12660

# Supreme Court of Illinois

Divilbiss, Admr.

VS.

Whitmire, Assignee.

71641

S. Whitmin  "A Record of the Andyments orders blonces and proceedings of the House being the houses began I holden at the bount House in the being of Lacen in and for said bounty on menday April (14 the AD 1856) instructed in the year of our Sort one thousand eight hundred and fifty six Present the Homerable Madison & Hollister Indge of the minth fudicial bircuit and of the State of Millians 16 & Wallace States allowing for Said bircuit and A Gardner Sheriff of Said bounty and I I Fort clerk of Said bircuit bount bounty and I & Fort clerk of Said bircuit bount bounty and I save St b Boal deputy"

Wenty first day of March A 1886 a Bill to forclose a mortgage mas filed in Said Court on the Chavery thereof which bile is in mords and figures as follows to mit:

Bill to fordow "To the Homorable The Judge of the Circuit Court of Mortgage of the County of Marchall and State of Silinois in Chancery Liting Respectfully Represents wate your Homoryman contor James I. Whitevire of the County of Mortford and State of Silinois that on the Levententhe day of the month of Starols in the year of our Lord one

thousand Eight Lundred and five one Nathaniel &. Bill to forclose continued

Tirethis whome your actor frage may be made faily Defendant to this file Executed A. Dud of Molgages to one D. of Street of the County of Brown and Stat of Ohio in fee Simple upon the following Real Estate Sitwated in said County Marchall to nit the South East quarter of Section Sun (2) Township Shuiten (12) North Range Eight 18) East of the Fourt o puncifial meridian in the State of Silinois and County of Marshall (A) Copy of said Deed of Mortgage is Sucurto started and marked (4) and art to be maid front of this till (4) Certified Copy will be Exchited on the final General this bance the original being mif laid or Laped! and which Deed bearing date the day and year Last ofor. paid was Executed as a foresaid in order to secure the pay ment of 1A, Certain promisory mate of Nathaniel to Divelbies hearing date on the first day of the months of March A. 2. 1155 for the sum of three hundred Dollars with intruct from date till faid at the Rate of die persent which said Note is marked (B) and mail fruit of this bill (which said Nate is in donced by A. Riter in done ment Over to your leator and your orator charges and Avers that he is the Legal and Equitable owner of said motorin na than by Calearges that he has full that to cause to be foreclosed in my own name and payable on the first day of March A. S. 1186 and your restor furth Represents that the said sum of three hundred Dollars warnet paid paid to the said D. f. Steart nor to very other freezon for

Continued

Bill to forche your orator nor to your orator at the time dirited in in said Deed of Moitgage and that thusby the Estate of your orator in said Sand Conveyed by said Deed he Esme a hesolete at Law and your orator furth Represents. that the said sum of three sundred Deliens together with a Considerable arrear of intrust arrived thereon is now ducto your orator are the hearity of said premises and your orator furth shows that your orator halk frequently and in a fredely maner applied to the said Nathanies to Direlbis and Requested him to pay came or to Release to your outer the facuries which the raid Nathaniel. E. Divillies Refused to do your orator therefore prays for process of Subpeara in Chancey and to Time the same directed to the Country of Spearia and State of Sunois for the said Nathanies E. Direthis and that hear die Corporiel Catte to the best and ulmast of Lies knowledge Remembrance information and belief full true direct and sperfect answers make to all eingular the maters aforesaid and that the enment due to your ovator may be asertained under the discotion and decree of this Homable bourt of what is due to your orator upon the said Deed and note and that said Nathaniel 6. Direction may be desired to pay with Jour orator what shall there appear to be due with the teasts of this suit or proseding by a day to be appointed by this Generale Court your outer being Ready and willing and Terety offering are heing paid his said mony and interest and basts at such appointed time to Resovery baid

X

Bill to forclose Land named and described in each Deed of Most gage to the Said Nathanie E. Direchies as this Governale Court shall direct and that in default of such fragment the said Nathanies 6. Direllies and all frencons Clairing under them may be absolutely barred and foreclosed of and from all Rights and Equitys of Redemption in and to said Teeded francies and directed under the order of this Court to deliverage to your orator all and very such treds Evidences and writings of title in his possession & levelody or power Relating the said Deed purises as your orator aught to have and that your orstor may have such other and furth Relief in the primises as to your Honor whate seem meet and he shall Ever fray.

John Clark Sole for Complainant

Exibit "A" For water wines A was the sevententh day of March, in the Mind March general over Lord one thousand eight hundred and fifty fire 19.5 to 1855 - Between Nathaniel to Directies, of the Country of Cerries and at Nova A. St That of Chining, of the first, and D. I. Storet, of the Little of Chining, of the first fact, and D. I. Storet, of the cerent fact. Message clark, the said factly of the first part is justly indulted to chand heart of the several fact to chand heart of the several fact in the several fact to chand of March 16 first part is justly indulted to chand fact of the several fact in the several fact to be first day of March last, dearing in present interest, becoming one

Much the first, 1856, Now therefore, this indentiese witness

- etti, that the said party of the first fast, for the heller securing the payment of the movey aforesaid, with interest thereon, according to the tower and effect of the said note above mentioned; and also in consideration of the further sum of one Dollar, to him in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bugariet, sold, remised, aliened and conveyed, and by these presents do grant; bargain, sell, remiso, alien and convey unto the said farty of the second part, and to his heir and assigns forever, all of the South Eact quarter of section Sur 61, Coronchipo Viviteen (13) North, Range Eight (8) East of the Sourth principal meritians, in the state of Elleriois and county of Marchall. To have and to hald the same, together with all and cingular the tenements, Levelitaments and ap-Justenances thereunto belonging, or in any wise appentairoing, with the vents, issues and profits thereof, and also all the estate, interest and claim whateverer, in law or squits, which the said farty of the first part has in and to the francis hereby conveyed, with the said frants of the second Spart, Lie Leins, executors, administrators or accions, and to their only proper use, benefit and behoof forever; forwided always, and these presents are upon this express condition, that if the said franty of the first fast, This Leins, executors, administrators or assigns, shall well and truly fray, or cause to be fait, to the exist facts of the counted part, his hoir, executors, administration or resigns the aforesaid sum of amoney, with such interest

thereon, at the time and in the manner specified in the above mentioned note, according to the true intent and meaning thereof, that then and in that case, that these fresents, and every thing lucio enforced, shall be absolutely mule and void. In witness whereof the raid party of the first fart hereunts set his hand and seal, the day and gan first above written, Signed realed and delivered & Nathaniel 6. Dirillie ( ) in fremence of State of Selvivis, ( ss. of Chauncy H. Barnes, a Justice Marchall County" of the Peace in and for said county, in the State aforesaid, do Hereby certify, that Nathaniel 6. Divilies, who is freenably shown to me as the real sperior whose name is subscribed to the annexed deed, appeared before me this day, in person, and as-Throwledged that he signed, realed and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes therein set forth. Boien under my hand and official real, this seventeenth day of March, A. D. 1855-" Chause Mr. Barnes, ( 5) Justice of the Peace. " B" lopy of Said note and and declared on For rules received of process to pay D. J. Sunt or Perer the sum of three hundred dollars on or before the first day of March 1856 with Die purent intest from date til fruit as witnes my hand this first day of March 1853-11 Nathanies 6. Divelbies ?

Filingen litt Rudorsed on Said bile "Filed March 21st 1856 If I Fort", clerk.

And on the day and year last aforesaid a pricipe marfiled in Said cause to mit;

Precipe for "State of Illinois " In the leisenit locust of Said Summons Marshall County " It. County to the April Form A. 1856.

Jaines & Whitmise & Bill in Chancery

24 Li Forcher Murigago"

Authonice & Swellife &

"The black of Said Court mills.

issue a Subspoone in Chancery for Nathaniel to Devellips in the above entitled cause directed to the Sheriff of Peria County, Illo, to execute and returns"

Lo & L Fort "John Clark"

Lacon March 21 AD1856: aty for Complainant.

Dute of filing on Endorsed on Said foreing is the following Insiper "Filed March 21, AD. 1856, If & Fort " clark

and this following precipe appears in Said cause to mit

- Someway

"State of Stimois & Su the Coincuit Court Stars hall County? So the October Som is \$15.5.

Breife for Sames & Whitnise Summer Bile Summer No Summer Summer No Summer in to issue and alias Summers in

The Clerk of Said Court will please to issue and alias Summons in Chancing for Nathaniel . C. Devellifs in the above entitled cause and directed to the Sheriff of mars have bounty Illinois to Execute."

April 1t 15 AD 1856 John Clark"

"Teened April 16. 1856"

And on the Sixteenthe day of April in the year of our Lord One thousand eight hundred and fifty dix a Summons in Chancery was issued out of Said bourt which Summers is in words and figures as follows to Fret:

in Chancery.

Summers The People of the State of Celini, To the Shriff of Murchale Courty Cheeting: Me command gow to dummon Nathaniel C. Divellip do appear before our Circuit Court, on the first day of the real term thereof, to be direct at Lacon within and for the said County of Marchall, on the 3 monday of October their and there, in our said bourt, to answer the matters contained in a certain till filed in said Court, on the chancery side thereof, by james I. Whitmire to foreclase a Mortgage Herof fail not, and make due return of your doings herson. Mitues, Guenkory L. Fort, Clerk of our said bout, . and the real thereof, at Lucon, this 16th day of Afric, De in the year of our Lord one thousand Coul 3 sight hundred and filty-sin" " d. L. Fort, Clark"

Upon which dummon appears to filming return.

Shereff's Thave sured this with by delivering a true rapy of the .

Return same to the within somed game Direct his he being

A. D. 1886 as within communical."

A. Bardner, "Shuiff, of"

"Mushall les., Illy of mills travel to the son this, 2 day of May

Mushall les., Illy of mills travel to a strain of the son the son the son the strain of the son the so

Gud the following certified copy of a most gaze appears filed we Said bount in Said cause to mit:

This Indentiere made this deventement day Filed March 29 16 of March in the year of our Lord one thousand ight A.D.18.55 at 9 hundred and fifty five, Between Nathanie 6 ore AN Develbiss, of the County of Peria and State of & S. Fort Illuvis, of the first part, and H. P. Stewart, of the Country of Brown and State of Ohio, of the Second part, Whereas the Said party of the first part part is justly wedebted to the Said party of the second part in the same of three hundred dellars, for which a promisery note was given on the first day of March last, drawing Six per cent intrist becoming due March the first 1856. Now therefore, this under--ture intuessetto, that the Said party of the first part for the better securing the payment of the money afore -Said, mette wherest thereow, according to the lever and

effect of the said Note above mentioned; and also

in consideration of the further Sum of One Dollar to him in hand faid by the Said party of the Second part, at the delivery of these presents. The receipt whereof is hereby acknowledged, have granted bargament Sold remised, aliened and conveyed, and by these presents do grant, bargain sell remise, alien and convey unto the Said fiarty of the Second part and to his heir. and assigns forever all of the South East quarter of Section Ino (2) Lowership Therteen 13 North Range bight 8 Cast of the fourth firecipal mendian, in the State of Illieves and Country of Marchale To Have and to Hold the Same together with all and Lungular the tenements, hereditaments and afefourtenances thereinto belonging, or in any nice appertancing with the rents, issues and profits thereof and also all the estates, interest and claim Whatsoever, in law or equity which the Said party of the first part has in and to the premises hereby conveyed, unto the Said party of the second fast his hein, executors, administrators or assigns and to their only firefer we benefit and behoof forever founded always, and these presents are upon

this express condition, that if the said part, of the first part, his heirs, executors adminis trators. or assigns shall will and truly pay , or cause to be paid to the Laid party of the second part, his heirs Execution administrators or assigns the aforesaid Sum of money with such enter rest thereow, at the time and in the manner Specified in the above mentioned note, according to the true intent and meaning thereof, that then and in that case that these presents and every thing herein expressed that be absolute. by mull and wird. In Witness Whereof the said party of the first part hereunto Let his hand and seal the day and year first above mittien, Signed Sealed and & Nathaniel 6. Divillies 23 delivered in presence of 3 State of Illewiss marchale County 3 St. I, Channey n Barnes

Marshall County & St. I, Channey It Barnes a Instice of the Posce in and for Said County in the State of that Alineries aforesaid do Hereby certify that Nathaniel Co. Divillies, who is personally Known to me as the real person whose name is Subscribed to the annexed deed, appeared

before me this day in person and actionsledged that he Signed, Sealed and delivered
the said instrument, as his free and reluntary
act for the uses and purposes therein Set
firth.

Given under my hand and official Seal
this Seventeenthe day of March AD1855

Shanney It. Barnes TB3

Justice of the Seace

Marchall County & S. J. G. L. Fort, clerk of the leisewit Court, and ex-official Recorder for Said County; do here by certify, that the foregoing is a true and exact copy of a certain mortgage recorded on page 651 of Book I of the Records of Said County In milies mered, I hereusele I set my hand, and the Seal of Jaid Court, at Lacon this 21st day of clerk, A. D. 1856. I fort dark of South of Said Court of Said County and the seal and of Jaid Court, at Lacon this 21st day of clerk by town the Road Indone "Tiled Court & S. 1856. & Sort." death of the papers in the day of the Court with the inderements on this cause which that together with the inderements

Note For vaulue received I primace to pay Ing Swart or Burer the sum of three hundred dollars on or

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before the first day of Murch 1856 with six percent intrist from date til fuid as witness my hand this first day of March 1855." Natha

Nathaniel C. Develliso"

Indersementa Fir value rec?: I assign the within note to 16 & down Note demand + notice of non payment waived June 1. 18554 Indersement For value red I afrigne the within note to James of on Note Whitmire March 7. 1856". "Hansen & Peren"

> And afterwards to mit i on the teventy Second day of October, in The year of Our Lord One Thousand, eight hundred and fifty dix, the same being one of the days of the October A.D.1856 Jenn of Said Court and the Court being thew judicially setting the Hon Madison & Hollister Judge of the mutt Judicial Circuit of the State of Illeuris presiding and the officers of the bourt as aforeseed a Decree nas made and entered of Record in the above entitled cause which deene is in Trords and figures as follows to net;

James I. Militarine accionico de de la Stewart de De de Marcery .

Nathaw. Co Dinchies Rill to Goreclase a Mortgage And wowat this day comes comes the complainand by his Talicitor John Clark and it affearing to the Court the said Defendant Nathan C. Divelbies had been requeling served with process in this busse, by leaving a true copy of the Summons in this cauce by leaving the same with a white ferson over the age of two years where he lived or Boarded according to law and the Defendant having heen three Sexual times solemnly called same not but made default in the fremes and he the said defendant have ing failed to answer as herein required by the order of this Court but made default and this Cause coming on for final hearing on the Bill Exilit and proofs and it appearing to the Court that there is now due the said complainant on the said Note and Mortgage in the said compeniants Bill mentioned the survey there weredred and thirty Follows friend to and interest it is therefore ordered and Forced that the enid referdants hay the said Complainant the the said sure of three Gundred and thirty Tollars with six openeset Interest thewar from the date of this Dence by the festerthe day of November ment and in default thereof that the said defendant be foreclosed of and from all Equity of Redemption of

Dour-

Decree and to the said Mortgage furnises and that said fremises to wit the South East quarter of Section Two Continued (2) Vorondiep Minteen (13) North of Range Eight (8) East of the French (4) frincipal meridian enti County of Marchait State of Sierois with the From House 19 todie and Chicken Houses theremote said for money and that out of the proceed thereof the said Complainants be faid the said sum of Three Hundred and Thirty Dollars with Interest thereon until fail and the casts of this proceeding and it is further ordered by the bourt that the Master in Chancery of Munchall County he and the is hereby appointed to Execute and cary out this Decree and that said Master before making sale as aforesaid shall give Questy Days previous notice by putting up there thitten or Friends unlines in three of the most public felaces in this County giving notice of the time place and terms of sais and it is further ordered that if the the earl fremises are not Redermed according to Law, within fifteen Months after the sale thereof the said Master is fully Empowered and Regulared to make Execute and delines the the puchaser or furchasers thereof a good and sufficient Deed to the said formises and it is furthered ordered that the said Master make Report of his doings here in the west two of this bout to which there this Cause is Continued )

M. E. 36.

And afterwards to wit : on the twenty third day of October in the year of Our Sord One thousand eight hundred and fifty seven the same being one of the day regular October Term of Said bereuit bourt for said year A.D. 1857, and the Court being these feelicially selling How M Ballow Judge of the 23 of Judicial Corcuit of the State of Illinois presiding George in Slipp States allowing for said Indicial Circuit Henry & bram Sheriff of Said County & James Mescott clark of said bourt the master in Chancery Submitted a Report in the aforementament cause which report is in words and figures as follows to wis:

To forestore mortgage

The undersigned Master in Chancery in and for said County would refront that by virtue of the decree in the above cutitled buses made at the Oct Jerm A. D. 1856 after having advertised the S. 64 Section 2 in 13 A of R. 8 & of the 4th funcipal Meridian the Land named in said decree for sale for 20 days in accordance with will Decree delid on the 16th day of June 1887 at one Welock of. 20. of suid day at the door of the Court Touse in Lacu in said lounty to the flintiff for the sum of these Gult heing the amount of Debt interest and

costs and he being the lighest and hest brildes therefore all of which is respectfully submitted Siles Rumsey Master in Chancey) Jees of Master ad Rale 25 como cut reapy recording Reports Junters fu And on the day and year last aforesaid the following Decree was made and entered of Record in said bourt to not Decree "James & Mutaine Chimit bourt of Manchall bounty confirming halo we Attended to Directions" Now at this terms comes the Martin in Chancey and makes a Report that by wither of the decree in the above entitled cause he made sule of the SEM Section 2 in 813 Nof R 88 of the 4th prinrifial Meridian to Sume land named in said Decree to the said plaintiff to satisfy said decree . It is thusfore ordered adjudged and decreed by the bout that said report be approved and that each sale be affirmed in all Tings.") State of Illinois & Marshall bounty & SS. I, James Wescott click of the circuit bourt, in and for said bounty do hereby any

that the foregoing transcript is a face and and perfect copy of the proceedings had, and the papers on file in Said Coronit Court, in the above entitled cause as the same remains of Revord in Said Court In Willies whereof I have heremeto Set my name and affixed the seal of Said Court at Lucon in Said County This mitte day of March A 2 18 85. James Wescott Luster Record \$5.00 Downs S. Whitmun allique & Zeleft in Enor Tuthouil G. Lourlbifs die Poff in Enon and hove could the Plantito in Enor and Loyd, that in the recorde out procedings and in the rentition of the Indquest afour aid, there is monifeld Enor in this to wit. Ist the Court Emile in rendering a decut by suffering the following reasons? on the face of the bill this being no allegation mat the mertgage was wer assigned to line 2. nd Becoure said rottowal, la, electife week mon serous with any proeffin the could 2. The court lind in not rendering a deene in favor of the Defendant belong Nothernit, 6, touch dor there and other Eners in laid record Reintoff no Enor frage that the decu may be

(12ccount)

George Develbip win, Jangquere / Econompt Feled March 16.1850 Celent

# In Supreme Court of Illinois.

## APRIL TERM, 1858.

GEORGE DIVILBISS, Administrator of NATHANIEL C. DIVILBISS, Deceased.

Plaintiff in Error.

JAMES S. WHITMIRE, Assignee of D. J. STEWART.

Defendant in Error.

## ERROR TO MARSHALL.

This was a bill in chancery to foreclose a mortgage, filed in the Circuit Court of Marshall county, on the 1st day of March, 1856, by Whitmire as assignee of Stewart vs. Nathaniel C. Divilbiss, who is now deceased. The following is a copy of the bill.

To the Honorable the Judge of the Circuit Court of the county of Marchall and State of Illinois in Chancery sitting: Respectfully represents unto your homor your orator, James Whitmire, of the county of Woodford, and state of Illinois, that on the seventeenth day of the month of March, in the year of our Lord One Thousand Eight Hundred and Five, one Nathaniel C. Divilbiss, whom your orator prays may be made party defendant to this bill, executed a deed of mortgage to one D. J. Stewart of the county of Brown, and State of Ohio, in fee simple upon the following real estate, situated in said county of Marshall, to wit: The south east quarter of section two (2,) township thirteen (13,) north range eight (8) east of the fourth principal meridian in the State of Illinois, and county of Marshall. (A) copy of said deed of mortgage is hereunto attached and marked (A) and ask to be made part of this bill. (A) certified copy will be exhibited on the final hearing of this cause, the original being mislaid or lost, and which deed bearing date the day and year last aforesaid, was executed as aforesaid, in order to secure the payment of (A) certain promissory note of Nathaniel C. Divilbiss, bearing date on the first day of the month of March, A. D. 1855, for the sum of three hundred dollars, with interest from date till paid, at the rate of six per cent, which is marked (13) and made part of this bill, which said note is endorsed by A. Riten, endorsement over to your orator; and your orator charges and avers that he is the legal and equitable owner of said note, and an thur by charges that he has full right to cause to be foreclosed in my own name, and payable on the first day of March, A. D. 1856; and your orator further represents that the said sum of three hundred dollars was not paid to the said D. J. Stewart, nor to any other person for your orator, nor to your orator at the time limited in said deed of mortgage and that thereby the estate of your orator in said land conveyed by said deed became absolute at law; and your orator furth represents, that the said sum of three hundred dollars, together with a considerable amount of interest accrued thereon, is now due to your orator, on the security of said premises, and your orator furth shows that your orator hath frequently and in a fredily manner applied to the said Nathaniel C. Divilbiss, and requested him to pay same, or to release to your orator the premises which the said Nathaniel C. Divilbiss refuses to do; your orator then prays for process of subpæna in Chancery, and to have the same directed to the county of Peoria, and State of Illinois, for the said Nathaniel C. Divilbiss, and that he on his corporal oath, to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answers make, to all singular the matters aforesaid, and that the amount due to your orator may be ascertained under the direction and decree of this honorable court, of what is due to your orator upon the said deed and note, and that said Nathaniel C. Divilbiss may be decreed to pay unto your orator what shall thus appear to be due, with the costs of this suit, or proceeding, by a day to be appointed by this honorable court, your orator being ready and willing, and hereby offering, on being paid his said money and interest and costs at such appointed time, to re-convey said land named and described in said deed of mortgage to the said Nathaniel C. Divilbiss, as this

honorable court shall direct, and that in default of such payment the said Nathaniel C. Divilbiss and all persons claiming under him may be absolutely barred and foreclosed of and from all rights and equities of redemption in and to said deeded premises, and directed under the order of this court to deliver to your orator, all and every such deeds, evidences and writings of title in his possession, custody or power relating to the said deeded premises as your orator ought to have; and that your orator may have such other and furth relief in the premises as to as to your honor shall seemmeet, and he shall ever pray.

JOHN CLARK, Sol. for Complainant.

## Exhibit A.

This indenture made this seventeenth day of March in the year of our Lord one thousand eight hundred fifty five; between Nathaniel C. Divilbiss, of the county of Peoria, and State of Illinois, of the first part, and D. J. Stewart of the county of Brown, and State of Ohio, of the second part. Whereas the said party of the first part is justly indebted the said party of the second part, in the sum of three hundred dollars, for which a promissory note was given on the first day of March last, drawing six per cent. interest, becoming due March the first, 1856: Now, therefore, this indenture witnesseth, that the said party of the first part for the better securing the payment of the money aforesaid with interest thereon, according to the tenor and effect of the said note above mentioned, and also in consideration of the further sum of one dollar, to him in hand paid by the said party of the second part at the delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, sold, remised, aliened and conveyed, and by these presents do grant, bagain, sell, remise, alien and convey nnto the said party of the second part, and to his heirs and assigns forever, all of the south east quarter of section two (2,) township thirteen (13,) north range eight, east of the fourth principal meridian, in the State of Illinois, and county of Marshal; to have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, with the rents issues, and profits thereof; and also all the estate interest and claim whatsoever in law or equity, which the said party of the first part has in and, to the premises thereby conveyed unto the said party of the second part, his heirs; executors, administrators, or assigns, and to their only proper use, benefit and behoof, forever; provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid to the said party of the second part, his heirs, executors, administrators or assigns, the aforesaid sum of money, with such interest thereon at the time, and in the manner specified in the above mentioned note, according to the true intent and meaning thereof; that then and in that case that these presents, and everything herein expressed shall be absolutely null and void. In witness whereof, the said party of the first part hereunto set his hand and seal the day and year first above written. Signed, sealed and delivered in presence of )-NATHANIEL C. DIVILBISS, [L. S.]

(B.) COPY OF SAID NOTE SUED AND DECLARED ON.

For value received I promise to pay D. J. Stewart or bearer the sum of three hundred dollars, on or before the first day of Murch, 1856, with six per interest from date till paid, as witness my hand this first day of March 1855,

NATHANIEL C. DIVILBISS.

#### SUMMONS.

The people of the State of Illinois to the Sheriff of Marshall county, Greeting: We command you to summon Nathaniel C. Divilbiss, to appear before our circuit court on the first day of the next thereof, to be held at Lacon, within and for the said county of Marshall, on the 3d Monday of October next, then and there in our said court, to answer the matters contained in a certain bill filed in said court, on the chancery side thereof, by James S. Whitmire, to foreclose a mortgage: hereof fail not, and make due return of your doings hereon.

Witness, Greenbury L. Fort, Clerk of our said Court, and the seal thereof, at Lacon, this [L. S. 16th day of April, in the year of our Lord one thousand eight hundred and fifty-six.

G. L. FORT, Clerk.

Upon which summons appeared the following return:

I have served this writ by delivering a true copy of the same to the within named James Divilbiss, he being a white person over 10 years old, on this second day of May, A. D. 1856, as within commanded.

A. GARDNER, Sheriff, Marshall county, Ills.

And the following certified copy of a mortgage appears filed in said court in said cause to wit:

"This indenture made this seventeenth day of March, in the year of our Lord one thousand eight hundred and fifty-five, between Nathaniel C. Divilbiss, of the county of

# In Supreme Court of Illinois.

## APRIL TERM, 1858.

GEORGE DIVILBISS, Administrator of NATHANIEL C. DIVILBISS, Deceased.

Plaintiff in Error.

JAMES S. WHITMIRE, Assignee of D. J. STEWART.

Defendant in Error.

### ERROR TO MARSHALL.

This was a bill in chancery to foreclose a mortgage, filed in the Circuit Court of Mar-

This was a bill in chancery to foreclose a mortgage, filed in the Circuit Court of Marshall county, on the 1st day of March, 1856, by Whitmire as assignee of Stewart vs. Nathaniel C. Divilbiss, who is now deceased. The following is a copy of the bill.

To the Honorable the Judge of the Circuit Court of the county of Marshall and State of Illinois in Chancery sitting: Respectfully represents unto your honor your oractor, James Whitmire, of the county of Woodford, and state of Illinois, that on the seventeenth day of the month of March, in the year of our Lord One Thousand Eight Hundred and Five, one Nathaniel C. Divilbiss, whom your orator prays may be made party defendant to this bill, executed a deed of mortgage to one D. J. Stewart of the county of Brown, and State of Ohio, in fee simple month the following real estate, situated in said county of and State of Ohio, in fee simple upon the following real estate, situated in said county of Marshall, to wit: The south east quarter of section two (2,) township thirteen (13,) north range eight (8) east of the fourth principal meridian in the State of Illinois, and county of Marshall. (A) copy of said deed of mortgage is hereunto attached and marked (A) and ask to be made part of this bill. (A) certified copy will be exhibited on the final hearing of this cause, the orignal being mislaid or lost, and which deed bearing date the day and year-last aforesaid, was executed as aforesaid, in order to secure the payment of (A) certain promissory note of Nathaniel C. Divilbiss, bearing date on the first day of the mouth of March, A. D. 1855, for the sum of three hundred dollars, with interest from date till paid, at the rate of six per cent, which is marked (B) and made part of this bill, which said note is endorsed by A Riten, endorsement over to your orator; and your orator charges and avers that he is the legal and equitable owner of said note, and un thur by charges that he has full right to cause to be foreclosed in my own name, and payable on the first day of March, A. D. 1856; and your orator further represents that the said sum of three hundred dollars was not paid to the said D. J. Stewart, nor to any other person for your orator, nor to your orator at the time limited in said deed of mortgage and that thereby the estate of your orator in said land conveyed by said deed became absolute at law; and your orator furth represents, that the said sum of three hundred dollars, together with a considerable amount of interest accrued thereon, is now due to your orator, on the security of said premises, and your orator furth shows that your orator hath frequently and in a fredity manner applied to the said Nathaniel C. Divilbiss, and requested him to pay same, or to release to your orator the premises which the said Nathaniel C. Divilbiss refuses to do; your orator then prays for process of subpæna in Chancery, and to have the same directed to the county of Peoria, and State of Illinois, for the said Nathaniel C. Divilbiss, and that he on his corporal oath, to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answers make, to all singular the matters aforesaid, and that the amount due to your orator may be ascertained under the direction and decree of this honorable court, of what is due to your orator upon the said deed and note, and that said Nathaniel C. Divilbiss may be decreed to pay unto your orator what shall thus appear to be due, with the costs of this suit, or proceeding, by a day to be appointed by this honorable court, your orator being ready and willing, and hereby offering, on being paid his said money and interest and costs at such appointed time, to re-convey said land named and described in said deed of mortgage to the said Nathaniel C. Divilbiss, as this

honorable court shall direct, and that in default of such payment the said Nathaniel C. Divibbiss and all persons claiming under him may be absolutely barred and foreclosed of and from all rights and equities of redemption in and to said deeded premises, and directed under the order of this court to deliver to your orator, all and every such deeds, evidences and writings of title in his possession, custody or power relating to the said deeded premises as your orator ought to have; and that your orator may have such other and furth relief in the premises as to as to your honor shall seemmeet, and he shall ever pray.

JOHN CLARK Sol. for Complainant.

## Exhibit A.

This indenture made this seventeenth day of March in the year of our Lord one thousand eight hundred fifty five; between Nathaniel C. Divilbiss, of the county of Peoria, and State of Illinois, of the first part, and D. J. Stewart of the county of Brown, and State of Ohio, of the second part. Whereas the said party of the first part is justly indebted the said party of the second part, in the sum of three hundred dollars, for which a promissory note was given on the first day of March last, drawing six per cent. interest, becoming due March the first, 1856: Now, therefore, this indenture witnesseth, that the said party of the first part for the better securing the payment of the money aforesaid with interest thereon, according to the tenor and effect of the said note above mentioned, and also in consideration of the further sum of one dollar, to him in hand paid by the said party of the second part at the delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, sold, remised, aliened and conveyed, and by these presents do grant, bagain, sell, remise, alien and convey nnto the said party of the second part, and to his heirs and assigns forever, all of the south east quarter of section two (2,) township thirteen (13,) north range eight, east of the fourth principal meridian, in the State of Illinois, and county of Marshal; to have and to hold the same, together with all and singular the tenements, hereditaments, and appurtanances thereunto belonging, or in any wise appertaining, with the rents issues, and profits thereof; and also all the estate interest and claim whatsoever in law or equity, which the said party of the first part has in and, to the premises thereby conveyed unto the said party of the second part, his heirs; executors, administrators, or assigns, and to their only proper use, benefit and behoof, forever; provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid to the said party of the second part, his heirs, executors, administrators or assigns, the aforesaid sum of money, with such interest thereon at the time, and in the manner specified in the above mentioned note, according to the true intent and meaning thereof; that then and in that case that these presents, and everything herein expressed shall be absolutely null and void. In witness whereof, the said party of the first part hereunto set his hand and seal the day and year first above written. NATHANIEL C. DIVILBISS, [L.S.] Signed, sealed and delivered in presence of )

# (B.) COPY OF SAID NOTE SUED AND DECLARED ON.

For value received I promise to pay D. J. Stewart or bearer the sum of three hundred dollars, on or before the first day of March, 1856, with six per interest from date till paid, as witness my hand this first day of March 1855.

NATHANIEL C. DIVILBISS.

#### SUMMONS.

The people of the State of Illinois to the Sheriff of Marshall county, Greeting: We command you to summon Nathaniel C. Divilbiss, to appear before our circuit court on the first day of the next thereof, to be held at Lacon, within and for the said county of Marshall, on the 3d Monday of October next, then and there in our said court, to answer the matters contained in a certain bill filed in said court, on the chancery side thereof, by James S. Whitmire, to foreclose a mortgage: hereof fail not, and make due return of your doings hereon.

Witness, Greenbury L. Fort, Clerk of our said Court, and the seal thereof, at Lacon, this [L. S. 16th day of April, in the year of our Lord one thousand eight hundred and fifty-six.

G. L. FORT, Clerk.

Upon which summons appeared the following return:

I have served this writ by delivering a true copy of the same to the within named James-Divilbiss, he being a white person over 10 years old, on this second day of May, A. D., 1856, as within commanded.

A. GARDNER, Sheriff, Marshall county, Ills.

And the following certified copy of a mortgage appears filed in said court in said cause to wit:

"This indenture made this seventeenth day of March, in the year of our Lord one thousand eight hundred and fifty-fixe, between Nathaniel C. Divilbiss, of the county of

George Develops James S. Mhetmine

Hiled April 20th 1838 De Lelend Celenh

	STATE OF ILLINOIS, as. The People of the State of Illinois, to the sheriff of the country of Mandal of Creeting:
	TO THE SHERIFF OF THE COUNTY OF Wood for GREETING:
	BECAUSE, In the record and proceedings, and also in the rendition of the judg-
	ment of a plea which was in the Circuit Court of Murithall county
	before the Judge thereof, between Karnes of Whitmine agrees
	before the Judge thereof, between fames of Mitunia arriga
	of one are the defendance the george
	Develbifs administrator of Vathaniel C.
	0 11/11/11/11/11
	defendant, it is said that manifest error hath intervened, to the injury of the said
	Defendant
	as we are informed by complaint, the record and proceedings of which said
	judgment we have caused to be brought into our Supreme Court of the State of
,	Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in
	due form and manner, according to law; Therefore, We Command You, that by
	good and lawful men of your county, you give notice to the said
	James of Whitmire
	that the be and appear before the Justices of our said Supreme Court, at the next
	term of said Court, to be holden at Ottawa, in said State, on the Monday
	in Mr in ext, to hear the records and proceedings aforesaid, and the
	errors assigned, if / shall see fit; and further to do and receive what said Court
	shall order in this behalf; and have you then there the names of those by whom you
	shall give the said that a stall his track
	notice, together with this writ. John I. Cato
	WOTCHES, The Hon. WALTER B. SCATES, Chief
	Justice of our said Court, and the Seal thereof at
	Ottawa, this 16 the day of hanch in the
	Year of Our Lord One Thousand Eight Hundred and
	Fifty-Eight,
	Villant
	Clerk of the Supreme Court.
	by f. D. Mice deputy
4	

george Pevelles adun James de Maitmine Ser fur Duly Lerved by readings To James I. Whitmire march 230 1808 Mileage & Return Lewice OMMinior Sept fees Paid by N. H. Parple Felia April 20, 1858

STATE OF ILLINOIS, ss. supreme court, The People of the State of Illinois, TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF Mushall GREETING: BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of house had County, before of I. Alewant the Whitmire assignee plaintiff, and George Sivel bip a denimente to defendant it is said manifest error hath intervened, to the injury of the aforesaid defendant. as we are informed by complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay. send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the full of the the think the next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law. WINGESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16 the day of March in the Year

Clerk of the Supreme Court.

of Our Lord One Thousand Eight Hundred and Fifty-

(12000-16)

George Level hips funes AM whiter wit of mer 1º che Mench 18.1888

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Morch 15' 1858.

Soud the mit to mo immediately and I will See to the Duvice - I Enclose \$ 5.00 which please Receipt AM Prople

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George De wellijs fame, & Matur freeze File Munch 18,1839 George Develbif adnius hotor Poff in af Mathorical, B, Moulbif die B Enor Aunil I. Mitmirvarique Zdeyt in of 20, Stewart - Senon

Au Stale of Ollenois April Jerm 1838

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Morch. 12.1858.

John black Attory Salinetar for Defendents

Moderation ? appearance of Det Files April ents 508

# In Supreme Court of Illinois:

## APRIL TERM, 1858.

GEORGE DIVILBISS, Administrator of NATHANIEL C. DIVILBISS, Deceased.

Paintiff in Error.

JAMES S. WHITMIRE, Assignee of D. J. STEWART.

Defendant in Error.

## ERROR TO MARSHALL.

This was a bill in chancery to forcelose a mortgage, filed in the Circuit Court of Marshall county, on the 1st day of March, 1856, by Whitmire as assignee of Stewart vs. Nathaniel C. Divilbiss, who is now deceased. The following is a copy of the bill.

To the Honorable the Judge of the Circuit Court of the county of Marshall and State of Illinois in Chancery sitting: Respectfully represents unto your honor your ora-

tor, James Whitmire, of the county of Woodford, and state of Illinois, that on the seventeenth day of the month of March, in the year of our Lord One Thousand Eighe Hundred and Five, one Nathaniel C. Divilbiss, whom your orator prays may be made party defendant to this bill, executed a deed of mortgage to one D. J. Stewart of the county of Brown, and State of Ohio, in fee simple upon the following real estate, situated in said county of Marshall, to wit: The south east quarter of section two (2,) township thirteen (13,) north range eight (8) east of the fourth principal meridian in the State of Illinois, and county of Marshall. (A) copy of said deed of mortgage is hereunto attached and marked (A) and ask to be made part of this bill. (A) certified copy will be exhibited on the final hearing of this cause, the original being mislaid or lost, and which deed bearing date the day and year last aforesaid, was executed as aforesaid, in order to secure the payment of (A) certain promissory note of Nathaniel C. Divilbiss, bearing date on the first day of the mouth of March, A. D. 1855, for the sum of three hundred dollars, with interest from date till paid, at the rate of six per cent, which is marked (B) and made part of this bill, which said note is endorsed by A. Riten, endorsement over to your orator; and your orator charges and avers that he is the legal and equitable owner of said note, and an thur by charges that he has full right to cause to be foreclosed in my own name, and payable on the first day of March, A. D. 1856; and your orator further represents that the said sum of three hundred dollars was not paid to the said D. J. Stewart, nor to any other person for your orator, nor to your orator at the time limited in said deed of mortgage and that thereby the estate of your orator in said land conveyed by said deed became absolute at law; and your orator furth represents, that the said sum of three hundred dollars, together with a considerable amount of interest accrued thereon, is now due to your orator, on the security of said premises, and your orator furth shows that your orator hath frequently and in a fredity manner applied to the said Nathaniel C. Divilbiss, and requested him to pay same, or to release to your orator the premises which the said Nathaniel C. Divilbiss refuses to do; your orator then prays for process of subpæna in Chancery, and to have the same directed to the county of Peoria, and State of Illinois, for the said Nathaniel C. Divilbiss, and that he on his corporal oath, to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answers make, to all singular the matters aforesaid, and that the amount due to your orator may be ascertained under the direction and decree of this honorable court, of what is due to your orator upon the said deed and note, and that said Nathaniel C. Divilbiss may be decreed to pay unto your orator what shall thus appear to be due, with the costs of this suit, or proceeding, by a day to be appointed by

this honorable court, your orator being ready and willing, and hereby offering, on being paid his said money and interest and costs at such appointed time, to re-convey said land named and described in said deed of mortgage to the said Nathaniel C. Divilbiss, as this

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honorable court shall direct, and that in default of such payment the said Nathaniel C. Divibiss and all persons claiming under him may be absolutely barred and foreclosed of and from all rights and equities of redemption in and to said deeded premises, and directed under the order of this court to deliver to your orator, all and every such deeds, evidences and writings of title in his possession, custody or power relating to the said deeded premises as your orator ought to have; and that your orator may have such other and furth relief in the premises as toas to your honor shall seemmeet, and he shall ever pray.

JOHN CLARK, Sol. for Complainant.

## Exhibit A.

This indenture made this seventeenth day of March in the year of our Lord one thousand eight hundred fifty five; between Nathaniel C. Divilbiss, of the county of Peoria, and State of Illinois, of the first part, and D. J. Stewart of the county of Brown, and State of Ohio, of the second part. Whereas the said party of the first part is justly indebted the said party of the second part, in the sum of three hundred dollars, for which a promissory note was given on the first day of March last, drawing six per cent. interest, becoming due March the first, 1856: Now, therefore, this indenture witnesseth, that the said party of the first part for the better securing the payment of the money aforesaid with interest thereon, according to the tenor and effect of the said note above mentioned, and also in consideration of the further sum of one dollar, to him in hand paid by the said party of the second part at the delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, sold, remised, aliened and conveyed, and by these presents do grant, bagain, sell, remise, alien and convey nnto the said party of the second part, and to his heirs and assigns forever, all of the south east quarter of section two (2.) township thirteen (13,) north range eight, east of the fourth principal meridian, in the State of Illinois, and county of Marshal; to have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, with the rents issues, and profits thereof; and also all the estate interest and claim whatsoever in law or equity, which the said party of the first part has in and, to the premises thereby conveyed unto the said party of the second part, his heirs; executors, administrators, or assigns, and to their only proper use, benefit and behoof, forever; provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid to the said party of the second part, his heirs, executors, administrators or assigns, the aforesaid sum of money, with such interest thereon at the time, and in the manner specified in the above mentioned note, according to the true intent and meaning thereof; that then and in that case that these presents, and everything herein expressed shall be absolutely null and void. In witness whereof, the said party of the first part hereunto set his hand and seal the day and year first above written. Signed, sealed and delivered in presence of ) NATHANIEL C. DIVILBISS, [L. S.]

## (B.) COPY OF SAID NOTE SUED AND DECCLARED ON.

For value received I promise to pay D. J. Stewart or bearer the sum of three hundred dollars, on or before the first day of March, 1856, with six per interest from date till paid, as witness my hand this first day of March 1855.

NATHANIEL C. DIVILBISS.

#### SUMMONS.

The people of the State of Illinois to the Sheriff of Marshall county, Greeting: We command you to summon Nathaniel C. Divilbiss, to appear before our circuit court on the first day of the next thereof, to be held at Lacon, within and for the said county of Marshall, on the 3d Monday of October next, then and there in our said court, to answer the matters contained in a certain bill filed in said court, on the chancery side thereof, by James S. Whitmire, to foreclose a mortgage: hereof fail not, and make due return of your doings hereon.

Witness, Greenbury L. Fort, Clerk of our said Court, and the seal thereof, at Lacon, this [L. S. 16th day of April, in the year of our Lord one thousand eight hundred and fifty-six.

G. L. FORT, Clerk.

Upon which summons appeared the following return:

I have served this writ by delivering a true copy of the same to the within named James Divilbiss, he being a white person over 10 years old, on this second day of May, A. D. 1856, as within commanded.

A. GARDNER, Sheriff, Marshall county, Ills.

And the follow ag certified copy of a mortgage appears filed in said court in said cause to wit:

"This indenture made this seventeenth day of March, in the year of our Lord one thousand eight hundred and fifty-five, between Nathaniel C. Divilbiss, of the county of

Peoria and State of Illinois, of the first part, and M. P. Stewart of the county of Brown and State of Ohio, of the second part; whereas the said party of the first part is justly indebted to the said party of the second part in the sum of three hundred dollars, for which a promissory note was given on the first day of March last, drawing six per cent. interest,

becoming due March the first, 1856.

Now, this indenture witnesseth, that the said party of the first part, for the better securing the payment of the money aloresaid, with interest thereon, according to the tenor and effect of the said note above mentioned, and also, in consideration of the further sum of one dollar, to him in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, aliened and conveyed, and by these presents do grant, bargain, sell, remise, alien and convey unto the said party of the second part, and to his heirs and assigns forever, all of the south-east quarter of section two (2,) township thirteen (13,) north range eight (8,) east of the fourth principal Meridian, in the State of Illinois and county of Marshall, to have and to hold the same, together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, with the rents. issues and profits thereof, and also all the estate, interest and claim whatsoever, in law or equity, which the said party of the first part has in and to the premises hereby conveyed, unto the said party of the second part, his beirs, executors, administrators or assigns, and to their only proper use, benefit and behoof forever: Provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay or cause to be paid to the said party of the second part, his heirs, executors, administrators or assigns, the aforesaid sum of money with such interest thereon, at the time, and in the manner specified in the above mentioned note, according to the true intent and meaning thereof, that then, and in that case, that these presents and everything herein expressed shall be absolutely null and void.

In witness whereof, the said party of the first part has bereunto set his hand and seal,

the day and year first above written.

NATHANIEL C. DIVILBISS, [L. S.]

And a note appeared attached to the papers in this cause, which note, together with the

endorsements are as follows, to wit:

"For value received, I promise to pay D. J. Stewart or bearer, the sum of three hundred dollars on or before the first day of March, 1856, with six per cent interest from date, till paid, as witness my hand this first day of March, 1855.

NATHANIEL C. DIVILBISS.

Endorsement on note:

For value rec'd, I assign the within note to H. S. Penn; demand and notice of non-payment waived.

D. J. STEWART.

Endorsement on note:

For value received, I assign the within to James S. Whitmire. March 7, 1856.
HANSON L. PENN.

JAMES S. WHITMIRE, Assignce of D. P STEWART,

In Chancery.

NATHAN C. DIVILBISS.

And now at this day comes the complainant by his solicitor, John Clark, and it appearing to the court, the said defendant, Nathan C. Divilbiss, had been regularly served with process in this cause by leaving a true copy of the summons in this cause, by leaving the same with a white person over the age of ten years, where he lived or boarded according to law; and the defendant having been three several times solemnly called, came not, but made default in the premises, and he, the said defendant having failed to answer as herein required by the order of this court, but made default, and this cause coming on for fin al hearing on the bill, exhibits, and proofs, and it appearing to the court that there is now due the said complainant on the said note and mortgage, in the said complainant's bill mentioned, the sum of three hundred and thirty dollars, principal and interest, it is therefore ordered and decred, that the said defendant pay the said complainant the said sum of three hundred and thirty dollars, with six per cent. interest thereon, from the date of this decree, by the fifteenth day of November next, and in default thereof, that the said defendant be foreclosed of and from all equity of redemption of and to the said mortgaged premises, and that said premises, to wit: the south-east quarter of section two (2,) township thirteen (13,) north of range eight (8,) east of the fourth (4th) principal meridian, in the county of Marshall, State of Illinois, with the farm house and stables, and timber and fences thereon, be sold for money; and that out of the proceeds thereof the said complainant be paid the said sum of three hundred and thirty dollars, with interest thereon until paid, and the costs of this proceeding; and it is further ordered by the court, that the Master in Chancery of Marshall county be and he is hereby appointed, to execute and carry out this decree; and that said Master before making sale as aforesaid, shall give twenty days previous notice, by putting up three written or printed notices in three of the most public places in this county, giving notice of the time, place and terms, of sale; and it is

further ordered that if the said premises are not redeemed according to law, within fifteen months after the sale thereof, the said Master is fully empowered and required to make, execute and deliver to the purchaser or purchasers thereof, a good a sufficient deed to the said premises; and it is further ordered that the said Master make report of his doings herein the next term of this court; to which time this cause is continued.

M. E. H,

JAMES S. WHITMIRE,
vs.
NATHAN C. DIVILBISS,

Circuit Court of Marshall county, Illinois, to October Term, A. D. 1857.

### MASTER'S REPORT.

The undersigned, Master in Chancery in and for said county, would report, that by virtue of the decree in the above entitled cause, made at the October Term, A. D. 1856, after having advertised the S. E. \(\frac{1}{2}\) section 2, in T. 13, N. of R. 8 E. 4th principal meridian, the land named in said decree, for sale for 20 days, in accordance with said decree. I did on the 16th day of June, 1857, at one o'clock, P. M. of said day, at the door of the court house in Lacon, in said county, to the plaintiff for the sum of three hundred and eighty-six dlolars and seventeen cents, being the amount of debt, interest and costs, and he being the highest and best bidder therefor; all of which is respectfully submitted.

SILAS RAMSEY, Master in Chancery.

And on the day and year last aforesaid the following decree was made and entered of record in said court, to wit:

JAMES S. WHITMIRE,

vs.
NATHAN C. DIVILBISS.

Circuit Court of Marshall county, Oct. Term A. D. 1857.

Now, at this term comes the Master in Chancery and makes a report, that by virtue of a decree in the above entitled cause he made sale of the S. E. 4 section 2, in T. 13, N. of R. s. E. of the 4th principal meridian, the same land named in said decree, to the said plaintiff, to satisfy said decree. It is therefore ordered, adjudged and decreed by the court that said report be approved, and that said sale be affirmed in all things.

#### THE ERRORS ASSIGNED ARE:

1st. Rendering decree by default against Nathaniel C. Divilbiss; because there was no service of process on him, nor no equity on the face of the bill.

2nd. In not rendering a decree in favor of the said Nathaniel C. Divilbiss, the defendan below.

N. H. PURPLE, Atty. for Piff. in Error.

Beorge Civilles

Filed Offeril 2014 1888

Lo. Loclevell

Clerk

opinion with

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