not paid at its maturity.

Q. State whether or not resort has had to the power of sale. (Kleft objects to any evidence about the notes. unless the notes are produced & objects to the question propounded. Objection to question propounded overruled & Kleft excepted. which is noted & question answered. There was a sale made under the deed. The Kleft asks the Court to exclude all the evidence touching the notes. unless the notes are produced. motion denied. Defendant then and there excepted. which is noted). A sale was made and a deed was executed.

Q. Who was the purchaser at the sale (Objected to. overruled and exception taken.) Answer: George Ackerman. I am not certain whether he had a middle name or not. I think he now resides in the City of New York. I executed a deed to Mr Ackerman in pursuance of the notice and sale. (This answer objected to. overruled. And exception taken) I could not tell where that deed is. I do not know where that deed is now. The last time

99 Doan it was when I delivered it to McKernan. at my Office. either on the day of sale. or a few days afterwards. The notice of the sale was published in Chicago in the National Union. a daily paper. The notice was first published in the paper of March 26. 1858. It was inserted in the paper of the 27. 28. 30 March. the 29. March was Sunday. also on 31. March. 1st April & 2. 3. 4. 5." April. there is no paper issued on Sunday. the number of this paper is 18. The papers of the 6" April does not appear among these files. The notice was again on 7" April. Wednesday. the day of sale. and the No. of the paper is 20. I own this paper as it came out. and the notice was published in consecutive numbers until the day of sale. (Kleft Objects to this evidence. on the ground that parol evidence of the publication cannot be given. but the paper itself must be produced. & on this ground Kleft asks for the exclusion of the last statement of the witness. motion overruled. and exception taken & noted) She took the paper at our Office. and I examined the paper every day. and it was published

ten days before the day of sale

Cross Examination

Have you now any recollection of seeing the notice every day for ten days as the paper appeared.

It is my habit to notice the papers each day. I cant state that I saw it each day in particular. In the course of my business I took a good many Irish Deeds. did not always publish ten days. It was generally ten days or thirty days. I think I could have told the number of days from the original papers and from memory. I think I could have stated that the sale was to be made in 10 days. from my recollection. I cannot tell the day of sale of all the Deeds I took that year. perhaps I could not tell the number of days in all cases. I base my statement that I recollect from the fact that we took the paper. and it was my habit or to do. I cant state positively that I do recollect. but it is an impression from my habit. I cannot state how many Sundays occured from the date of notice to day of sale. I dont recollect that

101 during this time there was a fast day On which the paper was not published. I have never made any mistake. as notifying a sale for Sunday or a fast day, I think I may have made mistakes in business transactions. not alone these things.

Direct Resumed.

Q. State what your habit in making sales which you were required to make as Trustee. in reference to being assessed. that the advertisement of the sale was correct? (Question objected to. Objection overruled. exception taken & Question answered.) In preparing the notice my habit is to allow from one to three days to allow time for corrections. And to make sure of the time which the notice published. Then I exclude Sundays from the computation. my habit is to see the paper the next morning after it is handed in and to compare the notice with the one handed in. and to see that it is published right.

Q. What is your habit as to noticing whether the notice is inserted the proper number of times. (Question objected. Objection overruled. exception taken. Question answered). My habit is to

notice the publications. and to read the notice from the publication. on the day of sale. Q. Was there, or was there not any departure from that habit in this case. (Question objected to. objection overruled. & exception taken & question answered) A know of no departure. The Daily National Union was a newspaper published daily in Chicago at that time. application was made to me by the legal holder of the note to make the sale the sale was made at the North door of this House, the Court House in Chicago. at 10 Oclock A M. of 7th day of April. A answer this question from the notice. Q. What is the profession of Mr Fordham. (Quest. objected to. overruled and exception taken & quest answered.) A think he is a Lawyer or was at the time A saw him. A think he told me so himself. A cannot tell you where the promissory note now is for which Trust Deed was given. A endorsed the amount bid on the note. and it the note was given by me to Ackerman. My impression is that the property sold for less than the amount due on the note.

103 Plaintiffs offer to read the notice as published in the paper. to which Deft objects. objection overruled by the Court & exception taken. and notice read as follows: "

Trustees Sale:

Whereas default having been made in the payment of a certain Promisory note. dated June 16. 1857. and secured by a Trust Deed to the undersigned. of the property hereinafter described. and Recorded in the Recorders Office in Cook County in Book 138 of Deeds Page 328. on application of the legal holder of said note. I shall on Thursday the 7. day of April 1858 at 10 Oclock A M of said day. at the North door of the Court House. in the City of Chicago. sell at Public vendue to the highest bidder. for cash Lot number twenty four (24) in Block nineteen (19). School section addition to Chicago. County of Cook. State of Illinois. and all right and equity of redemption of the grantors in said Trust deed therein. and for the purposes in said Trust deed stated.

Chicago March 26. 1858.

James Otis. Trustee."

Cross Examination Resumed.

I think there was some money paid on note and Trust Deed after the note became due. but I cant state the precise amount. there was some interest or some thing the precise amount I cannot state. my impression is there was none paid on the principal but that some was paid to extend the note two months. I have an impression that there was $1000 or $1100 due at time of sale. I think the amount paid was about $100.

Q. Did he not at one time pay you $100. another time $50. another time $70.

I cant fix on any of these sums. my impression is he paid less than $1000. I cant tell how long the claim was extended. The sum was paid after the maturity of the note. I can recollect these facts as well as about the notice. I Keep some memoranda in my office about these matters.

Q. After the sale did you not go to Eames and tell him that on paying up he could have the property. In behalf of McKernan and by his authority. Did said to Mr Eames that he would sell the property to him cheaper than he would to any one else. and

105 under Mr Ackermans instructions. I should have sent him to Mr Ackerman. Has authorized me to say this to Mr ~~Oak~~ Eames ~~Eames~~ if I met him. did not tell me to hunt him up. I got the impression Mr Ackerman would take for the property about what it cost him, Direct resumed.

That is to say the amount of his debt costs. expenses and taxes. not the amount of the bid. neither Eames or Fordham ever availed themselves of the offer. I dont recollect that he said he had been sued. and for that reason did not want to do anything about it. This conversation I think took victim three months after the sale. I did not know Defendants had been sued. Knew nothing about it.

Michael Niversy. Sworn and Testified.

A File of papers called the Daily National Union. being shown to the witness. I was the Publisher and Proprietor of this paper. and this is a regular file of the paper. It was published every day in Chicago

Cross Examination

Q. Does that contain a file of all

the papers published of the paper. A.
Well yes sir.
Direct Resumed. The paper never
missed a publication. from the start
it was published every day.
Cross Examination.
It was not published on the 4. of
July. it was not published on Monday
it was published on Sunday. I could
not tell whether it was not on any
other day. I had nothing to do
with the publication of it.
Direct Resumed. I received it every day
and read it. the number missing from
the files I am sure was published.
Cross Examination Resumed.
Mr Thomas called my attention to a day
for which there is no paper in the file
I could not swear that it was published
on that day. The plaintiff here
offers a certified copy of Trustees Deed
to Ackerman. Deft. objects. and as
preliminary the plaintiffs offer
Lansing Morgan as a Witness;
I have not the deed executed by Otis
as Trustee to Ackerman for the property
in question. in my custody. power
or control. nor have the other plaintiffs

107 said Deed to the best of my knowledge and belief. nor is the deed from Fordham and Wife to Eames for same property in my custody. power or control. nor have the other plaintiffs to the best of my knowledge & belief. I dont know where it is.

Cross Examination.

Do you know of your own knowledge. that those deeds are not in the power of the other plaintiffs.

A. I do not know.

Direct Examination Resumed.

What do you know. if any thing. about any effort made by them. to procure them. There has been a mutual effort to obtain those Deeds. to be used on the trial of this cause. but that effort was unavailing. The plaintiffs also read to the Court the answer of McKernan to the third interrogatory of his Deposition above set out.

The Deft objects. to the reading of the Certified copies of the Deeds. on the same grounds urged against the first Deed before. and also on the ground that they are both inadmissable as irrelivant. which objections were

overruled. and exception taken & noted.
Certified Copies read as follows:
"This Indenture made the seventh day of
April. in the year of our Lord One Thou-
=sand Eight hundred and fifty eight.
between James Otis of the County of
Cook and State of Illinois party of the
first part. And George Ackerman of
Chicago County of Cook and State of
Illinois of the second part. Witnesseth:
That Whereas William Fordham and
Caroline his wife. And J.H. Eames and
Elizabeth his wife. of the County of Cook
and State of Illinois. did by a certain
deed of trust dated the sixteenth day
of June A.D. 1857. which deed is recorded
in the Recorders Office of the County
of Cook in the State of Illinois in
Book 138 of Deeds. page 328. convey to
said party of the first part. all the
premises hereinafter described. to secure
the payment of one certain promissory
note in said deed particularly men-
-tioned. and upon certain trusts in
said deed particularly declared. and
whereas default hath been made in
the payment of said note. the said
premises were by the said party of the

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first part. duly noticed for public sale. at the North door of the Court House in the City of Chicago. County of Cook and State of Illinois. on the seventh day of April A.D. 1858. in the manner prescribed in and by said deed of Trust. and were upon the day and hour. and at the place last mentioned aforesaid in pursuance of said notice sold at public sale. and at said sale the said party of the second part was the highest and the best bidder therefor. and bid for the tract first hereinafter named the sum of Five Hundred dollars. a copy of the notice of sale. as published for more than ten (10) days prior to the day of sale in the Daily National Union. a newspaper published in the City of Chicago as hereto attached. "Trustees Sale:" Whereas Default having been made in the payment of a certain promissory note. dated June 16 1857. and secured by a Trust Deed to the undersigned of the property hereinafter described. and recorded in the Recorders Office in Cook County in Book 138 of Deeds page 528. on the application of the legal holder

of said note. & shall on Thursday the seventh day of April 1858. at 10 Oclock A M of said day at the North door of Court House in City of Chicago. sell at Public venue to the highest bidder for cash. Lot number twenty four (24) on Block nineteen 19) School section addition to Chicago County of Cook State of Illinois. and all right and equity of redemption of the Grantors in said Trust Deed, therein and for the purposes in said Trust deed stated.

Chicago March 26.1858.

James Otis. Trustee

Now therefore these presents Witness that the said party of the first part in pursuance of the Power and authority in him vested. in and by the said Deed of Trust. and in consideration of One Dollar. and also in the further sum of Five Hundred dollars to the said party of the first part. paid by said party of the second part. the receipt whereof is hereby acknowledged. hath and doth hereby convey. remise. release and quit claim to the said party of the second part

111 his heirs and assigns forever. all the right title and interest. as well in law as in Equity which the said party of the first part hath acquired by virtue of the Grant Deed above mentioned. of in and to all that certain tract. piece or parcel of land. situated in the City of Chicago. County of Cook and State of Illinois. and described as follows to-wit: Lot number twenty four (24) in Block number nineteen (19) School section addition to Chicago. Together with all and singular the tenements. hereditaments and appurtenances thereunto belonging or in any wise appertaining. and the ~~remain~~ reversion and ~~remains~~ reversions, remainder rents issues and profits thereof and also all the Estate right. title interest claim and demand whatsoever. as well in law as in equity of the said party of the first part of in and to the same. and any and every part thereof with the appurtenances. which the said party of the first part acquired by virtue of said Grant deed. To have and to hold the aforesaid right. title and interest of the said party of the first part unto the said party of the second

part. his heirs and assigns forever. as fully and absolutely as the said party of the first part can by virtue of the power and authority in him by said Trust Deed vested. convey the same. In witness whereof the party of the first part. hath hereunto set his hand and seal the day and year first above written.

James Otis (Seal)

State of Illinois. Cook County. City of Chicago ss:

I Albert S Evans a Notary Public in and for said City. in the County and State aforesaid. do hereby certify that James Otis who is personally known to me to be the same person whose name is subscribed to the annexed Trustees Deed appeared before me this day. in person and acknowledged. that he had signed. sealed and delivered the said instrument of writing. as his free act and deed. for the uses and purposes therein expressed.

Given under my hand and Notarial Seal this seventh day of April A.D. 1858.

A S. Evans
Notary Public.

No 218. Filed April 24. 1858

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State of Illinois County of Cook ss:
I William L. Church Clerk of the Circuit Court and Ex Officio Recorder in and for said County, in the State aforesaid do hereby certify that the annexed is a true and correct copy of a certain instrument filed in my Office on the 24. day of April A.D. 1858. and Recorded in Book No 105. of Deeds on page 66. the Parties to the same being James Otis of the first part, and George Ackerman of the second part.

In Testimony whereof I have hereunto set my hand and affixed the seal of said Court at Chicago, this 11. day of January A.D. 1860.

L.S.

Wm. L. Church Clerk
of the Circuit Court and
Ex Officio Recorder of Cook County."

"This Indenture made this sixth day of January in the year of our Lord One Thousand Eight hundred and fifty eight, between William Fordham and Caroline A. his wife of the City of Chicago and State of Illinois Party of the first part and James H. Eames of the said City and State, Party of the second part. Witnesseth: That the said Party of the

first part. for and in consideration of One Thousand five Hundred in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged. and the said party of the second part forever released and discharged therefrom, have remised released. released. sold. and conveyed and quit claimed. and by these presents do remise. release. sells. convey and quit claim unto the said party of the second part. and to his heirs and assigns forever. all the right. title. interest claim and demand which the said party of the first part has in and to the following described lot. piece or parcels of land Viz: "Lot Twenty four. according to subdivision of Block nineteen. in Schoo section addition to the city of Chicago To Have and to hold the same together with all and singular the appurtenances and privileges thereunto belonging or in any wise appertaining. and all the Estate right. title. interest and claim whatsoever of the said party of the first part. either in law or equity. to the only proper use. benefit. and behoof

115 of the said party of the second part. his heirs and assigns forever. And the said party of the first part for themselves. their heirs. executors and administrators. doth Covenant Promise and agree to and with the said party of the second part. that they have not made. done. executed. committed or suffered any act or acts. thing or things whatsoever whereby. or by means whereof the above mentioned and described premises. or any part or parcel thereof now are. or at any time hereafter shall or may be impeached. charged or incumbered in any manner or way whatsoever. In witness whereof the said party of the first part hereunto set their hands and seals. the day and year first above written

Wm Fordham (seal)

Caroline A. Fordham (seal)

State of Illinois. Cook County.
City of Chicago } ss;

I John A Nichols a Notary Public in and for the City of Chicago. in the County of Cook and State aforesaid do hereby certify that William Fordham and Caroline A. his wife. personally

Known to me to be the same persons whose names are subscribed to the annexed instrument of writing. 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 Caroline A. Farnham wife of the said William Farnham having been by me examined seperate and apart. and out of the hearing of her husband. and the contents and meaning of the said instrument of writing 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 sixth day of January A.D 1858

John A. Nichols. Not Pub.

State of Illinois County of Cook ss:
I William L. Church Clerk of the Circuit Court. and Ex Officio Recorder

117 in and for said County in the State aforesaid, do hereby certify that the annexed is a true and correct copy of a certain instrument filed in my Office on the 6 day of January A.D 1858. and Recorded in Book No 147 of Deeds. on Page 248. the Parties to the same being William Storeham & Wife of the first part and James H Eames of the second part.

In Testimony whereof I have hereunto set my hand and affixed the seal of our said Court at Chicago this 10 day of May A.D 1860.

L S

Wm L. Church
Clerk of the Circuit Court &
Ex Officio Recorder of Cook County

William Hoyde. sworn and testified:
I resided in Porter County Indiana in February and March 1858. and was then engaged in the employ of the Plaintiffs at Morgan Station in that County. I know of wood being shipped from Morgan Station to the Defendants during the time stated, about Eight hundred and sixteen cords. I know it because I measured it on the Cars at Morgan

Station. The wood was Beech and Maple. four foot wood. some of it was sea-soned wood, and I should think about one third of it was green. The wood belonged to Morgan. I manufactured. I attended to the Shipping of it. I shipped it to Chicago to J. H. Eames. I saw some of the wood in Chicago at the Depot. I cannot say it reached him. I cant tell how much I saw it at different times. some of it on the boat and some of it off.

Q. What was that wood worth by the Cord. (Deft objects to this question objection overruled. exception taken. and noted & question answered.)

I could not tell what it was worth. The market price of it at Morgan Station was $2.50 or $3.00. I dont know. I cannot recollect. the wood that was shipped to Deft was the same wood that was at the Station on the 6 January. 1858 except the green. I know what kind of wood was in plaintiffs yard in winter of 1857. 1858. I attended to the Shipping of it. I was not here on the 6. January. the wood that was in plaintiffs yard in

119. Winter of 57-8. came from Morgans Station. I think all of it. the wood there during that time was Beech and Maple I dont Know whether there was any green wood there or not. It was seasoned Beech and Maple. I was engaged at the yard most of the early part of the winter. and backward and forward after that time. but was at the Mill most of the time after the 1st of January. There was none shipped to plaintiffs yard in Jany and Feby 1858. I think not. I was not there in March. The wood shipped by me was from the 7th of January to the 27th of Feby 1858 I think. I dont Know that the Defts obtained wood for their yard elsewhere during that time. I dont Know how they did busines. before the first of January. when I left I had been in the plaintiffs employ a number of years. I should judge when I left they had in the yard from 400 to 600 boards. all came from Morgan Station. I should judge the daily sales before 1st Jany. were about five cords a day. when I left they were selling at that rate.

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Q. How did the wood you shipped to Hefts compare with the wood that was in the yard on the 1st January.
A. The seasoned wood sent to Hefendants was same kind of wood. out of same lot. The Green wood was Beech and maple. it was from feet in length. and was a good quality of wood. the quality was better than the seasoned wood in the yard. I am acquainted with Eames. have seen Fordham. I saw Eames at Morgans Station in January. He and myself examined the wood that was there. I dont recollect what he said about it. The same wood was shipped to him that he looked at. I know he examined the wood. The way the conversation ran when he and I were together was that he had come out to buy the wood. He might have found some fault with the quality of the wood. and he might not.

Cross Examination

I dont recollect what the Rail Road Co were buying for wood at Morgans Station. those who were buying wood have paid $2.50 or $3.00 there. In

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speaking of Market price I refer to what was usually paid by purchasers there. I have known of sales there I think at these prices. from the charges I was directed to make on the Books. I also know parties here who were buying wood. the Michi-gan Central Company. cant give the name of any purchaser. Dont recollect now of any instance being present at any sale. Dont know that said Rail Road refused to take any wood from plaintiff on account of its quality. I dont think any part of the wood had been rejected by the company. I know that part of the wood there was got out for the company. and not taken because they had enough. I dont think it was rejected by them. Plain-tiffs were in the habit of getting wood for the Rail Road. I dont know that Peffs had contract with company. cant not swear there was no oath. The wood that Eames examined was all dry. A portion of the wood shipped was green. I suppose that Eames did not see that wood until it got there. I am not now in Peffs. employ. was Superintendent

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and Book Keeper. I did not pile the wood on the cars. When it was piled I measured it. as to the Kind I judged something of the wood from what the men were hauling. I did not examine the wood. with a view to see what Kind it was. to see that one third sent to Defendants. was one third Green, I was at the Mill and saw what the teams were hauling. I wrote in the Books at night, I made entries at times in day time. I knew what was going on in the Mills. was there frequently during the day. My impression is that Plaintiffs never sold to Rail Road Company Beech and Maple for less than $2,00 per Cord I cant say that there was a stick of oak. or Ash in the seasoned wood I think there was some Oak and some Ash mixed with the wood there. and that Oak and Ash were thrown out when the wood was loaded. The Dry and Green were shipped together on same car. not Kept seperate. only Beech and Maple sent. all the Wood cut by Plffs that Winter was not shipped to Defendants. I think

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none shipped to any one else. while we
125 were shipping the 800 bords to them.
I left about 27th Febry. Dont think
all the wood out by Jeffs that Winter
was hauled out. I will not swear
that I kept any account of the Green
wood that was hauled out of the
woods. I intended to be pretty care-
-ful in doing this business. my dir-
-ections were to send one third green,
and I intended to send that proportion
I dont recollect that I kept any acc-
-ount of the Green wood sent.
Adjourned Resumed. I never knew
the Rail Road Co. to reject any wood.
I never knew Defts to object during
the time it was being delivered. that
the wood was not according to con-
-tract. I attended to the delivery of
all the wood from time Plaintiffs
began shipping to Defendants till I
left. there were days that no ship-
-ments were made. on days I did
not measure. but some cars were
loaded up every day. sometimes the
trains did not carry the wood for-
-ward. & there were times when
20 or more cars were taken away

at one time.
Benjamin Case. sworn and testified.
Reside now in Lake County Indiana.
In winter and Spring of 1858 I lived
in Porter County Indiana, and was in
employ of Peffs hauling wood out of
the woods & sometimes out of the yard
to the cars. I was with them in Janu
ary. February and March. and superin
tended the Shipping of wood to defend
ants by plaintiffs in month of March.
and I superintended the shipping in
that month. One hundred and forty
& one fourth cords. it was shipped from
1st. to 16th March 1858 from Maryans
Station. It was Beech and Maple
wood. Some seasoned wood and some
green wood. should Judge one third
green or near that. I judge so because
I was hauling all the time and loading
cars. My duty was to haul the wood
and throw it into the cars. there
were other teams hauling. I measured
it all. it was shipped to Chicago to
J. H. Barnes. I do not know anything
about the value of the wood that
shipped at that time.
Cross Examination

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I have a memorandum of my measurements, made it when I left Morgans in April. I can recollect time I measured, because I set down the quantities before I left Morgans. I drew that memorandum from the Books: I put some of the entries in the Books, others were made by Inniss from my measurements which I handed in. Inniss figured up the measurements. I dont positively know his figuring up the quantities was correct. suppose it was, could not say positively that he figured right. I did not handle all the wood. All I handled was what I hauled and threw into the bars. Any wood I hauled from the yard, could not say how much green wood there was in each load. I could not tell how much green wood the other men put in. I dont think any ash or oak was put in, nor any Elm, nothing except Beech and Maple. Am sure I saw none put in. am as sure of that as of any other fact. Direct Examined. Have no recollection of the number of bars I saw loaded. could not say how many there

were. I can figure up a bar load of wood. but it would take some time to do it.

Cross Examination

Q. How much is there in 174 feet long by 17 feet high of four foot wood. A. I cant answer that question A Copy of the National Union for the 6th of April 1858. Ex 18 was produced by the Pltff. who from it read the notice above set out. Subject to the objections made to that notice. John A. Nichols. sworn & testified. Being shown the contract signed by Eames says. This is my signature. I signed the papers as a witness. It is signed by J A Eames and the signature is his.

Cross Examination

I was not present when the instrument was drawn I dont know when it was drawn. it was executed at my office on blank Street I dont think the paper was written at my office. I was not present when Eames paid any money on the trust deed to Otis. All I know is I obtained $100 for Eames and paid it to him. never had any conversation with Otis. but

I recollect I went up with Eames to
127 Otis' Office for the purpose of having
that $100. but Otis was not in at
the time.
John Henson. sworn and testified,
In January 1858. I resided in this City.
Q. State whether you were acquainted
with the pecuniary condition of Eames
his solvency or insolvency at that time.
(Question objected to by Deft. because
irrelevant. objection overruled. except-
tion taken & noted and question ans-
wered). Nothing more than by
general reputation.
Q. Did you have occasion at or
about that time to make any inve-
tigation of his pecuniary condition.
and if yea did you make any investiga-
tion. (Quest objected to by Deft.
objection overruled. exception taken
and noted. & question answered).
It is my impression I received his
note in 57. or 58. payable in six
months. when I came to collect it
I found that Mr Eames had nothing
in his name.

Cross Examination.

I cannot tell what time the note became

due exactly. the Records would show that. I have forgotten whether it fell due in 57. or 58. may have been in the fall of 1858. I did not purchase paper in 1857 endorsed by Eames. I have no doubt there were good many responsible men who did not pay their paper in fall of 1858. I did buy $700 or $800 of paper endorsed. Eames & Fordham. I cant say when this was. I did not examine the Records in the fall of 1858.
Direct Resumed. I entered a judgment against Eames on the paper I first spoke of. In January 1858 I was not particularly acquainted with pecuniary circumstances of Fordham. (Bell I was at that time dealing with him and he gave me what I supposed to be security. I had an assignment of a Bill of sale. it showed as much property of Eames and Fordham. and I found I could recover nothing from that Bill of sale. it was all personal property. I did not find any property belonging to Fordham. I think he had property subject to execution. I dont think Eames had any property subject to execution).

129 This Testimony included in the Brackets from word "Well". to "Execution" inclusive objected to by Deft. & moved to be excluded. which objection and motion were overruled. & exception taken thereto and noted.

Horace G. Chase. sworn and testified. Paper Abstract shown Witness. This is an abstract. I am a conveyancer and examine titles to Real Estate. I keep an abstract of titles & an Office. the firm was Rees Chase & Co. and at the date of the abstract June 13. 1857. I was then in that firm. we furnish abstracts at our Office of incumbrances on Real Estate. This abstract was furnished from our Office. the last examination is dated June 13. 1857. It was furnished originally October 30. 1856. This piece of paper I should say was a part of the cover. The abstract was furnished upon this order. The original abstract of title was made as I infer. from my Books on an order of Wm. H. Sampson. and this abstract I hold in my hand. was made from that by copy. upon an order of Cameo & Fordham. The original abstract was

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made Oct 30. 1856. and this copy was made June 12/1857. The order for this is dated June 12. 1857. Abstract offered in evidence by Plffs. objected to by Defendant. objections overruled. & exception taken and noted. & it read to the Jury as follows;

"Abstract of Title to Lot 24. in Block 19. in the School section addition to Chicago, 1. Governor of Illinois to Louis J. Jamison. Patent dated 15. Feby 1834. Grants Block 19. in Sec 16. T 39. N R 14 E. of 3rd P M. and said Jamison 24. Oct 1835. by the Schl Comm. for $7. Recorded Nov 8. 1834. Book B. page 16.

2. Louis J. Jamison and Wife to May John Greene. Deed dated Nov 1. 1834. consid: $200. conveys said Block with other property. certificate of ackgt. by Notary Public Cook County Illinois. not under Seal. dont state contents of deed were made known to Mrs. Jamison & otherwise informed. Recorded January 12. 1835. Book B. page 285.

3. Lieut Louis J. Jamison & wife to May John Greene. Apparently a re-record of the last above deed. with a certificate

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appended thereto by John Forsythe. Notary
131 Public Cook County Illinois. who certifies
that on May 22. 1856 personally appeared
before said Notary. J Young Scammon
who being duly sworn by said Notary
deposed in substance that he personal-
-ally knew Louis J Jannison and
Nancy his wife. that he knows their
signatures. and believes that the names
subscribed to the within deed were
thereto subscribed by said Jannison
and wife in their own proper hand
writing. Recorded May 24. 1856. Book
109. page 16 17.
4. Subdivision by May John Green.
Map of Block 19. above named. sub-
-divided into 24 lots. Lot 24. accord-
-ing to said map is 44 foot front on
one end and 43½ ft. on the other.
& of uniform depth of 118 feet. Record-
-ed July 16. 1855. Book D page 116.
5. John Green to Henry Merrill.
Mortgage dated 13. May 1858 to secure
$1.350. conveys Blocks 19. and 29 in
Sec 16. T 39. N R 14 E. Recorded 26 Nov
1859. Book 1. of Morts. Pg 338.
6. Release on margin of Record
Aug 2. 1861 by Henry Merrill. In Book

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6 of Deeds. Page 157. is a Letter Henry Merrill to Walter Kimball. dated Aug 10. 1840. directing him to deliver Lieut McClintock the Mortgage D. (said Merrill) sent you. (said Kimball) to have recorded against Col John Green. as he has paid it in full. and D (Merrill) wish to have it cancelled.

7. Proceedings in Court vs. Records of Book C. Court show that at a term of said Court. January 6. 1844. Letters of administration were granted to John B. H. Russell. on the Estate of Col John Green. Bond filed by said Admr. in the penal sum of $ 500. See Book B page 334 of Records of said Court. in the matter of the application of said Admr. to sell the Real Estate of said deceased. at a term of the Court County Circuit. Aug 21. 1844. it was ordered by said Court, that the whole of the Real Estate of said Green deceased. be sold by said Admr. to pay the debts of said deceased. Administrator reports that he gave due notice of time and place of said sale. and made sale of Lot 94. with others. in Block 19. School

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Section to Alson S. Sherman for $330.-
133 xxx and at the same time executed deeds
to said purchasers. (other property sold
at same time) Report filed. accepted
and approved Nov 16. 1844. See Records
of said Comt. Book G page 198.
8. John B D. Rupell Admr. of Estate of
John Green deceased to Alson S. Sher-
man & Ezra Batchellor. Deed
dated Oct 21. 1844. sets forth that at
the August Term 1844 of Cook
Cook County. said Rupell was ordered
to sell the whole of the Real Estate
of John Green deceased. to pay debts
of said Estate. posting notices of such
sales and sale 21 Oct 1844 of Lot
24. in Block 19. School section add-
-ition to Chicago. with other Lots in
same Block to said Sherman and
Batchellor for $330. in pursuance of
order of said Comt. and in consider-
-ation of $330. conveys Lot 24 aforesaid
and other Lots. Warranty against claims
under said Green or said Administrator
Recorded Oct 25. 1844. Book 14 Pg 66.
9. Alson S. Sherman & Ezra Batchellor
to John B D. Rupell. Admr. of John
Green deceased. Mortgage dated Oct 21

1844. given to secure $333. and interest. conveys Lot 24 and other Lots in Block 19 aforesaid. Recorded Oct 29. 1844. Book 3. of Mortgages pg. 107. On margin of Record of said Mortgage is an acknowledgment of satisfaction of same by said Rufus Admr. &c. dated April 22. 1845.

10. A S Sherman and Wife and Ezra Batchelor to John Rufs. Warranty deed dated March 13. 1845. consid. $58.33 Conveys Lot 24. according to subdivision of Block 19. in School Section addition to City of Chicago. Recorded Oct 26. 1847. Book 23. pg 281.

11. John Rufs & Wife Jr. John L Haines. Deed dated Dec 28. 1848. consid. $1. Quit claims all right. title &c in and to same land last described. Recorded Feby 28. 1849 Book 31. page 330.

12. John L Haines & wife to Robert Pantall. Warranty

Encumbrance

13. Robert Pantall Jr. Abraham Morrison use James M. Morrison. Trust Deed. dated Oct 1. 1855. sets forth that said Pantall is indebted to James M Morrison $40. secured to be paid by a note of said date. payable two months from date hereof.

* Warranty Deed dated Oct. 13. 1847. consid. $125. Conveys same land last described. Recorded Oct 26. 1847. Book 24. page 281.

Release of above filed June 20. 1857.
135 with interest at 10%. That said Pantall has been held to Bail to Keep the Peace towards his wife. and that said Morrison has signed a Bond with said Pantall as his surety conditioned to Keep the Peace. Convey Lot 24. in Block 19. School section addition to Chicago. Recorded Oct 1. 1855. Book 99. Pg 419.

Judgments.

Alson S. Sherman Judgt B. McKeon vals Geo H. Hoyt. In Cont of Com Pleas. Judgment dated March 9. 1847 for $374.52. and costs $7.68. Exon 429. dated June 3. 1847. Returned by order of A. Garnett Esqr. Exon. No 527. issued Sept 30. 1847 not returned.

Otis R Johnston. Alson S Sherman vals. Otis Ellis and David B Plumm. Judgment dated April 2. 1847 for $270.66 and costs $4.68. Exon No 348. issued April 7. 1847. Not Returned.

The foregoing Judgments are not liens on Real Estate in question. They are given because executions were issued. or trials have not been returned. no objections to the title are do not think them

deseiving consideration.

Rees Chase & Co.

Tax Sales. Leity Taxes.

Sale Feb 23. 1842 of Lot 24 to L. Nichols for $0.38¾. Redeemed of Purchasers assignee by J B & J Ripell. Admr. of Estate of Col Green. and certificate cancelled Nov 30. 1844.

State and County Taxes.

Sale Sept 18. 1843. of Lot 24 to S A. Lowe for $0.36.

(The tax sale last above given are think invalid.

Rees Chase & Co)

The following deed has been filed for Record since this abstract of title was made by us. Robert Pantall to James H Eames and Wm Wardham. Warranty deed dated Nov 28. 1856. Conveys Lot 24. in Blk 19. School section addition to the leity of Chicago. Recorded Nov 28. 1856. Book 94 Pg. 607.

The foregoing is an abstract of title to Lot 24. Block 19. School section addition to Chicago. We find no conveyances of said premises by any of the parties named in said abstract as Grantors or Grantees. recorded in the Office of the Recorder of book County Illinois. Prior to the

to the dates of Record of the instruments
137 executed by them respectively as above
set forth. neither any judgments against
any of said parties in the several Courts
of Cook County Illinois. which are
liens on said land. except as above
set forth. and no tax sales of the same
except as shown.
Chicago Oct 30. 1856.

Rees Chase & Co

We find on conveyances of Lot 24 in
Block 19. School sec. Addn to Chicago.
aforesaid by James H. Eames or Will-
iam Farnham recorded in the Recorders
office. Cook County Illinois. prior
to this date.
Chicago June 10. 1857.

Rees Chase & Co."

Judgment and Execution. dated Feby 26. 1858.
in the case of George B. Whitney vs.
James H. Eames. offered by Plffs. and
objected to by Defts. because no evi-
dence that execution was ever in
Sheriffs hands. & Evidence irrelivant.
objections overruled. exception taken
and noted & Judgment entry and Ex"
& Sheriffs return read as follows:
"State of Illinois County of Cook ss.

The People of the State of Illinois, to the Sheriff of said County Greeting:

We command you, that of the lands and tenements, Goods and Chattels of James McEames Defendant, in your County, you cause to be made the Sum of One Hundred and Sixty four dollars and fifty cents, which George B. Whitney Plaintiff, lately in the Cook County Court of Common Pleas of said County, at a term thereof begun and holden at Chicago in said County, on the first Monday of February instant, recovered against the said Defendant, and which by the said Court was adjudged to the said Plaintiff for his Damages, And also the further Sum of Eleven dollars and ten cents, which were adjudged to the said Plaintiff for his costs and charges in that behalf expended, whereof the said Defendant was convicted, as appears to us of Record, And have you these moneys ready to render to the said Plaintiff for his damages and costs aforesaid, and make a return of said writ with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof

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L S Witness Walter Kimball. Clerk of of our said Court. and the Seal thereof at Chicago in said County this 9th. day of February A.D 1858.
Walter Kimball Clerk

And afterwards to-wit: On the Second day of June in the year of our Lord. One Thousand Eight hundred and fifty eight aforesaid. the Sheriff of Cook County to whom said Execution was directed and delivered. returned the same to the Clerks Office of said Court. endorsed by him as follows to-wit:
I having demanded of the within named Defendant the payment of this Execution or that he surrender property in satisfaction thereof. he says he has none to surrender. but what is encumbered. and being unable to find any whereon to levy this writ. I therefore return the same no part satisfied this 26 of May 1858.

1 Service	50	
2 Mile	10	
1 Return	10=	70

John L Wilson Shff.
By George Anderson Dep.

John Hennison Recalled. I got that note of Eames & Deby 18. 1858. it was payable six months after date to Fordham and endorsed. Indpment on it

but it was never paid. Amount $278.
Geo. Ex.d I got the note from Eames.
I drew the note myself.
Judgment of March 4. 1858 in Francis
McCann & J. H. Eames for $100 offered.
& objected to by Deft. for same reason
as made to the Whitney Judgment. overruled and exception taken and noted.
Plff. also offer Execution dated April
17. 1858. & return and like objection
made by Deft. overruled. exception taken
and noted & Judgt. Ex.n & return read
as follows:
State of Illinois County of Cook ss;
The People of the State of Illinois to
The Sheriff of said County Greeting;
We command you that of
the Lands and Tenements, Goods and
Chattels of James H. Eames. Defendant
in your County. you cause to be made
the sum of One Hundred dollars,
which Francis Kepuhe Plaintiff. lately
in the Cook County Court of Common
Pleas of said County. at a term thereof
begun and held at Chicago, in said
County. on the first Monday of February
last past. recovered against the said
Defendant. and which by the said Court

141 was adjudged to the said plaintiff for his damages. And also the further sum of ten dollars and thirty five cents which were adjudged to the said plaintiff for his costs and charges in that behalf expended, whereof the said Defendant was convicted, as appears to us of Record. And have you then money ready to render to the said plaintiff for his damages and costs aforesaid, and make a return of said writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

Witness Walter Kimball Clerk of our said Court, and the seal thereof at Chicago, in said County on this 17. day of April AD 1858,

Walter Kimball Clerk

And afterwards to-wit: On the fourteenth day of July in the year of our Lord One Thousand Eight hundred and fifty eight aforesaid, the Sheriff of Cook County to whom said Execution was directed and delivered, returned the same to the Clerks Office of said Court, endorsed by him as follows: "having demanded of the within named Defendant the payment of the within

Execution. or that he surrender property in satisfaction thereof, he says he has none to surrender. & being unable to find any whereon to levy this writ. & therefore return the same no part satisfied. this 14. of July 1858.

1 Service 50
1 Mile 5
1 Return 10 = 65 3/4

John L. Chilson Shff
By George Andrew Deputy.

Myron W. Downs. Sworn and testified, I believe I saw some of the wood shipped by Jeffs to Wefts. on the Michigan Central Depot in this City. along in Febry. March. April and May. I think it was removed about first of May. I dont think I can say how much of it I saw. There was a very large pile. & I saw it a number of times. I was asked to look at the wood by Smith the Freight Agent of the Road. with a view of buying it. he said it was going to be sold. It was considered good Merchantable wood. character of wood. good long and heavy. If I recollect right it was mostly Beech and Maple wood. I dont think I could state.

Cross Examination

I am dealing in wood. I believe I was not present at the sale. Any

impression is that I did not buy it be-
143 cause I was receiving as much wood
as I could dispose of. Navigation was
open at the time. I saw Eames about
the wood. and his teams there. I think
they were not removing any of this pile.
I saw Morgan there also. I cant say
I know whose it was. I saw Eames
about this pile. I was about it too.
I dont know that I heard Eames say
anything about the wood. I should
say it was Eames wood. cant say
I can swear it was his. I dont know
that I can say I know it was his.
I cant say how many loads were there.
It was a pretty large pile. cant say
there was any Ash or Elm. or oak
in it. it was good Merchantable Beech
and Maple.
Direct Resumed. I cant say how
long the wood was lying there. I think
Mr Smith was with me when I
examined it. I saw it while it was
unloading. I saw Eames about the
Depot there frequently. he was receiving
wood there. saw him there frequently
with his teams. It was piled not
far from the South end of Passenger

Depot. not at the end. but between that and Burlington Depot. The wood was on the Depot Grounds. could not say whether there was 25 or 75 loads of wood. Isaac Eames at that pile of wood & frequently down there.

John Hs. Severidge. I was Solicitor (our firm was) for Plaintiffs in the Chancery Suit. brought in the Circuit Court. to enforce a Specific performance of the wood and Lot contract above set out. Plffs took some proof. and Defts took some evidence.

Here the Defts. objects to the testimony The Plffs. state that it is offered first to show a continued concealment of the fraud. and 2nd for the purpose of showing additional damages by reason of such concealment. and of the original fraud. Defts objects to the evidence. objection overruled. & exception taken & noted. & witness proceeds. Complainants concluded their proof. and Defendant concluded theirs. & the case was set for hearing. but was not heard.

Q. Why not. Defts. Objects. 'objection overruled and exception taken,

A. Because on coming into Court at

145 2 Oclock PM of the day the case was set to be taken up. by agreement Mr Bingfo. who was Solicitor for Cannes. intimated to me that the property mentioned in our Bill of Complaint had been sold upon a Trust Deed. and that a decree in our favor would do us no good. which conclusion I came to & therefore the cause was not heard. (This Evidence objected to by Defts. Objection overruled. exception taken and noted.)

Q. State when you first received information when this property had been sold. under the Trust Deed. Quest. objected to by Defts. objection overruled exception taken and noted. & Quest. answd. The information that Bingfo gave me was the first information. That was the first time that I knew that there was a Trust Deed outstanding in the property. State whether or not you communicated this information to the Complainants. Objected. Objection overruled. exception taken by Defts & noted. I did to Lansing Morgan. The Complainants here offer the Bill and answer in the Chancery Suit

The Deft objects to the same. Objection overruled. exception taken and noted. & Bill and answer read to the Jury as follows:

State of Illinois Cook County:

Cook Circuit Court.

The Bill of Lansing Morgan. Gilbert Morgan. and Edwin L. Inmeft. complainants. against James H. Eames.

Humbly complaining unto your Honor. your Orators Lansing Morgan. Gilbert Morgan and Edwin L Inmeft. would represent that your Orators at the instance and request of the said Defendant. and for the consideration hereinafter mentioned. contracted and agreed in writing to purchase of the said Defendant the following lands and premises to-wit: Lot twenty four. according to subdivision of Block nineteen. in School Section addition to the City of Chicago. The same being in the County of Cook and State of Illinois. with all and singular the tenements. hereditaments and appurtenances thereto belonging. or in any wise appertaining. And in consideration of such undertakings on the part of the

The Deft objects to the same. Objection overruled. exception taken and noted. & Bill and answer read to the Jury as follows:

State of Illinois Cook County:

Cook Circuit Court.

The Bill of Lansing Morgan. Gilbert Morgan. and Edwin L. Inness. complainants. against James H. Eames.

Humbly complaining unto your Honor. your Orators Lansing Morgan. Gilbert Morgan and Edwin L Inness. would represent that your Orators at the instance and request of the said Defendant. and for the consideration hereinafter mentioned. contracted and agreed in writing to purchase of the said Defendant the following lands and premises Viz-wit: Lot Twenty four. according to subdivision of Block nineteen. in School section addition to the City of Chicago. The same being in the County of Cook and State of Illinois. with all and singular the tenements. hereditaments and appurtenances thereto belonging. or in any wise appertaining. And in consideration of such undertakings on the part of the

147 said Defendant. your Orators agreed to pay him the said Defendant for said premises. One Thousand bords of wood. to be delivered on Board the bars. at Morgans Station on the Michigan Central Rail Road. in the County of Porter and State of Indiana. Said wood to be of Beech and Maple. and to correspond in quality to the wood at said Station on the sixth day of January AD 1858. or with the wood before the date last mentioned. delivered by your Orators to said Defendant. and the wood remaining in the yard of the said party your Orators. Which said wood was to be delivered by said agreement on or before the twentieth day of March then next. (meaning the 20. of March AD 1858) unless otherwise changed by mutual agreement of your Orators and said Defendant. Said wood was to be delivered at the place and in the way above mentioned. and in quantities from time to time so as to equalize the amount delivered from day to day. not to exceed four bar loads per day. unless there might become hinderance in such daily

delivery. beyond the control of your Orators.
It was also stipulated and agreed by and
between your Orators and said Defend-
ant. that any part of said mord not
exceeding one third. might be green wood
And upon the completion of said undertak-
ing of your Orators as aforesaid.
the said Defendant stipulated. and
agreed in writing to make out and
deliver to your Orators a good and suff-
icient Deed of conveyance of the prem-
ises hereinbefore described. and refered to
with full covenants and Warrants. clear
of all encumbrances. which agreement
more fully appears by the said artic-
le of agreement. a copy of which are
in the words and figures following to wit
Know all men by these presents. that I
James H Eames of the City of Chicago.
and County of Cook in the State of
Illinois. party of the first part. am
held and firmly bound unto Lansing
Morgan. Gilbert Morgan and Erwin
L. Jones party of the second part
in the penal sum of Six Thousand dollars
for the payment of which well and truly
to be made. the said party of the first
part binds himself. his heirs. executors

149 And Administrators and assigns, unto the said party of the second part, their heirs, executors, administrators and assigns, firmly by these presents. Sealed with my seal and dated this 16 day of January A.D. 1858. The condition of the above obligation is such, that whereas the above bounden James H. Barnes, has this day sold to the said party of the second part, for the consideration hereinafter mentioned, all the following described property to-wit: Lot Twenty four according to subdivision of Block nineteen, in School section addition to the City of Chicago, together with all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining. The condition of which said sale is as follows: The said party of the second part agree to deliver on board cars at Morgans Station on the Michigan Central Rail Road, in the County of Porter and State of Indiana, One Thousand lords of Beech and Maple wood, which shall correspond in quality to that at said station, or that heretofore delivered to the said party of

the first. and that remaining in the yard of the said party of the second part. at Chicago. On or before the twen-tieth day of March next. unless other-wise changed by mutual agreement of the said parties. and to deliver the same in quantities from time to time or as to equalize the amount delivered from day to day. that there shall be no more than four car loads per day unless there shall be some hindrance in the daily delivery beyond the control of the party of the second part. It being understood that a portion of said wood may be green, provided it does not exceed one third part. On the completion of said contract on the part of the party of the second part the said party of the first part agrees by these presents to make out and deliver to the said party of the second part. a good and sufficient deed of conveyance. with covenants of Warran-tee. clear of all incumbrance of the premises hereinbefore described. It being further understood and agreed that the possession of said premises shall remain in the party of the first

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part. until the said party of the sec-
-ond part shall complete the delivery of
said wood in manner aforesaid.
and preserve said property in its
present condition use excepted. And
when the said party of the first part
shall have performed his said covenants
and agreements as aforesaid. then this
Obligation to be void. otherwise to be
in full force and virtue.

Witness: J.A. Nichols } James H. Eames Seal

State of Illinois. Cook County.
City of Chicago ss:

I John A. Nichols a Notary Public in
and for the said City. in the County and
State aforesaid. do Hereby certify that
James H Eames who is personally known
by me to be the same person whose
name is subscribed to the annexed
contract. appeared before me this day
in person and acknowledged that he
had signed. sealed and delivered the
said instrument of writing. as his free
act and deed. for the uses and purposes
therein expressed.

Given under my hand And Notarial
Seal this sixth day of January
A.D 1858.

Jno. A Nichols
Notary Public

And your Orators would further represent, that they delivered the One Thousand Loads of Wood. in Kind. quality. time and place as required by said agreements and on the full completion of the said undertakings upon their part to be Kept and performed, they called upon said Defendant and demanded a deed of the premises. set out and refered to in this Bill. and in the Contract a copy of which is above set out in full. and which Original Contract was Recorded in Book 127. of Deeds. page 549. in the Recorders Office of said Bourbon County. therein filed for Record January 6. A.D. 1858 reference being had to said Original Contract and Records if necessary for Description thereof and the terms and conditions of purchase. And your Orators would also further represent that said Defendant refused to make. execute and deliver to your Orators. a good and sufficient Deed. of said premises. with sufficient Covenants of Warantee, and has hitherto wholly neglected and failed or to do. though requested by your Orators. to their great injury and detriment.

153 Your Orators would further represent that there is situated on said premises above mentioned and set out, three Houses or Tenements, renting for a month-ly rent of twelve dollars per month, each, as your Orators are informed and believe, and they so charge the fact to be, the rents and profits of which the said Defendant is receiving and appl-lying to his own use, when in truth and in fact, by the strict rules of con-science and equity the said rents and profits duly and properly belong to your Orators, and that they are unjustly and wrongfully kept from receiving the same, by the wrongful and unreasonable acts of said Defendant in not performing the Contract above set out as is in said Contract specified, although properly called upon so to do. In tender con-sideration thereof and for so much as your Orators are remediless by the strict rules of the Common Law, to the end therefore that the said James H Eames (and his confederates when discovered) may, (his and their corporal oaths being hereby waived) full, true and perfect answers make to all and

singular. the said premises as fully and particularly as if the said matters were here repeated. according to the best of his knowledge. information and belief. and Especially whether or not he has possession of said premises herein refered to. And whether or not he is and has been receiving the rent therefor. since the 30. day of March AD 1858. to the time he may answer. Your Orators pray that your Honor shall decree that said Defendant shall deed by a good and sufficient deed of conveyance as mentioned in his said agreement. to your Orators. the premises in question and above refered to in this Bill. and for such other and further relief. as to this Honorable Court may seem meet in the premises. Your Orators in first consideration of the premises pray that a writ of injunction may issue against said Defendant. enjoining said Defendant from collecting and receiving rents for the said premises. or for any portion thereof. together with his Agent. Attorneys or Servants therefrom And your Orators pray that a Receiver may be appointed by this Court. with

155 full powers to rent. control and take charge of said premises. untie the further order of this Court. And on the final determination of this suit that this Court will deem that said Defendant shall pay all reasonable and just damages. which may accrue to your Orators. by reason of his refusal to comply with his agreements above set out and refered to.
And to this end your Orators pray that a Summons ~~array~~ issue from the proper Office. directed to the Sheriff of said Cook County. requiring the said Defendant to appear and answer this Bill. on the return day of the same.
And as your Orators will ever pray &c.

Lansing Morgan
Edwin L. Stevens.
Gilbert Morgan
Eastman B. & L. Solrs for Compts.

State of Illinois Cook County ss:
Lansing Morgan on oath says that he is one of the complainants. named in the above Bill of Complaint. that he has read the above Bill. and knows the contents thereof. and that the facts therein stated are true. except

the matters stated upon information and belief. and these he verily believes to be true;

Lansing Morgan

Subscribed and sworn to before me this 21. day of March A.D. 1858

John L. Beveridge
Notary Public.

Lansing Morgan. Gilbert Morgan.
Edwin L. Tribune & James H. Eames

Clerk of Circuit Court

will issue a Summons in Chancery in the above entitled suit. to Sheriff of Cook County. returnable first day of next Term of said Court.

Eastman B & L
Sol's for Compl's.

Let the writ of injunction issue in conformity with the prayer of the foregoing Bill of complaint The complainant Lansing Morgan executing a Bond in a penalty of Five Hundred dollars. with good and sufficient surety.

George Manierre
Judge 7. Judicial Cir. Ills

To the Clerk of the Circuit Court of Cook County.

Lansing Morgan Trial vs. James H. Eames
Cook County Circuit Court. State of Illinois.

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In Chancery. Defendants Answer.
This Defendant now and all times hereafter
saving and reserving unto himself all
benefit and advantage of Exception,
which can or may be had or taken to
the many errors. Uncertainties and
other imperfections in the said Complain-
ants Bill of Complaint mentioned & contained
for answer thereunto. or unto or unto such
such part thereof as this Defendant is
advised. is or are material or necessary to
make answer unto, this Defendant ans-
wering saith. That the contract or
agreement upon which said suit is
brought for a Specific Performance. hath
not as yet been complied with. on the
part of the said parties complainant. but
on the contrary thereof. they utterly refuse
or to do. Whereby this Defendant hath
been greatly damaged in the premises
And further this defendant denies all
and all manner of unlawful combination
and confederacy whereinch he is by said
Bill charged. without this. that there
is any other matter cause or thing
in the said complainants said Bill
of Complaint contained. material or
necessary for this Defendant to make

answer unto. and not herein and hereby well and sufficiently answered. confessed. traversed. and avoided or denied is true to the knowledge and belief of this Defendant. all which matters and things this Defendant is ready and willing to aver. maintain and prove as this Honorable Court shall direct. and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. T. Eames.

Plaintiffs Close their Case.

The Defendant now moves the Court to exclude and strike out all the evidence which has been introduced to the Jury by the Plaintiffs. Motion overruled. & Defft then and there excepted. noted.

The Defendant moved to strike out the evidence of the agreement between the Plaintiffs and him. which motion was overruled. & exception taken and noted

Defense.

Jesse Little. Sworn and testified. I lived on North side in winter of 1858. and used part of the time to run for Eames with Steam Engine. I know of a quantity of wood received by Eames of Plaintiffs it came in

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by Michigan Central Rail Road.
I think some of it came in January
I cant say how much he received on
his yards. I unloaded some thirty loads
at the Depot by request of Eames.
One or two loads were measured. some
about six cords. and some may
have been a little over, & some a
little under. some Box loads wont
hold six cords. Those I unloaded
held some six. some 7. or nearly so.
some two of the loads were measured,
Eames and Morgan were there. I know
from measurement that some of them
held less than seven cords. The wood
I unloaded was chiefly Beech and Ma-
-ple. there might have been a little
Oak & ash in it. There was very little
of that in what I saw at Depot.
some at yard with a little Ash and Oak
in it. That I unloaded at Depot was pretty
near all Green Wood. not two cords
out of twenty were dry. some loads had
not a stick of dry in them. I assis-
-ted in handling every one of those
loads. The reason it was unloaded and
left at the Depot was that it was
green. and we could not sell it in

Chicago. Eames told me to go and look at the cars. and see what I would unload them for. That the wood was green and he could not sell it. and he said he should have to leave it at the Depot. for Morgan to do what he chose with it. He paid me One dollar per car for unloading the car. The company compelled me to unload the cars of course. the wood was left there. I saw some wood in Eames yard that came from there. it was Beech and Maple the greater part. & the remainder Ash and Oak & was thrown aside. it came from the Michigan Central Depot. Oak and Ash Kept seperate from Beech and Maple I cant say how much there was of it. I saw all that arrived in the yard after 6th January. that in the yard might have been half and half dry and green. That is as near the fact as I can now state. The wood I unloaded at the Depot was never taken to the yard. When the 30 cars were unloaded. I saw Morgan at the Depot several times.

Cross Examination

I Entered Defendants employ about five
181 years ago. I continued with them till the
Spring before Morgans wood came,
When Defts quit Lake Street. Eames
went to Michigan Avenue. and Fordham
went to 12. Street & river. think he
closed his yard in winter of 1857-8.
Used to see Fordhams hands at the
Depot taking away the Morgan wood
to his yards on 12th Street & the River.
saw his teams come four or five times,
I dont think Fordham kept more than
one team that Spring. I owned all
Eames wood that Spring. could not
say how much Eames brought into
the yard. I think owned wood was
about $5. per Cord that year. The
wood piled at the Depot could not
be sold. think I unloaded that about
the beginning of February. we began
to receive wood from him in January
The Rail Road company unloaded a lot
after that. you could not make the
freight on it. I dont know that the
wood was sold for non-payment
of freight. Norris told me that the
wood was for sale. Eames gave
me One Dollar per Car for unloading

it. The wood pretty nearly all Beech and Maple. you could not sell it at any price. It was sold three or 4 months after when it got dry. it was piled up about opposite the Passenger House. It was green wood and could not be sold. some of it I think had not been cut three days, or a week at the most. very little dry wood in it. what little dry wood there was in it was dead wood. I know we received no more after that to my knowledge. I saw the Rail Road Company unloading several cars after that. It was about the same I had unloaded. I measured three or four cars. about three cars. I might have measured a number. I did this in a rough way to find out how much to charge. I can't swear I measured five. I saw Hardhams team taking wood away at three or four different times. James Corbin attended to the receiving of the wood for Eames. I don't know who acted for Hardham. Q. Was there any sign on the door of the Office. Defendant objects. objection overruled

exception taken by Defendant & question
113 answered. Sign of carved and split
wood for sale. I never had any
thing to do with the Books. I made
stakes for Eames then. I believe the
bills went out in Left Eames. name.
Dont think his Brother had anything
to do with the yards. I think Eames
sold out to his Brother in the Summer
of 1859. Direct Resumed.
The expense of sawing was One dollar
per Cord. What I saw Strohams
teams take. was taken directly from
the saw.
Martin Mahan. I was engaged in
Jany. Feby. & March 1858. in driving
team. I drew wood from Michigan
Central Rail Road for Eames. I hauled
some of the wood that was got
from Morgan. from the Michigan
Central Depot to Michigan Avenue
Eames yard. I dont know how
much I did haul. not all of it.
I did not haul a great deal of it.
not every day. nor a whole day
at any one time. about a week
altogether. hauled a load at a
time. handled a part of it. two

parts of it out of three were green. seemed to be cut a very short time. before it came in. it was so with all hauled. there were some oak and Ash.

Cross Examination

About seven years ago since I was first employed by Eames & am still with him. that that was hauled from the depot was part of it sawed up. what was done with the rest of it I cant say. my memory is not very clear about it as to quantity. but is as to quality. because I handled it. I dont know that I hauled to any other places than the yard. Saw Yardhams team hauling wood. cant say how many times. he had one team. I saw the 30 bars that Little testified about. there were some Oak and Ash. cant say how much but most of it was green Beech & Maple. part of it was dry dead wood. Robert O. Nowell. I was driving team in 1858. I hauled some wood from the Michigan Central depot. that came from Morgan. hauled every week whenever bars came in. with others to the Wood yard of Eames

It was mostly Beech. dont recollect.
165 as to Oak or Ash. biggest part of it
green. limby green wood. some of
it so heavy that I could not lift
it. not saleable in the Market. I
handled it. about two thirds of it
was green.

Cross Examination

When the cars came in I could very
plainly see that the biggest part of it
was green. I would want a load
of dry wood. and could not get it.
James Conlin. Sworn testified:
In 1858. I was in employ of J.H Eames.
Clerk and Book Keeper. I did know
distinctly the quantity of wood received
under the Morgan contract. it was
840 ~~and~~ or 860 cords at the Depot,
arrived at the Depot. part of it was
received by Eames and part of it remained at the Depot & part of it sold.
Eames could not see some of the wood
& the freight could not be raised on it.
When it came in there first a majority
of it was green wood. it remained
there two or three months & got dry
a little. The piles of wood left at
Depot was 271 cords. that was

Beech and Maple. and a little white ash and Oak 200. to 250 boards of that was green and was not saleable in the Market. Five Hundred and seventy Eight boards of wood were received beside the 271 left at Depot. some of it (578 boards) dry. and some of it green. some of it would appear good to a man not familiar with wood. it was cut from dotty down trees. Estimated of the whole lot. about one third of it dry. and the rest of it green. some of the green would look dry. but it was down wood recently but. The freight was Two dollars and a half a cord. I could not give any more for the green a Cord. than the expense of freight. hauling and handling it. The first portion of the wood that came in was on Rack boards. and was right as to measurement after it began to come in. in covered boards it began to fall short. and I measured it. you cant well measure the wood in a covered boat. as you cant tell how much is in it. one had racks and measured it in boards and half boards. some of it was measured

in the barn. when I could. & some of it
167 in the Racks. Kept tally. The covered
bars fell from half to three quarters
of a board short. 2. What do
you know if anything about the Def-
endant Barnes refusing to take the
wood at the Depot because it was green
& State what you know of it.
Question objected to by Plffs. objection
sustained. Question excluded and Deft
excepted & Exception noted.
The witness is shown a number of
Tray Bills. & testifies these are a part
of Tray Bills of wood received under
Morgan contract. That dated March
16. is billed at 29 boards & measured
out 24¾. that dated March 15. is
billed at 27. boards and measured out
26 boards. that dated March 11. is
billed at 27. boards and measured
out 22¾. that dated Feby 26. is
billed at 14 boards. and measured
out 12. that dated Feby 1. is billed
at 47. boards and measured out 41¼
boards. that dated Feby 26. is billed
at 7 boards. and measured out 6 boards.
that dated Feby 25. is billed at 13½
boards. & measured out 12½ boards.

That dated Feby 15. is billed at 34 Cords and measured ont 24. cords. that dated Feby 12. is billed at 27½ cords. and measured ont 25. another dated Feby 12. is billed at 27. cords. and measured ont 24¼ cords. that Feby 10 is billed at 27¼ cords. and measured ont 25½ cords. that dated Feby 8. is billed at 19½ cords and measured ont 17½ That dated Feby 6. is billed at 19½ cords. and measured ont 18¼ cords. that dated Feby 9. is billed at 42 cords. and measured ont thirty six ¾ cords. that dated Feb 5. is billed at 26 cords. and measured ont 23¾ cords & that dated Feby 3. is billed at 13 cords. and measured ont. 12 Cords. as shown by memorander made by me at the time in pencil mark on said Bills. The said Road Bills were then read in evidence to the Jury; (here copy them) Omitted by direction of Counsel.

Talmage went down to examine and see the wood at the Depot. Remember Morgans promising to send the dry wood to Eames. Eames did not take the pile of green wood at the Depot.

Before this green wood came on, I
called Morgans attention to the wood
in Eames yard. to a quantity of limbs
piled up there picked out of lot of
wood that he had sent. he said he
was not aware such wood had been
sent. I called his attention to the char-
-acter of it. some ash and knotty. and
to large for bord wood. he said he was
not aware such wood had been sent,
I also called his attention to the Green
wood. that we could not sell it,
He said it made no difference when
the Green part came in. whether at
the beginning or end of time. It was
after this the green wood came. we
kept receiving it in hopes that the
dry wood would come. He Morgans
Repr saying the dry wood should come.
This is wood we hauled to the yard
that we could not tell what it was
until the wood was hauled. Eames
told me he would not receive any
more such wood. and that he would
see Morgans. there was some little dry
wood came in. and then the larger
pile of Green. The wood received by
Eames did not correspond with the

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wood bought by Eames. of Morgan & Co it did not have so much maple. He received 580 bords. worth about 3½ to 4 Dollars per bord. less two & a half dollars for freight ont. Eames paid freight upon excess of Rail Road Bill. over actual receipt.

Crop Examination

Suppose Eames could have raised the money to take the wood away if he had wanted to. I heard Eames tell Littler. he had better make a bargain with the Rail Road Co. about storage. so that they would not charge too much for letting the wood remain there. until he could see Morgan. At first I paid freight as fast as it came in. and when it came in green. and we could not sell the wood we had in the yard because it was green. Eames could have raised the money when the wood came in and paid the freight. I was-ned not unless Eames told me. Eames told me not to receive the wood because it was green. I gave receipt and made objections to it. gave them before measurement. upon notices from R R Co. of arrival of wood

I executed some receipts before wood
actually came in. upon Morgans
statement. Witness is shown a paper.
I cant say whether I gave this from
actual measurement or from Rail
Road Co. bills. The receipts which I
gave are all according to either
what Morgan told me. or what
the Rail Road company billed. they
dont contain the truth. as I gave
them before measurement.
Fordham and I went down once
to examine wood and found in
20 cars only 2 cars that were dry
that Fordham would take. and
these he afterwards would not take
because they were doty.
Fordham and Eames had their sepe-
ation in business. but had other
property together. they had Vessells and
Real Estate. Eames had some means
at this time. had a quantity of wood
in the yard & a pile of wood he
owned with another man. Eames
sold out his wood yard in the Sum-
mer of 1858 to his Brother E.B. Eames
and sold this wood for less than $5.
for what we could get. I sold some

of the dry wood to a man for 4 25/100 corned wood at that time worth $5; to $5.50. long wood $1 less.

Direct Resumed.

Sold some of this wood to Fordham by the Rail Road Bills by the car load. I gave him the Bills for 5 car loads. he also got one or two other loads. this is included in my Estimate. While Eames wood was coming in I saw wood at this Depot billed to Morgan. it was of a better quality than that received by Eames. Fordham got altogether about 40 cords

Plaintiff Rebutting Evidence.

J M Smith. sworn and Testified I have been in freight Department of Michigan Central Rail Road ~~Office~~ from March 1855 to present year. I was freight Agent when wood came from Morgans Station. or long since cant state particulars. There was quite a quantity left upon the grounds of the Company either from inability or disinclination to pay freight. had most of the conversation with Eames. Eames proposed that if we would take 50 cts less he would pay. The wood was only

at private sale to pay the charges. did
not hold out what I thought there ought
to be of it. Wood sold for $18. less
them charges it was fair kind of wood
mostly Beech, generally green. fell
short of the Piles. this was piled up
about fifteen feet high. they hauled
some away. are found on measurement
it was short of the Piles & after some
of it was taken from the pile. Barnes
proposed to pay for the wood 50 cts
less than freight on actual measure
ment of the quantity. Barnes said
the wood did not belong to him,
green or short measure reason assi-
gned for not taking it. Fordham
got a small quantity upon which he
paid freight.

Cross Examination

Sold for $2.87½ a load. I can't say
whether it was an entire lot as recei-
ved or not. or how it was piled.
I can't say whether this was piled
before or after the 30 loads of green
wood was received & piled.

Plffs. Rest. Offs to Evidence.

The Deposition of N Morgan. taken
before Waldron J.P. read to the Jury

as follows:

Lansing Morgan
Gilbert Morgan and
Edward L. Barnes

vs

James H. Barnes and
William Fordham

In the Circuit Court of Cook County Illinois. Case

Please take notice that upon affidavit filed. the Plaintiffs will take the Depisition of Nathan M. Morgan. residing in Elgin. Kane County Illinois. on account of his being unable to attend Court in Cook County. on account of advanced age and bodily infirmity. before Andrew J. Waldron a Notary Public in said Elgin. Kane County Illinois. on the 24. day of July A.D. 1860. between 10 Oclocks A.M. and 10 Oclocks P.M. of said day. to be read in evidence in the above entitled cause.

Goodrich. Thomas. & Roberts
Attys for Pleffs.

July 10. 1860.

To the above named Defendants.

We acknowledge Service of the above by copy this 10 day of July 1860

W. J. Barnes
J. M. Chickering

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Lansing Morgan
Gilbert Morgan &
Edwin L. Inwood
v
James H Eames &
Wm Fordham

In the Circuit Court
of Cook County. State
of Illinois
Case

Deposition of Nathan
M Morgan. aged seventy five years. residing
in the City of Elgin. County of Kane
and State of Illinois. taken before me
Andrew J. Waldron a Notary Public in and
for said County and State this 24 day
of July AD 1860 at my Office in Elgin
aforesaid. between the hours of 10 o'c
A M and 10 o'c. P M. on the part of
the Defts. in above entitled cause.
who being first duly sworn to testify the truth
in relation to the matter in controversy
so far as he may be interrogated on his
oath says.
Interrogatory first. State your name
age and residence.
Answer 1st I am seventy four years
of age the 6. day of November last.
name Nathan M Morgan. and reside
in Elgin Kane County State of Illinois.
Int. 2. State whether you are acquainted
ted with the parties to the above entitled
suit

Ans. I am acquainted with the parties plaintiff. but not with the Defendants until a few days before the contract for wood was entered into.

Int 3. State what contract you allude to. and the circumstances connected with it.

Ans. It was a contract for wood. a thousand cords to be delivered. on the Cars on the side track at Morgans Mill. or Station in Indiana. which ~~contract~~ was reduced to writing by Mr Fordham. I think who was sitting at the table and appeared to be trying the pen. this was in the City of Chicago on Wells Street. at what was called Morgans Wood yard. corner of Michigan Street It was a wood Office where the plaintiffs transacted their business. It was between the first and the middle of January A.D. 1858. the precise day I am not able to say. Mr Fordham and Mr Eames came there some two or three times. talking about buying wood and exchanging a Lot in Chicago for it. where situated I did not know. It was two or more days before the writing was made. Mr Fordham and Mr Eames came there on the day

the writing was made. and put down
on the Table a paper which they called
177 an abstract done up in the form
of a deed. I did not know what
was in it. I did not know what the
meaning of an abstract was. Mr
Horsham says. we own the property
jointly but I do not wish to go into
the wood business. I will deed or
quit claim to Mr Eames. and Mr
Eames when the wood is delivered.
will deed to you. this was at the last
interview. when they were making ar-
angements for drawing the contract
this was the talk. Morgan and Barnes
were present and formed some fault
with the abstract on account of the
date. the abstract was dated a consid
erable time before the day they were
making this contract. and that was
the objection they made to the abstract.
In consequence of that objection Mr
Horsham said there had been no convey-
ance since the date of that abs-
tract. Mr Barnes proposed going and
searching the Records. soon after Mr
Barnes stepped out for a few minutes
and in his absence Mr Horsham said

to Mr Morgan the plaintiff. that partner of yours is one of the most particular men I ever saw. Mr Barnes asked the question why the abstract was not made up to day. and Mr Fordham answered. that they thought they had made a sale of it and had the abstract made up with reference to such expected sale. but that it fell through and there was no conveyance since. The abstract produced & marked by them to be an abstract of the property or Lot proposed to be traded for the wood. On the last conversation Mr Fordham sat at the table writing. and Mr. Barnes stood close to him. looking over his shoulder. and at all of the conversations both Barnes and Fordham were present. and participated in the conversation. one as much as the other it seemed to me. The Mill company was to deliver the wood on the cars at Morgans side track. a thousand cords. by the Mill company I mean the plaintiffs.'

Int. 4. State the conversation upon that subject.

Ans; The amount of wood to be del

received per day were four car loads.
179 Mr Eames objected to that amount, Mr Morgan said he must have this privilege to enable him to fill the contract within the time. Mr Farnham says what you cannot take care of I will. This was while they were drawing up the contract Int. 5. State which of them Eames and Farnham proposed at the beginning of the negotiation to become the purchaser of of the wood. whether one or both of them and all you recollect on that subject.
Ans: I expected from what I heard of the conversation. and the plaintiffs appeared to so understand it. that both of them should become the purchasers. until the proposition to quit claim as above stated. That both Eames and Farnham. on each of the days went out to look at the sample wood in the yard. It appears that they both had and felt the same interest in the purchase until the proposition above mentioned.
Int 6. Do you know anything about the actual delivery of the wood. and if you do. state what.

Ans: After the contract was signed I went down to the Station where it was to be delivered. Morgans Station in Indiana. and my business there was to help load the cars. I know all about the quality of the wood. It was Superior wood, and Mr Fordham acknowledged to me it was a good Superior quality of wood. and he remarked it comes rather faster than we can take care of it. this was his exact language. this was at Chicago while he was unloading the cars.
William Hyde was the Clerk who measured the wood at Morgans Station until he went East with his wife. Then I measured fifty cords after Mr Hyde left. the next man was Benjamin Bosso. who measured, the car loads of wood were billed to Eames to Chicago all the Bills I saw were confined to Mr Eames. I saw the bills pretty generally, perhaps not all
Int. 7. State what proportion of the wood was dry. and what green. and what kind of wood.
Ans: It was Beech and Maple. and about one fourth was green. what I

measured & know was ~~was~~ say. one quarter
181 green wood. and the rest dry. The
wood was equal to the sample wood
in Chicago. but was longer. being
cut by a different set of hands. I
saw pretty much all the wood.
Int 8. Also you know of anything
more of importance in this matter.
Ans: No. I do not.

Nathan M. Morgan.

Kane County ss: I the subscriber a
Notary Public in and for the county
aforesaid. in the State of Illinois. do
hereby certify that the above Deposition
was taken by me at the time and
place mentioned in the caption thereof
that said witness was first duly sworn
to testify the truth in relation to the
matters in controversy as fer as she
should be interrogated. and that the
said Deposition was carefully read
to the witness and subscribed and sworn
to by him.

Dated this 24 day of July A.D. 1860

A. J. Waldron
Notary Public.

L. B. Otis. sworn and testified.
Between the 6 January 1858 and date of

sale. Eames paid one One Hundred Dollars on the principal secured by the Trust deed read in evidence.

Otis recalled. testified.

On the 6 Janry. 1858. interest arrears all paid up. and One Hundred dollars paid on principal of note. secured by the Trust deed. I have alluded on former examination. And the interest arrears all paid up extending the payment of this note to the 15. March 1858.

Cross Examination.

Payment of note extended two or three times for short periods but not extended after March 15. 1858

Defts. Closes.

Which arrs all the evidence in the cause. And the Defendant requested the Court to instruct the Jury to disregard the fifth Count in the declaration in making up their verdict. which motion the Court denied & the defendant then and there excepted. And the Defendant requested the Court to instruct the Jury in making up their verdict, to disregard the ~~fifth~~ fourth Count in the declaration. which motion the Court denied. and the defendant then and there excepted.

And the defendant requested the Court to
183 instruct the Jury to disregard the third
Count in making up their verdict
which the Court refused to do. & the
Defendant then and there excepted to the
refusal of the Court in that behalf.
And the Defendant requested the Court to
instruct the Jury to disregard the second
Count in making up their verdict, which
the Court refused to do. & the Defendant
then and there excepted to such refusal
of the Court. And the Defendant reques-
-ted the Court to instruct the Jury to
disregard the first Count of the declaration
in making up their verdict, which the
Court refused to do, & the Defendant
then and there excepted to such the
refusal of the Court. And the Plain-
tiffs request the Court to give the follo-
-wing instructions to the Jury in writing
viz:

First: It is the duty of every Party
on making a contract to be honest and
truthful in his statements and repre-
-sentations, and although a Party to
a contract is bound to exercise reason-
-able care and caution to prevent
being defrauded, yet if the Party

committing the fraud make use of such false statements, representations and acts with respect to a material inducement to the contract, are and calculated to de-ceive & mislead a person acting with common prudence and without indes-cretion, and he is thereby induced to enter into a contract, or to part with his property, then such party cannot be heard to complain that the person so deceived and misled did not make such enquiries as might have resulted in a discovery of the falsity of the representations.

Given.

Second. That a party alleging fraud must prove it to the satisfaction of the Jury, but in a civil action like the one at Bar the party alleging fraud is not bound to prove its existence beyond a reasonable doubt. It will be suff-icient if the fact is established in the minds of the Jury, by the weight and predominance of the evidence only. It is not necessary that the proof should be of such a character as would warrant the conviction of the defendants, in a criminal prosecution

for false and fraudulent representations, given.

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Third. This action is not brought upon the contract given in evidence. and it is not necessary to the recovery of the plaintiffs that they should show performance of the contract by them. the action is based upon fraud & deceit and loss to the plaintiffs resulting therefrom. And if the jury believe from the evidence that the defendants were guilty of the fraud. and deceit alleged in the declaration. and that the plaintiffs delivered wood of some value to the defendant Eames. and sustained damages in consequence thereof. then they will find the defendants guilty.

Fourth: This action is not founded on or brought upon the contract offered in evidence. and it is not necessary to the recovery of the plaintiffs. that both of the defendants are shown to have been guilty. The jury may find either of them guilty. if they believe from the evidence that the fraud and deceit was practised upon the plaintiffs by either as alleged in the declaration and that the plaintiffs sustained damage in consequence of such fraud

& deceit.

Given.

Fifth: If the Jury believe from the evidence that the defendants falsely and deceitfully represented to the plaintiffs that said transfer of the said lot had taken place, since the date of the abstract as alleged in the first count of the declaration with the intent and purpose as therein alleged and that the plaintiffs relying upon such representations were induced to and did deliver money of value to the defendant Eames. then they will find the defendants guilty.

Given.

Sixth: If the Jury believe from the evidence that the defendants made the representations and statements contained in the declaration. and that the same were made with the intent as therein alleged. and that the plaintiffs relying upon the said representations and statements were thereby induced to deliver money to the defendant Eames and that the representations and statements were false and fraudulent as therein alleged. then they will find the defendants

guilty.
Given.
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Seventh: If the Jury find the Defendants guilty, and believe from the evidence that the Defendent Eames accepted the wood lying at the Depot. then they will be liable for the value thereof at Morgans Station if that was the place at which the same was to be delivered. and in order to ascertain whether there was an acceptance they are entitled to take into consideration all the acts and statements of the Defendant Eames in evidence: if any are in evidence. respecting the said wood made to the freight Agent and others.
Given.
Eighth. If the ~~Jury find for the~~ Plaintiffs and that the Defendants are guilty of the fraud and deceit charged in the declaration. then in estimating the damage they may give the value of the wood delivered by the Plaintiffs to the Defendant Eames at the place where the same was to be delivered. according to the terms of the contract. at the time the same was delivered. together with interest thereon to this date.

together with such sum as will indemnify the plaintiffs from all damages directly sustained by them, by reason of the misconduct of the defendant, including such exemplary damages as the jury may think the circumstances warrant, by way of punishment of the defendants for the fraud and deceit, and of example to the community, &c.

Which instructions were given by the court to the jury & marked "given" on the margin, to the giving of which respectively, the defendant then and there excepted, which was noted. And the defendant Evans requested the court to give the following instructions viz:

First: Every false affirmation does not amount to a fraud, if by an ordinary degree of precaution the plaintiffs in this case could have ascertained the falsity of the representations complained of, then the plaintiffs are not entitled to a verdict, to entitle them to a verdict it should appear that the representations or means used were of were calculated to deceive a person acting with ordinary prudence

and in determining this question the
189 Jury should consider the circumstances
under which they were made, and
whether under the circumstances, the
representations were such as a person of
common prudence would or should
have relied upon, or as would be likely
to mislead such a person.
Given.
Second: The plaintiffs are not entitled
to recover unless the Jury believe from
the evidence that the defendants made
the representations alleged in the declaration
and such representations were false
and were made with an intent to defraud
plaintiffs, and that the plaintiffs
were induced by such representations to
make the contract.
Third: If the plaintiffs shipped in good
& kept Eames that was more than
one third green or that was not
of the kind and quality mentioned
in the contract between them &
Eames. Eames was not bound to
receive it, and if he did not receive
such wood the plaintiffs cannot
recover for it.
Given.

Fifth: That the Bill in Chancery read in evidence by the Plaintiffs is no evidence of any fact stated in it & can only be used to show the fact of a suit being instituted, but the Plaintiffs having read the answer of Defendant filed in the same cause as evidence. it is evidence tending to prove all the facts stated in it, Given. All of which were given by the Court to the Jury. And to ma Ruling whereof the Defendant excepted.

And said defendant requested the Court to give to the Jury the following instructions in writing Viz:

Fourth: If the Jury believe from the evidence that the Defendants made the representations alleged in the Declaration, yet the Plaintiffs are not entitled to recover for the wood delivered under the contract with Carnes, if they believe from the evidence that plaintiffs did not perform their contract with Carnes by delivering 100 cords of wood at the time and of the kinds and quality mentioned in said contract, and if the plaintiffs did not perform the entire contract they cannot recover because the Defendants Carnes was not bound to perform his part of the contract

191 until the plaintiffs had performed on their part according to the terms of their contract.

Sixth. The Court instructs the Jury that upon the pleadings and proof in this case the plaintiff is not entitled to recover.

Refused.

Seventh. The Court instructs the Jury that as a matter of law the plaintiffs are not entitled to recover in this action against Barnes and Fordham for the violation or non-performance of the contract between Plffs and Barnes.

Refused.

Eighth. The Court instructs the Jury that though they may believe from the evidence that the Defendants made the false and fraudulent representations alleged in the declaration, yet the plaintiffs are not entitled to recover upon the pleadings in this cause.

Refused.

Ninth. If the plaintiffs are entitled to recover at all he can only recover the value of the wood delivered and such as were of the kind and quality mentioned in the contract, after deducting therefrom the freight.

Refused.

192 10. The Court instructs the Jury that they cannot render a verdict against the Defendant Barnes Strobhar for any default or non-performance, on the part of Deft Barnes, of his contract with the plaintiffs.

Eleventh. If the Jury believe from the evidence that the Defendants did make the representations alleged in the declaration and also that they were false yet the plaintiffs cannot recover if the ~~plaintiff~~ Jury further believe from the evidence that the Defendants did not intend to deceive and defraud the plaintiffs. If therefore the Defendants at the time they made such representations intended in good faith to remove the encumbrance upon said land by the time they were to convey the same to plaintiffs and were prevented from doing so by the non-performance of the contract on the part of the plaintiffs. Then the plaintiffs cannot recover.

Refused

Twelfth: Every false affirmation does not amount to a fraud. If by an ordinary degree of precaution. The plaintiffs in this case. The plaintiffs in this case could have ascertained the falsity of the repre

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entations complained of. then the Defen-dants are not liable. and the searching of the Records of the County was any ordinary degree of precaution, which the Plaintiffs ought to have taken before concluding the purchase.

Refused as Drawn.

Thirteenth: If the Jury believe from the evidence that the Plaintiffs did not com-ply with & keep their written contract in evidence with Eames on their part. they are not entitled to any damages. as against him under that Contract. in any form of action. And in this case as the Plaintiffs must have sus-tained actual damage recognized by law as such. if the Plaintiffs have not shown any damages sustained by them other than the failure of Eames to comply with that contract. by conveying the land clear of encumbrances. the Jury will find for the Defendants.

Refused.

Which instructions the Court refused to give to the Jury. and so marked them severally. and to the refusal of the Court to give each of said instruc-tions severally. the said Defendant then

and there excepted. And the Jury having retired brought in their Verdict that. We the Jury find the Defendants guilty, and assess the Plaintiffs damages at the sum of Two Thousand four Hundred and Eighty four dollars. The Defendant comes files his motion for a new trial in the words and figures following viz; In the Cook Circuit Court:

James H. Eames Etal } Case
vs
Morgan Etal }

And the Defendant Eames by his Attorneys Burgess and Jamison comes and moves the Court for a new trial of this cause for the following reasons.

1st. There was no issue joined upon which to go to trial before the Jury.

2d. The Court erred in allowing improper evidence to go to the Jury.

3d. The Court erred in excluding proper evidence from the Jury.

4th. The Court erred in denying the motion to exclude the 5th Count from the consideration of the Jury.

5th. The Court erred in denying the motion to exclude the 4th Count from

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the consideration of the Jury.
6. The Court erred in denying the motion to exclude the 3d Count from the consideration of the Jury.
7. The Court erred in denying the motion to exclude the second Count from the consideration of the Jury.
8. The Court erred in denying the motion to exclude the first Count from the consideration of the Jury.
9. Because the Court refused to exclude the evidence introduced by the Plaintiff as showing no cause of action
10. Because the evidence in the cause did not warrant the verdict of the Jury, & it was against the weight of evidence,
11. Because the Verdict of the Jury was contrary to law & the case.
12. Because the Court erred in giving the several instructions on part of the Plaintiff.
13. Because the Court refused and modified instructions asked by the Defft.
14. Because of the overruling of each of the various objection taken by the Defendant to the evidence offered in the cause by the Pltff.
15. Because the damages assessed by the

Jury are excessive. & for other reasons
D. K. Knapp for Cames
And the Defendant Fordham by his Attorney
Chickering now also Comes and files his
motion for a new trial and affidavit in
support thereof. which motion and affidavit
are as follows:
State of Illinois Cook County ss:
In Circuit Court of April Term A.D. 1861.

Lansing Morgan Etals
vs
James H Eames and
William Fordham
} In Trespass on the Case

And William Ford-
-ham one of the plaintiffs in the said suit
comes and moves the Court for a new trial
therein. for the following reasons. as are
disclosed in the affidavit hereto annexed.
by Chickering atty for Wm Fordham
Morgan Etals v. Eames and Fordham
In Circuit Court.
State of Illinois Cook County ss:
John H Chickering being duly sworn. doth
upon his oath say that he is the Attorney
of William Fordham in the case entitled
as above. that the said Fordham is
and has been for the last year and a
half a non-resident of this State. that
as such Attorney this affiant appeared

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for the Defendant Hardham upon a former trial of the suit wherein the Plaintiff obtained leave to amend his declaration, further this affiant says that he had no notice. nor did he know until the last trial was nearly finished. that the said Plaintiffs had filed their amended declaration in the cause. and further that this affiant had no knowledge or information that said cause had been set down for trial until the same time as last above mentioned. the order in that behalf having been made in the absence of and without notice to this affiant and as he verily believes the same to have been unknown to his said client.

J. T. Chickering

Subscribed and sworn to before me June 27. 1861.

Wm. L. Church Clk

Which motions being heard by the Court after argument had are overruled. & denied by the Court. to which decision of the Court the said Defendants then and there excepted. and tender this their Bill of Exceptions. taken severally and jointly by them in the premises. to be signed and sealed by the Court

under the Statute in such case made and provided. and it is done accordingly in open Court. this seventh day of August AD 1861. time having been given to prepare the same, to this day.

George Marrierre
Judge of 7th Judicial Circuit. Ills.

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I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the Process + return thereon, Declaration, Plea, Bill of Exceptions + all orders entered of record in a certain cause lately pending in said Court, on the Common side thereof, wherein Dennis Morgan Et al are plaintiffs and James McEarney et al Defendants.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this Thirteenth day of April A. D. 186 .

Wm L Church Clerk.

Fee for Record $19.00 Paid Mr Schuchardt

In the Supreme Court of the
State of Illinois of the third
Grand Division.

April Term 1863.

James H Eames &
William Fordham
vs
Lansing Morgan
Gilbert Morgan &
Edwin L. Eames
} Error to Circuit Court
of Cook County.

And now come the plaintiffs in error by their Attorney W. J. Bishop and say that in the record proceedings & rendition of the judgment aforesaid there is manifest & material error apparent of record therein in this

That the declaration is insufficient upon which to render any judgment - if there is any in the cause

That the court refused a continuance of the cause on the day of A.D.

That the court refused the motion by pro. the plaintiff to strike the amendments in the declaration

That the declaration being changed

and attend by the plaintiffs and not upon
203 them is no declaration in the cause
That the court tried the cause without
the issues being made up the aforesaid objection
That the court refused a new trial

And for which and other
matters they pray that the said
judgment may be reversed and
held for naught &c

W. Y. Burks
for Pltff in error

And the said Lansing Morgan one of the said
defendants in error comes by Godwin
Thomas & Roberts his attorneys and says
that in the foregoing record and judgment
no error hath intervened

Godwin Thomas & Roberts
Attys for Lansing Morgan

And the said defendants Gilbert Morgan
and Edwin L Furness by their attorneys come
and say that in the foregoing record and judge-
ment no error hath intervened

Godwin Thomas & Roberts
Attys for defts in error