

12130

No. _____

Supreme Court of Illinois

Jacobas

vs.

Smith

71641  7

Shews to the Circuit Court of Saywell
County and State of Illinois, on the Chancery
side, to the April and September Terms
in the year of our Lord, One Thousand Eight
Hundred and Fifty; and to the April Term
in the year of our Lord, One Thousand Eight
Hundred and Fifty-one, before the Hon.
David Davis, Judge of the Eighth Judicial
Circuit composed of the Counties of
Saywell, Sangamon &c.

Be it remembered, that on the Fifteenth day of Jan-
uary, in the year of our Lord, One Thousand Eight Hun-
dred and Fifty, James, Smith, by his Solicitor William
B. Parker Esq. filed his exhibit marked (A) in the
words and figures, as follows, to wit;

Exhibit
Know all men by these presents that I George W. Kirkbride
of the County of Monroe and State of Ohio, in consider-
ation of the sum of Four Hundred and Fifty Dollars
in hand paid by Nathan Hollister of the same
place have bargained and sold and do hereby grant
bargain sell and convey unto the said Nathan
Hollister his heirs and assigns forever the following
premises situate in the County of Monroe and
State of Ohio and in the late Marietta Land district
and bounded and described as follows to wit, all
my interest being the equal undivided third part
of Lots numbered Twelve and Eight, seven in the
Town of Woodfield in Monroe County, Ohio and also
the equal undivided third part of Twenty acres of
Land in the South East quarter of section Thirty-Six
in Township Four and Range Five bounded on the
North by the lands of E. Archibald and Joseph
Morris on the East by the lands of B. R. Duggs on the
South by the lands of W. Cochran and on the West by
the lands of A. Paul To Have and to Hold said
premises with the appurtenances unto the said

"Nathan Hollister his heirs and assigns forever, And the
"said George W. Kirkbride for himself and heirs doth
"herely covenant with the said Nathan Hollister his
"heirs and assigns that he is lawfully seized of the
"premises aforesaid that the premises are free and
"clear from all incumbrances whatever and that he
"will forever warrant and defend the same with
"the affurtenances unto the said Nathan Hollister
"his heirs and assigns against the lawful claims of
"all persons whomsoever. The testimony whereof the said
"George W. Kirkbride hereli set his hand and seal this
"Seventeenth day of April One thousand Eight Hun-
"dred and Forty nine

"Executed in presence of  George W. Kirkbride *Seal*
" Wm Myers
" Jas Smith

"The State of Ohio Monroe County ss
"Before me William Myers a justice of the peace in
"and for the County aforesaid personally appeared the
"above named George W. Kirkbride and acknowledged
"the signing and sealing of the above conveyance to be
"his voluntary act and deed this 17th day of April
"AD 1849

William Myers. J.P. *Seal*

"Entered April 19th 1849

"Recorded May 5 1849 in vol 9 page 301

" Lewis Shipley Recorder Monroe
" County Ohio

"State of Ohio Monroe County ss & Recorder's Office

"I hereby certify that the foregoing is a true copy of a deed
"on record in this Office

" Given under my hand and seal this 13th day of
" Nov. AD 1849

" Lewis Shipley Recorder
" M. C. O

Now, afterwards, to wit: on the 31st day of January, in
the year of our Lord, one Thousand Eight Hundred and
Fifty, the said Complainant ^{found for cost of said act} filed his bill in the words
and figures, as follows: to wit:

Bill " To the Honorable David Davis Judge of the Circuit
" Court of Tazewell County in Chancery sitting:
" Humbly complaining your Orator James Smith of the
" County of Monroe in the State of Ohio sheweth unto your
" Honor that Henry Kirkbride and John W. Kirkbride of the
" County of Monroe and State of Ohio purchased of your
" Orator and one Sonah M. M. Dillon the following described
" Real Estate situated in the County of Tazewell and State
" of Illinois to wit: the East half of the South West quarter
" and the West half of the South East quarter of section
" number Twenty Eight containing one hundred and sixty-
" acres Also the West half of the North West and the East
" half of the North East quarter of section number Twenty-
" Nine containing One Hundred and Sixty acres also the
" North half of section number Thirty containing Three
" Hundred and Thirteen acres and Sixty-Six hundredths
" of an acre all in Township number Twenty two North
" of Range No. Two West of the third principal meridian
" the whole containing Six hundred and thirty-three
" acres and Sixty-Six hundredths of an acre, Your
" Orator further shews that the said Henry and John
" W. Kirkbride in payment of the above described Real
" Estate conveyed unto your orator and one Sonah M.
" Dillon who was partner with your Orator and con-
" ant in common in the matter the following described
" real estate in the County of Monroe and State of
" Ohio and in the late Marietta land district and
" bounded and described as follows. to wit: Lot number
" Twelve and Eighty-seven in the Town of Woodfield
" in the County of Monroe in the State of Ohio
" and also Twenty acres in the South East quarter
" of section Thirty-Six in Township number four
" and Range Five Bounded on the North by lands

of C. Archibald and Joseph Sherris on the East by
the lands of L. R. Drigg on the South by the lands
of William Cochran and on the West by lands of
N. Paul Your Orator further shows that Henry
Kirkbride Seignior did seized of the above described
Real Estate and devised the same to his sons Henry,
John W. and George W. Kirkbride Your orator further
shows that at the time of such conveyance George
W. Kirkbride was owner in fee simple the undivided
third of the above specified Real Estate and
that the said George W. Kirkbride was a minor
and would not arrive at full age until the tenth
day of January A.D. 1848 Your Orator further shows
that John W. Kirkbride also entered into an article
of agreement on the Eighteenth day of October A.D.
1841 with your Orator and Sarah Ch. Dillon who
was partner with your Orator a copy of which is
herewith filed and marked (A) prays that the
same may be taken as part of this bill who covenanted
with John W. Kirkbride that they would board
furnish Books. Room and fuel and instruct in the
science of medicine the said John W. Kirkbride for
the for the term of three years granting the said
Kirkbride five months of the time to go to school
and the said Kirkbride on his part agreed to pay
your Orator and Sarah M. Dillon the sum of Three
hundred dollars on the Eighteenth day of October
A.D. 1845 and the balance to be paid annually in One
hundred dollar instalments and perform the duties
of the Office and keep all the secrets of the profession
Your Orator further shows that the said Henry and
John W. Kirkbride in order to secure to your Orator
and the said Sarah M. Dillon that the said George
W. Kirkbride should make a good and sufficient deed
only executed and delivered conveying unto your
Orator and Sarah Ch. Dillon or to their heirs and
assigns all his interest both legal and equitable

" in and to the premises in the County of Shunroe in
" the State of Ohio to wit Lots Twelve and Eighty seven
" in the plat of the Town of Woodfield situated in
" said Township and the improvements thereon and
" also Twenty acres of land situated in Centre Township
" Shunroe County in the State of Ohio and bounded as
" follows on the North by lands of Edward Archibald
" and N. B. Hill on the East by the North and South
" section line between section Thirty and Thirty six on the
" South by lands of Wm Cochran on the West by the
" quarter section line dividing section Thirty six Township
" Twenty four Range five of the Marietta Land District
" Ohio the said premises being the same which Henry
" Kirkbride Senior did seize and divide with sons
" Henry John W. & George W. Kirkbride at the time said
" George W. Kirkbride shall have arrived at the age of
" Twenty one years to wit on the Tenth day of January AD 1848
" and further that they the said Henry Kirkbride and
" John W. Kirkbride shall pay or cause to be paid to your
" Orator and Josiah M. Dillon or either of them all moneys
" that are due from the said Henry Kirkbride and the
" said John W. Kirkbride or either in consequence of your
" Orator and Josiah M. Dillon being disturbed in the east-
" mentioned premises by the said George W. Kirkbride and
" all sums that may be due or become due from the said
" Henry Kirkbride or John W. Kirkbride or either of them
" to your orator or Josiah M. Dillon with interest thereon
" from the Tenth day of January AD 1844 executed and
" delivered to your orator & Josiah M. Dillon a mortgage on
" three tracts of land lying and being in the County of
" Tazewell State of Illinois described as follows to wit
" the East half of the South West quarter and the
" West half of the South East quarter of section No
" Twenty eight containing one Hundred and fifty acres
" Also the West half of the North West quarter and the
" East half of the North East quarter of section Twenty
" nine containing one Hundred and fifty acres Also the

North half of section number thirty containing three
hundred and thirteen acres and sixty six hundredths
all in Township number Twenty two North of Range
No Two West of the third principal meridian the
whole containing six hundred and thirty three acres and
sixty six hundredths of an acre To have and to hold
the premises aforesaid unto your Orator and Josiah
M. Dillon and to their heirs and assigns forever. Your
Orator further shews unto your Honor that the said
Mortgage was made on this express condition therein
contained that if the said George W Kirkbride shall by
a good and sufficient deed duly execute and deliver and
convey unto the said Josiah M. Dillon and your Orator
or their heirs and assigns all his interest both legal
and equitable in and to the following described
premises being the same of which Henry Kirkbride Sen.
died seized and devised to his sons Henry, John W.
George W Kirkbride with lots number Twelve and
Eighty seven in the plat of the Town of Woodfield
Shannon County Ohio and situated in said Town
with the improvements thereon and also twenty acres
of land situated in center Township Shannon County
Ohio and bounded as follows on the North by land of
Edward Archibald and Hugh B. Hill on the East by the
North and South section line between Thirty and
Thirty six on the South the lands of William Cochran
on the West by the quarter section line dividing section
Thirty six Township Thirty four and Range five of the
Sharon land district Ohio at the time said George
W. Kirkbride shall arrive at the age of Twenty one
years with on the tenth day of January one thousand
and Eight Hundred and Forty eight and further that
they the said Henry Kirkbride and John W Kirkbride
shall pay or cause to be paid unto the said Josiah
M. Dillon and your Orator or either of them all money
that is from the said Henry Kirkbride and the
John W Kirkbride or either of them in consequence

of them the Sociab. M. Dillon and your Creator being
" in any wise disturbed in the possession of the last
" mentioned premises by the said George W Kirkbride
" and all other sums that may be due or become due
" from the said Henry Kirkbride and the said John W.
" Kirkbride or either of them to the said Sociab. M. Dillon or
" your Creator or either of them with interest thereon from
" the tenth day of January A.D. 1844 then and in that
" case this conveyance shall be void and otherwise remain
" in full force and virtue in law Your Creator further shows
" unto your Honor that on the tenth day of January A.D.
" 1848 the said George W Kirkbride became one and twenty
" years of age and the said Henry and John W
" Kirkbride did not procure a good and sufficient
" deed of conveyance of the said George W Kirkbride
" according to the terms of said mortgage of the Real
" Estate therein specified. And your Creator further shows
" that the said George W Kirkbride has deprived himself
" of the power of making the deed specified in said
" ^{+mortgage} the said George W Kirkbride having conveyed the Real
" Estate specified therein to one Nathan Hollister on the
" seventh day of April A.D. 1849 for which he the said
" George W Kirkbride received the sum of Four Hundred
" and Fifty dollars a copy of which deed is herewith
" filed and marked (B) and prays that the same
" be taken as part of this Bill. Your Creator further shows
" that the agreement wherein the said John W Kirkbride obli-
" gated himself to pay for his instruction as a Physician to
" Your Creator and Sociab. M. Dillon the sum of Three Hun-
" dred dollars accordy- to the terms of the agreement
" has never been paid in whole or part although your
" Creator and Sociab. M. Dillon has fully complied with
" their part of the agreement. Your Creator further shows that
" the said Henry & John W. Kirkbride has suffered said
" Real Estate mentioned in the above Mortgage to be sold
" for its taxes to redeem said Real Estate your Creator
" has been forced to pay large sums of money in order to

protect himself from loss and injury which your Grator
would have sustained if he had suffered the time of
redemption to expire the condition of the said mortgaged
deed is forfeited and the estate thereby granted has
become absolute in your Grator and Josiah M. Dillon is
law subject only to the equity of redemption of the defen-
dants by the force and effect of the said mortgage your
Grator is entitled to the foreclosure of the same in this
Honorable Court for the amount charge in said Bill
together with all interest taxes and costs and expenses
thereon Your Grator further shows that Josiah M. Dillon
deceased this life March 20 1844 and that all of his
the said Josiah M. Dillon interest in said mortgage
has been conveyed to your Grator your Grator further
shows unto your Honor that John Jacobus of the County
of Tazewell and State of Illinois claims to have some
lien on said land by way of Debt or otherwise as your
Grator is informed and believes but your Grator charges
that it is a subsequent and inferior incumbrance to
your Grator's lien Your Grator herewith files a copy of
said mortgage marked (C) and prays that the same
be taken as part of this bill of Complaint Your Grator
further shows unto Honor that the said mortgage
was duly acknowledged by said Henry and John
W. Kirkbride according to law on the Eighteenth day
of November A.D. 1843 before Henry Mason an acting
Justice of the County of Chumroe in the State of Ohio
and that Wm. C. Key Clerk of the Court of Common Pleas
of Chumroe County certified that Henry Mason was an acting
Justice of the Peace of the County of Chumroe and State of Ohio and was
duly commissioned and sworn according to law and having
full power to take acknowledgments of deeds and the said
mortgage was duly recorded on the 6 day of November A.D. 1844
in Book C Pages 386 in the Office of the Recorder of the
County of Tazewell and State of Illinois For so much thereof
as your Grator is reminded by the strict rules of the com-
mon law and can only have adequate relief in this

"Honorable Court. where matters of this and the like nature are
 "proper cognisable and reliable Your Orator prays that the
 "defendants may upon their several and respective oaths
 "be able true full direct and perfect answers make to all and
 "singular the matters and things hereinbefore stated and
 "charged and that as fully and particularly as if the same
 "were here repeated and they thereto severally and specifically
 "interrogated and that they shall so answer to the best of their
 "respective knowledge and remembrance but also to the best
 "of their information and belief and that the said defendant
 "may be decreed to pay the amounts found to be due accor-
 "ding to the terms in said mortgage with all claims interest
 "costs taxes and expenses due thereon by a short day by your
 "Honor to be specified or that said defendants be forever barred
 "from all equity of redemption to said premises and that
 "the same or such parts thereof as will be sufficient for
 "that purpose be sold under the order of this Honorable
 "Court to satisfy and pay all demands costs taxes interest
 "and expenses thereon and that such sale be for cash and
 "that your Orator may have such other and further relief
 "as your Honor may seem meet and agreeable in equity may
 "it please your Honor to grant unto your Orator a summons
 "issuing out of this Honorable Court directed to the said
 "Henry Kirkbride John W Kirkbride and John Jacobus
 "commanding them to appear before this Honorable court
 "by the first day of the next term thereof then and there to
 "stand to and abide and perform such order and decree
 "as shall be agreeable to equity and good conscience in the
 "premises and your Orator will ever pray

James Smith

By Wm B Parker Solicitor

James Smith

Townsend Circuit Court April

vs

Term 1854

Henry Kirkbride

Suit for Foreclosure

John W Kirkbride & others

"I do hereby enter myself security for costs in this
 "cause and acknowledge myself bound to pay or cause

Bond
for
cost

to be paid all costs which may accrue in this action
either to the opposite party or any of the officers of this
Court in pursuance of the laws of this State
dated this 31 day of January AD 1850 Wm B Parker

J. A. Jones Clerk

Exhibit State of Illinois
Tazewell County Personally appeared before the undersigned
Clerk of the Circuit Court of the County of Tazewell and
State of Illinois Wm B Parker who being duly sworn deposed
and said that Henry Kirkbride and John W Kirkbride
are non residents of this state and are at the present time
residents of Iowa
Sworn to and subscribed before Wm B Parker
me this 31st day of Jan'y AD 1850
J. A. Jones, Clerk

Now afterwards to wit: on the Twenty first day of January
in the year of our Lord one thousand eight hundred and
Fifty, the said Complainant files his exhibits marked (B/C)
in the words and figures as follows. to wit:

Exhibit An Article of Agreement.

B. Article of agreement made and entered into, this 18th day
of October in the year of our Lord one thousand eight hun-
dred and forty one, by and between South S Dillon & James
Smith of the one part and John W Kirkbride, of the other
part. Witness that the said Dillon & Smith, for the considera-
tion herein after mentioned, hath agreed and doth hereby
covenant and agree that they will, Board, furnish books,
room and fuel and instruct in the science of medicine,
the said John W Kirkbride for the term of three years;
granting the said Kirkbride five months of the time to go
to school And the John W Kirkbride on his part doth
hereby covenant and agree to pay the said Dillon & Smith
the just sum of Three Hundred dollars in the following
payments, to wit. One Hundred dollars the 18th of October 1845
and the balance to be paid annually in one Hundred

"dollar instalments and perform the duties of the
"office faithfully keep all the secrets of the profession -"
"the true and faithful performance of the several covenants
"and agreements aforesaid, the parties aforesaid, do hereby
"respectively bind themselves. In Testimony whereof they
"have hereunto interchangeably set their hands and seals
"the day and year first within written.

A. A. Dillon

James Smith

John W Kirkbride

" Know all men by these Presents that we Henry Kirkbride
" and John W Kirkbride Es of the County of Monroe in the
" State of Ohio in consideration of the sum of Two
" Thousand dollars to us in hand paid by Josiah M
" Dillon and James Smith of the same place have bargained
" and sold and do hereby grant bargain sell and convey
" unto the said Josiah M Dillon and James Smith and to
" their heirs and assigns forever the following described
" premises situated in the State of Illinois; to wit: the
" East half of the South West quarter and the West half of the
" South East quarter of section No Twenty Eight, containing
" One Hundred and sixty acres; also the West half of the
" North West quarter and the East half of the North East
" quarter of section No Twenty nine containing One Hundred
" and sixty acres. Also the North half of section No Thirty
" containing Three Hundred and Thirteen acres and Sixty
" Six hundredths this all of the Township No Twenty two
" North of Range no Two all west of the third principal
" meridian the whole containing Six Hundred and Thirty
" Three acres and Sixty Six hundredths. To have and to hold
" the premises aforesaid with the appurtenances unto the
" said Josiah M Dillon and James Smith and to their heirs
" and assigns forever. Provided always and these presents
" are upon the express condition following that is to George
" W Kirkbride shall by good and sufficient deed duly
" executed and delivered convey unto the said Josiah

„ A. Dillon and James Smith or to their heirs or assigns
„ all his interest both legal and equitable in and to the
„ following described premises being the same of which
„ Henry Kirkbride sen died seized and devised this sum
„ Henry John W and George W Kirkbride to wit Lots number
„ Twelve and Eighty seven on the plat of the Town of Woods-
„ field Summit County Ohio and situated in said Town
„ with the improvements thereon and also Twenty acres
„ of land situated in Centre Township Summit County Ohio
„ and bounded as follows on the North by lands of Edward
„ Archibald and Hugh B. Kist on the East by the North and
„ South section line between sections Thirty and Thirty-Six
„ on the South lands of William Cochran on the West by
„ the quarter section line dividing section Thirty-Six Township
„ Twenty four and Range five of the Marietta Land district
„ Ohio. At the time said George W Kirkbride shall arrive
„ at the age of Twenty one years to wit on the Tenth day
„ of January One Thousand Eight Hundred and forty eight
„ And further that they the said Henry Kirkbride and
„ John W. Kirkbride Jr shall pay or cause to be paid unto
„ the said Societs A. Dillon and James Smith or to either
„ of them all money that is from the said Henry Kirkbride
„ and the said John W Kirkbride Jr or either of them in
„ consequence of them the Societs A. Dillon and James
„ Smith being in any wise disturbed in the possession of
„ the last mentioned premises by the said George W Kirkbride
„ and all other sums that may be due or become due
„ from the said Henry Kirkbride and the said John W
„ Kirkbride Jr or either of them to the said Societs A
„ Dillon and James Smith or either of them with interest
„ thereon or before the Tenth day of January AD 1844.
„ then and in that case this conveyance shall be void
„ otherwise to remain in full force and virtue in Law-
„ In Testimony hereof we have hereunto set our hands and
„ seals this Eighteenth day of November AD 1843

Specified and delivered in presence Henry Kirkbride

Henry Sharon

„ Nathan Hollister

John W Kirkbride

State of Ohio, Monroe County, St.

Before me Henry Mason a Justice of
the Peace within and for said County personally came
Henry Kirkbride and John W. Kirkbride, & also person-
ally acknowledge the foregoing mortgage deed to be their
voluntary act and deed for the purposes therein expressed
Given under my hand and seal this Eighteenth day of
November AD 1843

Henry Mason Justice of the Peace *H. M.*
The State of Ohio

Monroe County, I Wm. Okey Clerk of the Court of
Common Pleas in and for said County certify that Henry
Mason Esq. before whom the foregoing Instrument of writing
was acknowledged was at the same time the said was
done an Acting Justice of the Peace in and for said
County duly commissioned and sworn according to law
having full power to take the acknowledgment of such
instruments and that the within signature purport-
ing to be genuine

In Testimony whereof I hereunto set my hand and
the seal of said Court at Woodfield this Eighteenth day
of October, in the year of our Lord one thousand eight-
Hundred and Forty four

William Okey Clerk

State of Illinois

Tazewell County, I J. A. Jones Clerk of the Circuit
Court and is Official Recorder of said County, do hereby certify
that the foregoing is a true copy of the mortgage recorded
in my said Office from Henry and John W. Kirkbride to
Josiah M. Nelson & James Smith

J. A. Jones Witness my hand and Official seal at Tremont
this 12th day of Decr AD 1849

J. A. Jones
Clerk & Off. Recorder

And now afterwards writ on said Twenty first day of January in the year of our Lord, one thousand eight hundred and fifty. Summons in Chancery was issued in the words and figures as follows. To wit:

Summons. State of Illinois  The people of the State of Illinois, to
Jazewell County  the Sheriff of said County, Greeting:

We command you to summon Henry Kirkbride
John W. Kirkbride, John Jacobus if they are to be found
in your County, to be and appear before our Circuit Court
for said County, on the first day of the next term thereof
to be held at the Court House, in the Town of Tremont,
on the First Wednesday of the month of April next, then
and there to answer unto the matters and things contained
in a certain bill in chancery filed in our said Circuit
Court, on the Chancery side thereof, by James Smith and
to do and perform whatever our said Circuit Court shall order
and decree in the premises. And you hereof make due
return with our endorsement of the manner in which
you shall execute the same.

Witness John A. Jones, Clerk, and the seal of
said Circuit Court at Tremont this 31st day of
January one thousand eight hundred and fifty.
J. A. Jones Clerk

On which said writ was endorsed the following return.

Ret. Served the within summons on the within named defen-
dant John Jacobus by leaving a true copy of the same with
said defendant.

Feb'y 15th 1854

R. T. Gill Sheriff

Now afterwards to wit: on the Twenty fourth day of January
in the year of our Lord, one thousand eight hundred and
fifty. Publication was made in the words and figures as
follows. To wit:

Pub. State of Illinois  Circuit Court of the April Term 1854
Jazewell County: 

James Smith vs Henry Kirkbride, John W. Kirkbride, John
Jacobus. - In Chancery.

Affidavit having been filed in said entitled cause satisfac-

" Truly showing, that the Defendants Henry Kirkbride and John
" W. Kirkbride, are non-residents of the State of Illinois, and
" summons having been issued returnable to the April Term
" A.D. 1857. Now public notice is hereby given to the said non-
" residents, that unless they be and appear before our Circuit
" Court for said Tazewell County, on the first day of the next
" Term thereof, to be held at the Court House in the town of
" Tremont, on the first Wednesday of the month of April next,
" and plead, answer or demur to the Complainant's bill herein
" filed, the matters and things therein contained will be
" taken for confessed as to them and a decree entered, accord-
" ing to the prayer thereof. Dated at Tremont, this 21st Jan-
" uary A.D. 1857.

" Wm. B. Parker, Compt. Clk. S. A. Jones, Clerk.

" January 24. 1857 - 4 W

Now, afterwards, to wit: at a Circuit Court begun and held
in the Town of Tremont, on the First Wednesday of the
Month of April, in the year of our Lord, one thousand Eight-
hundred and Fifty. Present the Hon. David Davis, and
on the second day of said Term being the fourth day of
said month of April, the following proceeding was had
in said cause.

" James Smith

" vs

" Henry Kirkbride

" John W. Kirkbride

" John Jacobus

" by his Solicitor, ^{Parker}

" ruled to answer by Monday morning next at the opening
" of this Court.

And now afterwards, to wit: on the Fourth day of said Term
being the sixth day of said month of April, Certificate of
publication was filed, in the words and figures as follows,
to wit:

" I do hereby certify that the annexed notice was duly pub-
" lished in the Tazewell Mirror, a weekly newspaper, pub-
" lished in the City of Pekin, County of Tazewell, State

of Illinois, for four successive weeks commencing January
24, 1857 and continued weekly to February 28, 1857.

Printers fee \$3.00.

But Smith's publisher

And now, afterwards, to wit: on the Tenth day of said
Month of April being the Seventh day of said Term.
the following decree was entered in said cause, in the
words and figures as follows, to wit:

James Smith

vs

In Chancery

Henry Kirkbride

John W Kirkbride

John Jacobus

This day came the Complainant by his solicitor
and, it appearing to the Court that due notice of the
pendency of this suit as to said Defendants Henry
Kirkbride and John W Kirkbride, has been published
in the Tazewell Herald a newspaper printed in the City
of Peoria in the County of Tazewell and State of Illi-
nois for four weeks successively the first publication being
on the 24th day of January 1857 and continued weekly
to 28 February 1857 a copy of which is of Record on file
in this Court together with a certificate of the publisher
of said newspaper, and the said John Jacobus being
regularly served with process, the Defendants were three
times solemnly called came not and made default, and
they having filed no answer to said Bill of complaint
the same is ordered to be taken as confessed against them,
and thereupon the cause being set for hearing, and the Court
having examined said bill and the proofs and allegations
of the parties doth order adjudge and decree that the
equity of redemption of the said Henry Kirkbride and John
W. Kirkbride to the said mortgaged premises, to wit: the East
half of the South West quarter and the West half of the
South East quarter of section number Twenty-eight, Also the
West half of the North West quarter, and the East half of the
North East quarter of section number Twenty-nine, Also
the North half of section number Thirty all in Township

" number Twenty two, North of Range no Two West of the
" Third principal meridian containing Six hundred and thirty
" three acres and Sept; Six hundredths of an acre be forever
" foreclosed, and it appearing to the Court that there is now
" due from the said John W. Kirkbride and Henry Kirkbride
" upon said mortgage to said complainant for principal
" and interest of the mortgaged debt together with one
" hundred and thirty four dollars and thirty two cents
" Taxes and redemption money paid on said land dis-
" charged in said bill the sum of Nine hundred and seventy
" four dollars and thirty two cents; It is, therefore, ordered,
" adjudged and decreed that unless the said Henry and John
" W. Kirkbride will pay to the said Complainant the said
" sum of Nine hundred and seventy four dollars and thirty
" two cents in thirty days from this date the said mortgages
" premises be sold for the payment thereof, and William D
" Briggs is hereby appointed a commissioner of this Court
" to make sale of said mortgaged premises at Public vendue
" at the door of the Court House in Tremont to the said
" Briggs first having given notice in some newspaper pub-
" lished in the County of Tazewell and State of Illinois four
" weeks successively of the time and place of such sale,
" and when such sale shall be made the same shall be
" made for ready money, which when received by said com-
" missioner he shall pay to the Complainant, the amount
" of the mortgaged debt aforesaid, Taxes, redemption and
" costs of this suit, and the residue thereof he shall pay
" to the said Henry and John W. Kirkbride when demand-
" ed by them, And, it is, further, ordered that upon the
" sale of the premises the said Commissioner shall execute
" to the purchaser or purchasers a certificate entitling said
" Purchaser to a deed in fifteen months from the day of
" sale, And it is ordered, that the Commissioner report
" his proceedings herein at the next Term of this Court at
" which time the Court will make such further order
" as may be necessary.

Now, afterwards, to wit: at a Circuit Court begun and held
in the Town of Tremont. on the First Wednesday of the month
of April in the year of our Lord, One thousand eight hundred
and Fifty-one. Present, Hon. James Davis and on the Third
day of said Month being the second day of said Term, the
Report of the special Commissioner herein appointed was filed
in the words and figures as follows, to wit;

"James Smith

" do

" Henry Kirkbride

" John W. Kirkbride

" John Jacobus

In chancery

April Term of the Tazewell Circuit

Court AD 1851

" William D Briggs a special Commissioner in the
" above entitled cause by the appointment of the court begs
" leave to make the following report. That the Defendants
" having failed to pay the amount of money specified in
" said decree did on the Thirtieth day of April AD 1851
" at the Court House Door in the Town of Tremont, County of
" Tazewell and State of Illinois Notice of the time, place and
" terms of sale having been given by Publication in the Tazewell
" and Union a Public newspaper published in the City of
" Pekin and County of Tazewell and State of Illinois.
" Between the hours of Ten o'clock A.M. and Four o'clock P.M.
" of said day at Public sale. The East half of the South West
" quarter was struck off for the sum of One hundred and
" Thirty dollars and the West half of the South East quarter
" for the sum of One Hundred and Thirty dollars all of
" the above described Real Estate being in section Twenty
" Eight, also the West half of the North West quarter for
" the sum of One Hundred and Thirty dollars and the East
" half of the North East quarter for the sum of One Hun-
" dred and Thirty dollars being in section Twenty nine,
" All of the above Real Estate being in Town Twenty two
" North of Range Two West of the Third principal meridian
" said. Also the North East quarter for the sum of Two
" Hundred and Forty nine and the North West
" quarter for the sum of Two Hundred and forty

nine dollars All of which is in section Thirty-Township
" Twenty-two North of Range Two West of the Third principal
" meridian to Nathan Hollister and James Smith
" the above being the highest and best bids therefor, said
" Commissioner further reports, that he furnished Hollister
" and Smith with a certificate of Purchase of said Real
" Estate entitling them to a deed on the 13 day of October
" AD 1857. unless the same should be redeemed according to
" law.

" All of which is respectfully submitted.

William D. Briggs

Commissioner

" Which said Report is approved by the Court and ordered to be
" Recorded.

State of Illinois
Jasper County, ss. I, John A. Jones,
Clerk of the Circuit Court, do hereby certify, that the forego-
ing Eighteen and one half pages contain
a true, full and complete Transcript of all
the papers filed and the proceedings had
in said entitled cause of James Smith
against Henry Kirkland and others, as
fully and completely as the same are of
record in my said Office.

Witness my hand and official
seal at Pekin this Fifth day
of July AD 1857

J. A. Jones
Clerk

James Smith

28

Henry Kirkbride

John W. Kirkbride

John Jacobus

Transcript

Filed July 10th 1857.

Fee \$6.25

John Jacobus implicated H. B. B. in Error } Supreme Court
no
James Smith (Left in Error }

Additional Errors assigned

1st No decree against Defendants because
could be made in the nature of a fore
closure the Bill and Exhibits showing
upon their face, that there was no
Mortgage but only a contract exe-
cuted by the said Kirkbride,

2nd It is not shown by the Bill how
or in what manner or when, whether before
or after the death of Dillon, his interest
in the pretended mortgage became trans-
ferred or conveyed to complainant.

3. The Circuit Court erred in approving
the Report of Sale made 13th Apr 1850 - when
the decree for sale was made 10th Apr
1850 requiring 4 weeks notice

~~June 29th 1852~~ ~~Chapman~~

4. The Court erred in including the Redeem-
tion money said to have been paid by Smith
to Redeem from the sale in said decree

He therefore Prays that said decree may be
reversed &c
June 29th 1852 ~~Chapman~~

John Jacobus Ho

(n)

James Smith

additional Enore

Filed June 30th 1852,
Leland Ch.
By P. H. Leland Depy.

John Jacobus

Supreme Court of the State of Illinois
June Term 1851

James Smith

and

~~Henry Kirkman~~

~~John W. Kirkman~~

~~John Jacobus~~

And now comes the said John Jacobus
by C. J. Sel and his attorney & says that in the record &
proceedings in this cause there is manifest error in this
to wit:

1st The Court erred in rendering
Complaints

2^d The allegations in the bill are not sufficient
to sustain the decree -

3^d The Court erred in rendering the decree - the same
mons not having been returned nor est returned as to
Henry Kirkman & John W. Kirkman

4th The Court erred in rendering the decree without
making George W. Kirkman a party to the suit

C. J. Sel and

for plaintiff in

error

5th The Court erred in rendering a decree of foreclosure
on a bill filed to foreclose a paper not under seal
The bill not averring the supposed mortgage to have been
sealed & the supposed mortgage made an exhibit
not being sealed.

C. J. Sel and

for plaintiff in
error

J. Olin J. Jacobs

ms

J. amos Smith
Asst. of Engrs.

Filed July 10th 1857

Imp. Ind. Co.

Blvd.

Know all men by these Presents that
John ~~J~~ Jacobus of Taylor County State
of Missouri have made Constituted and
appointed Edwin Jones my true and
lawful attorney in fact and by these
presents do hereby authorize and empower
my said Attorney in fact for me
and in my name and stead to
execute all papers or bonds necessary
for suing a Writ of Error ^{out} of the
Supreme Court of the State of Illinois
in the Case of James Smith vs Henry
Kirkbride John W Kirkbride and
myself in the Taylor Circuit wherein
a decree was obtained for the foreclosure
of a Mortgage at the April Term
of said Court A.D. 1857 - hereby
ratifying and confirming all acts of
my said Attorney in the premises
Witness my hand & Seal this 30th day
of Aug. 1857

John Jacobus (Seal)

State of Illinois

Superior Court 355

The clerk
personally appeared for his father
before the undersigned Clerk of the
Court in and for said County
and acknowledged his signature
to the foregoing and of Illinois
to be his act and deed for the
uses and purposes and therein
expressed

Witness J. H. Jones Clerk and
the Seal of said Circuit
Court at Potosi Missouri
day of August A.D. 1851

J. H. Jones
Clerk

Re Kin 30 Aug 1855
Mr Selam

Ar fr

Annexed I send
you Mr Jacobus P.A. to Edw C
Jones to execute Bond please
to execute in accordance therewith
forward but immediately to
my address

In haste Respy

Wm Kellum Jr

Power of Atty.
Jacobus to Jones -
Letter from B. Kellogg
to L. Island.

Filed September 7th 1857
L. Island Clerk
By P. K. Island Svy.

copy of notice attached to Commissioner's report, & referred to therein. —

"Commissioner's Sale

Notice is hereby given that by virtue of a decree of the Tazewell Circuit Court, rendered at the April Term A.D. 1850, in a certain cause then & there pending, wherein James Smith was plaintiff & Henry Kirk Bridge, John M. Kirk Bridge & John Jacobus were defendants; I will expose at the court house door in the town of Pekin, Tazewell, in the county of Tazewell & State of Illinois on,

Saturday the 13th day of July, A.D. 1850
between the hours of 10 o'clock A.M. & five o'clock P.M. of said day the following described real estate lying & being in the county of Tazewell & State of Illinois, to wit, the east half of the South West quarter, & the West half of the South East quarter of section number twenty eight; also the west half of the north West quarter & the east half of the North East quarter of section number twenty nine; also the north half of section number thirty, all in section number ^{twenty} thirty two north of Range two West of the third principal meridian, containing six hundred & thirty three acres to the highest & best bidder for cash in hand. The purchaser will be entitled to a certificate for a deed in fifteen months from the time of sale, unless the same shall be redeemed according to Law

Tazewell June 13. 1850

Wm D. Briggs
Commissioner

Printer's certificate accompanying above notice
I do hereby certify that the annexed notice was duly published in the Tazewell Union a weekly newspaper published in Pekin, Tazewell County Ills. on four

sempain weeks commencing with June 19. 1850 and
ending with July 19. 1850 Jno. Smith Publisher
Printers fee \$2.50

Smith vs. Jacobus et al.
copy of commission
notice of Pet. Sec.

Know all men by these presents, that we
John Jacobus and Benjamin Kellogg
are held and firmly bound unto James
Smith in the full sum of one thousand
dollars, for the payment of which well and
truly to be made, we bind ourselves, our
heirs, executors and administrators
firmly by these presents. Witness our hands
and seals this ~~twelfth~~ day of Aug^t A.D.
1857.

The condition of the above obligation
is such, that whereas the said James Smith
did on the tenth day of April A.D. 1850, in
the Circuit Court of Tazewell County, and
State of Illinois, obtain a decree against
John Jacobus, Henry Kirkbride, and
John W Kirkbride, for the foreclosure of
a certain mortgage, from which said decree
of foreclosure, John Jacobus upon said
has prayed that a writ of error may be
granted from the Supreme Court of Illinois
to operate as a Supersedeas. Now if the said
John Jacobus shall duly prosecute the
said writ of error with effect, and moreover
pay the amount of the decree, costs, interest,
and damages rendered or to be rendered
against him in case the said decree
shall be affirmed in the said Supreme
Court, then the above obligation is to be
void, otherwise in force.

John Jacobus (Seal)
By E. D. Jones his atty in fact
B. Kellogg (Seal)

Boyd.
John Jacobus et al
James Smith.

~~Filed September 1st 1857.~~
Filed September
1st A.D. 1857.
J. Leland Clerk
By P. K. Leland
Depy.

STATE OF ILLINOIS, }
Supreme Court. }

The People of the State of Illinois,

To the Sheriff of the County of *Jagwell* — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the ~~same~~ ^{judgment} of a plea which was in the circuit court of *Jagwell* — county, before the Judge thereof, between *James Smith Complainant* — and *John Jacobus, Henry Kirkbridge, & John W Kirkbridge* —

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

John Jacobus —

as we are informed by *his* complaint, the record and proceedings of which said ~~judg~~ ^{judg} ~~ment~~ ^{ment} 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 Smith* —

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 *Second Monday in June* 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 Smith* — notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this ~~first day of September~~ ^{first day of September} — in the year of our Lord one thousand eight hundred and fifty one.

L. Leland Clerk of the Supreme Court.

By *P. K. Leland* Deputy.

Tazewell County.
John Jacobus &c.
vs
James Smith
Sci. fa. —

Filed Dec^r. 1st 1857.
J. Leland Clerk
By P. Holland Esq.

The Within Married James Smith cannot
Be found in this County
Nov 2nd 1857
Return 15th Dec
Jm. L. Smith
Jm. L. Smith

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Tazewell* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the ^{*scum*} judgment of a plea which
was in the Circuit Court of *Tazewell* county, before the Judge thereof, between

James Smith Complainant

~~plaintiff~~ and *John Jacobus,*
Henry Kirkbride & John W. Kirkbride

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

Jacobus as we are informed by *his* complaint, and we being willing that error, if any there be, should be
corrected 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 *3^d Monday in June* next, that the record and proceedings,
being inspected, we may cause to be done therein, to correct the error, what of right ought to be done
according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said
Court, and the seal thereof, at Ottawa, this ~~1st~~ *first*
day of ~~September~~ *September* in the year of our Lord one thousand eight
hundred and fifty *one* —

L. Keland Clerk of the Supreme Court.

Lazenell
John Jacobus inft. ee.
by
James Smith
Wit of Enor

This wit of Enor is
made a Supersedeas
as to the obys accordingly
L. Leland Clk.

September 1st
Filed xxix, 1854.
L. Leland Clk.

John Jacobus
as
James Smith

Abstract

The bill charges that Henry Kirkbride & John W Kirkbride purchased of Orator & on Dillen some real estate (describing it)

That H K & J W K in payment thereof conveyed to Orator & Dillen certain real estate describing it

Henry Kirkbride Senior died seized of the above real estate & devised it to his sons H K. J W K & Geo. W. K

At the time of such sale Geo W. was owner of $\frac{1}{3}$ of above real estate

It John W K on one part & Orator & Dillen on the other made an agreement, (The agreement is attached to the bill & is in substance that John W. should stay and reside with Orator & Dillen. They should feed him & he should pay \$100 Oct 1845 \$100 annually next two years)

It Henry & John to secure Dillen & Orator that Geo should make a deed ^{when 21} & that they should pay Orator & Dillen all monies due from them or either of them in consequence of Orator & Dillen being disturbed by Geo. on all sums that may be due or become due from them or either of them to Orator & Dillen with int from Jan 10 1844. Made a mortgage.

(This mortgage is attached to the bill & has no seals nor is it averred to have been sealed)

It Geo became of age - H K & J W K did not procure deed according to terms of mortgage

12120-197

It Geo sold land to Nathan Belcher Apr 7 1849 for which he recd \$450 copy of which deed is attached marked

Exhibit B.

(Exhibit B is the article of Agreement & not the ~~Deed~~) This deed seems to have been filed as exhibit A 6 days before bill filed -)

9 Agreement wherein J. W. K. obligated himself to pay \$300 has not been paid

10 H. K. & J. W. K. suffered said real estate in Mortgage to be sold for taxes. As reason said real estate owner has been forced to pay large sums of money to protect himself from loss & injury he would have sustained had ~~been~~ redemption of funds -

11th Mortgage perfected estate become absolute in nature & S in law & owner is entitled to foreclose & for amount charged in Bill

12 Dillon died in March 1894

13 All of S's interests in Mort has been conveyed to owner

14th Jacobus claims to have some lien on said land by way of deed or otherwise, but it is a subsequent & junior incumbrance

15th Copy of Mortgage filed & marked C

16th Prager - for answer - That after may be decreed to pay amounts found due according to terms of Mort with all claims interest, costs, taxes & expenses and thereon by a short day or That same may be sold or

Summons

Served on Jacobus. No return as to other debts

Decree

After reciting there is due for principal & int of the mort
gaged debt together with \$134. $\frac{32}{100}$ taxes & redemption money paid on said
land discharged (as charged) in said bill \$474 $\frac{32}{100}$ decrees there
it be paid in 30 days or in default sale to be made by
one Briggs appointed commissioner to make sale - to give to Whites
notice in Tazewell paper

Report made & app'd. It does not show how long the notice
was published -

John G. Acheson

M

James Smith

Abstract

Filed July 10th 1857

Tazewell No 7
John Jacobus wife
by
James Smith

7

1853

Prepared

12/30

1853