

12660

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

# Supreme Court of Illinois

Divilbiss, Admr.

---

vs.

Whitmire, Assignee.

---

10-55

George D. White

vs  
James S. Whitman

100

12660

1858

~~James S. Whitman~~  
Paid

"A Record of the Judgments orders Decrees and proceedings of the Honorable Circuit Court of Marshall County in the State of Illinois begun & holden at the Court House in the City of Leno in and for said County on Monday April (14<sup>th</sup> AD 1856) Twentieth in the year of our Lord One thousand eight hundred and fifty six

Present the Honorable Madison E. Hottelster Judge of the ninth Judicial Circuit ~~and~~ of the State of Illinois -

William H S Wallace States attorney for said Circuit and A Gardner Sheriff of said County and G S Fort clerk of said Circuit Court and by James St C Boal deputy"

Be it remembered that heretofore to wit on the twenty first day of March AD 1856 a Bill to foreclose a Mortgage was filed in said Court on the Chancery thereof - which bill is in words and figures as follows to wit:

Bill to foreclose Mortgage "To the Honorable The Judge of the Circuit Court of the County of Marshall and State of Illinois in Chancery Liting Respectfully Represents unto your Honor your orator James S. Whitmire of the County of Woodford and State of Illinois that on the twentieth day of the month of March in the year of our Lord one

Bill to foreclose  
continued

thousand Eight Hundred and five one Nathaniel C.  
Dinwiddie whose name your Orator prays may be made party  
Defendant to this bill Executed A. Deed of Mortgage to  
one D. J. Stuart of the County of Brown and State of  
Ohio in fee Simple upon the following Real Estate Sit-  
uated in said County Marshall to wit the South East  
quarter of Section Ten (2) Township Thirteen (4?) 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 hereto attached and  
marked (A) and act to be made part of this bill (A)  
Certified copy will be exhibited on the final hearing of  
this cause the original being with said or Lost (A) and  
which Deed bearing date the day and year last aforesaid  
was Executed as aforesaid in order to secure the pay-  
ment of (A) Certain promissory note of Nathaniel C.  
Dinwiddie 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 percent  
which said Note is marked (B) and made part of this  
bill (which said Note is in force by A. Dittin in document  
Over to your Orator and your orator charges and swears  
that he is the Legal and Equitable owner of said note  
as shown 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  
paid to the said D. J. Stuart nor to any other person for

Bill to foreclose your orator nor to your orator at the time limited in  
Continued in said Deed of Mortgage and that thereby the Estate of  
your orator in said Land Conveyed by said Deed be become  
absolute at Law and your orator further Represents  
that the said sum of three hundred Dollars together with  
a Considerable arrear of interest accrued thereon is now  
due to your orator on the security of said premises  
and your orator further shows that your orator hath  
frequently and in a friendly manner applied to the said  
Nathaniel C. Dineen and Requested him to pay same  
or to Release to your orator the premises which the said  
Nathaniel C. Dineen Refuses to do your orator therefore  
prays for process of Subpoena in Chancery and to have  
the same directed to the County of Spencer and State  
of Illinois for the said Nathaniel C. Dineen and that  
he an his Corporate Agents to the best and utmost of  
his knowledge Recombance 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 dis-  
tion and decree of this Honorable Court of what is due  
to your orator upon the said Deed and note and that  
said Nathaniel C. Dineen may be decreed to pay unto  
your orator what shall then 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  
lawfully offering and being paid his said money and interest  
and costs at such appointed time to Recovery said

Said married and described in said Deed of Mort-  
 gage to the said Nathaniel C. Divelbiss as this Honorable  
 Court shall direct and that in default of such pay-  
 ment the said Nathaniel C. Divelbiss and all persons  
 claiming under them may be absolutely barred and fore-  
 closed of and from all Rights and Equities of Redemp-  
 tion in and to said Deeded premises and directed under  
 the order of this Court to deliver up to your orator  
 all and every such Deeds Evidence and writings of  
 title in his possession ~~or~~ custody or power relating the  
 said Deed premises as your orator ought to have and that  
 your orator may have such other and further Relief in the  
 premises as to your Honor shall seem meet and he shall  
 Ever pray.


John Clark Sole  
for Complainant

Exhibit "A" To wit: **A** promissory note, **of** the  
This Indenture made this seventeenth day of March, in the  
year of our Lord one thousand eight hundred and fifty five,  
Between Nathaniel C. Dierkes, of the County of Marion 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 to the said  
party of the second part in the sum of three hundred dol-  
lars, for which a promissory note was given on the first day  
of March last, drawing six percent interest, becoming due  
March the first, 1856, Now therefore, this indenture witness-


-eth, 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  
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 ap-  
purtenances thereto belonging, or in any wise appertain-  
ing, 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 heirs, executors, administrators or assigns, and to  
their only proper use, benefit and behoof forever; pro-  
vided 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

Exhibit A  
Continued

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 every thing 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 } Nathaniel C. Dixellie   
in presence of

'State of Illinois, } ss. "I, Chauncy M. Barnes, a Justice  
Marshall County," } of the Peace in and for said county,  
in the State aforesaid, do hereby certify, that Nathaniel  
C. Dixellie, 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 as-  
knowledgeed that he signed, sealed and delivered the  
said instrument of writing, as his free and voluntary  
act, for the uses and purposes therein set forth.  
Given under my hand and official seal, this  
seventeenth day of March, A. D. 1855."

"Chauncy M. Barnes,   
Justice of the Peace.

"B" copy of said note read and declared on

Exhibit B

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

"Nathaniel C. Dixellie"

Filing on bill Endorsed on said bill "Filed March 21<sup>st</sup> 1856  
G L Fort," clerk.

And on the day and year last aforesaid a precept  
was filed in said cause to wit:

Precept for "State of Illinois } In the Circuit Court of said  
Summons Marshall County } St. County to the April Term A.D. 1856.

Samuel S Whitmire  
assignee of D J Stewart }  
vs } "Bill in Chancery  
Nathaniel C Devellips } To Foreclose Mortgage"

"The clerk of said court will  
issue a Subpoena in Chancery for  
Nathaniel C Devellips in the above  
entitled cause directed to the Sheriff  
of Peoria County, Ill., to execute and  
return"

To G L Fort

"John Clark"

Lacon March 21 A.D. 1856." atty for complainant.

Date of filing on Precept Endorsed on said precept is the following  
"Filed March 21, A.D. 1856," G L Fort," clerk

And the following precept appears  
in said cause to wit

"State of Illinois } In the Circuit Court  
Marshall County" } To the October Term 1856

Receipt for James S. Whitman

Summons

Vs

Nathaniel C. Devellips

} In Chancery Bill  
To Foreclose  
Mortgage

"The Clerk of said Court will please  
to issue and Alias Summons in  
Chancery for Nathaniel C. Devellips  
in the above entitled Cause and  
directed to the Sheriff of Marshall  
County Illinois to execute."

"April the 15 AD 1856

"John Clark"  
att'ny for complainant

"Issued April 16. 1856"


And on the sixteenth day of April in the  
year of our Lord One thousand eight hundred  
and fifty six a Summons in Chancery  
was issued out of said Court which  
Summons is in words and figures as  
follows to wit:

Summons  
in Chancery.

"The People of the State of Illinois, To the Sheriff  
of Marshall County, Greeting:

We command you to Summon Nathaniel C. Dinschiff  
To appear before our Circuit Court, on the first day of  
the next term thereof, to be held at Lason within, and  
for the said County of Marshall, on the 3<sup>d</sup> Monday of  
October <sup>next</sup> 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. Whit-  
mire to foreclose a Mortgage hereof fail not, and  
make due return of your doings hereon.

Witness, Greenberry L. Fort, Clerk of our said Court,  
and the seal thereof, at Lason, this 16<sup>th</sup> day of April,

in the year of our Lord one thousand  
and eight hundred and fifty-six"  
 "G. L. Fort, Clerk"

Upon which Summons appears the following return.

Sheriff's Return "I have served this writ by delivering a true copy of the  
same to the within named James Dinschiff he being  
2220-77

white person over 10 years old on this <sup>the</sup> 2<sup>d</sup> day of May  
A. D. 1856 as within commanded.

"A. Gardner, Sheriff, of"

Sheriff's fees.

"Marshall Co., Ill."

Service, \$1.50  
copy 25-  
mills travel 50  
Return of this writ 10  
1.35

And the following certified copy of a mort-  
gage 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  
Divelbiss, of the County of Peoria and State of  
Illinois, of the first part, and H. 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 therefore, this inden-  
ture witnesses, that the said party of the first part  
for the better securing the payment of the money afore-  
said, with interest thereon, according to the tenor and  
effect of the said Note above mentioned; and also

Filed March 29<sup>th</sup>

A.D. 1855 at 9


one A.W.

H. L. Fort

clerk

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 thereto belonging, or in any wise appertaining with the rents, issues and profits thereof and also all the estate, interest and claims 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 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 adminis-  
trators, 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 inter-  
est 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  
every thing herein expressed shall be absolute-  
ly null and void. In Witness Whereof  
the said party of the first part herunto  
set his hand and seal the day and year  
first above written,

Signed Sealed and } Nathaniel C. Divillies  
delivered in presence of } 

State of Illinois }  
Marshall County } Sd. J. Chauncy M. Barnes  
a Justice of the Peace in  
and for said County in the State of  
~~Illinois~~ aforesaid do hereby certify that  
Nathaniel C. 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 acknowledged that he signed, sealed and delivered the said instrument, as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal  
this seventeenth day of March A.D. 1855  
Channey W. Barnes *CL*  
Justice of the Peace

State of Illinois }  
Marshall County } ss J. G. L. Fort, clerk of the  
Circuit Court, and ex-officio  
Recorder for said County, do hereby certify, that  
the foregoing is a true and exact copy of a  
certain Mortgage recorded on page 651  
of Book 1 of the Records of said County  
In witness whereof, I hereunto  
set my hand, and the seal  
of said Court, at Lacon this  
21<sup>st</sup> day of March, A.D. 1856.

Endorsed "Filed Oct 23. 1854. J. G. L. Fort, clerk" by James H. B. Root  
respectfully

And a Note appears attached to this paper in  
in this cause which Note together with the indentments  
are as follows to wit

Note "For value received I promise to pay J. F. Stewart  
or Bearer the sum of three hundred dollars on or

before the first day of March 1856 with six percent  
interest from date till paid as witness my hand this  
first day of March 1855."

"Nathaniel C. Divelliss"

Indorsement on Note "For value recd: I assign the within note to H & Penn  
demand & notice of non payment mailed June 1. 1855"

"W J Stewart"

Indorsement on Note "For value recd I assign the within note to James S  
Whitmore March 7. 1856." "Hansen & Penn")

And afterwards to wit: on the twenty second day  
of October, in the year of Our Lord One thousand,  
eight hundred and fifty six, the same being one  
of the days of the October A.D. 1856 Term of said  
Court and the Court being then judicially sitting  
the Hon Madison C Hollister judge of the Ninth  
Judicial Circuit of the State of Illinois presiding  
and the officers of the Court as aforesaid a  
Decree was made and entered of Record in  
the above entitled cause which decree is in  
words and figures as follows to wit:

Decree of  
Inclosure

"James L. Whitman acquiesces  
of D. J. Stewart  
vs

Nathan. C. Dineelbier

In Chancery  
Bill to Foreclose a Mortgage

"And now at this day comes comes the complain-  
ant by his Solicitor John Clark and it appearing to  
the Court the said Defendant Nathan C. Dineelbier  
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 accord-  
ing to law and the Defendant having been three  
several times solemnly called came not but made de-  
fault in the premises and the said defendant hav-  
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 Exhibit 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 Decreed that  
the said Defendants pay the said Complainant the  
the said sum of three hundred and thirty Dollars  
with six percent 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

Decree  
continued

and to the said Mortgage premises and that said premises to wit the South East quarter of Section Two (2) Township Fifteen (15) North of Range Eight (8) East of the Tenth (4) principal meridian in the County of Marshall State of Illinois with the Farm House 15 Acres and Timber & Forest thereon be sold for money and that out of the proceeds thereof the said Complainants 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 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 and sufficient Deed to the said premises and it is further ordered that the said Master make Report of his doings here in the next term of this Court to which time this Cause is Continued "

M. E. H.

And afterwards to wit: on the twenty third day of October in the year of Our Lord One thousand eight hundred and fifty seven the same being one of the days <sup>of the</sup> regular October Term of said Circuit Court for said ~~year~~ A.D. 1857, and the Court being then judicially sitting Hon M Ballou judge of the 23<sup>rd</sup> judicial Circuit of the State of Illinois presiding George W Stipp States attorney for said Judicial Circuit Henry S Groom Sheriff of said County & James Mescott clerk of said Court the Master in Chancery submitted a Report in the aforementioned cause which report is in words and figures as follows To wit:

Master in Chancery's Report	James S. Whitman vs Nathan C. Dinschell	} "Circuit Court of Marshall County Illinois. To Oct Term A. D. 1857. 1 "To foreclose Mortgage
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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 Oct Term A.D. 1856 after having advertised the S. E. 1/4 Section 2 in T. 13 N. of R. 8 E. of the 4<sup>th</sup> principal Meridian the Land named in said decree for sale for 20 days in accordance with said Decree sold on the 16<sup>th</sup> 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 dollars and seven-tenths being the amount of Debt interest and

costs and he being the highest and best bidder  
therefore all of which is respectfully submitted

Silas Ramsey

Master in Chancery

Fees of Master ad sale	25-
coms	14.00
cut & copy	1.00
recording	20
Report	5.00
	<u>25.75-</u>
penalties for	5.00

And on the day and year last  
aforesaid the following Decree was made and entered of  
Record in said Court to wit

Decree  
Confirming Sale

"James S. Whitney  
vs  
Nathan C. Dixell's")

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 the  
decree in the above entitled cause he made sale of the  
S.E. 1/4 Section 2 in T. 13 N of R. 8 E of the 4th prin-  
cipal 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."

State of Illinois

Marshall County, S.D. J. James McCott clerk of the circuit  
Court, in and for said County do hereby certify

that the foregoing transcript is a full and perfect copy of the proceedings had, and the papers on file, in said Circuit Court, in the above entitled cause as the same remains of Record in said Court.

In Witness whereof I have herewith set my name and affixed the seal of said Court at Leon in said County this ninth day of March A.D. 1883.

James Prescott  
Clerk

Dues for Record \$5.00

James S. Whitman assignee of } Left in Error

George <sup>and</sup> ~~several~~ <sup>admiral</sup> }  
Nathaniel C. Durbin and } Plff in Error -

And now comes the Plaintiff in Error and says, that in the record and proceedings and in the rendition of the Judgment aforesaid, there is manifest Error in this to wit:

1st. The Court Erred in rendering a decree by default against Nathaniel C. Durbin, for the following reasons:

1st because there is no Equity in the Complaint on the face of the bill - There being no allegation that the mortgage was ever assigned to him  
2nd Because said Nathaniel C. Durbin was never served with any process in this cause

2. The Court Erred in not rendering a decree in favor of the Defendant because Nathaniel C. Durbin

For these and other Errors in said record Plaintiff in Error prays that the decree may be

100  
George Develbiss, admt,  
by  
James S. Whitman  
attorney

Transcript

Filed March 16, 1858

L. Leland  
Clerk

Let aside accident, and wholly for  
nothing admitted.

W. D. Apple  
Attorney for City of New York

# In Supreme Court of Illinois.

APRIL TERM, 1858.

GEORGE DIVILBISS, Administrator of  
NATHANIEL C. DIVILBISS, Deceased. } *Plaintiff in Error.*

vs.

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 Marshall and State of Illinois in Chancery sitting:* Respectfully represents unto your honor 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 (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 thar 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 *freedily* 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 subpœna 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 toas to your honor shall seemmeet, and ha 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, 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, 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 SUEO 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-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.*

vs.  
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 Marshall and State of Illinois in Chancery sitting:* Respectfully represents unto your honor 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 (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 *further* 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 *further* shows that your orator hath frequently and in a *credibly* 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 subpœna 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 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, 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, 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 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-five, between Nathaniel C. Divilbiss, of the county of

100  
George Deolbiff  
Adm 10  
17

James S. Whitman

Filed April 20<sup>th</sup> 1838

Do. do. do.  
do. do. do.

Sts

Stems

STATE OF ILLINOIS, }  
SUPREME COURT,

ss. The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF *Woodford*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Marshall* county, before the Judge thereof, between *James S. Whitmire assignee*

*of D. S. Stewart complainant and George*  
*Revelbiss Administrator of Nathaniel C.*  
*Revelbiss deceased &c.*

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

*Defendant*

as we are informed by *his* 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 S. Whitmire~~

*James S. Whitmire*

that *he* 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 *third* Monday in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* 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 *James S. Whitmire*

notice, together with this writ. *John T. Bates*

WITNESS, The Hon. ~~WALTER B. SCATES~~, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *16th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*eight*.

*John T. Bates*  
Clerk of the Supreme Court.

*by J. D. Rice Depy*

100  
George Revelles adms  
vs

James S. Whitmore  
Assignee.

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Set for

Suby Served by readings

To James S. Whitmore

March 23<sup>d</sup> 1858

Mileage & Return 13-

Service 30

63-

J. Minor's Liff

O. W. Minor's Liff

fees Paid by S. H. Parple

O. W. Minor's

Filed April 20, 1858

Delivered  
66k

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,  
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Marshall* 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 *Marshall* County, before the Judge thereof, between *James S. Whitmore Assignee of L. S. Stewart*

plaintiff, and *George David his Administrator of Nathaniel G. David his Decedent*

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

*Defendant* as we are informed by *his* 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 *first Tuesday after the third Monday* 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.

*John D. Eaton*  
WITNESS, The Hon. ~~WALTER B. SCATES~~, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *16<sup>th</sup>* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*eight*.

*L. Leland*  
Clerk of the Supreme Court.  
*J. B. Hyde Deputy*

George Level trip  
Nov 28<sup>th</sup>  
by

Harriet A. Whitman  
unpublished.

Went of river

Filed March 18, 1888



100

George Sivalbiss

or

James S. Whitman

Prize

Filed March 4th, 1858

J. S. Sivalbiss

Black

George Swilbiff administrator } Plff in  
of Nathaniel B. Swilbiff dec'd } Error

vs  
James J. Whitmire assignee } deft in  
of S. J. Stewart — } Error

In the Supreme Court of  
the State of Illinois April Term 1858

I do hereby Enter the appearance of  
the Defendant in Error in this cause  
and stipulate that the same shall  
stand for trial at the April Term  
of said Court A.D., 1858.

March, 12, 1858,

John Clark  
Attorney Solicitor  
for Defendant

100

Swallow

in

Whitman

}

Appearance of Swift

Filed April 21st 1888  
L. L. L. L.

# In Supreme Court of Illinois.

APRIL TERM, 1858.

GEORGE DIVILBISS, Administrator of  
NATHANIEL C. DIVILBISS, Deceased. } *Plaintiff in Error.*

vs.

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 Marshall and State of Illinois in Chancery sitting:* Respectfully represents unto your honor 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 (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 *further* 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 *further* shows that your orator hath frequently and in a *friendly* 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 subpoena 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 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 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, 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. DIVULBISS.

### 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

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 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 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 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 has hereunto 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, Assignee of  
D. P. STEWART,

vs.

NATHAN C. DIVILBISS,

In Chancery.

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 final 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 decreed, 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 and 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. } Circuit Court of Marshall county, Illinois,  
NATHAN C. DIVILBISS, } 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.  $\frac{1}{4}$  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 dollars 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. } Circuit Court of Marshall county, Oct. Term A. D. 1857.  
NATHAN C. DIVILBISS, }

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.  $\frac{1}{4}$  section 2, in T. 13, N. of R. 8, 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 defendant below.

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

100  
George C. Smith

v3  
James H. Whitmore

Filed April 20th 1838

L. S. General

Clerk

opinion written  
by Meunier