

12663

No. _____

Supreme Court of Illinois

Whitcomb.

vs.

Sutherland.

71641  7

State of Illinois
Cook County Ill.

Plas before the Honorable William
Morris Judge of the 7th Judicial Circuit Court of
the State of Illinois and presiding Judge of the Circuit Court
of Cook County at the Court House in the City of
Chicago in said County at a vacation term on the 24th day of
Monday being the twenty fourth day of October in the
year of our Lord one thousand eight hundred and
fifty three and of the Independence of the United States
the seventy eighth.

Present Hon. Buckner S. Morris Judge of said Court
C. P. Bradley Sheriff of Cook County
West. Lewis D. Hoards Clerk of said Court

Be it remembered that heretofore to wit, on the
seventh day of October in the year of our Lord one thousand
and Eight hundred and fifty three there was filed
in the office of the Clerk of Cook County Illinois
in and for said County, on the Chancery side of the Court
a certain Bill of Complaint with the Exhibits there-
inferred to, which Bill and exhibits are in the words
and figures following to wit, —

In the Cook Circuit Court October Term A.D. 1848
To the Hon. Buckner S. Morris Judge of the
Circuit Court in and for the County of Cook &
State of Illinois

In Chancery sitting

Humblly complaining sheweth, unto your
Honor, your oratrix Frances Helen Sutherland
the wife of Elias B. Sutherland of the City of
Chicago and State of Illinois by Benjamin B.
Raymond her next friend — That on the 27th
day of October A.D. 1848, in the County of Cook
and State of Illinois, your oratrix being then
the widow of one Charles Camus and possessed
in her own right of seven thousand dollars in
money from the estate of her said deceased
husband, Camus which money was then loaned
out and the said Elias B. Sutherland then pro-
posing to marry your oratrix, the said Elias then
agreed with your oratrix that in consideration
that your oratrix would marry him the said
Elias, he the said Elias would permit your
oratrix to retain and your oratrix should
retain the entire & absolute control of her said
money as her separate estate, and the said
Elias should invest said money in real estate
and secure the same for the use & benefit of your
oratrix. And thereupon and while the said
marriage was subsisting your oratrix & her
husband the said Elias at the said time

of Cook and State of Illinois

Your oratrix further shews to your Honor that on the sixth day of September A. D. 1848 one Florimond Canada having at the sale of Canal lots & lands by the Trustees of the Illinois & Michigan Canal in the month of A. D. 1848 become the purchaser of Out lot number Forty Eight of the Canal Trustees subdivision of Section seven Township Thirty Nine North of Range Fourteen East situated in the City of Chicago County of Cook & ^{State of Illinois} made the first payment thereon and received a certificate of purchase according to the usual practice at such sales, bargained and sold to one William Tuck three acres of land part of said out lot 48 siting on Lake Street twelve rods or thereabouts and gave to said Tuck an obligation in writing for a deed to the same upon full ^{payment} being made therefor.

And afterwards to wit, some time in the month of June 1849, the said Elias with the consent and by the request of your oratrix and for the purpose of investing the funds of your oratrix in real estate for the benefit of your oratrix in accordance with the anti-trust agreement above set out purchased the interest of him the said Tuck in the East two acres of said land at and for the price

of \$800 payable \$200,00 on Sep. 6th 1849
\$100,00 June 1, 1850, \$100,00 Sep. 6th 1850 & Dec. 1,
Sep. 6, 1851 \$200 Dec. 1, 1852 and in the name
of himself, but in fact for ^{the use & benefit of} your orator and in
trust for her - He, the said Eliás had no funds
of his own but was expecting to receive the funds
of your orator and did actually make every
payment which he made upon said land with
the funds of your orator aforesaid. And at
the time of said last mentioned purchase the
said Eliás received from the said Turks the
obligation from said J. Canda to him said
Turks with a written assignment thereon, a
copy of which said obligation and assign-
ment are herewith filed marked Exhibit
A. & prayed to be taken as a part of this bill.

Your orator further shews to your
Honor that on or about the 1st day of Septem-
ber A.D. 1849, the said Eliás received a portion
of her said moneys, and applied two hun-
dred dollars of her said moneys in making
for your orator the first payment on said
two acres of land, which payment was due
Sep. 6th 1849 and was made at or about that
time.

Your orator further shows that on the
29th day of May A.D. 1850 at Chicago in the
County of Cook aforesaid - the said Eliás for

the purpose of making known the true owner-
ship of the said land and securing the same
to your oratrix, made his certain deed of con-
veyance of said two acres of land to one
William Wheeler in trust for the use and
benefit of your oratrix to pay the rents, issues
& profits of the said premises to your oratrix
or to such person or persons as she in writing
should direct, for her sole and separate use
and at her death then to the use of such per-
son or persons, & for such estate, estates or
charges, as your oratrix by her last will and
testament in writing or any writing purport-
ing to be her last will & testament, should
give & devise said premises - Your oratrix
to have the sole power to give & devise said
premises to whomsoever she might direct
& choose, but reserving & conferring power
on said Wheeler to sell & convey said prem-
ises by good & sufficient deed in case your
oratrix, her heirs or assigns should so or-
der to be expressed in writing - and the
said deed of trust was duly acknowledged
and delivered to your oratrix, and has
always been kept by her until the com-
mencement of this proceeding - And the
said deed of trust is herewith filed (mark-
ed Exhibit B.) and prayed also to be taken

as a part of this bill.

That at the time of executing said deed of trust as aforesaid the said Elias made an assignment in writing of the obligation or contract above referred to as exhibit A to said Wheeler in trust as aforesaid, which assignment was attached by a wrapper to said contract, and with said contract was then & there delivered into the possession of your oratrix, and the said last mentioned assignment is filed herewith marked Exhibit C and prayed to be taken as a part of this bill.

Your oratrix further shows to your Honor that at the time of making said deed of trust and last mentioned assignment said Elias was free from debt, except some inconsiderable amounts not exceeding three hundred dollars, besides the notes given for the premises aforesaid, and said Elias was also then entirely solvent, and has since paid all the debt which he was then owing except a portion of the purchase money of above described land in Sec. 7 in Chicago.

Your oratrix further shows to your Honor that on or about the Third day of August A. D. 1880 - the said Elias having received during the thirty days next preceding

7 of one Truman Whitcomb various sums of
money amounting in the aggregate to five
+ hundred dollars - which money was to be
used in the business of brickmaking for the
joint account of said Elias & said Whitcomb
and upon said Whitcomb wishing to with-
draw from said partnership, it was agreed
that said Whitcomb should have said money
in the possession & use of said Elias as so
much borrowed money, and said Elias
should pay him the usurious interest of five
per cent. per month - And thereupon said
Whitcomb induced the said Elias to give
him his note payable in Thirty days for three
+ hundred dollars for interest on said sum
of \$600.00 with a power of attorney to con-
fess judgment (a copy of which said note
& power of attorney is herewith filed marked
Exhibit D, and prayed to be taken as a part
of this petition -) and the said Whitcomb sub-
sequently to wit, on the 12th of October 1850
caused judgment to be entered on said
note against said Elias for \$310.00 and
costs, in the Cook County Court of Common
Pleas, and the same day ~~was~~ entered an execu-
tion on said judgment, under which
two kilns of brick of said Elias was levied
on, & on the 8th of November A.D. 1850, were

sold to said Whitcomb for \$345,00, but
 were subsequently transferred by said Whitcomb
 to one Thomas Morgan, assignee of said
 Elias upon said Morgan paying him, for
 said Elias the said sum of \$345,00 and as
 your orator is informed & believes \$60,00 in
 addition which said Whitcomb claimed of
 said Elias as interest on said \$600,00, ac-
 cidentally omitted in the calculation when
 said note of \$300,00 was given as aforesaid.

And your orator refers to the record of
 proceedings in said case of Whitcomb vs.
 said Elias B. Sutherland, and particularly
 the execution & endorsements thereon, and
 prays that all of said record & said execu-
 tion & endorsements may be taken as a
 part of this bill — And your orator has
 filed herewith a memorandum or ab-
 stract from said record marked exhibit
 E — and which she prays may be taken
 as a part of this bill —

Your orator further shows that on
 the said third day of August A. D. 1850 the
 said Whitcomb not content with the said
 judgment note for three hundred dollars
 so unconscientiously demanded & taken
 by him as aforesaid, insisted upon taking
 from said Elias security for the payment

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of said principal sum of six hundred dollars
 and thereupon the said Elias assenting thereto
 made to the said Whitcomb a deed of conveyance
 of said premises purchased by him as aforesaid
 and conveyed by him to said Wheeler in trust
 for your estate as aforesaid together with one
 acre belonging to Warner and to be deeded to
 him when title was obtained, by the following
 description which your estate owns and
 shews was and is the true and accurate
 description of said three acres so previously
 purchased
 by said Jucks viz "all of that part and portion
 of out Lot no Forty Eight (48) in the Illinois &
 Michigan Canal Trusts Subdivision of
 Sec. 7 Township 39. Range Fourteen. (14)
 East described as follows to wit, Commencing
 at the South East corner of said out Lot
 48 running thence west upon Lake Street
 twelve (12) rods thence North forty (40) rods
 thence East twelve (12) rods to the East line
 of said out Lot (48) thence South upon
 said East line of said out Lot 48 to the
 place of beginning subject to two pay-
 ments amounting together to \$284.84
 then still due to said Thompson & Co and
 on said three acres - which said convey-
 ance your estate signed and acknowl-
 edged, although not a party named in

the same (and a copy of the said last-
 mentioned deed is filed herewith marked
 Exhibit F. and prayed to be taken as a
 part of this bill) and your oratrix avers that
 the said Wheeler is not a party to said con-
 veyance last mentioned and that your ora-
 trice never supposed or intended that she
 was relinquishing her ownership of said
 premises - but only supposed and intended
 that she was subjecting the same to a tempo-
 rary encumbrance - And your oratrix
 charges that she did not thereby, by signing
 or acknowledging said conveyance sur-
 render or convey away the ownership or
 interest which she had previously thereto
 in said premises, and at the same time
 when said last mentioned deed was exe-
 cuted, the assignment above referred to
 and filed herewith as Exhibit C. was ^{discharged}
~~released~~ from the original obligation or
 contract ^{from} ~~and~~ Canada to ~~or~~ Jacks to which
 it had been previously attached, and the said
 Elias signed some writing which purpor-
 ed to assign said contract to said Wheeler
 and delivered the same to him with said
 contract -

But your oratrix expressly charges
 that the said deed from said Elias to said

Whitcomb, although absolute on its face, was intended as a security for the repayment of the said money loaned, which then constituted a debt of the said Eliás to said Whitcomb -

And your orator shews to your Honor that said deed Exhibit F. was dated on the 1st day of August in one part and on the second day of August in another part and appears to have been acknowledged on the 5th day of August 1850 and that at or about the same time a writing of defeasance was executed by said Whitcomb to the said Eliás which defeasance bears date the 3rd day of August A. D. 1850 by which it was stipulated that the said Whitcomb should reconvey said premises in B48 to said Eliás, by deed of quitclaim upon the said Eliás paying to said Whitcomb on or before the 3rd day of August 1851 the sum of six hundred & twenty four dollars with legal interest and a copy of said defeasance is filed herewith marked Exhibit G and prayed to be taken as a part of this bill - And your orator avers that said sum of \$624.00 was the \$600.00 loaned as aforesaid and \$24.00 (which said Whitcomb pretended he had paid for expenses in drawing the papers) last referred to.

Your oration further shews to your Honor
that at the time of the execution of said deed
and defeasance the following payments
were still to be made on said premises viz,
+ to W^m Juck Sep. 6. 1850. \$100,00. Sep. 6. 1851
\$200,00. Dec. 1st. 1852 \$200,00. which pay-
ments were to be made by said Elias but
really as the trustee and for the benefit of
your oration - Your oration further shews
that there was still to be paid said F. Canada
by said Juck on said contract for said
two acres and one acre of land adjacent
thereto then owned by one Herman Warner
the sum of \$284,84 as follows Sep. 6th. 1850
\$142,42 with one years interest on that ~~was~~
amount at six per cent, and on the 6th. Sep.
1851 the sum of \$142,42 without interest that
the said Elias had the right to pay said a-
mounts due ~~to~~ Canada, and have the
sum deducted from said payments to
said Juck - That at the time of executing
said deed & defeasance said Elias trans-
ferred to said Whitcomb a promissory
note given by one George H. Pratt as the
maker to said Elias being in fact the prop-
erty of your oration, and given for his upa-
rate money loaned to said Pratt, which
note with interest then amounted to the

sum of \$255, 94 or thereabouts and which note
 would be due on or about Sep. 1st 1850 which
 note was fully secured by a mortgage on val-
 uable real estate, and the said note was thus
 transferred to provide said Whitcomb with a
 fund from which to reimburse himself
 for any payments which he might make to
 said Canada, it being contemplated that said
 Whitcomb should pay said Canada the payment
 coming due Sep. 6th 1850 - of \$142, 42 and one
 year's interest \$8, 54^{ts} or thereabouts amounting in
 all to about \$150, 97 - which payment to said
 Canada would be a payment to said Whitcomb
 in full of the \$100, 00 coming due to him on
 the 6th Sep. 1850 and would leave a balance
 of about \$50 to be applied on the payment
 coming due to him said Weeks Sep. 6th 1851
 and the said note of said Pratt and the full
 amount thereof with interest the said Whitcomb
 subsequently collected, as your orator is informed
 and believes - and expressly charges -

Your orator further shows that on the 16th
 day of September A. D. 1850 the said Chas paid to
 the said Whitcomb the further sum of Fifty dollars
 as by said Whitcomb's receipt filed herewith mark-
 ed (exhibit H,) and prayed to be taken as a
 part of this bill, reference being thereunto here-
 with appear.

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That on the 1st September 1851 said Elias delivered
 and said Whitcomb a promissory note of Her-
 man Warner & J. C. Smith for Fifty six ⁶⁰/₁₀₀ Dollars
 to be used in making payments on said lot as by
 said Whitcomb's receipt of that last named date
 filed herewith marked Exhibit I and prayed
 to be taken as part of this bill will appear - and
 the last mentioned note said Whitcomb has col-
 lected since as your oratrix is informed & believes
 and expressly charges - Your oratrix further
 shews that on or about the 25th day of June 1851,
 she made a payment to said Whitcomb for
 the purpose of reducing the amount of the claim
 secured by said deed of defeasance or mortgage,
 the further sum of one Hundred & Twenty dol-
 lars, as by said Whitcomb's note of that date
 herewith filed marked Exhibit II. and prayed
 to be taken as a part of this bill reference being
 thereunto made will appear - and your oratrix
 avers that said transaction was a payment
 and not a loan - that your oratrix could
 not afford and did not intend to loan said
 Whitcomb money from her scanty means at
 simple interest of 6 per cent, when her husband
 was at the same time a debtor to said Whitcomb
 for money borrowed for which he had paid
 in advance Sixty per cent interest, which was
 still drawing interest in addition at six per

+

ent and as a security for the repayment of which
her homestead was held subject to the capacity of
said Whitcomb - But when said Whitcomb should
have given her a receipt, he for some dishonest
purpose as your oratrix now believes, wrote &
handed to her said last mentioned note - Your
oratrix is informed & believes & further charges
that said Elias has paid to said Whitcomb in
additions at other times ^{in full} of \$17.44 - and also the
further sum of \$33.00 - making \$50.44 -

Your oratrix avers that it is equitable and
just that on a settlement of accounts between
said Elias and said Whitcomb said Elias should
be allowed on said debt of \$600.00 - a credit of \$300
on account of said judgment note, the same hav-
ing been collected with interest by said Whitcomb
which will reduce said debt to \$300 - also a further
credit of \$60.00 interest money paid as aforesaid
also a further credit of said \$50 payment of Sep.
6-1850 reducing said debt to \$240 - also a large
amount as your oratrix believes exceeding one
hundred dollars for excess of moneys collected
by said Whitcomb on said Pratt note and said
Warner & Smith note, overpayments made
by said Whitcomb to said Canada - also a further
credit of \$120.00 for said money paid said
Whitcomb by your oratrix - and your oratrix
charges & believes that said debt to said Whitcomb

was almost entirely paid before the 3rd day of August A. D. 1851 and is now paid and overpaid with all arrears of interest—

Your exhibit further shews that on the 20th day of October A. D. 1850 said Elias executed a writing purporting to be an assignment of the defeasance aforesaid to one Benjamin Bennett of Otsego County New York, that on the 20th day of June A. D. 1853— the said Benjamin Bennett transferred to your exhibit all his right title and interest of ~~\$171.00~~ in and to said defeasance all of which from Exhibit L. which is a copy of said defeasance, and of said writing of said Elias to said Bennett and this assignment of said Bennett to your exhibit which is filed herewith, and prayed to be taken as a part of this bill, reference being thereunto had will more fully appear—

Your exhibit further shews to your Honor that in the Spring of 1849 after the said purchase by said Elias for your exhibit from said Tucks your exhibit with the said Elias her husband who acted as her agent and for her use & benefit therein entered upon and took possession of said premises, and that they have been ever since that time 1849 in the actual and visible occupation & possession of said premises residing upon the same.

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Gau. archives further shows that on or about
the 14th day of November A. D. 1848 the said Flori-
mona Canda conveyed by deed of quit claim
all his right, title & interest in said Best Lot
Forty Eight in Section Seven to his brother one
Charles Canda, he the said Charles then hav-
ing notice of the sale and contract to and with
said Tucks above referred to.

That subsequently the said Florimonda
and Charles Canda by certain articles of agree-
ment made to bear date the 1st day of August
A. D. 1850 entered into with the said Whitcomb
as the assignee of said Tucks and said this
without any new consideration moving from
said Whitcomb to said Florimonda and Charles
Canda or either of them, the said Charles
Canda as well as said Florimonda recognised
and confirmed the said sale of said Florimonda
Canda to said Tucks, and the said assignment
of said Tucks to said Eliás, and covenanted
with said Whitcomb as assignee of said
Eliás that upon payment of the two prom-
issory notes executed as aforesaid by said
William Tucks to said F. Canda dated
6th day of September 1848 each for \$142,52
due in two & 3 years from date with such
interest as should be legally due thereon, they
would well & truly convey by good and

sufficient deed of special warranty to said Whitcomb his heirs or assigns, the said three acres of land by the description contained in said deed marked Exhibit F, and the said last mentioned agreement is filed herewith marked Exhibit M, and is specially referred to.

Your oratrix shews that the East two acres of said land being the same described in the deed to Gurly hereinafter referred to, is the part of said three acres which was purchased for her as aforesaid, and the premises which she claims, and respecting which she now prays the aid of this Court.

Your oratrix further shews that on the 2nd day of March 1852 the Trustees of the Illinois and Michigan Canal made their deed conveying said out Lot 48 to the said Charles Canada.

Your oratrix further shews that the said Whitcomb now pretends that by virtue of the said conveyance by said ~~deed~~ ^{deed} Elias to him and the writing purporting to be an assignment of the contract or obligation of C. Canada to Jucks also referred to, he the said Whitcomb became and was the owner of said premises, and authorised absolutely to sell and convey away the same. And she has been informed & believes & charges the fact too that some papers have been filed for record

in the office of the Clerk of the Circuit Court & Recorder of said Cook County, purporting to be an assignment of the above named contract (marked Exhibit M) by said Whitcomb to one Jason Gurly & also that the said Gurly as such assignee of Whitcomb has obtained from said Charles Cook a deed of conveyance of the said premises being the two acres bought for your estate as aforesaid that part of said Out Lot 48 - which is bounded as follows - Beginning at the South East corner of said out Lot on the North line of Lake Street and running thence Westerly along said North line of said Street one hundred & thirty two feet thence northwardly to a point on the North line of said Out Lot or Block 48 one hundred & thirty two feet from the North east corner thereof, thence East one hundred & thirty two feet to said North east corner of said out lot to the place of beginning - ^{thence south on the East line of said out lot} And that subsequently a pretended conveyance of said last mentioned part of said Out Lot 48; has been made by said Gurly to one James W. Borden of the State of Ohio - And your estate further shews that the said Borden by Messrs. Thomas Flayne and Henry J. Miller, who are attorneys of this Court has brought his action of ejectment to the present October term of the Circuit Court of the United

States for the District of Illinois against the said Elias as defendant seeking to recover possession of the part of said premises last above described, which action is still pending and undetermined.

But your oratrix believes true and expressly charges that ~~neither~~ ^{neither} the said pretended assignment by ~~sa~~ Whitcomb to said Gurley, nor said pretended conveyance by said Gurley to said Borden was made in good faith, or for a valuable consideration but that they were made fraudulently, with the design on the part of said Whitcomb to defraud your oratrix out of said premises and on the part of said Gurley and Borden to aid him in so doing -

Your oratrix further shews and expressly charges that said Gurley at the time of said pretended assignment to him and said Borden at the time of said pretended conveyance to him ~~sa~~ Borden each had notice of the rights of your oratrix in the premises, and particularly that the only right which said Whitcomb ever had, if he had any, in said premises, was the right of a mortgage and that there was an outstanding equity of redemption in said premises -

Your oratrix further expressly charges

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that the said defeasance was filed for record
in the office of the Clerk of the Circuit Court
of Cook County on the 18th day of January 1853
before any assignment or deed from said
Whitcomb had been made and recorded
or filed for record and thereupon the said
Whitcomb on the 14th day of February 1853 made
the pretended assignment (above referred
to) to said Gurdy and fraudulently antedated
the same as of the 21st day of December A.D.
1852.

Your oratrix further shews unto your
honor that your oratrix at various times both
before and after the 3rd day of August A.D. 1851
applied to the said Whitcomb to have a settle-
ment with him ~~relating~~ⁱⁿ to his claims upon
said premises against said Elias B. but the
said Whitcomb upon various pretenses put
off your oratrix, assuring her that he would
take no advantage of her - And that if your
oratrix could not conveniently make out what
was due to him said Whitcomb, she need not
give herself any trouble or uneasiness about
it, as all he the said Whitcomb wanted was
his money & interest and such interest thereon as
he T. Whitcomb should be obliged to pay, and
your oratrix received relying upon these &
other similar assurances of the said Whitcomb

omitted to have a settlement with him relative to the matters aforesaid - and your oratrix charges that said Whitcomb made such assurances for the fraudulent purposes of cheating and defrauding your oratrix out of said lands.

Your oratrix has often applied to said Whitcomb to release and confirm to your oratrix the said premises, and had even offered to account with said Whitcomb and pay him the balance which would be due him from said Elias if the \$360,00 paid as aforesaid for interest were held to be a legal and proper payment of interest, and not a proper set off or payment on the principal, but said Whitcomb has first put off your oratrix with evasive excuses, pretending great friendship for her, but of late has absolutely refused to comply with the reasonable request of your oratrix, pretending that your oratrix was forever bound by reason of a certain clause in the said defeasance - and the said Gurley and the said Borden refuse likewise to convey or release and confirm to your oratrix said premises.

Wherefore inasmuch as your oratrix is remedyless in the premises at and by the strict rules of the common law, and can only have relief in a Court of equity, &c.

the end that the said Trusman Whitcomb,
 Jason Gurly, James W. Borden, William
 Wheeler & Elias B. Sutherland

may be made defendants to this bill and
 may severally answer the same and all the
 statements and charges therein fully, as if
 severally specially interrogated thereto, that
 when this cause comes on to be heard the
 Court may order & decree that each of said
 parties defendant by a short day shall convey
 to your oratrix or a suitable trustee for her
 to be appointed in that behalf by the Court
 all his right, title and interest of ~~any~~ ^{any} in & to
 said premises, or in the event of their failure
 so to do that a commissioner make such
 conveyance your oratrix hereby offering
 to account with said Whitcomb respecting
 said money loaned to the said Elias as afore
 said and to pay him all arrears of both prin-
 cipal and interest thereupon and the cost
 of this suit if the Court should deem it
 equitable and just for her so to do and
 that your oratrix may have such other
 and further relief in the premises as to
 your Honor may seem meet and be
 equity belongs. Your oratrix prays the

People's writ of summons &c. and until this
 cause can be finally heard your oratrix prays
 your Honor by writ of injunction to restrain
 the said Whitcomb, Gurley and Borden from
 making any deed, conveyance or transfer of
 said premises, and restrain the said Borden
 and the said Thomas Hays Esq and Henry
 J. Miller Esq. his attorneys from further pro-
 secuting the said ejectment suit against the
 said Elias - And as in duty bound your
 oratrix will ever pray &c.

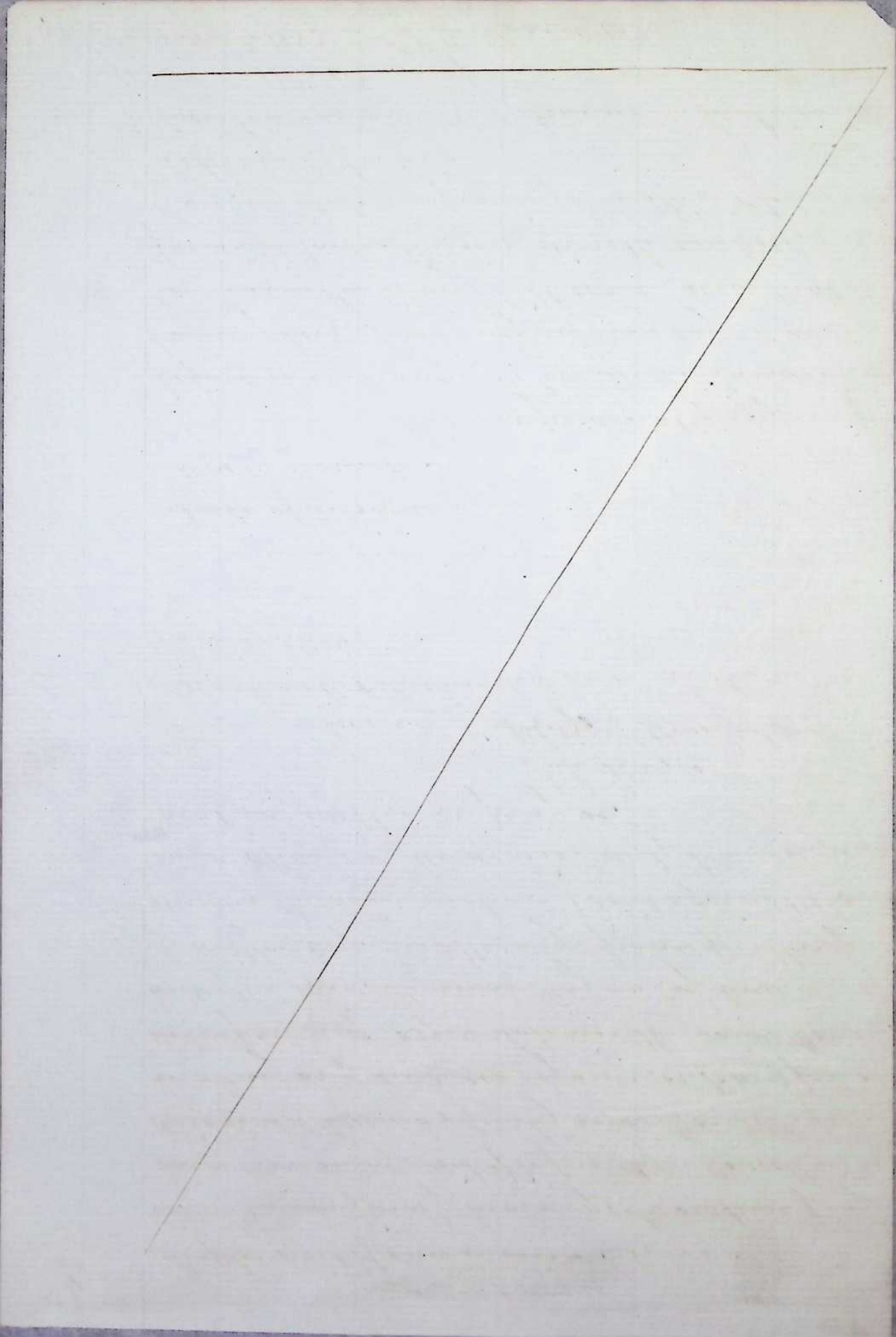
J. S. Hayes
 Sol. for Compt.

Blackwell & Beckwith
 of Counsel }

State of Illinois } ss,
 Cook County }

This day personally appeared
 before me - Francis Helen Sutherland who
 having been first duly sworn says that she
 has read the above bill read, and that the
 facts set forth therein directly are true, and
 the facts stated upon information & belief she
 believes to be true

Subscribed & sworn to } Francis H. Sutherland
 before me this 6th day of }
 October A. D. 1853 - L. D. Moore Clk



1 "A."

Florimond Canada To W^m Jacks

Agreement

Chicago Sept 6th 1848

This certifies that William Jacks has this day purchased of F. Canada three acres of land in Lot No 48 Sec 7 T39 N Range 14 East as laid out by canal Trustees Septending on Lake St. Twelve rods or thereabouts for the sum of Five hundred sixty nine & $\frac{7}{100}$ dollars and that he has paid toward the same the sum of one hundred and forty two & $\frac{4}{100}$ dollars being one quarter of said purchase money And also twenty five & $\frac{6}{100}$ dollars being one years interest in advance on the residue of said purchase money. The said Canada has also received from said purchaser his three several promissory notes for Four hundred twenty seven & $\frac{2}{100}$ dollars equally divided and becoming due in one two and three years from date with interest at six per cent per annum payable annually in advance. And that upon the full payment of said promissory notes and the interest thereon promptly according to their tenor and effect the said purchaser will be entitled to receive from said Canada a good and sufficient deed of said three acres but in case of a failure in the part of said purchaser to pay such interest or the residue of such prin

ipal within twenty days after the same or any
instalment thereof becomes due he shall forfeit
said land and all claim thereto and all pay-
ments made on account thereof

Witness

F. Candia seal

H. R. Pearson

William Jacks To Elias B. Sutherland

Assignment

For a valuable consideration to me paid by
Elias B. Sutherland his heirs and assigns I
do hereby assign to him the within contract
executed by F. Candia and all my right and
interest in and to the land therein described
with the exception of one acre of the West side
of the same sold to Joel Niant, in consideration
whereof the said Sutherland hereby agrees to
pay to me the sum of Eight hundred dollars
as follows. Two hundred dollars on the 6th
Sept. (6) 1849. One hundred dollars (100) on
the first June 1850. and one hundred dol-
lars on the 6th Sept. 1850. Two hundred dollars
6th Sept. 1851 and two hundred dollars the
1st December 1852 with interest on each pay-
ment as the same becomes due and payable
the said Sutherland hereby reserving the
right of making the payments on the with

in contract to F. Canada and deducting the
amount thereof from the payments herein to
be made to me

In presence of William Jack. Seal
Geo. Manfieri

No 23, 620 Filed June 26, 1849

Recorded in Book No 30 page 412

"B." This indenture made and entered into this twen-
ty ninth day of May in the year of our Lord one
thousand eight hundred and fifty between
Elias B. Sutherland of Chicago, Cook County and
State of Illinois, of the first part and William
Wheeler of the same place of the second part -
Witnesseth - That the said party of the first part in
consideration of the sum of seven hundred dollars
to him duly paid at and before the signing and
delivery of these presents and in further considera-
tion of the trust hereinafter mentioned, has
granted, bargained and sold and by these pres-
ents does grant, bargain and sell and convey
to the said party of the second part and assign
all right, title, interest, claim or demand what-
soever of the party of the first part of in and to a
certain contract for deed executed by F. Canada

to William Jack dated December 6th 1848 and assigned by William Jack to said party of the first part for two acres of land in Lot No. 48 Section Town 39 N Range 14 E. as laid out by the Canal Trustees, which contract and assignment are recorded in the Recorders office of Cook County Illinois June 26, 1849 in Book No 30 page 412 and also all buildings and improvements situated on said two acres and also any deed or conveyance of said two acres which may hereafter be made by said Canal and his heirs or assigns, said deed when made to be made to said party of the second part, subject in its operation in all respects to the provisions of trust herein recited. The said two acres being the same that said party of the first now resides on - To have and to hold the same with the appurtenances to the said party of the second part and his assigns forever In trust for the following purposes to wit, —

For the use and benefit of Francis Helen Sutherland wife of Elias B. Sutherland to pay the interest and profits of the said premises to the said Francis Helen Sutherland or to such person or persons as she in writing shall direct for her sole and separate use, and at the death of the said Francis Helen Sutherland then to the use of such person or persons and for such estate, estates or charges as the said Francis

Helen Sutherland by her last will and testament in writing or any writing purporting to be her last will and testament shall give and devise said premises. The said Francis Helen Sutherland to have the sole power to give and devise the said premises to whomsoever she may direct and chose. But reserving and conferring power of said party of the second part to sell and convey said premises by good and sufficient and in case said Francis Helen Sutherland her heirs or assigns should so order to be expressed in writing.

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

Elias B. Sutherland 

In the presence of }
Henry W. Clark. }

State of Illinois }
Cook County } ss.

I Henry W. Clark a Notary Public in and for said County in the State aforesaid do hereby certify that Elias B. Sutherland who is personally known to me to be the same person whose name is subscribed to the annexed Trust Deed appeared before me this day in person and acknowledged

that he had signed and sealed and delivered
the said instrument of writing as his free act
and deed for the uses and purposes therein
expressed.

Given under my hand and official
seal this first day of June A. D. 1850
L.S. Henry W. Clark Notary Public

"C." For value received I hereby sell, assign,
transfer and set over unto William Wheeler
all my right, title and interest to the attached
contract as assigned to me by William Jack
for two acres of land described in said as-
signment. In trust in all respects according
to the conditions and provisions of a deed of
trust executed by me to said Wheeler May
29, 1850 in regard to said two acres for the
use and benefit of Francis Helen Sutherland
Elias B. Sutherland.

May 29, 1850.

Witness Henry W. Clark

(L.S.)

"E." Truman Whitcomb } Cook County Court of
vs. } Common Pleas,
Elias B. Sutherland } Confession

Judgment entered 12 October. A.D. 1850
in vacation for damages \$316, 00

Plaintiffs cost 3, 65

Defendants cost 135

\$315, 00

Execution issued 12 October 1850. to Sheriff of
Cook County - October 14th 1850 Levied upon
"a lot of brick on the North side of the river near
Kinzie Street all the right, title and interest of the
within named defendant to said Brick
two kilns of said Brick

I, Cook Shff. by C. McCarthy Deputy

Return of sale on execution

By virtue of the within Execution and this by
thereon I did on the 8th day of November 1850 after
advertising according to law proceed to sell at
Public Vendue all the right, title and interest of
the within named defendant to said Brick,
and Truman Whitcomb bid the sum of three
hundred and forty five dollars which being the
highest and best bid therefor and the interest
of the defendant to said Brick has been sold
to the said Whitcomb - therefore return this sum

being satisfied in full as the plaintiffs receipt
shows on this execution and costs this 11th day of
November A. D. 1850

Sheriffs fees paid \$ 8,59
 Watchman for Do paid 20,00
 \$ 28,59

Isaac Cook Sheriff

By Owen McCarthy Deputy

Received on the within execution the dam-
 ages and Clerks costs and interest & on the same
 from Owen McCarthy Deputy Sheriff by sale
 of said Brick which has been levied upon
 November 9, 1850

J. Whitcomb

"F"

Elias B. Sutherland To

J. Whitcomb

This Indenture made this first day of August
 A. D. 1850 between Elias B. Sutherland of Chicago
 Cook County Illinois party of the first part and
 Truman Whitcomb of the same place party
 of the second part Witnesseth that for and
 in consideration of the sum of six hundred
 dollars paid by said party of the second

part to said party of the first part the receipt where
of is hereby acknowledged the said party of the first
part hath bargained, sold, assigned, aliened,
released, remised, conveyed and confirmed
and by these presents doth grant, bargain, sell,
alien, assign, release and convey unto said
party of the second part and unto his heirs
and assigns forever all of that part and por-
tion of Out Lot No Forty Eight (48) in the Illinois
and Michigan Canal Trustees subdivision
of Sec. 7 Township 39 Range Fourteen (14)
East, described as follows to wit, Commen-
cing at the South East Corner of said Out Lot
48 running thence West upon Lake St. 12
rods thence North forty (40) rods, thence
East twelve (12) rods to the East line of said
Out Lot 48 thence South upon said East
line of said Out Lot 48 to the place of begin-
ning. And further the said party of the
first part doth hereby assign to said party
of the second part that certain contract of
sale, a certificate of purchase executed by
one Florimond Canada to one William Jack
dated the 6th day of September A.D. 1844 for
three acres of said Out Lot 48 of said Canal
Trustees subdivision of Sec. 7 above mentioned
upon which there has been paid the sum of
Two hundred & eighty ^{four} ⁹⁵/₁₀₀ dollars principal

beside Interest bearing one year at moiety or balance of Two hundred & Eighty four ²⁹/100 dollars to be still paid thereon without interest to said F. Canada. One half of the last named sum follows due on the 6th day of September 1850 and one half of same on 6th day of September. A.D. 1852 which said sums last above named said party of the second part agrees to pay and subject to which this conveyance is made, the said party of the first part hereby authorising said party of the second part to receive, have and demand of said Florimond Canada the deed covenanted and agreed to be made by said F. Canada in and by said contract of sale or certificate so executed by him as aforesaid to William Jacks. To have and to hold the said premises above bargained and described with the appurtenances and buildings thereon unto the said party of the second part and his heirs and assigns forever. And the said party of the first part for himself, his heirs, executors, administrators and assigns doth hereby covenant, bargain and agree so & with the said party of the second part his heirs and assigns that upon payment of the said sum and sums of money so due to F. Canada as aforesaid upon said certificate

of purchase above described and assigned &
that said F. Candia will well and truly assure
and convey a perfect, absolute and indefeasible
estate or Inheritance in law in fee simple by
good and sufficient deeds of conveyance to said
party of the second part of said premises so
described and bargained as aforesaid and
hereby conveyed by said party of the first part
to said party of the second part his heirs and
assigns. And that said premises are free
and clear of all former and other grants
sales, leases, lases and incumbrances of what
kind or nature soever & the above bargained
premises in the quiet and peaceable possession
of said party of the second part his heirs and
assigns against all and every person or
persons lawfully claiming or to claim the
whole or any part thereof the said party of
the first part shall and will warrant and
forever defend, subject to the payment of
such sum or sums as are due to F. Candia
aforesaid and that in case of failure on
the part of said F. Candia to convey such
title as aforesaid to said party of the second
part as shall be perfect, sure and indefea-
sible that legal proceedings may at the
option of said party of the second part be
instituted in his own name or the name

of said party of the first part at the cost and charges of said party of the first part against said F. Canada or Charles Canada or such other person or persons as may appear to be properly liable to convey title as aforesaid to said premises or for payment of damages in default thereof and appropriate the proceeds of such judgment as may be obtained against them or any of them to his said party of the second parts own use and benefit without liability own and that in any event said party of the first part upon failure of said Canada to convey a good title for said premises to said party of the second part as aforesaid said party of the second part shall be entitled to receive and recover of the said party of the first part as stipulated damages without deduction or discount whatsoever the sum of nine hundred dollars which shall become and fall due as soon as the payments now remaining of the purchase money to F. Canada on the certificate or contract of sale so described as aforesaid shall be paid up to said Canada by said party of the second part and the said Canada fails or refuses upon demand made to convey said premises so described as aforesaid to said party of the second part and

make thereto a perfect, sure and indefeasible
title in the law in fee simple free of all defect
of record and all charge or encumbrance
whatsoever - In witness whereof said party
of the first part has hereunto set his hand
and seal this second day of August A.D.
1856.

In presence of
The words "payments"
struck out & also words
"due" struck out on
last page signing & on
2^d page and second
altered to first
S. J. Lowe

E. B. Sutherland (seal)
F. H. Sutherland (seal)

State of Illinois }
Cook County } ss.

I Samuel J. Lowe a Jus-
tice of the Peace in and for said County
and the State aforesaid do hereby certify
that Elias B. Sutherland and Francis H.
Sutherland who are personally known
to me to be the same persons whose names
are subscribed to the annexed Deeds ap-
peared before me this day in person and
acknowledged that they had signed

sealed and delivered the said instrument of writing as their free act and deed for the uses and purposes therein expressed. And the said Frances H. Sutherland wife of the Elias B. Sutherland having been by me examined separate and apart and out of the hearing of her said husband and the contents and meaning of said instrument of writing having been by me made known and fully explained to her, she acknowledged that she had freely and voluntarily executed the same without any compulsion of her husband and relinquished her Power to the lands and tenements therein mentioned and that she does not wish to retract the same.

Given under my hand
and official seal this 5th day of August
A. D. 1856

(sgd) S. J. Lowe (seal)
Justice of the Peace

No 26. 892 Filed for Record

6. August 1856

Recorders Book 37 Page 46

Articles of agreement made this third day of August A. D. 1850 between Freeman Whitcomb of the City of Chicago County of Cook, and State of Illinois party of the first part and Elias B. Sutherland of the same place party of the second part Witnesseth that the party of the first part at the request of the party of the second part and in consideration of the sum of money herein after named to be first paid at and within the time stipulated and the performance of the covenants herein expressed to be first performed by said party of the second part, hereby agree to sell and assure to the said party of the second part by good and sufficient deed of quit claim all of the right, title and interest which said party of the first part now has or may hereafter acquire of in and to the following described piece, parcel and tract of land, to wit,

All of that part and portion of said Lot No 48 in the Illinois and Michigan Canal Trusters Subdivision of Section Township 39 Range 14 East and bounded as follows- Commencing at the South East corner of said Lot No 48 and running thence west upon Lake Street twelve rods thence North forty (40) rods, thence East twelve (12) rods to the East line of said Lot

Lot 48 thence south upon said East line of said Out Lot 48 to the place of beginning with the privileges and appurtenances buildings, rents, issues and profits thereunto belonging.

And the said party of the second part in consideration of the premises hereby agrees to pay to the said party of the first part or to his attorney, executor, administrator or assigns the sum of Five hundred and twenty four dollars on or before the third day of August next A. D. 1851 with legal interest and also that he will faithfully and in due season pay or cause to be paid all taxes and assessments ordinary and extraordinary that may be levied assessed or imposed upon the said premises or appurtenances.

And it is mutually covenanted and agreed by and between the parties herunto that in case the said party of the second part shall make default or fail to make the payments above mentioned at and within the time limited above (the said time of payment being hereby declared to be an essential part of this contract) then and in that case this agreement and all the covenants and

agreements on the part of the party of the first part
herein contained shall at the option of the said
party of the first part his representatives and assigns
be and hereby declared to be null and void and no
longer binding and all the right and interest either
in law or equity of the said party of the second
part shall cease and be determined or at the elec-
tion of said party of the first part the covenants and
liabilities of said party of the second part shall
continue and remain obligatory upon said party
of the second part and may be enforced and the
said consideration money and any part thereof
may be collected by proceeding in Law or Equity
from the said party of the second part his
heirs, executors, administrators and assigns

In witness whereof the parties to
these presents have hereunto set their hands
and seals the day and year first above written
words "first part the" } Truman Whitcomb [seal]
interlined above on }
the 2^d page before }
signing }
In presence of }
J. H. Hayne }

Cockitt's "G" continued

For a valuable consideration I Elias B. Sutherland
 of Chicago ^{de heretofore assign, transfer and}
 land set over to Benjamin Bennett of Chicago
 County New York all my right, title, interest and
 claim and property of in and to the ^{within} ~~recorded~~
 contract or agreement of purchase, he paying
 all money due or to become due thereon and
 upon payment thereof he is hereby authorized
 and I hereby direct that the ~~within~~ within name
 of Truman Whitcomb shall make the deed
 therein specified to be made to said Benjamin
 Bennett or his assigns - I being justly
 indebted unto him in the sum of two hundred
 and fourteen dollars which is the full consid-
 eration of this assignment

Witness my hand and seal this
 20th day of October A. D. 1850

(Signed) E. B. Sutherland {seal}

In presence of
 Th. H.

39.115

State of Illinois } ss.
 Cook County }

Filed for Record

Jan'y. 18 - 1853 Recorded

in Book No 52 of

Deeds page 594

(Signed) L. D. Hoard Clk. Cir. Court

Shirley L
 See ante page 16

State of Illinois } ss.
Cook County }

I Louis D. Hoard Clerk of
the Circuit Court and Ex officio Recorder of
Cook County do hereby certify that the above is a
true copy of an instrument of writing filed for record
in my office on the 18th day of January A.D. 1853
and duly recorded in Book No 52 of Deeds
page 594

L. D.

Certified under my hand
& the seal of said Court
at Chicago this 16th day
of Jan'y, 1853
(signed) L. D. Hoard
Clerk

For a valuable consideration I Benjamin
Bennett of Essex County New York do hereby
assign and transfer unto Francis H. Suther-
land Wife of Elias B. Sutherland of Chicago
all my right, title, and interest of in or to the
contract of which the foregoing is a copy (by virtue
of the assignment of which the foregoing is a
copy) & authorise her as the assignee & owner
thereof to take all proceedings which I could
before have done - holding me at all times
harmless and indemnified from all

believe that his signature to the said certificate
of proof or acknowledgment is genuine, that
said instrument is executed and acknowledged
according to the laws of the state of New
York.

In testimony whereof I have hereunto
set my name and affixed the seal of said
County the 20th day of June A. D. 1853

L.S.

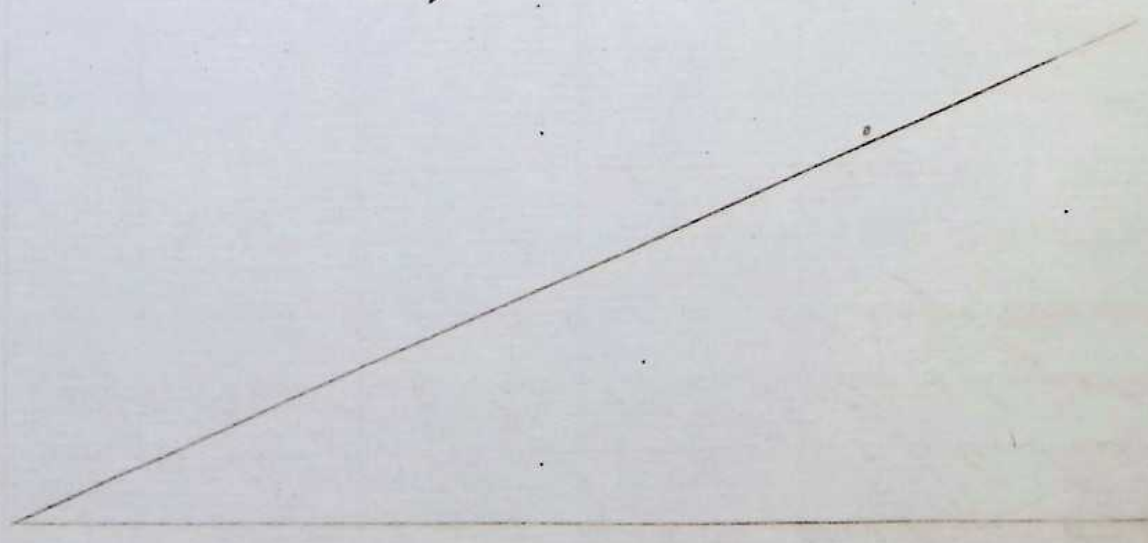
(signed) W^m C. Fields Clerk

H.

Rec^d Chicago Sept. 16th 1850 from
E. B. Sutherland Fifty Dollars it being
Warners payment due to F. Canada
on Lot No 48

\$50.00

(signed) J. Whitcomb



J.

Rec^d Chicago Sept. 1st 1851 from C. S.
Sutherland, Hiram Warner & J. C. Smith
Note for Sixty Six 66/100 Dollars payable
to Wm Jacks and dated Chicago Sept. 19.
1849

(signed) J. Whitcomb

H.

\$120⁰⁰

Chicago June 23/51

One day from date for value
rec^d I promise to pay Francis H.
Sutherland or bearer One hundred
and Twenty Dollars with Int.

(signed) J. Whitcomb

F. & C. Candee To J. Whitcomb

This indenture made this first day of August A. D. 1850 between Florimond Candee of Chicago Cook County Illinois and Charles Candee of the City, County and State of New York parties of the first part and James Whitcomb of Chicago Illinois of the second part

Witnesseth - That whereas the above named Florimond Candee became the purchaser of Out Lot No 48 of the Canal Trusters subdivision of Section 7 Township 39 N R. 14 East at a sale of canal lands and lots made by said Trusters in the year A. D. 1848. And whereas also the said F. Candee did on the sixth day of September A. D. 1848 bargain and sell to one William Jacks three acres of said Out Lot No 48 above described for a consideration of Five hundred and sixty nine and $\frac{19}{100}$ dollars of which there was paid down the sum of one hundred and forty two & $\frac{42}{100}$ dollars being one quarter of said purchase money. And also twenty five and $\frac{63}{100}$ dollars one years interest in advance on the residue of said purchase money and the three several promissory notes of the said William Jacks, each payable for one hundred and fifty two & $\frac{4}{100}$ dollars in one two and three years from the date of said purchase respectively executed and delivered by him to said Florimond Candee

for the residue of said purchase money. in consideration whereof the said Florimond Banda, executed and delivered his certain certificate of purchase dated the sixth day of September A. D. 1848 and thereon and thereby covenanted and agreed that upon payment of said note according to their tenor and effect that he the said F. Banda would make to said purchaser William Jacks a good and sufficient deed of said three acres of land so sold as aforesaid, and whereas afterwards the said William Jacks assigned the said certificate or contract of purchase to one Elias B. Sutherland for a valuable consideration in writing on the back thereof and the said Elias B. Sutherland has assigned all his interest therein to the said party of the second part Truman Whitcomb, and authorised him to demand, have and receive the deed covenanted and agreed to be made by the said F. Banda to said premises or three acres of land upon the payments of the residue of the purchase money now due thereon according to the true intent and meaning of said contract, bargain and sale above described and made with William Jacks.

Now therefore this agreement and indenture - Witnesseth. That upon the payment by said party of the second part his

heirs, executors, administrators or assigns to
said party of the first part their heirs, executors,
administrators or assigns of the two ^{several} second
promissory notes now remaining unpaid iss-
ued by said William Locks to said J. Cand-
dated 6th day of September A. D. 1848 each paya-
ble for one hundred and forty two ⁴⁰⁰ dollars
~~and~~ and due in two and three years from the
date thereof respectively together with such inter-
est as shall be legally due thereon the said parties
of the first part for themselves, their heirs, execu-
tors, administrators and assigns hereby agree
and bind themselves to said party of the second
part well and truly to convey by good and suffi-
cient deed ^{or deeds} with covenants of Warranties against
any act done or suffered by them to said party
of the second part his heirs or assigns the above
bargained and sold three acres of land more
particularly known and described as follows
to wit, Being part of Cut Lot No 48 of the subdivi-
sion of the Trustees of the Illinois and Michigan
Canal of Section 7 Town 39 Range 14 East
and bounded as follows. Commencing at
the South East corner of said Cut Lot No 48
and running thence West upon Lake Street
twelve (12) rods thence North forty (40) rods
thence East twelve (12) rods to the East line
of said Cut Lot 48, thence South on the said East

line of said Lot 48 to the place of beginning and containing three (3) acres of land.

But it is expressly agreed and understood that upon a failure by said party of the second part to pay said notes or any part thereof within twenty days after the same shall become due that in that case he shall forfeit said land and all claim thereto acquired and all payments made on account thereof.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written

In presence of	F. Banda	(seal)
F. Hathaway as to F. Banda	Charles Banda	(seal)
Thacker J. Payne as to C. Banda	J. Whitcomb	(seal)

In consideration of one dollar to me in hand paid I assign, transfer and convey all my right, title, claim and interest in and to the within contract to Jason Gurley and I hereby make said Gurley my true and lawful attorney and in my name and stead to enforce said contract according to the true intent and meaning thereof

Chicago December 21. 1852

James Whitcomb (seal)

State of Illinois }
Cook County. }

I, Edward S. Kimberly, Clerk
of the County Court of Cook County do hereby
certify that on this 14th day of February A. D. 1853
personally appeared before me Truman Whitcomb
who is personally known to me to be the same per-
son who signed the foregoing assignment and
acknowledged that he signed, sealed and
delivered the same as his free act and deed
for the uses and purposes therein set forth

Witness my hand and seal of office
the day and year aforesaid

E. S. Kimberly, Clerk

No 40,011 Filed for Record February
15, 1853 Recorded in Book 56 page 424 v. 11

"D."

August 3rd 1850

Thirty days after date for value
recd. I promise to pay to Truman Whit-
comb or order Three hundred dollars
with interest

E. B. Sutherland.

Know all men by these presents that I
Elias B. Sutherland of Chicago am justly
indebted unto Truman Whitcomb upon

a certain promissory note bearing even date herewith for the sum of three hundred dollars and due thirty days after date.

Now therefore in consideration of the premises I do hereby make, constitute and appoint Thos. Hoyne or any attorney of any Court of Record to be my true and lawful Attorney irrevocable for me and in my name, place and stead to appear in any Court of Record in term time or in vacation in any of the States or Territories of the United States at any time after the said note becomes due to waive service of process and confess a judgment in favor of said Terman Whitcomb his assigns upon the said note for the above sum or for as much as appears to be due according to the tenor and effect of said note and interest thereon to the day of the entry of said judgment together with costs and Attorneys fees ten dollars and to file a cognovit for the amount that may be so due with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof nor any bill in equity filed to interfere in any manner with the operation of said judgment and to release all errors that may intervene in the entering upon of the said judgment or issuing execution thereon. Hereby ratifying and confirming all that

my said Attorney may do by virtue hereof
Witness my hand and seal this third day
of August A. D. 1850

In presence of
E. L. Knott.

E. B. Sutherland (seal)

State of Illinois }
Cook County } ss.

E. L. Knott being by me duly
sworn deposes and saith that he is the subscribing
Witness to the within power of Attorney and
saw Elias B. Sutherland sign seal and deliver
the same freely and voluntarily for the use and
purposes therein expressed.

E. L. Knott

Subscribed and sworn to
before me this 7th day of
August A. D. 1850

F. A. Howe J. C.

and
Afterwards ~~to wit~~ on the day and year aforesaid
(to wit, October 7. A. D. 1853) there issued out of the office
of the Clerk of said Circuit Court the People's writ of
summons directed to the Sheriff of said County
and clothed in the words and figures following
to wit,

State of Illinois }
Cook County } ss.

The People of the State of Illinois
to the Sheriff of said County Greeting.

We Command you that you Summon James
Whitcomb, Jason Gurley, James N. Borden, William
Whitler & Elias B. Sutherland if they shall be found
in your County personally to be and appear before the
Circuit Court of said County, on the first day of the
next term thereof to be holden at the Court House in
Chicago, in Cook county, on the fourth Monday of
October instant, to answer unto Francis H. Suther-
land by her next friend Benjamin W. Raymond
in her certain bill of complaint filed in the said
Court, on the chancery side thereof.

And have you then and there this writ with
an endorsement thereon, in what manner you
shall have counted the same,



Witness, Louis D. Hoar, Clerk of
our said Court, and the Seal thereof
at Chicago, in said county, this 7th
day of October A.D. 1853

L. D. Hoar Clerk

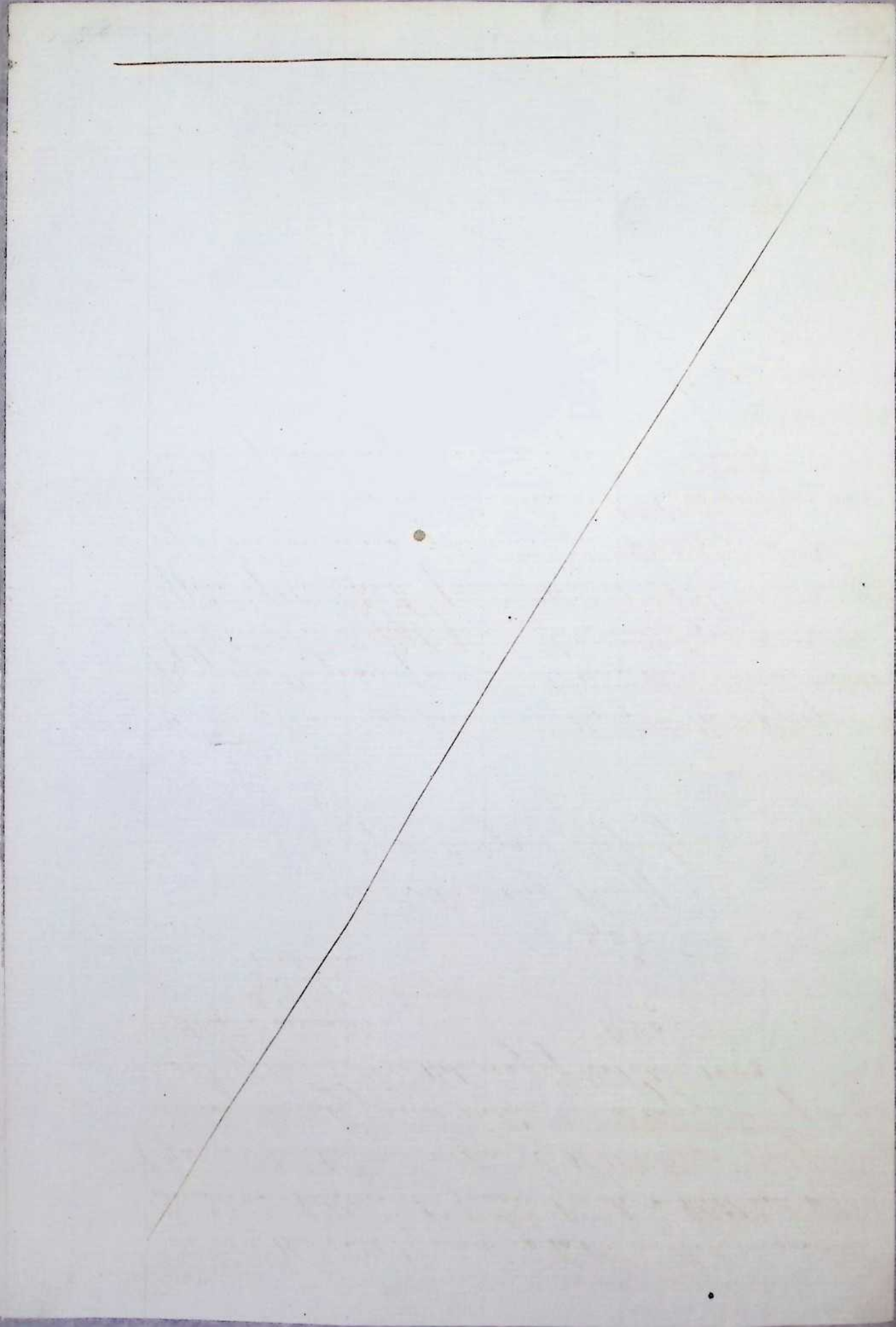
Said Summons was afterwards returned, to wit,
on the 11th day of the month & year aforesaid, into
the office of the Clerk aforesaid with an endorse-
ment thereon in the words & figures following to wit:

Served this writ by reading to the within named
Truman Whitcomb, Jason Gurley & William Whiter
(James R. Borden & Elias B. Sutherland not found
in my County) and delivering a copy thereof to
each of them - this 11th. day of October 1853

Fees 3 services	1.50
3 copies	1.50
3 miles	1.5
1 return	1.0
	3.25

C. P. Bradley Sheriff
By W. R. Egan Deputy)

And afterwards to wit, on the fourth day of
May in the year of our Lord one thousand eight
hundred and fifty four, there were filed in the
office of the Clerk of said Court, in this cause the
separate answers of Truman Whitcomb, Jason
Gurley & James R. Borden which answers are
in the following words & figures, to wit,



In the Cook County Circuit Court
of the 1st Term A. D. 1853

In Chancery

The several answer of Jason Gurdy one
of the defendants to the bill of complaint
of Francis Helen Sutherland by Benjamin
H. Raymond her next friend complain-
ant against this defendants, Truman
Whitcomb, William Wheeler & Elias
B. Sutherland defendants —

This defendant now and at all times saving and
reserving to himself all advantage and benefit of ex-
ception to the errors and imperfections contained in said
bill of complaint for answer thereto or to so much
thereof as he is advised it is material for him to make
answer unto answering saith that he has no knowledge
or information respecting the matters and things
in said bill of complaint contained wherein it is
charged and set forth that in October A. D. 1848, the
said complainant being the widow of Charles Earns
was possessed in her own right of the sum of seven
hundred dollars derived from the estate of her said
deceased husband and that she then made the agree-
ment with the said Elias B. Sutherland stated and
set forth in said bill of complaint for the considera-
tion therein stated, and that the marriage between
the said Elias and the said complainant afterward

took place under and in pursuance of such agreement and this defendant insists that if any agreement was made by and between the said complainant and the said Elias as stated in said bill of complaint and for the consideration therein stated, the same had never been reduced to writing nor signed by the party to be charged therewith as required by the statute in such cases - And this defendant insists upon the said statute and claims the same benefit therefrom as if he had pleaded the same.

And this defendant says that he is informed and believes and therefore admits that one Florinda Canan purchased of the Trustees of the Illinois & Michigan Canal, Lot Number forty eight - of the canal trust subdivision of section seven, Township thirty nine North Range fourteen - and that the said trustee issued to him a certificate of such sale and purchase as stated and set forth in said bill of complaint. And that on the sixth day of September A. D. 1848, he sold to one William Jacks three acres, part of said Lot 48 and gave to the said Jacks an obligation in writing to convey the same to him as is therein stated.

And this defendant further says that he is informed and believes and therefore admits that subsequently and some time in the month of June A. D. 1849 the said Elias B. Sutherland purchased of the said Jacks what was then supposed to be the East two acres of the said three acres and that

the said obligation was thereupon assigned to the said Elias as stated in said bill of complaint but this defendant has no knowledge or belief nor has he ever received any intimation until the filing of said bill of complaint that said purchase was made with the money or at the request of said complainant that the said complainant has ever paid any money for or on account thereof or that any of the money paid therefor was paid with the funds of said complainant as stated in said bill of complaint.

This defendant further answering says that he has no knowledge nor has he received any intimation until the filing of said bill of complaint of the execution or ~~execution~~^{violation} of any deed of said premises from the said Elias to one William Wheeler in trust for the complainant nor of the assignment to said Wheeler of said obligation as stated in said bill of complaint but this defendant believes and therefore charges that if any such deed was executed or assignment made - ~~the deed was executed and assignment~~, the same was made & executed with a fraudulent design and for the purpose of defrauding this defendant and the subsequent purchasers of said premises.

This defendant further answering says that he has no knowledge information or belief respecting the advances therein charged to have been made by the said Truman Whitcomb to the said Elias and the agreement of said Elias to pay usurious

interest therefor nor of the execution of the promissory note & power of attorney referred to in said bill of complaint nor of any of the matters therein stated as relating thereto

And this defendant further answering says that he is informed and believes and therefore admits that on or about the 2nd day of August A.D. 1850 the said Eliás and the said complainant made and executed their certain deed of conveyance whereby they conveyed said premises to the said Truman Whitcomb and that they executed to said Whitcomb an assignment of the contract or obligation hereinbefore mentioned which deed and assignment are referred to in said bill of complaint & set forth in complainant's exhibits marked Exhibit F. but this defendant is wholly ignorant of any of the circumstances, matters or things affecting the execution of said deed assignment or which are charged in said bill of complaint as affecting the execution of the same —

And this defendant further answering says that at the time of the purchase of said premises by this defendant from the said Whitcomb as hereinafter mentioned he was not aware and had he received any intimation that the said Eliás & the said complainant had or claimed to have any interest whatever in said premises

and he now charges that whatever interest the said complainant might heretofore have had in said premises either at law or in equity the same was released, conveyed and assigned to the said Whitcomb and to his executors by the deed and assignment herinbefore mentioned the said complainant having duly signed and acknowledged the execution of said deed as required by the statute in such cases —

And this defendant further answering says that at the time of the purchase made by him as hereinafter mentioned he had no knowledge of the execution by the said Whitcomb of the writing or contract charged in said bill of complaint to have been executed by him to the said Elias on the 30th day of August A. D. 1850 — nor of any of the circumstances or matters stated in said bill of complaint to have attended or affected the execution thereof —

This defendant further answering says that he has no knowledge or information respecting the several payments alleged in said bill of complaint to have been made at different times by the said complainant and the said Elias to the said Whitcomb nor of any other matters or transactions therein stated to have been had or to have taken place by and between the said Elias & complainant and to said Whitcomb excepting the case to

of the deed from the said Elias & complainant herein before mentioned.

This defendant further answering says that he has no knowledge or information with regard to any assignment of the contract from Whitcomb to the said Elias having been made by the said Elias to one Benjamin Bennett of Copego N. Y. as stated in said bill of complaint, nor of the transfer thereof to the said complainant as therein stated. And this defendant was not aware of the existence of any such contract at the time of the purchase made by him as hereinafter mentioned or that the said complainant had or claimed to have any interest in the premises therein described.

And this defendant further answering denies that the said complainant either by herself or her agent has been in possession of said premises since the Spring of 1849, as stated in said bill of complaint but this defendant is informed and believes & therefore charges that the said complainant has been living with her husband Elias B. Sutherland and is a member of his family and that such possession has been the possession of the said Elias B. Sutherland and not of the said complainant.

This defendant is informed and believes and therefore admits that on or about the 14th day of November A.D. 1848 the said Florinda Leanda conveyed by and of Quit claim all his

right, title and interest in and to said Lot 48
to his brother one Charles Canada and that subse-
quently and on or about the 1st day of August A.D.
1850 the said Truman Whitcomb executed the
contract or agreement referred to in said bill of
complaint and set forth in complainant's exhibit
and designated as exhibit 11, and that subsequent
thereto the same was signed and executed by
the said Charles & Florinda Canada — and this
defendant admits that the trustees of the Illinois
& Michigan Canal conveyed said Lot forty
Eight to the said Charles Canada on the 27th day
of March A. D. 1852 as stated in said bill of
complaint —

This defendant further answering says that
on or about the 21st day of December A. D. 1852 this
defendant supposing that the said Whitcomb
and his grantees were entitled to a deed of
the premises described in the contract made
by and between the said Charles & Florinda
Canada of the one part and the said Truman
Whitcomb of the other part and dated August
1st A. D. 1850 and being informed by the said
Whitcomb that the amount due thereon had
been duly paid and satisfied and that a deed
of said premises conveying a clear and unincum-
bered title thereto would upon applica-
tion being made therefor be given by the said

Charles Banda and it not having been intimated to this defendant that the said complainant or the said E. B. Sutherland had or claimed to have any right, title or interest in or to said premises or in or to any part thereof, this defendant did on that day purchase said premises of the said Whitcomb and all his right, title and interest therein and thereto, for the sum of ~~ten~~^{twenty} five hundred dollars payable as follows, One fourth in four months and the balance in equal payments in one, two and three years from the said 21st day of December. — And this defendant therefore executed & delivered to the said Whitcomb his four certain promissary notes for those several amounts payable as aforesaid and the said Whitcomb at the same time delivered to this defendant the agreement herein before mentioned as having been made by the said Charles & Florinda Banda of the one part and the said Whitcomb of the other part together with a memorandum in writing in the words & figures following to wit,

"In consideration of one dollar I hereby agree to convey by assignment of this contract the premises described in the accompanying contract for the sum of five thousand five hundred dollars payable $\frac{1}{4}$ in four months — the balance in one two and three years equal

payments

Chicago Dec. 21, 1852

(Signed) J. Whitcomb,

Which said memorandum was on that day signed by the said Whitcomb and with the contract therein referred to delivered to this defendant.

This defendant further answering says that said contract and memorandum was thereupon left at the office of Messrs. Judge & Wilson Attorneys & Counsellors at law in this City of Chicago in order that the necessary papers might be drawn & prepared for a more formal execution of said assignment and conveyance and that subsequently and during the first part of the month of January A. D. 1853 the said Truman Whitcomb did execute a more formal transfer and assignment of said contract to this defendant by endorsement thereon in writing and at the same time executed to this defendant his certain deed of conveyance whereby in consideration of the sum of twenty five hundred dollars as therein expressed the said Whitcomb remised, released, sold and quitclaimed to this defendant all his right, title, interest, claim and demand in and to the premises described in said contract which said deed and assignment was duly acknowledged by the said Whitcomb - The said deed

on the 12th day of February A. D. 1853 and the said assignment on the 14th day of February A. D. 1853 and this defendant was not then aware nor had he received any intimation that the said complainant had or claimed to have any right, title or interest at law or in equity in the premises described in said contract or in any part thereof—

And this defendant says that such purchase was made by him in good faith and on the day when the memorandum in writing hereinbefore mentioned bears date to wit, on the 21st day of December A. D. 1852 and was not made with the intention or design of defeating or defrauding said complainant as charged in said bill of complaint— And this defendant denies that said sale and assignment was made without any consideration therefor as stated and charged in said bill of complaint but says that he has paid to the said Whitcomb the full sum of \$625 that being the amount of the first of said payments due on account of said purchase and that he has secured the payment to the said Whitcomb of the balance of the said sum of \$2500—

And this defendant further answering says that the said Charles Canda & Adie his wife by Mahlon D. Ogden their attorney in fact on the 21st day of February A. D. 1853 entered and in

persons of the contract made and executed by
and between the said Charles & Florinda Conda
and the said Whitcomb as aforesaid and of the
assignment thereof by the said Whitcomb to this
defendant as aforesaid made, executed and de-
livered to this defendant their certain deed of
conveyance whereby they duly aliened, remised
released and confirmed unto this defendant
and unto his heirs and assigns forever, the
premises described in said contract, and de-
scribed in said deed of conveyance as that part of Lot
Lot number forty eight in the canal trustees sub-
division of section seven in Township thirty nine
North of Range fourteen East of the third prime-
pal Meridian bounded as follows— Begin-
ning at the South east corner of said Block on
the North line of Lake Street and running then
westerly along the North line of said Street one
hundred and thirty two feet thence Northward
to a point on the North line of said Block dis-
tant one hundred and thirty two feet from the
North east corner thereof— Thence East one hun-
dred and a thirty two feet ^{to the said} from the North east
corner ^{of said Block} of — Thence South one hundred and
thirty two feet to the South east corner of
said Block— and thence South on the East line
of said Block to the place of beginning—
which said deed was duly acknowledged

and recorded in the office of the recorder of said County on the 6th day of March A. D. 1853 as by the said and hereby to be produced as this Court shall direct will more fully appear

And this defendant further answering says that the purchase made by him from the said Whitcomb was made in good faith - that for some time prior to the said 21st day of December A. D. 1852 this defendant and the said Whitcomb had frequent conversations together respecting the sale and purchase of said premises And this defendant denies that said purchase was made with the intention or design on the part of this defendant of defrauding said complainant or of assisting the said Whitcomb in so doing as is charged in said bill of complaint

And this defendant further answering says that on or about the third day of May A. D. 1853 in consideration of the sum of four thousand dollars then paid & secured to be paid to him this defendant and Sabrina his wife made executed and delivered to one James W. Borden of Cincinnati of the State of Ohio their certain deed of conveyance whereby they aliened, released, conveyed and confirmed said premises unto said James W. Borden and unto his heirs and assigns forever - which said deed was duly ac-

known & acknowledged by this defendant & Sabrina his wife &
recorded in the office of the recorder of said County &
on the 4th day of May A. D. 1853

And this defendant says that the sale made
by him to the said Borden as aforesaid was made
in good faith and for the consideration expressed
in said deed and without any intention or design
on the part of this defendant to injure or defraud
said complainant, or to assist the said Whittier in
so doing - And this defendant was not then aware
that the said complainant or that any one for her
had or claimed to have any right, title, interest either
at law or in equity in said premises or in any part there
of - And this defendant denies that said complain-
ant has ever applied to him to convey said premises
to her or to any one for her as stated and charged in
said bill of complaint - And he further says that he
has no interest whatever in said premises but that he has
in good faith & for the consideration hereinbefore men-
tioned conveyed the same unto the said James A.
Borden and he therefore humbly submits that he
ought not to be compelled to convey said premises
or any part thereof unto the said complainant or
unto any one for her as prayed for in said bill of
complaint -

And he denies all fraud and conspiracy
charged in said bill of complaint, without that
that any other matter or thing in the said bill

of complaint contained and notherin and hereby
well and sufficiently answered unto confessed and
avoided traversed or denied is true, to his knowl-
edge & belief all which matters & things this defend-
ant is ready to aver maintain and prove as this
Honorable Court shall direct and prays to be hence
dismissed with his costs & charges in this behalf
most wrongfully sustained

Hayne & Miller
Defts. Solrs.

State of Illinois
Cook Cook vs.

Jason Gurley being duly sworn
deposes and says that he is one of the defendants
named in said bill of complaint, that he has heard
read the foregoing answer and knows the contents
thereof and that the same is true except as to the
matters & things therein stated on his information
& belief and that as to those matters he believes
it to be true

Jason Gurley

Subscribed & sworn
to before me this 17th
day of April A. D. 1854

L. C. Howard

Clk.

In the Cook County Circuit Court

Ret. Term A. D. 1853

In Chancery

The several answer of James W. Borden
one of the defendants to the bill of com-
plaint of Frances Helen Sutherland
by Benjamin W. Raymond her
next friend, complainant against
this defendant Truman Whitcomb
Jason Gurley, William Wheeler and
Elias B. Sutherland defendants

This defendant now and at all times saving
and securing to himself all advantage & benefit
of exception to the errors and imperfections contained
in said bill of complaint for answer thereto or to
so much thereof as he is advised it is material
for him to make answer unto, answering as follows
that he has no knowledge or information respecting
the matters & things in said bill of complaint
contained, wherein it is charged and set forth that
in October A. D. 1848 the said complainant being
the widow of one Charles Earnes was possessed
in her own right of the sum of seven hundred
dollars derived from the estate of her said de-
ceased husband and that she then made the
agreement with the said Elias B. Sutherland
stated & set forth in said bill of complaint for

the consideration therein stated, and that the marriage between the said Elias and the said complainant afterwards ^{took place} under and in pursuance of such agreement and this defendant insists that if any agreement was made by and between the said complainant and the said Elias as stated in said bill of complaint and for the consideration therein stated the same had never been reduced to writing nor signed by the parties to be charged therewith as required by the Statute in such cases —

And this defendant saith that by an act of the People of the State of Illinois adopted by the general Assembly of said State, at its regular session held in the year A. D. 1844-5 and approved March 3^d A. D. 1845 Entitled, "Frauds and Perjuries" it was among other things enacted —

"That no action shall be brought whereby to charge any person upon any agreement made upon consideration of marriage, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized —

and this defendant insists upon the said statute and claims the same benefit as if he had pleaded the same.

And this defendant further answering says

that he is informed and believes and therefore admits that one Floinda Candia purchased of the trustees of the Illinois and Michigan Canal Out Lot Number forty eight of the Canal trustees subdivision of section seven township thirty nine north Range fourteen. That he made payment therefor and that the said trustees issued to him a certificate of such sale & possession as stated and set forth in said bill of complaint. And that on the 6th day of September A. D. 1848 he sold to one William Jacks three acres part of said Out Lot 48 and gave the said Jacks an obligation in writing to convey the same to him as is therein stated.

And this defendant further says that he is informed and believes and therefore admits that subsequently and some time in the month of June A. D. 1849, the said Elias B. Sutherland purchased of the said Jacks the East two acres of the said three acres and that the said obligation was therefore assigned to the said Elias as stated in said bill of complaint, but this defendant has never received any knowledge nor has he ever had any intimation until the filing of said bill of complaint that said purchase was made with the money or at the request of said complainant, or that the said complainant had ever paid any money for or on account thereof or that any of the money paid therefor was

paid from the funds of said complainant as stated in said bill of complaint.

This defendant further answering says that he had no knowledge nor has he received any intimation until the commencement of this bill of the existence of any deed of said premises from the said Elias to one William Wheeler in trust for the complainant ^{as stated in said Bill of complaint} nor of the assignment to said Wheeler of the obligation as is therein stated but this defendant believes and therefore charges that if any such deed was executed or assignment made the same was made and executed for the purpose of defrauding this defendant and the subsequent purchasers of said premises -

This defendant further answering says that he has no knowledge, information or belief respecting the advances therein charged to have been made by the said Truman Whitcomb to the said Elias and the agreement of said Elias to pay usurious interest therefor as therein alleged nor of the execution of the promissory note or power of attorney referred to in said bill of complaint nor of any of the matters therein stated as relating thereto -

And this defendant further answering says that he is informed and believes and therefore admits that on or about the 3rd day of August A.D. 1850 the said Elias and the said complainant made and executed their certain deed of conveyance whereby they conveyed said premises to the said Truman

Whitcomb and that they executed the assignment to
said Whitcomb off the contract or obligation herein be-
fore mentioned; which deed and assignment are
referred to in said bill of complaint ^{and} set forth in
complainant's Exhibit marked Exhibit B, but this
defendant is wholly ignorant of any of the circumstan-
ces, matters or things affecting the execution of said
deed and assignment or which are charged in said
bill of complaint as affecting the same.

And this defendant further answering says that
at the time of the purchasing said premises by him
from the said Jason Gurley as herein after mentioned
he was not aware nor had he received any intimation
that the said complainant or the said Elias B. Suther-
land had any interest whatever in said premises
and he now charges that whatever interest the said
complainant might theretofore have had in said
premises either at law or in equity, the same was
released, conveyed and assigned to the said Whit-
comb and was granted by the deed and assign-
ment hereinbefore mentioned; the said complain-
ant having duly signed and acknowledged the
execution of said deed as required by the statute in
such cases

And this defendant further answering says
that he has no knowledge, information or belief
respecting the execution by the said Whitcomb of
the writing or contract charged in said bill of

complaint, to have been executed by him to the said Eliás on the 3^d day of August A. D. 1850 nor of any of the circumstances or matters stated in said bill of complaint to have attended or affected the execution thereof.

This defendant further answering says that he has no knowledge ^{or} information respecting the several payments alleged in said bill of complaint to have been made at different times by the said complainant and the said Eliás to the said Whitcomb nor of any other matters or transactions stated in said bill of complaint to have been had or to have taken place by and between the said Eliás & complainant & the said Whitcomb - excepting the execution of the deed from said Eliás & the complainant to the said Whitcomb as hereinbefore mentioned.

This defendant further answering says that he has no knowledge or information with regard to any assignment of the contract from Whitcomb to the said Eliás having been made by the said Eliás to one Benjamin Bennett of Etsego N. Y. as stated in said bill of complaint nor of the transfer thereof to the said complainant as therein stated, and this defendant was not aware of the existence of any such contract at the time of the purchase & made by him as hereinafter mentioned nor had he any intimation of its execution or existence until the commencement of this suit.

And this defendant further answering denies that the said complainant either by herself or an agent was ever in possession of said premises since the Spring of 1849, as stated in said bill of complaint but this defendant is informed and believes and therefore charges that during all that time the said complainant has been living with her husband Elias B. Sutherland, and that such possession has been the possession of the said Elias B. Sutherland and not of the said complainant —

This defendant is informed and believes and therefore admits that on or about the 14th day of November A. D. 1848 the said Florinda Canada conveyed by and of quit claim all his right, title and interest in and to said ^{lot} Lot 48 to his brother one Charles Canada and that subsequently and on or about the 15th day of August A. D. 1850 the said Truman Whitcomb executed the contract or agreement referred to in said bill of complaint, and set forth in complainants Exhibit and designated as exhibit 211 and that subsequent thereto the deed was signed & executed by the said Charles & Florinda Canada, and this defendant admits that the Trustees of the Illinois & Michigan Canal conveyed said Lot 48 to the said Charles Canada on the 27th day of March A. D. 1852 as stated in said bill of complaint —

This defendant further answering says that

he is informed and believes and therefore admits that
 the said Jason Gurley purchased of the said Truman
 Whitcomb all his right, title and interest in and to
 the contract or agreement hereinbefore mentioned
 as having been made by and between the said
 Florinda ^{& Charles} Canda of the one part and the said
 Truman Whitcomb of the other part and all his
 the said Whitcomb's right, title and interest in
 and to the premises therein described, and that
 the said Whitcomb thereupon assigned said
 contract to the said Gurley - and by his certain
 and bearing date on the 21st day of December
 A. D. 1852 conveyed said premises and all his
 right, title and interest therein unto the said
 Jason Gurley his heirs and assigns - but this
 defendant knows nothing as to the time when
 said deed and assignment were executed
 except that the same bear date on the 21st day
 of December A. D. 1852 and this defendant is
 informed and believes and therefore charges
 that an assignment of said contract was made
 by said Whitcomb on that day - and he avers
 upon his information & belief that the same
 was executed on the 14th day of February A. D.
 1853 and antedated as stated and charged
 in said bill of complaint - and this defend-
 ant knows nothing with regard to the consider-
 ation paid by the said Gurley for said premises

except as is stated in said and recited by the said Whitcomb as aforesaid but he is informed and believes and therefore avers that said purchase was made in good faith by the said Gurdy and for the sum of twenty five hundred dollars paid and secured to be paid by the said Gurdy and he therefore denies that the same was fraudulently made or with the design of defeating the rights of the complainant in the premises or to assist the said Whitcomb in so doing as is stated and charged in said bill of complaint.

And this defendant further answering says that he is informed and believes and therefore admits that on or about the 11th day of March A. D. 1853, the said Charles Banda and wife by Maklon D. Ogden their attorney in fact by their certain deed of conveyance bearing date on that day conveyed said premises unto the said Jason Gurdy, and that such conveyance was made under and in pursuance of the contract or agreement hereinbefore mentioned as having been made by and between the said Charles & Florinda Banda and the said Truman Whitcomb and the sale and assignment thereof by the said Whitcomb to the said Jason Gurdy as aforesaid.

And this defendant further answering says that on or about the 3rd day of May A. D. 1853

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he duly and in good faith purchased of the said
Jason Gurley the following described real estate be-
ing in the City of Chicago and described as follows
to wit, That part of Lot number Forty eight (48)
in the canal Trustees subdivision of Section seven
Township thirty nine North of Range Fourteen
East of the Third principal Meridian bounded
as follows. Beginning at the South East corner
of said Block on the North line of Lake Street and
running thence Westerly along said North line
of said Street one hundred and thirty two feet, then
Northwardly to a point on the North line of said
Block distant one hundred and thirty two feet
from the North East corner thereof thence East
one hundred and thirty two feet to said North East
corner of said Block and thence south on the
East line of said Block to the place of beginning
being the same premises as this defendant is in-
formed and believes purchased by the said
Gurley from said Whitcomb and referred to
in said bill of complaint.

And this defendant says that said purchase
was made in good faith by this defendant and
for the sum of Four thousand dollars then
actually paid and secured to be paid by this
defendant to the said Gurley, and the Jason
Gurley & Sabrina his wife made execution and
delivered to this defendant their certain deed

as by the said deed now in possession of this defendant ready to be produced a third part shall direct, refer-
ring back thereto will more fully appear, and the said deed of conveyance was after
I went on the 15th day of May 1888 duly acknowledged by the said James Gurley and his wife
and was in the office of the recorder of said county of Cook as will appear by said records reference being made

of conveyance whereby they duly bargained sold
conveyed, released aliened and confirmed said
premises unto this defendant and unto his
heirs and assigns forever - And the said James
Gurley therein and thereby covenanted and
agreed to and with this defendant that at the time
of the executing and delivery of said deed he
was well seized of the premises thereby conveyed
as of a good, sure, perfect, absolute & indefea-
sible estate of inheritance in the law in fee
simple and that he had good right, full power
and lawful authority to grant, bargain and
sell the land and that the land was free and
clear from all former and other grants, bar-
gains, sales, liens, taxes, assessments and en-
cumbrances of what kind and nature soever
- and this defendant not being aware and
it not having been intimated to him that any
other person or persons had any claim, right,
title or interest in and to said premises or any
part thereof - purchased said premises as of
said and paid and secured to be paid to
the said Gurley the just and full sum of four
thousand dollars the consideration expressed
in said deed - and this defendant expressly
denies that at the time of the purchase made
by him as aforesaid he had any notice knowl-
edge or intimation that the said complainant

and or any other person for her had any claim, right, title or interest either in law or equity in or to said premises or any part thereof or that there was any outstanding equity of redemption on said premises as charged in said bill of complaint - And this defendant expressly denies that said conveyance to him by the said Jason Gurley & Sabrina his wife was not made in good faith or that the same was made without consideration or with a desire on the part of this defendant to injure or defraud said complainant or to assist the said Whitcomb or any other person in so doing as stated and charged in said bill of complaint -

And this defendant humbly submits that he ought not to be held liable or be compelled to convey said premises or any portion thereof to said complainant and he denies all fraud and conspiracy charged in said bill of complaint without that, that any other matter or thing in the said bill of complaint contained and not herein truly, well and sufficiently answered unto, confessed and avoided, traversed or denied is true to his own knowledge or belief, all which matters and things this defendant is ready to aver, prove, or maintain as this honorable Court shall direct and prays to have be hence dismissed with his reasonable costs in this behalf most wrong

fully sustained

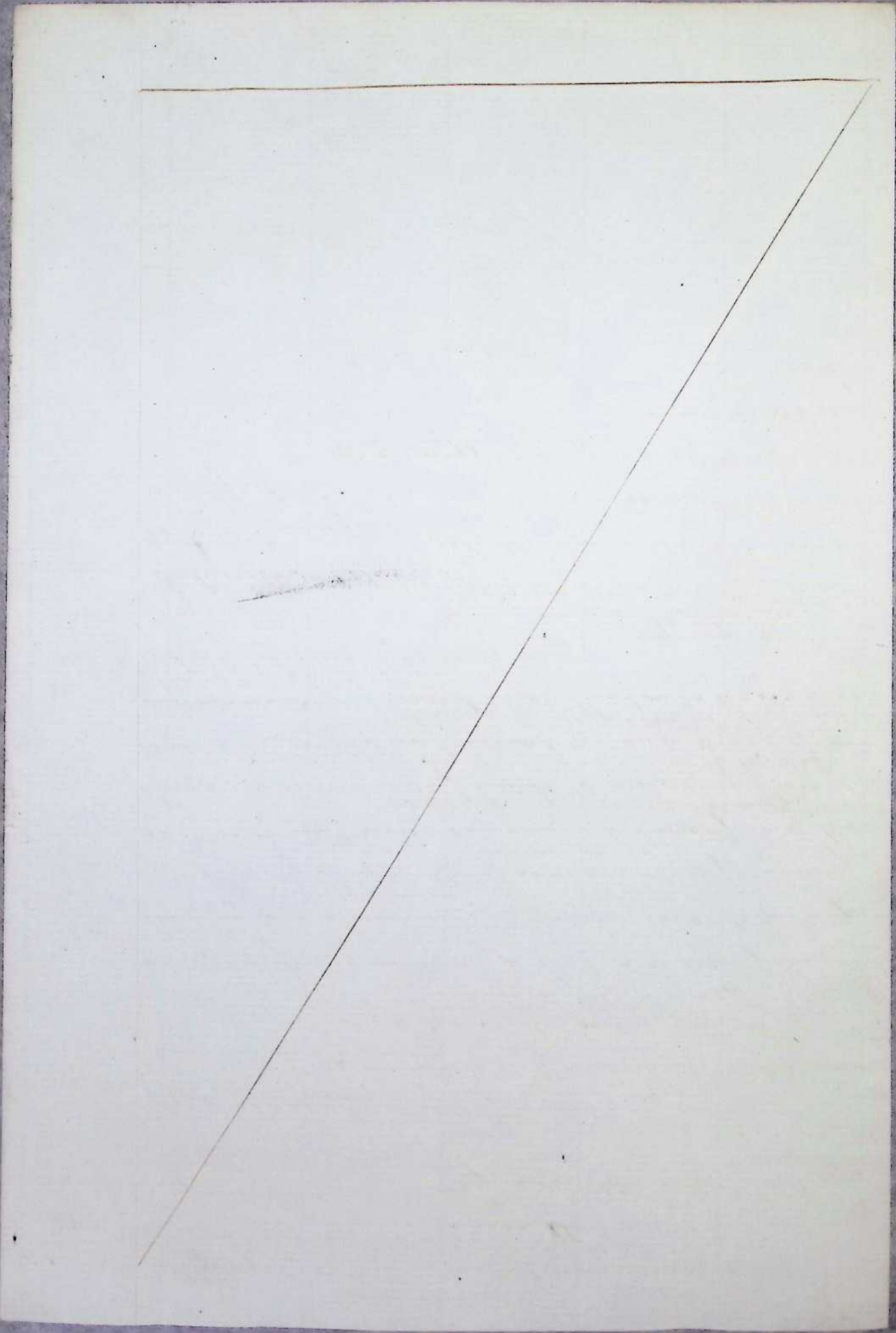
James H. Borden
Hoynes & Miller atts. Solrs.

State of Illinois
Cook County ss.

James H. Borden being duly sworn deposes and says that he is one of the defendants named in the complainant's bill of complaint, that he has heard read the foregoing answer and knows the contents thereof and that the same is true except as to the matters therein stated upon the information and belief of this ~~deponent~~ deponent and that as to these matters he believes it to be true

James H. Borden
Subscribed & sworn
to before me this 8th
day of April A. D. 1854

W. Kimball Clerk
Cook County Court of
Com Pleas



In the Court of Chancery
Oct. 2. D. 1858
In Chancery

The several answer of Immense
Whitcomb one of the defend-
ants to the bill of Complaint of
Francis H. Sutherland by
Benjamin W. Raymond her
next friend Complainant
against this defendant & Jason
Gurley, James W. Borden,
William Wheeler, Elias B.
Sutherland —

This defendant now and at all times saving
& reserving to himself all advantage & benefit
of exceptions to the errors & imperfections contained
in said bill of complaint for answer thereto
or to so much thereof as he is advised it is ma-
terial for him to make answer unto answering
saith —

That he admits that the said complainant
the 21st day of October A. D. 1848 was the widow
of one Charles Barnes then deceased but this defend-
ant is not advised nor has he any knowledge
or information as to whether said complainant
was then possessed in her own right of the sum

of seven hundred dollars or any other sum derived from the estate of her deceased husband or as to whether the said Elias B. Sutherland then or at any time agreed with said complainant that in consideration that she would marry him she should be permitted to have and retain the entire control & direction of said sum as her separate estate, and that while said agreement was subsisting the intermarriage between the said complainant and the said Elias took place, as stated and set forth in said bill of complaint - and this defendant insists that if any agreement was made in consideration of such marriage as is therein stated the same has never been reduced to writing nor signed by either the said complainant nor the said Elias as required by the statute in such cases and is for that reason of no binding power or effect -

And this defendant further answering admits that on or about the day of A. D. 1848 one Florinda Canada purchased of the Trustees of the Illinois & Michigan Canal at a sale of their lands on that day Lot Number Forty Eight of the Canal Trustees subdivision of Section seven Township thirty nine North of Range fourteen East and that he made the first payment thereon

and that he received from said Trustee a certificate of such sale & purchase made as is usually given in such cases, and that he subsequently gave to one William Jacks an obligation in writing for the conveyance of three acres thereof to the said Jacks as stated & set forth in said bill of complaint —

This defendant admits that the said Elias B. Sutherland did some time during the year 1849 purchase the interest of the said Jacks in what was then supposed to be two acres from the East side of said three acres at and for the sum stated in said bill of complaint and to be paid as therein stated and that the obligation from said F. Candia was thereupon assigned by the said Jacks to the said Sutherland — and this defendant says that one acre from the West side of said three acres was expressly excepted and reserved in said assignment as having been previously sold to one Joel Wheat and that the remaining portion thereof or that part of said three acres included in said assignment would not exceed one and one half acres by accurate measurement — and this defendant is informed and believes and therefore charges that said purchase was made for the benefit and solely on account of the said Elias B

Sutherland to whom such assignment was made and that the said complainant has never been in any respect interested therein - and this defendant therefore denies that said purchase was made with the consent or at the request of said complainant or for the purpose of investing her funds in real estate as stated in said bill of complaint or that any payment was made therefor with the funds of said complainant as is therein stated - And this defendant further answering says that the assignment by the said Jacks to said Sutherland of said obligation from the said F. Canada was an absolute and unconditional assignment and that the amount due said Jacks therefor was regarded and treated by the said Sutherland & this defendant at the time of the purchase of said premises by this defendant as hereinafter mentioned as the individual debt of said Sutherland and in no respect a lien upon said premises and the said Sutherland then agreed to pay and satisfy the same -

And this defendant further answering says that he is informed and believes and therefore charges that the said E. B. Sutherland some time in the winter of 1850 advanced to one Sidney Sutherland his cousin the sum of \$350 for the purpose of enabling him said

Sidney to go to California, that subsequently and after the return of said Sidney from California in consideration of such advancement he conveyed to said complainant or to some one in trust for her the South East quarter of the South East quarter of Section number sixteen Township forty two Range ten East and ^{west} ~~south~~ at the time of such conveyance, at least the sum of four hundred dollars - and also that some time in September 1852 said E. B. Sutherland sold and conveyed to one James B. Hill the North East quarter of the South East quarter of Section one Township Forty two North of Range nine East for the sum of \$75 and that this money was paid to said complainant - and this defendant therefore charges that the said complainant has been fully compensated and has received a full return for all moneys which she may have advanced to the said E. B. Sutherland or which the said E. B. Sutherland may have received from her as moneys derived from the estate of the said Charles Earns -

And this defendant further answering says that he has no knowledge information or belief respecting the conveyance charged in said bill of complaint to have been made by the said E. B. Sutherland to one William Wheeler in trust for the use and benefit of said complainant

nor of the assignment to said Wheeler of the contract therein referred to nor of any of the matters therein stated as referring thereto - but this defendant believes and therefore charges that if any such deed was executed or assignment made the same was made and executed for the purpose of defrauding this defendant and the subsequent purchasers of said premises -

This defendant admits that prior to the even one day of August A. D. 1850 the said Elias had been some time engaged in the business of brick making in the City of Chicago and that this defendant had from time to time advanced to the said Elias various sums of money amounting in all to the sum of three hundred dollars and this defendant says that prior to such advances the said Elias represented to this defendant that said business of brick making was a very profitable business and that large profits would accrue from a prosecution thereof and this defendant thereupon entered into a verbal arrangement with the said Sutherland by which this defendant in consideration of said ~~advance~~ advances thereafter to be made by him was to have and receive one half of all the gains & profits which might accrue & result from said business with the privilege of withdrawing from said arrangement whenever he this defendant

should desire or deem it for his interest so to do
and that the advances hereinbefore mentioned
were thereupon made by this defendant under
and in pursuance of such verbal arrangement.

And this defendant further answering says
that on or about the 2^d day of August this defend-
ant desiring to discontinue said arrangement
and the said Elias consenting thereto they the
said Elias & this defendant preparatory to such
~~dis~~ discontinuance effected a settlement &
adjustment of their respective interests in
said business and it was thereupon mutu-
ally agreed that this defendant should be
allowed the sum of three hundred dollars
as his share of the proceeds & profits of said
business. Conclusive of said advances theretofore
made by this defendant to the said Elias and the
said Elias to secure ^{the} payment thereof thereupon gave
his promissory note for that amount to this defend-
ant payable in thirty days from the date thereof
and executed his certain power of attorney authorizing
the confession of judgment therefor.

But this defendant denies that the said Elias
was then or had been indebted to this defendant in
the sum of five hundred dollars as stated in said
bill of complaint or that said note was given for or on
account of interest which might accrue thereupon or
that there ever was any agreement between this defend-

and the said Elias
 out by which this defendant was to receive the usurious
 interest of five per cent per month for money advanced
 by this defendant to said Elias as stated in said
 bill of complaint—

And this defendant admits that said promissory
 note not having been paid he caused judgment
 to be entered thereon in pursuance of said power
 of attorney as he lawfully might do and that execution
 was issued therefor and levied upon two kilns
 of brick belonging to the said Elias and that the
 same was sold under and by virtue thereof to this
 defendant for the sum of \$395, that being the
 X amount of said judgment including interest
 and costs at the time of such sale and that subse-
 quently this defendant sold said bricks so purcha-
 sed as aforesaid to one Thomas Morgan the as-
 signee of said Sutherland for the sum of three
 hundred and forty five dollars but this defendant
 denies that he received from said Morgan in addi-
 tion thereto the sum of sixty dollars or any other
 sum on account of interest upon the sum of five
 hundred dollars or on account of any interest upon
 any other sum as stated or charged on said bill
 of complaint.

And this defendant further answering says
 that on or about the 2^d day of ~~May~~ August 1880
 the said Sutherland and the complainant his wife
 in consideration of the sum of five hundred dollars

bargained, sold and conveyed to this defendant
and to his heirs & assigns forever in the following
described premises to wit, all of that part & portion of
Cut Lot Number Forty Eight (48) in the Illinois & Michi-
gan Canal Trusts subdivision of Section 7 Township
39 Range Fourteen East described as follows to wit,
Commencing at the South East corner of said Cut
Lot 48 running thence West upon Lake Street 12 Rods
thence North (40) Rods - thence East twelve rods to
the East line of said Cut Lot (48.) Thence South upon
said East line of said Cut Lot 48 to the place of begin-
ning - It having been the intention of the parties to
said deed to convey to this defendant the premises
purchased by the said E. B. Sutherland from the
said William Jacks herein before mentioned
and this defendant says that neither the said Elias
nor the said complainant had any interest whatever
in a portion of the premises included in said de-
scription and that the true length of the East and
West lines of the premises to which the said Elias
was then entitled or in which he had any interest
is ~~40~~ but thirty one and $\frac{1}{3}$ rods and that there was
actually but about one & $\frac{1}{2}$ acres conveyed to this de-
fendant by said deed - This defendant admits
that that three hundred dollars advanced by this
defendant to said Sutherland as aforesaid formed
a part of the consideration money paid by this defend-
ant for said premises but the remaining portion

thereof to wit the sum of three hundred dollars was paid by this defendant to said Sutherland after the execution of said deed - this defendant having at the time of the execution of said deed of conveyance made & delivered to said Sutherland his promissory note for that amount which was subsequently and during the said month paid and taken up by this defendant.

And this defendant says that said conveyance was executed in pursuance of a purchase of said premises from the said Sutherland & of his interest ~~per~~ bona fide therein and in good faith made by this defendant and he ~~avows~~ ^{denies} that said conveyance was ever intended by the parties thereto or by either of them as a mortgage or as a security for the repayment of any sum of money then due from the said Sutherland to this defendant. And this defendant says that all indebtedness theretofore due from the said Sutherland to this defendant except the said sum of \$300 upon which judgment was afterwards entered & execution issued as aforesaid was thereby cancelled & the said Sutherland forever released & discharged therefrom -

And this defendant further answering says that the full value of said premises so conveyed to him as aforesaid at the time of such conveyance would not exceed the sum of \$650 or \$700 - and he admits that the said Wheeler was not a party to said deed of conveyance for the reason that this defendant

was not aware that the said Wheeler either in his own right or as trustee for any other party had any interest in said premises conveyed to him by said deed or that any other person had any interest therein except the said complainant who might have had ^{a dower} interest therein and the said E. B. Sutherland and the said F. Canada ~

And this defendant further says that the said Elias Sutherland in and by said deed transferred & assigned to this defendant the contract of sale or obligation hereinbefore mentioned & executed by the said F. Canada to the said Jacks and assigned by the said Jacks to the said Sutherland. And the said ~~defendant~~ Sutherland therein and thereby stated and covenanted that there had been paid thereon the sum of \$284.85 and that there was then and thereon the sum of \$284.85 to be paid to the said F. Canada and half thereof on the 6th. day of September A. D. 1850 and one half thereof on the 6th. day of September A. D. 1852. and the said E. B. Sutherland therein and thereby further covenanted to & with this defendant his heirs and assigns that upon the payment of the said sum and sums of money so due to the said F. Canada as aforesaid the said F. Canada would well & truly convey and issue to this defendant, his heirs & assigns a perfect, absolute and indefeasible estate of inheritance

in law in fee simple by good and sufficient deeds of conveyance of said premises, and that said premises were then free and clear of all former and other grants, sales, liens, taxes and incumbrances of what kind or nature soever - and this defendant was not aware that there were any other liens or incumbrances upon said premises other than those mentioned in said deed and this defendant in making such purchase relied fully & in good faith upon the statements and covenants of the said Sutherland as expressed in said deed - and this defendant insists that whatever interest the said complainant might then have had in said premises by only signing and acknowledging said deed she thereby conveyed & released the same to this defendant.

This defendant further answering admits that on the 3rd day of August A. D. 1850 he executed unto the said E. B. Sutherland the contract & agreement mentioned and referred to as Exhibit G. in said bill of complaint - whereby in consideration of the sum of \$624, to be paid to him by the said Sutherland on or before a certain day therein mentioned to wit, on or before the Third day of August A. D. 1851 time having been therein declared to have been an essential part of said contract - this defendant agreed to sell & assure to the said Elias B. Sutherland by a good and sufficient deed of quit claim all the right, title &

interest which this defendant then had or there
after might have in and to the premises therein
described and being the same premises there-
fore conveyed by the said Sutherland & the said
complainant his wife to this defendant as herein
before mentioned —

But this defendant denies that said contract
was intended either by this defendant or the
said Elias to operate as a defeasance or in any
manner to defeat ^{or} interfere with the conveyance
made by the said complainant & the said Elias
to this defendant as aforesaid — but that the same
was intended as an agreement on the part of
this defendant to sell to the said Sutherland
said premises and to have no other and further
or different effect or operation than is indicated
by & expressed in & by said agreement. And this
defendant expressly denies that the said sum of
\$624 was the \$600 advanced by this defendant
to the said E. B. Sutherland and of \$24 which
this defendant pretended he had paid ^{for} ~~his~~ expenses
in drawing papers as stated in said bill of complaint
but this defendant says that he never pretended
that he had paid the sum of \$24 or any other
sum for drawing said papers or that the same
formed or was intended to form any part of the
consideration for said contract of sale and
he denies that the said sum of \$624 was mean-

Denies that
it was a loan

up to any extent of moneys theretofore advanced by this defendant to the said E. B. Sutherland, but this defendant says that such advances were fully paid and satisfied by the deed of conveyance of the said Sutherland and the said complainant to this defendant as hereinbefore mentioned —

And this defendant further answering admits that at the time of the conveyance to him by the said Sutherland and wife as aforesaid the said several sums of money were due the said Jacks from the said Sutherland as stated in said bill of complaint but the said Sutherland then expressly agreed with this defendant, that he Sutherland would fully pay and satisfy the same, yet the said Sutherland not paying to the said Jacks said several sums of money or either of them this defendant did on or about the 13th day of October A. D. 1852 pay to the said Jacks on account thereof the sum of one hundred and fifty dollars in consideration whereof the said Jacks by his attorneys agreed to release all his right, title & interest in & to said premises —

This defendant further answering admits that there was then due the said F. Canada on the contract of sale hereinbefore mentioned as having been made by the said Canada to the said Jacks the sum of \$284, 84 as stated in said bill of complaint. But this defendant says that it

up to any extent of moneys theretofore advanced by this defendant to the said E. B. Sutherland, but this defendant says that such advances were fully paid and satisfied by the deed of conveyance of the said Sutherland and the said complainant to this defendant as hereinbefore mentioned —

And this defendant further answering admits that at the time of the conveyance to him by the said Sutherland and wife as aforesaid the said several sums of money were due the said Jacks from the said Sutherland as stated in said bill of complaint but the said Sutherland then expressly agreed with this defendant, that he Sutherland would fully pay and satisfy the same, yet the said Sutherland not paying to the said Jacks said several sums of money or either of them this defendant did on or about the 13th day of October A. D. 1852 pay to the said Jacks on account thereof the sum of one hundred and fifty dollars in consideration whereof the said Jacks by his attorneys agreed to release all his right, title & interest in & to said premises —

This defendant further answering admits that there was then due the said F. Canada on the contract of sale hereinbefore mentioned as having been made by the said Canada to the said Jacks the sum of \$284, 84 as stated in said bill of complaint. But this defendant says that it

289,89
116.

was then well understood by this defendant and the said Elias Sutherland that ^{of said sum} \$116, or near that sum was to be paid by Herman Warner who then owned one acre from the West side of the premises included in said contract, it being the one acre referred to in the assignment from the said Jacks to the said Sutherland as having been sold to one Paul Niant ~

And the said Warner did subsequently pay said sum of \$116 or nearly that sum in the manner hereinafter mentioned ~

Pratt note
This defendant further answering says that he admits that he received the note of George H. Pratt referred to in said bill of complaint, but this defendant says that said note had been hypothecated to one Stephen Bronson Jr. by said Sutherland to secure the payment of the sum of \$53 ~ and this defendant at the request of said Sutherland paid to said Bronson said sum of \$53 and received said note from said Bronson and held the same as a collateral security for the repayment thereof ~ that ~~Sutherland~~ subsequently and on or about the 21st day of August 1850 this defendant advanced to the said Sutherland therefor the sum of fifty dollars, the said Sutherland at the same time desiring this defendant to retain said Pratt note as a collateral security for the payment of such advancement, and that this defend-

289,89
116.

was then well understood by this defendant and the said Elias Sutherland that ^{of said sum} \$116, or near that sum was to be paid by Herman Warner who then owned one acre from the West side of the premises included in said contract, it being the one acre referred to in the assignment from the said Jacks to the said Sutherland as having been sold to one Paul Niant ~

And the said Warner did subsequently pay said sum of \$116 or nearly that sum in the manner hereinafter mentioned ~

Pratt note
This defendant further answering says that he admits that he received the note of George H. Pratt referred to in said bill of complaint, but this defendant says that said note had been hypothecated to one Stephen Bronson Jr. by said Sutherland to secure the payment of the sum of \$53 ~ and this defendant at the request of said Sutherland paid to said Bronson said sum of \$53 and received said note from said Bronson and held the same as a collateral security for the repayment thereof ~ that ~~Sutherland~~ subsequently and on or about the 21st day of August 1850 this defendant advanced to the said Sutherland therefor the sum of fifty dollars, the said Sutherland at the same time desiring this defendant to retain said Pratt note as a collateral security for the payment of such advancement, and that this defend-

and likewise and at the request of said Sutherland made the following payments for and on account of said Sutherland - to wit,

Aug. 18. 1850	cash to R. P. Saunders	8
Dec. 21. 1850	cash to R. P. Saunders	25. 00
April 10. 1851	Balance a/c due R. P. Saunders	18. 00
July 24. 1851	This note to James McK. Neely	24. 25
Sept. 13. 1851	This a/c due D. W. Irvin	<u>20. 00</u>
amounting in all to the sum of		\$ 95. 25

Which said several sums last above mentioned was paid by this defendant for and on account of said Sutherland and at his instance and request. The said Sutherland directing this defendant to hold & retain said Pratt note until the same was repaid to him.

This defendant further says that neither the said Sutherland nor has any one for him repaid to this defendant the said sum of \$53 paid by this defendant to the said Bronson as aforesaid, nor the said sum of \$50 paid to said Sutherland, nor the said sum of \$95.25 paid by this defendant as aforesaid for and on account of said Sutherland, nor any portion of said several sums or either of them and this defendant has applied the proceeds of said Pratt note as he lawfully might do, on account of the said several sums so paid by him as aforesaid and this defendant expressly denies that said note was given to him to provide him with funds for the payment of the amount due to F. Candee

Denies
Pratt note

and likewise and at the request of said Sutherland made the following payments for and on account of said Sutherland - to wit,

Aug. 18. 1850	cash to R. P. Saunders	8
Dec. 21. 1850	cash to R. P. Saunders	25. 00
April 10. 1851	Balance a/c due R. P. Saunders	18. 00
July 24. 1851	This note to James McK. Neely	24. 25
Sept. 13. 1851	This a/c due D. W. Irvin	<u>20. 00</u>
amounting in all to the sum of		\$ 95. 25

Which said several sums last above mentioned was paid by this defendant for and on account of said Sutherland and at his instance and request. The said Sutherland directing this defendant to hold & retain said Pratt note until the same was repaid to him.

This defendant further says that neither the said Sutherland nor has any one for him repaid to this defendant the said sum of \$53 paid by this defendant to the said Bronson as aforesaid, nor the said sum of \$50 paid to said Sutherland, nor the said sum of \$95.25 paid by this defendant as aforesaid for and on account of said Sutherland, nor any portion of said several sums or either of them and this defendant has applied the proceeds of said Pratt note as he lawfully might do, on account of the said several sums so paid by him as aforesaid and this defendant expressly denies that said note was given to him to provide him with funds for the payment of the amount due to F. Candia

Denies
Pratt note

as stated in said bill of complaint or that it had any connection whatever with the purchase made by this defendant from the said Sutherland or with the agreement of this defendant to sell said premises to said Sutherland as therein stated —

This defendant further answering says that as he is informed and believes and therefore expressly charges that at the time said note was given the said E. B. Sutherland and the maker of said note had been joint owners of the following described real estate, to wit, the South East quarter of the South East quarter of Section twenty five ^{and} of the South East quarter of the North East quarter of Section thirty six in Township forty one Range Eleven East and that the maker of said note had purchased the interest of the said Sutherland therein for the sum of \$800, or thereabouts \$400 of which sum was then paid to the said Sutherland and the balance secured to be paid by two promissory notes of \$225 each — and that the note received by this defendant as aforesaid was one of the notes then given by said Pratt on account of such purchase. This defendant therefore denies that said note was the property of said complainant or that she ever had any interest therein as stated in said bill of complaint —

This defendant further answering says that George H. Pratt the maker of said note refused to

as stated in said bill of complaint or that it had any connection whatever with the purchase made by this defendant from the said Sutherland or with the agreement of this defendant to sell said premises to said Sutherland as therein stated —

This defendant further answering says that as he is informed and believes and therefore expressly charges that at the time said note was given the said E. B. Sutherland and the maker of said note had been joint owners of the following described real estate, to wit, the South East quarter of the South East quarter of Section twenty five ^{and} of the South East quarter of the North East quarter of Section thirty six in Township forty one Range Eleven East and that the maker of said note had purchased the interest of the said Sutherland therein for the sum of \$800, or thereabouts \$400 of which sum was then paid to the said Sutherland and the balance secured to be paid by two promissory notes of \$225 each — and that the note received by this defendant as aforesaid was one of the notes then given by said Pratt on account of such purchase. This defendant therefore denies that said note was the property of said complainant or that she ever had any interest therein as stated in said bill of complaint —

This defendant further answering says that George H. Pratt the maker of said note refused to

pay to this defendant the full amount thereof alleging that said two notes were given to secure the payment of the sum of \$900 only and that the \$880 included therein was for usurious and unlawful interest for the forbearance and giving day of payment of said sum of \$400. And this defendant was therefore compelled and did deduct the sum of fifty dollars from the amount of said note - and the balance of said note was paid to this defendant as follows - \$75 Nov 1 1850, and the balance \$100 in February A. D. 1853 which is all that this defendant ever received or been able to realize on account thereof -

This defendant further answering admits that in September A. D. 1850 he received from the said Sutherland the sum of \$880, but says that the same was handed to him by the said Sutherland for and on account of the said Herman Warner. The same was to be applied on account of the sum then due from the said H. Warner to F. Canada as stated in the receipt then given therefor by this defendant and referred to in said bill of complaint.

This defendant admits that he did on or about the first day of September A. D. 1851 receive from the said E. B. Sutherland the promissory note of Herman Warner & J. C. Smith for the sum of \$66.66 but says that said note was given to him by said Sutherland at the request of said Warner

pay to this defendant the full amount thereof alleging that said two notes were given to secure the payment of the sum of \$900 only and that the \$880 included therein was for usurious and unlawful interest for the forbearance and giving day of payment of said sum of \$400. And this defendant was therefore compelled and did deduct the sum of fifty dollars from the amount of said note - and the balance of said note was paid to this defendant as follows - \$75 Nov 1 1850, and the balance \$100 in February A. D. 1853 which is all that this defendant ever received or been able to realize on account thereof -

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This defendant admits that he did on or about the first day of September A. D. 1851 receive from the said E. B. Sutherland the promissory note of Herman Warner & J. C. Smith for the sum of \$66.66 but says that said note was given to him by said Sutherland at the request of said Warner

as payment of the balance of the sum due from
said Warner to said F. Canada on account of the one
acre purchased by said Miant of said Jacks and by
said Miant sold & conveyed to said Warner. And
that defendant did some time during the month of
September 1851 pay the amount of said note to
said Canada, but this defendant did not collect
the amount of said note until some time during
the month of October A. D. 1852 and this defend-
ant expressly denies that said note was received
or was intended to be received by him as a part
payment of any portion of the sum due from
the said Sutherland to this defendant on the
contract made ^{by} him by this defendant as
hereinbefore mentioned or that it had any con-
nexion with said contract —

This defendant further answering says that
he admits that on or about the first day of June
A. D. 1851 upon his applying to said Sutherland
for a portion of the money which he had agreed
to pay this defendant ~~of~~ on account of the pur-
chase of said premises as hereinbefore men-
tioned, the said Sutherland paid to this de-
fendant the sum of one hundred and twenty
dollars — this defendant then desired said Suth-
erland to have said sum endorsed upon the con-
tract for the purchase of said premises as a part
payment therefor, but that the said Sutherland

as payment of the balance of the sum due from
said Warner to said F. Canada on account of the one
acre purchased by said Miant of said Jacks and by
said Miant sold & conveyed to said Warner. And
that defendant did some time during the month of
September 1851 pay the amount of said note to
said Canada, but this defendant did not collect
the amount of said note until some time during
the month of October A. D. 1852 and this defend-
ant expressly denies that said note was received
or was intended to be received by him as a part
payment of any portion of the sum due from
the said Sutherland to this defendant on the
contract made ^{by} him by this defendant as
hereinbefore mentioned or that it had any con-
nexion with said contract —

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he admits that on or about the first day of June
A. D. 1851 upon his applying to said Sutherland
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to pay this defendant ~~of~~ on account of the pur-
chase of said premises as hereinbefore men-
tioned, the said Sutherland paid to this de-
fendant the sum of one hundred and twenty
dollars — this defendant then desired said Suth-
erland to have said sum endorsed upon the con-
tract for the purchase of said premises as a part
payment therefor, but that the said Sutherland

expressly declined having the same so construed al-
 leging as a reason that said contract had been as-
 signed by him to one Benjamin Bennett of Chicago
 Ill. as a collateral security for the payment of a sum
 of money then due from himself to said Bennett,
 and that it was then uncertain whether said con-
 tract would be returned to him and that if return-
 ed and the said Sutherland should be able to pay
 the amount due on said contract when the
 same should become due & payable that then
 & in that event said sum was to be applied in
 part payment thereof, but if not said sum should
 be considered as a loan from said Sutherland
 to this defendant. That the said E. B. Sutherland
 expressly declined & refused to have said sum
 of \$120 applied in part payment of the amount
 to be paid on said contract for the further
 reason that he might be obliged to forfeit said
 premises in consequence of his inability to meet
 the balance of said payment and he therefore
 desired that a note should be given by this de-
 fendant for said sum of \$120 as the same
 might otherwise become forfeited to this de-
 fendant if applied in part payment of the a-
 mount to be paid on said contract —

And this defendant thereupon and at the
 request of said Sutherland made and execu-
 ted the promissory note referred to in said

expressly declined having the same so construed al-
 leging as a reason that said contract had been as-
 signed by him to one Benjamin Bennett of Chicago
 Ill. as a collateral security for the payment of a sum
 of money then due from himself to said Bennett,
 and that it was then uncertain whether said con-
 tract would be returned to him and that if return-
 ed and the said Sutherland should be able to pay
 the amount due on said contract when the
 same should become due & payable that then
 & in that event said sum was to be applied in
 part payment thereof, but if not said sum should
 be considered as a loan from said Sutherland
 to this defendant. That the said E. B. Sutherland
 expressly declined & refused to have said sum
 of \$120 applied in part payment of the amount
 to be paid on said contract for the further
 reason that he might be obliged to forfeit said
 premises in consequence of his inability to meet
 the balance of said payment and he therefore
 desired that a note should be given by this de-
 fendant for said sum of \$120 as the same
 might otherwise become forfeited to this de-
 fendant if applied in part payment of the a-
 mount to be paid on said contract —

And this defendant thereupon and at the
 request of said Sutherland made and execu-
 ted the promissory note referred to in said

bill of complaint and at his request made the same payable to Francis H. Sutherland - and this defendant denies that said sum of \$120 was the money of said complainant or that this defendant received the same from said complainant, or that the same was or was considered or treated as a payment for the purpose of reducing the amount then due from the said Sutherland as stated and alleged in said bill of complaint or that the said Sutherland was then indebted to this defendant in any sum whatever except on the contract for the sale of said premises to said Sutherland as hereinbefore mentioned or that said promissory note was executed by this defendant for any dishonest purpose or that it was executed or given in violation of any understanding either of the said complainant or the said Sutherland as stated and charged in said bill of complaint, but on the contrary the same was so given at the special instance & request of the said Sutherland as hereinbefore mentioned - This defendant further answering says that the said E. B. Sutherland having failed to pay the amount due on said contract for the purchase of said premises from this defendant or any part thereof, as and when the same became due & payable, this defendant applied to said Sutherland and desired him to pay said sum, but said Sutherland expressly declined paying said sum.

Admits that
there was a debt
due him from S.

bill of complaint and at his request made the same payable to Francis H. Sutherland - and this defendant denies that said sum of \$120 was the money of said complainant or that this defendant received the same from said complainant, or that the same was or was considered or treated as a payment for the purpose of reducing the amount then due from the said Sutherland as stated and alleged in said bill of complaint or that the said Sutherland was then indebted to this defendant in any sum whatever except on the contract for the sale of said premises to said Sutherland as hereinbefore mentioned or that said promissory note was executed by this defendant for any dishonest purpose or that it was executed or given in violation of any understanding either of the said complainant or the said Sutherland as stated and charged in said bill of complaint, but on the contrary the same was so given at the special instance & request of the said Sutherland as hereinbefore mentioned - This defendant further answering says that the said E. B. Sutherland having failed to pay the amount due on said contract for the purchase of said premises from this defendant or any part thereof, as and when the same became due & payable, this defendant applied to said Sutherland and desired him to pay said sum, but said Sutherland expressly declined paying said sum.

Admits that
there was a debt
due him from S.

or any part thereof, saying that he was utterly unable to do so and that said premises might be considered as having become forfeited under and in pursuance of the provisions contained in said contract. This defendant further answering says that he again saw said Sutherland at Quincy in the State of Illinois some time in the month of November A.D. 1854 and again spoke to him with reference to said contract and desired him to return said contract to this defendant that the same might be cancelled or destroyed, and the said Sutherland then stated substantially to this defendant that he regarded said contract as ~~cancelled~~ ^{void} or that the same had been destroyed and that he did not consider that he had any right or claim to said premises under or by virtue thereof. And this defendant has since regarded said contract as forfeited and has frequently so stated to the said Sutherland and the said complainant and that neither of them until the filing of said bill of complaint had made any objection thereto but have fully acquiesced therein.

This defendant further answering admits that during the month of September A.D. 1850 he received from said Sutherland 2 thousand bricks at the rate of \$4 per M. but this defendant has an account against said ^{for money paid on foregoing} Sutherland by this defendant during the months of August, September and October of that year amounting in all to the sum

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of Eight dollars and seventy six cents - and this defendant denies that said Sutherland has paid to this defendant \$17, 44 in tick or the sum of \$33 ⁱⁿ money or any other sum except as hereinbefore stated -

And this defendant further answering denies that the said sum of \$624 which was to be paid by said Sutherland for said premises by the contract executed by this defendant to the said Sutherland Aug. 3. 1850 has been paid or any part thereof, or that the said complainant is justly or equitably entitled to have allowed to her any or either of the said several sums of money claimed and charged in said bill of complaint to have been paid to & received by this defendant on account thereof or that this defendant is justly or equitably bound to account to the said complainant therefor -

This defendant further answering says that he knows nothing of the assignment stated in said bill of complaint to have been made by the said Elias to one Benjamin Bennett of Chicago Ill., except that he has heard the said Elias state that such assignment had been made. And has no knowledge, information or belief in relation to the assignment alleged in said bill of complaint to have been made by the said Bennett to the said complainant. -

This defendant admits that said Elias Sutherland

of Eight dollars and seventy six cents - and this defendant denies that said Sutherland has paid to this defendant \$17, 44 in tick or the sum of \$33 ⁱⁿ money or any other sum except as hereinbefore stated -

And this defendant further answering denies that the said sum of \$624 which was to be paid by said Sutherland for said premises by the contract executed by this defendant to the said Sutherland Aug. 3. 1850 has been paid or any part thereof, or that the said complainant is justly or equitably entitled to have allowed to her any or either of the said several sums of money claimed and charged in said bill of complaint to have been paid to & received by this defendant on account thereof or that this defendant is justly or equitably bound to account to the said complainant therefor -

This defendant further answering says that he knows nothing of the assignment stated in said bill of complaint to have been made by the said Elias to one Benjamin Bennett of Chicago Ill., except that he has heard the said Elias state that such assignment had been made. And has no knowledge, information or belief in relation to the assignment alleged in said bill of complaint to have been made by the said Bennett to the said complainant. -

This defendant admits that said Elias Sutherland

land entered into the possession of said premises in the Spring of 1849. and that he has continued to occupy them since that time, but denies that he acted as the agent of said complainant in taking or continuing said possession, or that the complainant ever had possession of said premises except as the wife of and as living with her husband the said Elias and as a member of his family.

This defendant admits that Florinda Canada on or about the 14th. day of November A. D. 1848 conveyed by and of gift claims all his right, title and interest in said Lot 48, to his brother - one Charles Canada - and that on or about the 15th. day of August A. D. 1850 the agreement between this defendant and the said Charles and Florinda Canada, & referred to in said bill of complaint as Exhibit No. was drawn up and signed by this defendant, by which said agreement the said Charles and Florinda after reciting the purchase by said Florinda of Lot 48 from the Canal Trustee, and the sale of three acres thereof to one William Jacks, the execution of a certificate of such purchase by the said Florinda to the said Jacks and the assignment of such certificate to the said Sutherland and by the said Sutherland to this defendant, were to convey to this defendant & his assigns all their right, title and interest in and to said premises premises to this defendant.

land entered into the possession of said premises in the Spring of 1849. and that he has continued to occupy them since that time, but denies that he acted as the agent of said complainant in taking or continuing said possession, or that the complainant ever had possession of said premises except as the wife of and as living with her husband the said Elias and as a member of his family.

This defendant admits that Florinda Canada on or about the 14th. day of November A. D. 1848 conveyed by and of gift claims all his right, title and interest in said Cont Lot 48, to his brother one Charles Canada - and that on or about the 15th. day of August A. D. 1850 the agreement between this defendant and the said Charles and Florinda Canada, & referred to in said bill of complaint as Exhibit No. was drawn up and signed by this defendant, by which said agreement the said Charles and Florinda after reciting the purchase by said Florinda of Cont Lot 48 from the Canal Trustee, and the sale of three acres thereof to one William Jacks, the execution of a certificate of such purchase by the said Florinda to the said Jacks and the assignment of such certificate to the said Sutherland and by the said Sutherland to this defendant, were to convey to this defendant & his assigns all their right, title and interest in and to said premises premises to this defendant.

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upon the payment by this defendant of the two several promissory notes given therefor by the said William Jacks and then remaining unpaid, said notes having date on the 6th. day of September A.D. 1848, and having been given to secure the payment of \$142.42 each in two and three years from the date thereof. And the said Sutherland then agreed with this defendant that the said Charles & Florinda would sign said agreement upon the same being presented to them for that purpose - Yet the said Charles & Florinda at first refused to sign said agreement but did sign & execute the same on or about the day of 1850 -

And this defendant denies that said agreement was executed on the part of said Charles & Florinda without any consideration therefor, ^{but says} that the consideration for such execution was the undertaking by this defendant to pay the promissory notes therein referred to as by the said agreement well appear reference being had thereto -

And he admits that the trustees of the Illinois & Michigan Canal on the 27th. day of March A.D. 1852 conveyed said Out Lot 48 to the said Charles Candia as stated in said bill of complaint -

And this defendant further answering says that for some weeks prior to the 21st day of December A.D. 1852 this defendant had frequent conversation with Jason Gurley one of the defendants herein

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upon the payment by this defendant of the two several promissory notes given therefor by the said William Jacks and then remaining unpaid, said notes having date on the 6th. day of September A.D. 1848, and having been given to secure the payment of \$142.42 each in two and three years from the date thereof. And the said Sutherland then agreed with this defendant that the said Charles & Florinda would sign said agreement upon the same being presented to them for that purpose - Yet the said Charles & Florinda at first refused to sign said agreement but did sign & execute the same on or about the day of 1850 -

And this defendant denies that said agreement was executed on the part of said Charles & Florinda without any consideration therefor, ^{but says} that the consideration for such execution was the undertaking by this defendant to pay the promissory notes therein referred to as by the said agreement well appear reference being had thereto -

And he admits that the trustees of the Illinois & Michigan Canal on the 27th. day of March A.D. 1852 conveyed said Out Lot 48 to the said Charles Candia as stated in said bill of complaint -

And this defendant further answering says that for some weeks prior to the 21st day of December A.D. 1852 this defendant had frequent conversation with Jason Gurley one of the defendants herein

with reference to selling to said Gurley his right, title and interest in said premises - and the said Gurley on that day agreed to purchase of this defendant his interest in said premises for the sum of twenty five hundred dollars payable as follows $\frac{1}{4}$ in four months and the balance in equal payments in one, two & three years and the said Gurley thereupon executed & delivered to this defendant his four certain promissory notes for that amount payable as aforesaid this defendant at the same time delivered to the said Gurley the agreement heretofore mentioned as having been made by the said Charles & Florinda Candia of the one part and this defendant of the other part, together with a memorandum in writing in the words & figures following to wit,

"In consideration of one dollar I hereby agree to convey by assignment of this contract the premises described in the accompanying contract for the sum of two thousand five hundred dollars payable $\frac{1}{4}$ in four months - the balance in one two and three years - Equal payments."

Chicago Dec. 21. 1852

(Signed) J. Whitcomb

which said contract & memorandum was on that day delivered to the said Jason Gurley by this defendant -

And this defendant further answering says that subsequently and during the first part of the

with reference to selling to said Gurley his right, title and interest in said premises - and the said Gurley on that day agreed to purchase of this defendant his interest in said premises for the sum of twenty five hundred dollars payable as follows $\frac{1}{4}$ in four months and the balance in equal payments in one, two & three years and the said Gurley thereupon executed & delivered to this defendant his four certain promissory notes for that amount payable as aforesaid this defendant at the same time delivered to the said Gurley the agreement heretofore mentioned as having been made by the said Charles & Florinda Candia of the one part and this defendant of the other part, together with a memorandum in writing in the words & figures following to wit,

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Chicago Dec. 21. 1852

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And this defendant further answering says that subsequently and during the first part of the

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Month of January A. D. 1853, he executed a more formal transfer and assignment of said contract by endorsement thereon, and at the same time executed and delivered to said Gurley his certain deed of conveyance whereby in consideration of the sum of twenty five hundred dollars as therein expressed this defendant renounced, released, sold and quit claimed unto the said Gurley all his right, title, interest, claim & demand in and to the premises described in said contract, which said deed and assignment was duly acknowledged by this defendant. The said deed on the 12th day of February A. D. 1853 and the said assignment on the 14th day of February 1853.

And this defendant was not then aware nor had he received any intimation nor does he believe that the said Gurley was aware or that he had received any intimation that the said complainant had or claimed to have any right, title or interest at law or in equity in the premises described in said contract or in any part thereof.

And this defendant says that such sale and assignment to said Gurley was made in good faith and on the day when the memorandum in writing heretofore mentioned bears date to-wit on the 21st day of December A. D. 1852 and was not made with the intention or design of defrauding or defrauding the said complainant as charged in said bill of complaint. And this defendant denies that

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Month of January A. D. 1853, he executed a more formal transfer and assignment of said contract by endorsement thereon, and at the same time executed and delivered to said Gurley his certain deed of conveyance whereby in consideration of the sum of twenty five hundred dollars as therein expressed this defendant remised, released, sold and quit claimed unto the said Gurley all his right, title, interest, claim & demand in and to the premises described in said contract, which said deed and assignment was duly acknowledged by this defendant. The said deed on the 12th day of February A. D. 1853 and the said assignment on the 14th day of February 1853.

And this defendant was not then aware nor had he received any intimation nor does he believe that the said Gurley was aware or that he had received any intimation that the said complainant had or claimed to have any right, title or interest at law or in equity in the premises described in said contract or in any part thereof.

And this defendant says that such sale and assignment to said Gurley was made in good faith and on the day when the memorandum in writing heretofore mentioned bears date to-wit on the 21st day of December A. D. 1852 and was not made with the intention or design of defrauding or defrauding the said complainant as charged in said bill of complaint. And this defendant denies that

said sale and assignment was made without any consideration as stated and charged in said bill of complaint but says that the said Gurdy has paid to this defendant the full sum of \$625, that being the first of the payments due on account of said sale, and that he has secured to this defendant the payment of the balance of said sum of \$2500 -

And this defendant further answering admits that as he is informed and believes the said Gurdy has since that time sold and conveyed to one James Borden the premises sold by the said Sacks to the said Sutherland & by the said Sutherland to this defendant and that the said Borden has commenced an action in the Circuit Court of the United States against the said Sutherland to recover the possession of said premises as stated in said bill of complaint. But this defendant denies that the said Gurdy & Borden or either of them have ever taken or executed any deed or other instrument in writing for the purpose of assisting this defendant in defrauding said complainant as stated and charged in said bill of complaint -

And this defendant further answering says that the said complainant has never applied to him to convey said premises to her or to any one for her in pursuance of the contract made by this defendant to the said Elias B. Sutherland as stated in said bill, but on the contrary the said complainant

said sale and assignment was made without any consideration as stated and charged in said bill of complaint but says that the said Gurdy has paid to this defendant the full sum of \$625, that being the first of the payments due on account of said sale, and that he has secured to this defendant the payment of the balance of said sum of \$2500 -

And this defendant further answering admits that as he is informed and believes the said Gurdy has since that time sold and conveyed to one James Borden the premises sold by the said Sacks to the said Sutherland & by the said Sutherland to this defendant and that the said Borden has commenced an action in the Circuit Court of the United States against the said Sutherland to recover the possession of said premises as stated in said bill of complaint. But this defendant denies that the said Gurdy & Borden or either of them have ever taken or executed any deed or other instrument in writing for the purpose of assisting this defendant in defrauding said complainant as stated and charged in said bill of complaint -

And this defendant further answering says that the said complainant has never applied to him to convey said premises to her or to any one for her in pursuance of the contract made by this defendant to the said Elias B. Sutherland as stated in said bill, but on the contrary the said complainant

ant has frequently told this defendant that they mean-
ing herself and the said Elias considered said contract
as forfeited and that they did not intend to pay any
part of the money due thereon, nor has the said
complainant ever offered to account with this
defendant or to pay him any portion of the money
due on said contract as stated in said bill of
complaint —

And this defendant further says that he has
no interest whatever in said premises but that he
has bona fide conveyed all his interest therein
unto the said Jason Gurley as hereinbefore men-
tioned and he therefore humbly submits that he
ought not to be held liable to account to the said
complainant or to convey said premises or any portion
of them to the said complainant or to any one for
her as prayed for in said Bill — and he denies all
fraud and combination charged in said bill of
complaint — without that, that any other matter or
thing in the said bill of complaint and not herein
and hereby well and sufficiently answered unto,
confessed & avowed traversed or denied is true to
his knowledge or belief all which matters & things
this defendant is ready to aver prove and maintain
as the Honorable Court shall direct and prays to be
here dismissed with his costs and charges in this
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this defendant is ready to aver prove and maintain
as the Honorable Court shall direct and prays to be
here dismissed with his costs and charges in this
behalf most wrongfully sustained —

State of Illinois
Cook County ss,

Truman Whitcomb being duly sworn
deposes & says that he is one of the complainants named
in said bill of complaint, that he has heard read the
foregoing answer & knows the contents thereof and
the same is true except as to the matters therein set out
on his information & belief and that as to those mat-
ters he believes it to be true

Truman Whitcomb

Subscribed & sworn to
before me this 17th day
of April A. D. 1854

L. D. Hoard

Clk,

And afterwards, to wit, on the third day of January
A. D. 1856 there were filed in the office of the Clerk
of the Court aforesaid the Complainants Replica-
tions to the several separate answers of the said
defendants in this cause, which replications are
in the words & figures following to wit,

Cook County	}	Francis H. Sutherland by
Circuit Court		his next friend Benjamin H.
In Chancery		Raymond vs. Truman Whitcomb et al.

The replication of Francis H. Sutherland

State of Illinois
Cook County ss,

Truman Whitcomb being duly sworn
deposes & says that he is one of the complainants named
in said bill of complaint, that he has heard read the
foregoing answer & knows the contents thereof and
the same is true except as to the matters therein stated
on his information & belief and that as to those mat-
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Cook County	{	Francis H. Sutherland by
Circuit Court		his next friend Benjamin H.
In Chancery		Raymond vs. Truman Whitcomb et al.

The replication of Francis H. Sutherland

by Benjamin W. Raymond her most friends, to the
separate answer of Truman Whitcomb one of the
Defendants in said case.

This repliant saving and reserving to herself
all & all manner of advantage of exception which
may be had & taken to the manifold errors, uncer-
tainies and insufficiencies of the answer of the
said defendant, for replication thereunto, saith
that she doth and will ever, maintain & prove
her said bill to be true, certain & sufficient in the
law to be answered unto, by the said defendant,
and that the answer of the said defendant is very un-
certain, evasive & insufficient in the law to be
replied unto by this repliant, without that, that
any other matter or thing in the said answer
contained material or effectual in the law,
to be replied unto, not herein & hereby well &
sufficiently replied unto, confessed or avoided
traversed or denied is true, all which matters
& things this repliant is ready to aver, main-
tain & prove, as this Honorable Court shall di-
rect and humbly prays, as in & by her said
bill she hath already prayed.

L. S. Flays
Solt for Compt

Cook County
Circuit Court
In Chancery

Francis H. Sutherland by her
next friend Benjamin H. Raymond
vs

Truman Whitcomb et al,

The replication of Francis H. Sutherland, by Benjamin H. Raymond her next friend to the separate answer of Jason Gurley one of the defendants in said case

This repliant saving & reserving to herself all & all manner of advantage of exception which may be had & taken to the manifold errors uncertainties & insufficiencies of the answer of the said defendant, for replication thereunto, saith that she doth & will aver, maintain & prove her said bill to be true, certain and sufficient in the law to be answered unto, by the said defendant and that the answer of the said defendant is very uncertain, evasive and insufficient in the law to be replied unto by this repliant, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto & not herein & hereby well & sufficiently replied unto, confessed or avoided, traversed or denied is true, all which matters & things this repliant is ready to aver maintain & prove, as this Honorable Court shall direct, and humbly prays as in & by her ^{said} bill she hath

already prayed.

S. L. Hayes
(Sol^r for Compt)

Book County } Francis H. Sutherland
Circuit Court } by Benjamin W. Raymond
In Chancery } her most friend

vs.

Truman Whitcomb et, al,

The replication of Francis H. Sutherland
by Benjamin W. Raymond her most friend to
the separate answer of James U. Borden one
of the defendants in said case.

This replicant saving & reserving to her
self all & all manner of advantage of exception
which may be had & taken to the manifold errors
uncertainties and insufficiencies of the answer
of the said defendant, for replication therunto
saith that she doth & will ever, maintain & prove
her said bill to be true, certain & sufficient in
the law to be answered unto by the said defend-
ant & that the answer of the said defendant is
very uncertain, evasive & insufficient in the
law to be replied unto by this replicant without
that, that any other matter or thing in the said answer
contained material or effectual in the law to be

replied unto and not herein & hereby well & sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters & things this repliant is ready to aver, maintain and prove as the Honorable Court shall direct and humbly prays, as in & by her said bill she hath already prayed

S. S. Flays

Sol^r for Compt

And afterwards to wit, on the 9th day of April the same being one of the days of the March vacations term of said Circuit Court for the year A. D. 1856 the following among other proceedings were had and entered of record in said Court in this cause to wit,

Francis H. Sutherland

By Benjamin W. Raymond
her next friend, plaintiff

vs.

Truman Whitcomb, Jason Gurley,
James W. Borden, William Wheeler
& Elias B. Sutherland defendants

In Chancery

And now come the said defendants Truman Whitcomb, Jason Gurley and James W. Borden by Flays & Miller their attorneys and object in writing to certain interrogatories and answers in the said complainant's depositions contained, expressly

waiving and abandoning all other objections to said depositions, and the interrogatories and answers therein contained and after argument of Counsel had it is ordered that the first and eleventh objections of said defendants viz, to the third interrogatory to Reuben Taylor and the answer thereto, and to the second direct interrogatory to Henry W. Clark and the answer thereto, be overruled - and that all the other of said objections of said defendants viz, to the eighth and ninth interrogatories on the reexamination of Reuben Taylor and the answer thereto, to the third, fourth and fifth direct interrogatories to C. D. Fife and the answers thereto, to the second direct interrogatory to Thomas B. Dwyer and the answer thereto, to the testimony of S. S. Hayes with regard to contents of letters referred to, to the answers given by H. Warner to the eighth and ninth direct interrogatories in his examination resumed, to the fourth direct interrogatory to Stephen Bronson and the answer thereto, to the testimony of Elias B. Sutherland, to Complainant's exhibits lettered from B. to L. inclusive being bills of merchandise, to the seventh interrogatory to S. Doyle and the answer thereto, and to the tenth interrogatory to H. Warner and the answer thereto, be sustained and that said last mentioned portions of said depositions and the whole of the testimony

of said Sutherland, be shewn out and that the same shall not be read as testimony in this cause.

Afterwards and on the day & year last aforesaid (to wit April 9th 1836) the following further proceedings were had and entered of record in said Court in this cause to wit;

Francis H. Sutherland
by Benjamin W. Raymond her
next friend, Plaintiff

In Chancery

Truman Whitcomb, Jason Gurley
James W. Borden, William Wheeler,
and Elias B. Sutherland defendants

And now at this day comes the said Complainant by J. S. Hayes her Solicitor, and the said defendants Truman Whitcomb, Jason Gurley and James W. Borden come by Hayes and Miller their solicitors and the said defendants William Wheeler and Elias B. Sutherland, being three times solemnly called come not but make default and it appearing to the Court that the said William Wheeler and Elias B. Sutherland have been severally duly served with subpoenas in this cause by the Sheriff reading and delivering to each of them on the 11th day of October A.D. 1833 a copy of said writ of subpoena, it is ordered, adjudged and decreed that the bill of said Complainant

and the allegations therein be taken for confessed against them.

And this cause coming on to be heard upon the bill, the answers of the said defendants, Truman Whitcomb, Jason Gurley and James W. Borden and the replications of the said Complainant to the said answers, and the exhibits, the depositions and other testimony taken in open Court as follows

James J. Raddy being sworn on the part of the defendant testified — I am a surveyor — have been in employment of S. Greule City surveyor for last year. I made a survey on 17th day of Sept. '85 of that part of sub. lot No. 48 Canal Trustee's subdivision of section 7 Town 39 Range 14 Beginning at the S. E. corner of said sublot on N. line of running thence westwardly along Lake St. Lake St. 132 ft. thence N. to a point on north line of said Block distant 132 ft. from N. E. corner thence thence East 132 ft. to the said N. E. corner thence South on East line of said Block to the place of beginning and I found one acre and $\frac{542}{1000}$ acres I made the survey by order of Mr. Greule

Cross examined — Survey did not include any portion of Lake Street. The streets are included in the lots sold by canal Trustee and a 10 acre Block includes one half the street all round the Block. I did not calculate how much land there would be in the street, on a rough calculation I think about 70 of an acre have been taken

off this part of said outlot for streets.

And thereupon argument of counsel being had as well for the said defendants, as for the said complainant, and it appearing to the Court that the prayer of the said complainant's bill is just and ought to be granted and it being considered by the Court —

1. That the deed of Elias B. Sutherland and Francis H. Sutherland dated in the beginning thereof August 1st 1850, and at the end August the 2^d 1850 and acknowledged the fifth day of August 1850 by which was conveyed to Truman Whitcomb the interest of the said grantors in all that part or portion of out lot No. forty eight (48) in the Illinois and Michigan Canal Trusters subdivision of Section seven (7) in Township thirty nine (39) North of Range fourteen (14) East described as follows to wit, Commencing at the South East corner of said out Lot Forty eight (48) running thence West upon Lake Street twelve (12) Rods, thence North forty (40) rods, thence East twelve (12) rods to the East line of said out Lot Forty eight (48) thence South upon said East line of said out Lot Forty Eight (48) to the place of beginning" and the assignment to said Truman Whitcomb of this contract then held by said Elias B. Sutherland for the conveyance of the same premises to him as assignee of William Jacks together with

the articles of agreement of said Truman Whitcomb with said Elias B. Sutherland bearing date the third day of August 1850 for the ~~recognition~~ recognition and to said Sutherland of the same premises upon the payment by him ^{or assigns} Elias B. Sutherland to the said Truman Whitcomb his attorney, executor administrator or assigns of the sum of six hundred and twenty four dollars on or before the third day of August A. D. 1851 with legal interest and the performance of other covenants constituted a mortgage by the said Elias B. Sutherland and Francis H. Sutherland to secure the payment to the said Truman Whitcomb of a debt before that time existing.

2^d That the complainant Francis H. Sutherland has succeeded to all the rights of the said Elias B. Sutherland in the said premises, and the equity of redemption of that portion of the said premises described as follows to wit, "That part of out Lot number forty eight (48) in the Canal Trusts subdivision of section seven (7) in Township thirty nine (39) North of Range fourteen (14) East Meridian, bounded as follows, Beginning at the South East corner of said Out Lot Forty eight on the north line of Lake Street, and running thence westerly along said north line of Lake Street one hundred and thirty two (132) feet, thence northwardly to a point in the north line of said Out Lot

distant one hundred and thirty two (132) feet from the north east corner of said Out Lot and thence south on the East line of said Out Lot to the place of beginning is her separate property and estate by virtue of an assignment to her of said Contract for reference as executed by and between said Whitcomb & Sutherland as aforesaid, -

3. That the defendants Jason Gurley and James W. Borden are purchasers with notice of the right of the complainant Francis H. Sutherland

And thereupon the defendant James W. Borden further proved the payments by him on said land of State, County and City taxes for the years 1853, 1854, and 1855; as also certain assessments made by the City of Chicago in all

\$ 339.29

amounting to the sum of three hundred and thirty nine dollars and twenty nine cents.

It is ordered, adjudged and decreed that the complainant Francis H. Sutherland do pay into the hands of the Master in Chancery L. C. Paine Treer within four months of the date of this decree the amount of said mortgage debt (including the taxes & interest on whole sum) which is hereby adjudged to be the sum of

\$ 862.80,

(2862.00)

Eight hundred and sixty two ⁸⁰/₁₀₀ Dollars with interest thereon to be computed from the date of this decree at the rate of six per cent per annum together with the costs of the said defendants of this suit, the said payment to be held by

the said Master subject to the further order of this Court
and to be paid to such or one of the said defendants
who may appear to be entitled thereto and that upon
payment of said sum and interest into the hands of
the said Master within the time aforesaid then the
said defendants Elias B. Sutherland, William
Whelan, Truman Whitcomb, Jason Gurley and
James H. Borden shall convey to the said Com-
plainant Frances H. Sutherland or to her heirs or
assigns forever all of their respective interests in the
last described portion of the said mortgaged prem-
ises free and clear of all encumbrances done by
them or any person claiming by from or under
them respectively — And in the event of their
failure so to do within ten days after the time
of the payment of the said mortgage debt and
interest as aforesaid, then the said Master in
Chancery shall execute and deliver to the said
Frances H. Sutherland, her heirs and assigns, a
 deed conveying to her, her heirs and assigns
 forever the said last described portion of said
 premises, to wit, "That part of Out Lot number
 forty eight (48) of the Canal Trustees subdivision
 of Section seven (7) in Township thirty nine (39)
 North of Range Fourteen (14) East of the Third
 principal Meridian bounded as follows
 Beginning at the South East corner of said
 Out Lot forty eight (48) on the North line of Lot

Street and running thence westerly along said north line of Lake Street one hundred and thirty two (132) feet, thence northward to a point on the north line of said Out Lot distant one hundred and thirty two (132) feet from the North East corner of said Out Lot, and thence South on the East line of the said Out Lot to the place of beginning - and all the right, title and interest of each of the said defendants in the same.

But in default of the said Complainants paying into the hands of the said Master in Chancery the said sum of money, with said interest and costs, at such time as aforesaid, it is ordered that the said complainants' bill as against the said defendants, do from thenceforth stand dismissed out of this Court, with costs and that the said defendants have execution therefor -

To which decree and every part thereof the said defendants Truman Whitcomb, Jason Gurley, and James W. Borders except and pray that their exception may be entered of record which is done.)

Circuit
Cook County Court of
~~Commissioner~~ ~~Plas~~

Francis Sutherland by
her next friend B. W. Raymond
vs.

James W. Borden, Truman
Whitcomb & James Gurley

Be it known that in pursuance of a notice
in the words and figures following to wit,

Francis Sutherland by her next
friend Eliza B. Sutherland
vs.

James W. Borden, Truman Whitcomb
and Jason Gurley

In the Circuit Court
of Cook County Illinois
on the Chancery side
thereof

Chicago September 13th 1854

Gentlemen:— You are hereby notified that I shall
by myself or solicitors attend before George W. Sampson
Esquire a Notary Public of the City of Chicago in the
County of Cook in the State of Illinois, at his office at
number seventy two (72) Lake Street in said City, on Sa-
unday the twenty third day of September instant and
then and there before the said Notary Public proceed to
take the depositions of Thomas Morgan, John Rogers, John
J. Mc Gilver, Stephen Bronson, Samuel Warner, Herman
Warner, Simon Gayle, Thomas B. Sawyer and S. L. Hayes

to be read as evidence in the above entitled Cause upon
the hearing thereof on the part of me the said complainant,
and shall continue the said examination from day to
day until the whole of said witnesses ~~shall~~ ^{shall} have been
examined and their depositions completed. When &
where you can attend if you see proper and Cross
examine said witnesses

To Messrs Hayne & Miller	Francis Sutherland by E. B. Sutherland her most friend Blackwell & Beckwith Solicitors
Solicitors of the said defendant	

The parties by their respective solicitors appeared before
J. W. Davenport Esq. the commissioner named in
said notice on the day of A. D. 1854 and
thereupon Reuben Taylor being first duly sworn
certified as follows

Francis Sutherland by her most friend B. W. Raymond	In the Circuit Court of Cook County Illinois on the Chancery side
vs. James W. Border Truman Whitcomb Elias B. Sutherland & Jason Gurley	

The depositions of Reuben
Taylor, John Rogers, J. J. McGilera, Ann M. Brad

These depositions opened & filed by
consent of respective parties Court do this day file
November 10th. 1855
L. D. Hoard Clerk.

L. S. Hayes, C. D. Feltz, Thos. B. Deyer, Hiram Warner,
Simon Doyle, Samuel M. Warner, Stephen Bronson
Jr. Henry W. Clark, H. J. Wright, E. B. Sutherland,
Maklen D. Ogden, John B. Gerard, H. R. Melbins,
Wm Whitney, Felix F. Canada, V. C. Turner, W. B. Egan,
James H. Rees, Peter Page, Edward H. Castle, C. S.
Paiscott and A. C. Wood witnesses of lawful age pro-
ad, sworn and examined by and before me J. W.
Davenport a Notary Public in and for the City of
Chicago in the County of Cook and State of Illinois
at my office number 72 Lake Street in the City of
Chicago pursuant to the notice hereto attached.
The said witnesses being first duly sworn by me to
testify the truth in relation to the matters in contro-
versy between Francis Sutherland by her next
friend B. W. Raymond complainant and
James W. Borden, Truman Whitcomb, Elias B.
Sutherland and Jason Gurley defendants so far as
they should be interrogated thereto, and testified
as follows—

Ruben Taylor, witness on the part of
complainant was sworn and testified as follows
Interrogatory 1st

Are you acquainted with the par-
ties to the above entitled suit? How long have
you lived in the City of Chicago, and what is
your business?

Answer.— I am well acquainted with the

Complainant but am not acquainted with the defendants. I have lived in Chicago since 1839 - I have followed learning most of the time, at present I am a land agent -

Interrogatory 2nd

Are you acquainted with Lot No. 48 of Canal Trusters Subdivision Sec. 7 Town 9 North Range 14 East and with the West two acres of said lot and of its value on or about the 1st of August 1850? If yes, State your means of knowledge and the value, at that time, of said two acres?

Objected to by Defts. Counsel

Answer

I am, and also the two acres on the East side of said lot. I was. I lived on the opposite side of the street adjoining this property since 1841 - Those two acres with their improvement in August 1850 was not worth less than two thousand dollars.

Interrogatory 3rd Have you dealt in lands in that vicinity? Are you well acquainted with their value?

Objected to by Defendants' Counsel

Answer - I have dealt considerable in lands in that vicinity and am somewhat acquainted with its value.

Interrogatory 4th

What was said East two acres worth per acre in August 1st 1850

Objected to by Defendants' Counsel

Answer

The average value of these two acres at that time was not less than one thousand dollars per acre with the improvements

Interrogatory 5th

In your last answer did you intend to include the amt of land used for the streets bordering on said two acres which was formerly a part of said two acres?

Objected to by Defendants Counsel

Answer

I did not. I am not aware that the streets were ever attached to these two acres, since the subdivision of the canal Trustees -

Interrogatory 6th

Who has been in the possession of the said two acres of land since 1850?

Answer

Mr. Sutherland (E. B. Sutherland)

Interrogatory 7th. - What is the name of the wife

of said Sutherland, and has she resided on said two acres since August 1850?

Answer.

I believe her name is Frances - she has resided on the property since 1850.

And being cross-examined by defendants counsel he testified as follows -

Cross Interrogatory 1st.

When did you commence the business of Land agent, and how long have you been employed in that business?

Answer - I don't recollect any particular date, about two years ago - and have been employed in that business about two years -

Interrogatory 2^d

Have you occupied an office in the City of Chicago for that purpose? If so, when was it opened and where is the same located?

Answer -

I was for a time associated, for a time with David W. Martin 98 Randolph Street at present I do business at my own place at the corner of Lake & Ruben Street - I have had no regular

office
of my own since I left them other than my own house

Interrogatory 3rd

When did you leave them?

Answer

I do not now recollect the date,

Interrogatory 4th.

In what business were Mr. Davis & Martin engaged while you were with them?

Answer — In the practice of law and other business — I was only associated with them in the land business —

Interrogatory 5th.

How long were you associated with them in the land business? What was the nature of said association and when did it commence?

Answer

I have no particular dates at present to refer to — The article itself is still in existence and can be easily referred to — The buying and selling of real estate — I can't tell when it commenced but within two years.

Interrogatory 6th.

About how long were you thus associated with them?

Answer

Probably three, four or five months.

Interrogatory 7th.

Did you during that time issue any business cards, or advertise yourself as land agent? If so, in what manner was such advertisement made?

Answer

I was not publicly known in any advertisement with them that I recollect.

Interrogatory 8th.

Do you know of lands being sold in Lot 48 of Canal Trustees subdivision of Sec. 7 prior to August 1st 1850

Objected to Plaintiff counsel

Answer

I have no correct knowledge of any lands being sold there prior to that time. I believe Mr. Doyle bought one half acre in lot 48 prior to that

time. There was an exchange of possession prior to that time, but no clear title, as the land was not paid for -

Interrogatory 9th.

When did Mr. Doyle purchase this half acre?

Answer

I do not recollect - five or six years ago.

Interrogatory 10th.

(Do you know of any land being sold in that lot since August 1st 1850?

Answer

I do.

Interrogatory 11th.

What lands and to whom were they sold?

Objected to by Plffs Counsel

Answer

Doyle sold his half acre to me, I have been of one acre being sold between the half acre of Mr. Doyle & the two acres of Mr. Sutherland -

Interrogatory 12th.

When did you purchase this half

acre of Mr. Bayle?

Answer

A year ago, last winter.

Interrogatory 13th.

(Do you now own this half acre?)

Answer

I do not.

Interrogatory 14th.

(Do you know of any lands being sold in the vicinity of this lot (48) prior to August 1st 1850. If so to whom were they sold and when?)

Answer

I do — To Job and William Carpenter in 1842 or 1843 — Mr. Peck bought some shortly after. I do not recollect the date — nor do I know what he paid for it —

Interrogatory 15th.

Upon what then do you base your judgment of the value of the land in August 1850?

Answer

By the amount I could have taken for

lands similarly situated on the opposite side of the Street—

Interrogatory 16th.

Do you own this property now? and had you received offers for it or any portion of it prior to August 1850 - If so, from whom?

Answer

I have given it to my children. I had received offers for it prior to that - Mr. Wilson who is dead. I cannot recollect who else.

Interrogatory 17th.

Is that portion of said Lot 48 of which you say in your answer to sixth direct interrogatory, Mr. Sutherland has had possession since 1850, inclosed - If so, when was such inclosure made?

Answer

It is - It was made in 1844 I think.

Interrogatory 18th.

How much was included in such inclosure? Did it contain any Land then or afterwards laid out for streets by the Canal Trustees?

Answer — Probably about three acres - It did.

Remember what is now called Reuben Street - Reuben Street takes 38 feet off from the East side of this piece.

Interrogatory 19th

When you say in your answer to the seventh direct interrogatory that Mrs. Sutherland has resided on this property since August 1850 do you mean anything more than that she has lived with her husband E. B. Sutherland and in his family since that time?

Answer

I believe she is the wife of Mr. Sutherland and she resides there as such.

And being reexamined by said Complainant's Counsel said witness testified as follows

Direct examination resumed by Aff's

Counsel

Interrogatory 9th.

How much were you offered per acre for land on the opposite side of the Street from said two acres referred to in your answer to the 15th Cross interrogatory on or before August 1850

Objected to by Deft's Counsel

Answer

I will say one Thousand dollars

Reuben Taylor

lands similarly situated on the opposite side of the Street—

Interrogatory 16th.

Do you own this property now? and had you received offers for it or any portion of it prior to August 1850 - If so, from whom?

Answer

I have given it to my children. I had received offers for it prior to that - Mr. Wilson who is dead. I cannot recollect who else.

Interrogatory 17th.

Is that portion of said Lot 48 of which you say in your answer to sixth direct interrogatory, Mr. Sutherland has had possession since 1850, inclosed - If so, when was such inclosure made?

Answer

It is - It was made in 1844 I think.

Interrogatory 18th.

How much was included in such inclosure? Did it contain any Land then or afterwards laid out for streets by the Canal Trustees?

Answer — Probably about three acres - It did.

And thereupon John Rogers being duly sworn, on behalf of said Complainant testified as follows

First direct Interrogatory

Are you acquainted with the parties to this suit. If yes, how long have you been acquainted with them?

Answer

I am acquainted with Mr. Whitcomb, Mr. Gurly and Mr. E. B. Sutherland. I have known Mr. Whitcomb ten years I presume. I have known Mr. Gurly seven or eight years - I have known Mr. Sutherland for some five or six years

Interrogatory 2nd

(Do you recollect of having a conversation with the Deft. Whitcomb some time in July 1850 in relation to his dealings with E. B. Sutherland. If yes, state what that conversation was?

Objected to by Defts. Counsel

Answer

I recollect of having a conversation with Mr. Whitcomb early in the summer of 1850. It must have been in the month of June or July - The conversation was in regard to making brick with Mr. Sutherland - Mr. Whitcomb spoke about making brick with Mr. Sutherland - he told me he was

about going into the brick making business with Mr. Sutherland - I don't recollect that there was anything further said at that time -

Interrogatory 3rd

Do you recollect of having any other conversation with Mr. Whitcomb in which any thing was said concerning his business or dealings with Mr. Sutherland? If you state when it was and the substance of the conversation -

Objected to by Deft's Counsel

Answer

I recollect of having a conversation with Mr. Whitcomb in his office, I held a note against Mr. Sutherland for a cargo of wood, which when the note was taken Mr. Sutherland told me that Mr. Whitcomb would endorse. I called upon Mr. Whitcomb for his endorsement and he refused so to endorse saying that he had advanced to Mr. Sutherland all the money he should for making brick. I asked Mr. Whitcomb whether he was the partner of Mr. Sutherland and he told me he was not - That is all that took place at that time.

Interrogatory 4th

In the conversation last referred to was there any thing said by Mr. Whitcomb in relation to Mr. Sutherland being indebted to Mr. Whitcomb? If you state what it was?

Answer

There was none at that time.

Interrogatory 5th.

Was there at any other time? If yes, state what it was?

Answer

Some time in the latter part of 1850 I had a conversation with Mr. Whitcomb in regard to some brick that was to be sold at auction by the Sheriff. The bricks ~~were~~ ^{were} made by Sutherland. I enquired how much the debt was for which the bricks was advertised, I had some idea of buying them. The answer was between three hundred and fifty and four hundred dollars. I cannot recollect the exact amount. The next day or next day but I saw Mr. Whitcomb and asked him what he asked for the bricks and he replied that Mr. Gurley had bought them. That is all I know about it.

Interrogatory 6th.

In either of the conversations above referred to was there any thing said about Mr. Whitcomb having loaned Mr. Sutherland any money? If yes, state the substance of that conversation.

Answer. — I don't think there was except as

the time when I called on Mr. Whitcomb to endorse Mr. Sutherland's note. Then I asked him if he was in partnership with Mr. Sutherland? He said he was not, but had advanced or loaned him money.

Interrogatory 7th.

At about what time was this conversation?

Answer

I cannot tell exactly, it must have been some time in September or October of 1850

Interrogatory 8th.

At the time you asked Mr. Whitcomb to endorse Mr. Sutherland's note what answer did he make?

Answer

I cannot recollect any thing further than I have stated in my answer to the third interrogatory.

Interrogatory 9th.

Did Mr. Whitcomb in that conversation express a desire to get of Mr. Sutherland money he had loaned to him?

Asked to by Defts. Counsel

Answer

He did at that time or in some other conversation express himself in that way.

Interrogatory 10th.

Can you tell the exact words that Mr. Whitcomb used or their substance when he thus expressed himself? If yes - state.

Answer

I don't think I can give the exact words - the answer is the same I gave before - That he, Whitcomb had advanced or loaned Mr. Sutherland money and was anxious to get it back again.

Interrogatory 11th.

Did Mr. Whitcomb state in any of the conversations referred to, the amount Mr. Sutherland owed him? If yes, state what that amount was -

Answer

I don't think he did in any other way than I have stated.

(John Rogers)

The further examination of witnesses was continued until September 28th A. D. 1854 at 9 o'clock A. M.

Sept. 28th. The parties by their respective counsels met pursuant to adjournment -

J. J. McGilvra was produced sworn & examined

on the part of the complainant

Interrogatory 1st

Were you present in the office of Mr. S. S. Flays in the fall 1853 when he and Mr. Gurley had a conversation relative to the East two acres of East Lot 48 Canal Trust subdivision of Sec. 7 Town 39 Range 14 East? If yes state the substance of that conversation.

Objected to by Deft.' Counsel

Answer

I was present at a conversation at Mr. Flays office between Mr. Flays & Mr. Gurley in relation to the piece of ground on which Mr. Sutherland was then residing. Mr. Gurley was talking about commencing an action of ejectment or had commenced one I am not certain which, against Mr. Sutherland, in the course of that conversation I think Mr. Gurley remarked that he would like to settle the matter as he thought Mr. Sutherland had better, or he (Gurley) wished he would give up the premises. I think he stated in that conversation that he (Gurley) thought he had a good title to the land as a purchaser from Mr. Whitcomb - Mr. Flays in reply to this statement said that he (Gurley) was aware of the fact that Mr. Sutherland held a bond for a deed to these premises from Whitcomb at the time of Gurley's purchase from Whitcomb. Mr. Gurley said he did know of the fact. I think he remarked then or shortly after that he did not consider said Bond of any binding obligation, that he considered it forfeited. I think

he said for non-payment. There was a conversation then followed between Mr. Flays & Mr. Gurley in relation to the validity of the Bond at the time of Gurley's purchase. I don't recollect definitely what that conversation was except that it was upon that question. but Mr Flays again remarked to Mr. Gurley that he (Flays) considered Mr Gurley as standing in the same position as Mr. Whitcomb, for the reason that he knew of the existence of this Bond. The fact was mentioned either at this time or prior to that, that Mrs Sutherland was occupying the premises at the time of Mr. Gurley's purchase - Mr. Gurley then replied that he did not know of the existence of this Bond, at the time he purchased - Mr. Flays then remarked to him that previously in this same conversation he (Gurley) had admitted that he did know of its existence. Mr. Gurley then denied that he had made such an admission. Mr Flays then appealed to me to know whether Mr. Gurley had made such a statement? I told them what my understanding of the matter was, and then it ended.

Witness was cross examined by Defendant's Counsel

Cross Interrogatory 1st

Were you a clerk in the office of L. S. Flays at the time of the conversation alluded to in your answer to the last direct interrogatory?

(Answer)

Answer - I was a law student in his office.

Cross Interrogatory 2nd

Do you pretend to be able to give the language employed by the parties in that conversation?

Answer

I do not.

Cross Interrogatory 3rd

Can you then give the language that each of them used in that conversation?

Answer

I do not think I can give the precise language.

Cross interrogatory 4th.

Might there not then have been many expressions used by them during that conversation which you do not now remember?

Answer

There may be many that I do not remember the language of, and some perhaps that I have forgotten entirely.

Cross Interrogatory 5th.

Has your attention ever been called to this conversation since that time? If so, by whom

Answer

Mr Sutherland has asked me some two or three times if I recollected that conversation. And my attention has been called to it by no one else.

Interrogatory 6th.

Has not Mr. L. S. Flagg called your attention to that conversation?

Answer

He has not since that time.

Interrogatory 7th.

Have you had no conversation with Mr. Flagg in regard to it?

Answer

I think that I may say positively that I have not.

Cross Interrogatory 8th.

Have you never been desired by any one to remember the particulars of that conversation? If so by whom?

Answer

I think not, but will not be positive, Mr Flagg said something about this conversation just as Mr. Gurley went out or shortly after, but I do not recollect

distinctly what it was.

Cross Interrogatory 9th.

(Did he not desire you to remember what had taken place or what had been said or something to that effect?)

Answer

I think not.

Cross Interrogatory 10th.

Are you positive that he did not?

Answer

I am not positive as it is barely possible that he might.

Cross Interrogatory 11th.

Did you not commence your answer to the 8th cross interrogatory by saying that you were not certain whether Mr. Flagg requested you to remember this conversation or not?

Answer - I think not - but I ^{remember} ~~recorder~~ in the course of that answer that Mr. Flagg said something about this conversation but was not positive whether he requested me to remember it or not but thought he did not.

Cross Interrogatory 12th.

What did Mr. Flagg ^{say} about this conversation?

Answer.

I do not recollect sufficiently to attempt to give it.

Cross Interrogatory 13th

In this conversation alluded to who first spoke upon the subject of the land then occupied by Sutherland? What was said, and what reply was made thereto?

Answer — I think Mr. Gurley first spoke of it. I think he said that he had bought the land of Mr. Whitcomb, and he wished to obtain possession of it — that he either had commenced or was about to commence an action of ejectment, but he would rather settle the matter amicably — he might have said more — I do not recollect definitely, Mr. Flagg remarked that he thought Mr. Sutherlands title was good and he was unwilling to settle the matter in any other way than as it was to have been arranged with Mr. Whitcomb — Mr. Flagg remarked that Mr. Sutherland held a Bond (I think it was a Bond) for a deed for the premises from Mr. Whitcomb and that he Mr. Gurley was aware of the existence of that Bond at the time he purchased of Whitcomb. Mr. Gurley replied that he did know of its existence but

did not consider it of any binding obligation, I think he said for the reason that it was forfeited for non-payment - More was said during the conversation -

Cross Interrogatory 14th,

In the reply to the statement made by Flays that he, Mr. Gurley knew of the existence of the Bonds did not Mr. Gurley reply, I am aware such a Bond was given?

Answer,

I think that was not the reply that Mr. Gurley made

Cross Interrogatory 15th

Are you sure he (Gurley) did not make this reply and in this language?

Answer

I am quite certain that that was not the reply, nor in that language - I think Mr. Gurley replied simply that he did know of the existence of this Bonds and that he considered it forfeited.

Cross Interrogatory 16th

Did not Mr. Gurley distinctly and repeatedly say during that conversation, that he did not know of the existence of the Bonds at the time he

purchased from Whitcomb, but that his knowledge of its existence had been acquired subsequently ~~at~~ to that time and that he was to be so understood

Answer

I think he made no statement in those terms he said however in reply to a remark of Mr. Flays that he did not know of the existence of this Bond at the time he purchased of Whitcomb but I do not recollect that he stated when he obtained his knowledge of the fact that such a Bond existed, this was the last part of the conversation

Cross Interrogatory 17th

Did not Mr. Gurley during that conversation insist that he had never stated to Mr. Flays that he knew of the existence of a Bond at the time he purchased from Whitcomb, and did not an exciting dispute arise between Mr. Gurley & Mr. Flays as to what Mr. Gurley had stated?

Answer

He insisted that he had not stated that he knew of the existence of the Bond at the time he purchased from Whitcomb, a dispute arose (not very exciting however) in which Mr. Flays insisted that he Mr. Gurley had made the statement that he knew of the existence of the Bond at the time of his purchase

and Mr Gurley insisted that he had not.

Cross Interrogatory 18th.

Did not Mr. Gurley state to Mr. Flays that he misconstrued his language by putting any such construction upon it?

Answer

I think not.

Cross Interrogatory 19th

Will you swear that he did not?

Answer

I will swear that I have no recollection of any such statement. I think I should have recollected if there had been such a statement made.

Interrogatory 20th Cross

Did not Mr. Gurley during that conversation distinctly and expressly state, that he did not wish to be understood as having made any such statement as Mr. Flays sought to charge him with having made - for he was certainly not aware of the existence of the Bond alluded to at the time he purchased from Whitcomb?

Objected to by Plffs Counsel

Answer

I don't think he made any such statement. He denied having made a statement to Mr. Flays that he did know of the existence of the Bond at the time he purchased from Whitcomb, and also stated that he ~~that~~ ^{he} did not know of the fact of the existence of the Bond at the time of the purchase.

(Direct examination resumed by Plff's Counsel)
Interrogatory 2nd

At what time in the conversation above referred to was it that Mr. Gurley insisted that he did not know of the existence of the said Bond at the time of his purchase from Whitcomb, Was it before or after the discussion of the validity of the Bond?

Answer

It was in the last part of the conversation and after the discussion of the validity of the Bond.

J. J. Mc Gilver

Anni M. Bradt a witness on the part of the Plaintiff was produced, sworn & examined

Interrogatory 1st

Are you acquainted with the complainant in this suit, with her circumstances before her marriage with Mr. Sutherland, with the amount

of property she owned at the time of such marriage and in what that property consisted? J. J. P. a. State.

Answer

I am acquainted with the Complainant in this suit — I was acquainted with her circumstances as before her marriage with Mr. Sutherland. I know very near, within a trifle of the amount of the property she owned at that time — the amount was between six and seven hundred dollars. It was all in money.

Interrogatory 2nd

Do you know at what time or times this money was paid or sent Complainant or to her husband — for what it was paid or sent and what was done with said money?

Objected to by Deft's Counsel

Answer

I cannot say certain. I do not recollect the date one payment she had in July 1849 of two hundred and sixty dollars. Another payment I think she had of one hundred & thirty dollars about two years ago. I think I have sent the balance in drafts from time to time but can't say when — I don't know for what the money was paid or what was done with it by her.

Witness was here cross-examined by Deft's Counsel

Cross Interrogatory 1st

Are you the sister of the complainant and was this money sent her by her father?

Answer

I am sister of the Complainant and the money was sent to her by her father.

Ann M. Bradt

The further examination of witnesses was continued until September 30 at 9 o'clock A. M.

September thirtieth - examination of witnesses resumed on the part of Complainant - Present

Monroe counsel for Complainant and H. G. Miller counsel for defendants -

E. S. Fitts being produced was sworn and testified as follows -

Interrogatory 1st

Are you acquainted with the parties to this suit, Plaintiff and defendants or either of them? If yes, state the same & how long have you known them or either of them?

Answer

I know Mrs. Sutherland and Mr. Sutherland and Mr. Whitcomb? I think I first became acquainted with Mr. Whitcomb in 1847, I knew Mr. Sutherland as early as 1844 I think - I became

acquainted with Mrs. Sutherland in the fall of 1848 I think,

Interrogatory 2nd

About what time did the marriage between Mr and Mrs Sutherland take place?

Answer

In the fall of 1848 I believe —

Interrogatory 3rd

Previous to the marriage did you hear Mrs. Sutherland say any thing about the separate property of Mrs. Sutherland? If so, state

Objected to by Defts. Counsel

Answer

I heard him make a statement previous to the marriage — That she, Mrs Sutherland, was to keep in her own possession, her property, he said that she told him that she was going to buy a house and lot and take the title in her own name — She was to buy a house and lot or a lot and build upon it — The above answer was objected to by Defts. Counsel —

Interrogatory 4th

After the above conversation and previous to the marriage did you hear Mrs. Sutherland in the presence of Mr. Sutherland have any conversation

relative to her separate property and the manner in which she intended to dispose of it? If you, state what the conversation was and whether or not Mr. Sutherland assented?

Objected to by Defts.' Counsel

Answer

I have — She said she had money East she said she was going to buy a lot and build, or a lot and house — She said she was going to take the title in her own name — Mr. Sutherland was present and made no objection to it, but went on and mentioned there was one or two lots that could be bought for such a sum — She observed that she would like to see the lots — She said that J. C. Taylor had told her of a lot that he thought would be a good bargain she wanted to see that also.

Interrogatory 5th

After the marriage did you hear any conversation of Mrs. Sutherland in presence of Mr. Sutherland with reference to the same thing? If you, state what it was?

Objected to by Defts.' Counsel.

Answer

I did — Mrs. Sutherland told me when Mr. Sutherland was present — that there was an agreement between her and Mr. Sutherland previous to their marriage that she was to control her own

separate property - She mentioned some property that she could buy for so much mentioning the price of two or three lots - She said that Mr. Sutherland was going to take her out to look at some property around by Captain Jacks - I think it was on Lake Street - it is where Mr. Sutherland lives. This was the substance of the conversation at that time.

Interrogatory 6th

Did Mr. Sutherland assent?

Objected to by Deft's Counsel

Answer

He did assent.

Witness Fitts was here cross examined by Defendants' counsel

Cross Interrogatory 1st

At what time in the fall of 1848 did you first become acquainted with Mrs. Sutherland?

Answer - I think in October

Cross Interrogatory 2nd

Was any one present at the conversations of which you have spoken? If so, who?

Answer - At the first conversation alluded to

I think my wife was present Theta Tregon and her sister — This is all I recollect of being present at that time. Mr. Sutherland had two little boys that were in and out of the room — I don't recollect of any one being present at the last conversation referred to except Mr. Sutherland his wife and family and myself.

Cross Interrogatory 3rd

Has your attention ever been called to the matter of which you have been testifying? If so, by whom?

Answer

It has — by Mr Sutherland and his wife and no one else —

Interrogatory 4th

When was this?

Answer

I think it was Thursday of this week.

Interrogatory 5th.

Was not your attention called to it prior to Thursday of this week?

Answer

— At no other time than that I refer

to, which was either Wednesday or Thursday.

Interrogatory 6th.

Do you mean to say that you have had no conversation with Mr. Sutherland or any one else with reference to what was said at these conversations, than at the time mentioned in your answer to the last interrogatory?

Answer

I have had no other conversation with Mr. Sutherland. I recollect of telling Mr. Donaldson on our way to California of this conversation - I think I have told my wife. I have no recollection of telling any one else -

Interrogatory 7th.

Have you not spoken with the Counsel of the Complainant or either of them upon the subject?

Answer

I have this morning

C. D. Fitts

Henry Warner a witness on the part of the Complainant was produced and sworn and testified as follows -

Interrogatory 1st

Are you acquainted with the parties to this suit. Complainants and defendants, or either of them? If yes, How long have you known them?

Answer

I am acquainted with Mr. Sutherland and Mr. Whitcomb. I have known Mr. Sutherland four or five years have known Mr. Whitcomb two or three years.

Interrogatory 2nd

Do you recollect of having a conversation with Mr. Whitcomb in relation to his dealings with Mr. Sutherland? If yes, state the time of that conversation and the substance of the same.

Answer

I had a conversation with Mr. Whitcomb, I cant tell the year but think it was in 1849 or 1850, it may be the year before, I cant tell. I owned one acre in lot 48. I dont recollect anything about the conversation.

Interrogatory 3rd

Do you recollect of having a conversation with Mr. Whitcomb some time in 1851 in relation to his business with Mr. Sutherland? If yes, state what that conversation was.

I think I had a conversation with him in 1881 in relation to his business with Mr. Sutherland. Mr. Whitcom said that he and Mr. Sutherland talked of going into the brick business but he did not like Mr. Sutherland's way of doing business. And I understood him to say that he had let him have a certain amount of money - after he changed his views about the brick he let him have it as a loan, as I understood - we then talked about the property, he, Whitcom said he did not want the property - but he said he should not see Mrs. Sutherland suffer.

Interrogatory 4th.

Did Mr. Whitcom state what amount of money he loaned to Mr. Sutherland? If yes, state what amount it was -

Answer

It is my impression he did - Six hundred dollars.

Interrogatory 5th.

What reason did Mr. Whitcom give for changing his mind with regard to the brick business?

Answer

He did not consider his manner of doing

business would suit him.

Interrogatory 6th.

In that conversation did Mr. Whitcomb say whether or not he had ever been in partnership with Mr. Sutherland in the brick business?

Answer

I don't recollect

Witness Henry Warner was here cross examined by defendants counsel
Cross Interrogatory 1st

During what part of the year or as it you had this conversation with Mr. Whitcomb?

Answer

It was between Spring and fall.

Cross Interrogatory 2nd

Are you sure that it was in 1851?

Answer

I think it was - am not positive.

Cross Interrogatory 3rd

Where was this conversation and who was present?

Answer

I think it was on the property in question - no one present.

Cross Interrogatory 4th

Was Mr. Whitcomb there to look at the property?

Answer

We went up there together to look at the property.

Cross Interrogatory 5th

What did Mr. Whitcomb wish to see the property for?

Answer

To measure the width on the street.

Cross Interrogatory 6th

What did he wish to ascertain the width on the street for?

Answer

To know where my acre came to.

Cross Interrogatory 7th

Did you understand from him that he was interested in any property adjoining yours?

Answer — I did.

Cross Interrogatory 8th

What property was it?

Answer

The East two acres in Lot 48

Cross Interrogatory 8th

Did he say that he had bought it?

Answer

He did not.

Cross Interrogatory 9th

Did he desire to purchase yours?

Answer

I dont think he did at that time.

Cross Interrogatory 10

Are you sure he did not?

Answer — I could not say positively at that time.
He did then or soon after.

Cross Interrogatory 11th

For what purpose did he wish to purchase yours?

~~Answer~~

Answer — I dont know as he told.

Cross Interrogatory 12th

Did he not say that it was in order that he might have his hole out up to better advantage?

Answer

I don't think there was any thing said about his,

Cross Interrogatory 13th

Will you swear that there was not?

Answer

I can't swear positive - but am pretty sure there was nothing of the kind said -

Cross Interrogatory 14th

Do you pretend to give the language Mr. Whitcomb used in that conversation?

Answer

When I say, I give the language, I do.

Cross Interrogatory 15th

Is your recollection of that conversation so distinct that you are able to give the language Mr. Whitcomb used at that time?

Answer

So far as I have testified it is,

Cross Interrogatory 16th

Did not Mr. Whitcomb tell you that by purchasing your acre he could cut up his lots so as to front on Reuben Street or something to that effect?

Answer

He didn't say any thing about his that I recollect.

Cross Interrogatory 17th

Did he say any thing about cutting up into lots any lands adjoining yours?

Answer

I couldn't say that he did.

Cross Interrogatory 18th

At that or some other time did he not desire you to purchase your acre in order that he might cut up the remaining two acres so that the lots would front on Reuben Street?

Answer

I don't know but he did and I don't ^{know} as he did.

Cross Interrogatory 19th

At that time did he say any thing about having sold these two acres to Mr. Sutherland?

Answer

Yes Sir,

Cross Interrogatory 24th

Did he not say that he did not expect that Mr. Sutherland would ~~ever~~ pay for it, or some thing to that effect?

Answer

I don't think he did - Not directly -

The further examination of Witness was continued till Oct. 7th at 7 o'clock A. M.

Oct. 7th The parties met pursuant to adjournment Present, Th. S. Monroe for complainant and H. J. Miller for Respondent

The Complainant's counsel resumed the direct examination of Henry Warner -

Interrogatory 1st

In your answer to the 26th Cross interrogatory asking you if Mr. Whitcomb claimed to have any interest in the East two acres, you said I think he did. In what time he say that interest consisted?

Objected to by Defts.' Counsel

Answer

HE Whitcomb said he did not want the property he wanted his money he said it had got to be about Eight Hundred Dollars

(Harry Warner)

The further examination of witnesses was continued till Tuesday Oct. 10 at 9th o'clock A. M.,

Parties went pursuant to adjournment with their respective counsel.

The further examination of Henry Warner was deferred on account of absence from the City.

Samuel M. Warner a witness on the part of Complainants was produced, sworn as testifier as follows -

Interrogatory 1st

Are you acquainted with the parties to this suit, and how long have you known them?

Answer

I am acquainted with Mr. Whitcomb, Mr. Gurley, Mr. Sutherland, Mr. Raymond and have been acquainted with most of them eight or nine years.

Interrogatory 2nd

Did you during the year 1853 pay a note held by Mr. Whitcomb? If yes, by whom was said note made, Was it endorsed? By whom, and to whom, and what was the amount of said note? Objected to by Defk.'s Counsel because note was not produced.

Answer

I cant say that it was in 1853, it may have

been two years ago. I bought such a note of Mr. Whitcomb about that time, at some discount. I think note was made by George H. Pratt. I cant say by whom it was endorsed nor to whom it was payable. I dont know that the note was endorsed at all. I think the amount of note was \$225⁰⁰ or \$250⁰⁰ or thereabouts.

Interrogatory 3rd

Did you at the time you bought the note, hear Mr. Whitcomb say any thing concerning Mr. Sutherland connected with said note? If yes, state what he said.

Answer

I dont remember any thing distinctly. I know he told me how he got the note. That he had loaned Mr. Sutherland some money but dont recollect what the conversation was.

Interrogatory 4th

Did Mr. Whitcomb tell you the amount he had loaned Mr. Sutherland?

Answer

I have no recollection that he did

Interrogatory 5th :

Did you understand from Mr. Whitcomb to whom the note was originally from?

Answer - Not to my knowledge.

Interrogatory 6th

Did you pay Mr. Whitcomb the money on said note and take it up - or satisfy it?

Answer

I satisfied the note.

Interrogatory 7th

Did Mr. Whitcomb tell you or not that the loan from him to Mr. Sutherland was secured in any way. If yes, state in what property was it secured?

Answer

I have no recollection that Mr. Whitcomb told me that the same was secured.

Witness was here cross examined by Defts. Counsel

Cross Interrogatory 1st

Did not Mr. Whitcomb say that he had advanced money for Mr. Sutherland on account of the note, and that the note had been given to him to secure such advances?

Answer

I could not say.

Cross Interrogatory 2nd

Did not Mr. Whitcomb say that the note had been hypothecated to Mr. Bronson and that he had paid the amount for which it had been hypothecated.

Answer

I think so, and I think that he said he had paid the amount.

Cross Interrogatory 3rd

How much did you give Mr. Whitcomb for this note?

Answer

I can't tell definitely, but I think fifty or sixty dollars less the fee.

Cross Interrogatory 4th

(Do you know ^{whether} ~~the~~ said note was given on account of any Land purchased of Mr. Sutherland by Mr. Pratt the maker of the note?)

Answer

I have been told by different parties, I think by Sutherland & Mr. Pratt, that the note was given on account of land purchased of Mr Sutherland by Mr. Pratt.

Cross Interrogatory 5th — Can you tell about

where the lands are situated? If so, state.

Answer

All I can tell is, that the lands are in Cook County about sixteen miles North West of here.

Cross Interrogatory 6th

Was it not stated that the note in question and another note for the same amount were given to secure the payment of ~~the~~^{but} four hundred dollars principal and that the balance fifty dollars was for unlawful interest? and was not that the reason of your paying to Mr. Whitcomb less than the face of this note?

Answer

It was stated so to me and it was stated that the balance fifty dollars was given for unlawful interest and these are the grounds of my objections to paying the full amount.

Direct examination resumed by Offs. Counsel
Interrogatory 7th.

Who made the statement referred to in your answer to the last cross Interrogatory?

Answer

George H. Pratt is the man that told me

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I don't recollect that any one else told me
Cross examination resumed by Defts. Counsel
Cross Interrogatory 1st

Did you go with Mr. Pratt to the Recorder's
office of Cook County for the purpose of ascertain-
ing for how much the two notes were given? And
how did you ascertain that they were given for
only four hundred dollars?

Answer

I think I went with Mr. Pratt to the Recorder's
office for that purpose. I don't recollect that the
amount was only four hundred dollars. I don't
recollect what the amount was.

(S. W. Warner

Mr. J. S. Flagg a witness on the part of Com-
plainant was produced, sworn and testified
as follows.

First direct Interrogatory

Are you one of the Counsel for Com-
plainant in this suit?

Answer

I am.

Interrogatory 2nd

Were there two letters written by Mr. Whiting
to Complainant left with you by Complainant?
If yes, describe those letters and state what has

become of them.

Answer

There was one letter purporting to be written by J. Whitcomb from some point on the Mississippi River, I think Quincy directed to Mrs. Sutherland the complainant the date of which I do not remember but which I think was dated some time in the Spring or Summer of 1852 in which something was said about a conveyance of some property from Mr. Whitcomb to a third person, I think Mr. Easth and about the difficulty which Mr. Whitcomb had met with in obtaining title to that property from Mr. Canada and perhaps there was another letter from Mr. Whitcomb to Mrs. Sutherland but I do not recollect distinctly whether there was more than one letter or not.

This letter and perhaps another were delivered to me with other papers by the complainant and were kept by me at my office until about the time of the commencement of this suit, as I suppose the papers were handed by me either to Mr. Sutherland or to Mr. Blackwell without particular examination of them at the time. I was soon after desired by Mr. Sutherland to make search for that letter above particularly referred to. I went to Mr. Blackwell's office but could not find the letter there.

among the other papers, and subsequently made thorough examination and search in my office for the same letter but could not find it, and I do not know where that letter is.

That part of the answer referring to or giving the contents of the letter objected to by Deft's Counsel.

Witness was cross examined by Deft's Counsel.

Cross Interrogatory 1st

Did you ever see Mr. Whitcomb write or are you acquainted with his handwriting?

Answer

I have never seen Mr. Whitcomb write. My only knowledge of his handwriting is derived from inspection of some of the papers filed in this suit which purport to have been executed by him.

S. S. Flays,

Thomas B. Dwyer a witness on the part of Complainant was produced sworn and examined and testified as follows —

Interrogatory 1st Direct

Did you hear the testimony of Mr Flays in this case?

Answer

Idia

Interrogatory 2nd — Do you recollect

of ever ^{having} ~~hearing~~ seen the letters referred to by him? If yes, state when and where you saw them? and what were their contents?

Objected to by Defts.' Counsel.

Answer

I have seen the letters referred to one or two years ago but do not recollect precisely the time. I saw them at Mr. Sutherland's house on West Lake Street. Mrs. Sutherland read me two letters purporting to have been written by Mr. Whitom at Quincy, after she had read them I took them into my own hands and read them, in those letters the principal fact that I remember Mr. Whitom remarked to Mrs. Sutherland not to be afraid of him in reference to the property where they lived, that he would in the transaction treat her as a sister. I think that was the impression. Some thing was said about his coming here but I don't recollect what it was. That it was impossible for him to give a deed for the property before he got one either from Mr. Canada or Mr. Egden. The impression conveyed to my mind by the perusal of these letters, that Mr. Whitom was to give a deed of this land to Mr. or Mrs. Sutherland whenever he could get a deed from Canada or Egden I don't recollect which, I think both were mentioned. There is one expression which I remember

distinctly which was that he did not want the property all that he wanted was his money out of it. I believe that is all that I remember.

Interrogatory 3rd

Q. Have you ever seen those letters since? If yes, when have you seen them?

Answer

In the hands and in the office of S. S. Flays.

Interrogatory 4th

Do you remember whether or not there was anything said in those letters in reference to a sale of a part of the property referred to, to Mr. Castle? If yes, state what was said.

Objected to by Defts. Counsel

Answer

I have no recollection of anything of that kind.

The examination was continued to Oct. 11. 1854 at 9 o'clock A. M.

Oct. 11. 1854 the parties with their respective counsel were present pursuant to adjournment

(Direct examination resumed by Mr. Munroe Counsel for Complainant)

Interrogatory 5th

Q. What property was Mr. Sutherland residing at the time referred to in your answer to the second Interrogatory?

Answer ——— Mr. Sutherland was residing

on the property on the corner of Lake & Reuben Street, the property described in the letters, and where he now resides, it is the property where Mr Sutherland has for four or five years lived.
Interrogatory 6th

When did he commence residing there and has he resided there ever since and has the Complainant also resided there?

Answer

I think it was either in 1848 or 1849 it is rather my impression it was in 1849 -
Yes Sir, he and Mrs Sutherland have resided there ever since that time.

Here the witness Dwyer was Cross examined by Defts Counsel Miller

Cross Interrogatory 1st

Have you ever seen Mr. Whitcomb write? or were you at the time you read the letters referred to in your answer to the second Interrogatory acquainted with his handwriting?

Answer

I dont think I ever did. I could not say that I was.

Cross Interrogatory 2nd

How many pages of written

on the property on the corner of Lake & Reuben Street, the property described in the letters, and where he now resides, it is the property where Mr Sutherland has for four or five years lived.
Interrogatory 6th

When did he commence residing there and has he resided there ever since and has the Complainant also resided there?

Answer

I think it was either in 1848 or 1849 it is rather my impression it was in 1849 -
Yes Sir, he and Mrs Sutherland have resided there ever since that time.

Here the witness Dwyer was Cross examined by Defts Counsel Miller

Cross Interrogatory 1st

Have you ever seen Mr. Whitcomb write? or were you at the time you read the letters referred to in your answer to the second Interrogatory acquainted with his handwriting?

Answer

I dont think I ever did. I could not say that I was.

Cross Interrogatory 2nd

How many pages of written

matter were contained in those letters?

Answer

My recollection is very indistinct on that but I believe the letter continued ~~over~~ over the first page to the next page.

Cross Interrogatory 3rd

Are you able to say how many pages of written matter were contained in those letters?

Answer

I am not, Sir.

Cross Interrogatory 4th

Are you from memory able to distinguish and identify the contents of one of the letters from those contained in the other?

Answer

I am not, Sir.

Cross Interrogatory 5th

Are you able to state all that was written on any particular subject in either of the letters and give the language used by the writer, and can you designate the letter in which it was written?

Answer

I can only do so, so far as I have

already stated and cannot designate which letter my recollections is from, whether from both or one. I could not pretend to say that I recollect all that was said on any particular subject. Some of the most striking expressions are all that I can remember.

Cross Interrogatory 6th

Can you give the exact date of these letters, or either of them?

Objected by Plffs. Counsel

Answer

I could not.

Cross Interrogatory 7th

Have you ever read these letters or either of them more than once?

Objected to Plffs Counsel

Answer

At the time I read them at Mr. Sutherland's house I looked over some parts of them the second time — that is the only time I read them over.

Cross Interrogatory 8th

Have you any distinct recollection of the character or kind of paper on which they were written?

Answer

I have not.

Cross Interrogatory 9th

Would you now be able to identify those letters or either of them without seeing their address or any of their contents?

Answer

I would not be able.

Cross Interrogatory 10th

Did you ever read these letters, or either or any portion of them while they were at Mr. Flays' office?

Answer

I did not read them in Mr. Flays' office. I saw them in Mr. Flays' hands. I was sitting by the table in Mr. Flays' office and Mr. Sutherland came in and something was said and the letters were produced.

Cross Interrogatory 11th

Did you ever particularly charge your memory with the contents of these letters?

Answer — I did with one fact particularly.

Cross Interrogatory 12th

When?

Answer — At Mr Sutherlands house when I read the letters.

Cross Interrogatory 13th

Are you now or prospectively interested

either directly or indirectly in the property in question or any portion of it?

Answer

I am neither directly or indirectly neither present nor prospectively interested one way or the other in the property in question.

Direct examination of witness resumed by Plff's.

Counsel

Interrogatory 7th.

What was that fact with which you particularly charged your mind?

Objected to by Defts Counsel

Answer

That fact was that he could not give a deed of the property spoken of in the letter until he got a deed from other parties, Canada or Ogden.

Thos B. Dyer

The further examination of witnesses was postponed until Saturday the 14th day of Oct at 9 o'clock A. M. by consent of parties.

Oct. 14th The examination of witnesses was further continued until Monday the 16th instant at 9 o'clock A. M. by consent of parties.

Oct. 16th The parties with their respective Counsel were present and proceeded with the examination of witnesses. — Simon Doyle a witness on the part of the complainant was produced, sworn and

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testified as follows—

Interrogatory 1st

Are you acquainted with the parties in this suit, Complainant and defendants? If yes, How long have you known them?

Answer

Well, I have been acquainted with Mr. & Mrs. Sutherland since the fall of 1849. I have no particular acquaintance with any but Mr. Whitcomb. I saw him in 1850.

Interrogatory 2nd

Where do you reside and what is your business?

Answer

I reside on North Clark Street in the City of Chicago. I am not in any business now.

Interrogatory 3rd

Do you recollect of having a conversation with Mr. Whitcomb one of the defendants some time in the year 1853, at Mr. Ogden's office relative to his dealings with the complainant and Mr. Sutherland? If yes, state what that conversation was and the time that it occurred.

Objected to on the part of Defts. Gurly and Borden

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Answer

I think that it was in April 1853 - the conversation came up between Mr. Whitcomb and myself in relation to the property he was about obtaining a deed for - I observed at the time that he ought to do what was right by the woman. The conversation came up in regard to an interview he had had with Mrs. Sutherland. And from what I gathered from the conversation he took some exception to what she had said at their meeting. At that time, I observed that he ought to do what was right with the woman, he replied that he had always intended previous to that time to do what was right by the woman. That was about all upon that subject I think.

Interrogatory 4th

What land was Mr. Whitcomb then about obtaining a deed for?

Answer

The land that Mr. Sutherland now lives on about two acres off the East side of Lot 48 in the Canal Trustees subdivision of Section seven in Chicago.

Interrogatory 5th

Were you acquainted with the value of that

land the 1st day of August 1850? If y^e a, state your
means of knowledge, and what it value then was?

Answer

Yes Sir. I suppose I was. I did own at that
time half an acre in the same lot West of this land.
I should think that land was worth two thousand
dollars at that time.

Interrogatory 6th.

In that lot in which you own or do intend
the improvement as the lawyer says? what was it
worth?

Answer

Yes it might be worth more and it might
I would not like to put it too high.

Interrogatory 7th.

At what time did you buy your half acre in
said Out Lot 48; and what did you pay for it?

Objected to by Defts. Counsel

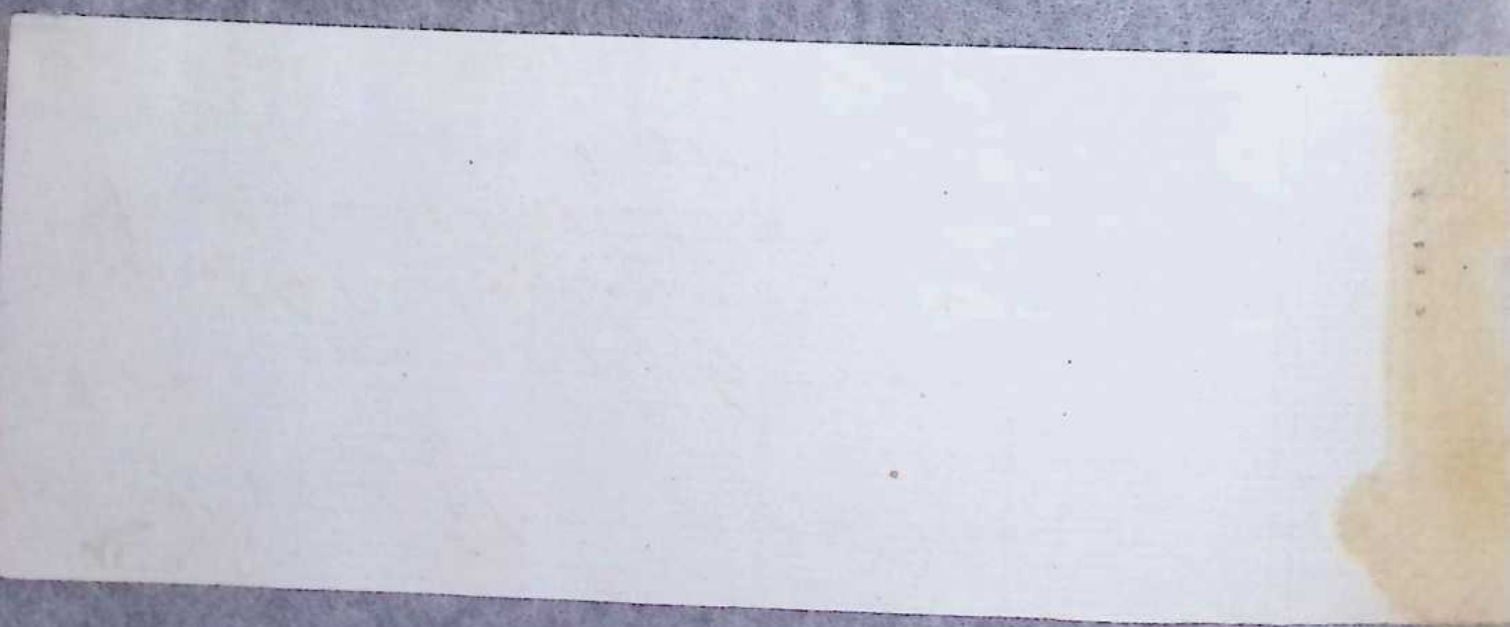
Answer

I bought it in the fall of 49 I think, I paid \$475

what Mrs. Sutherland had said?

Answer

Well, I have not been to see the property



land the 3rd day of August 1850? If yes, state your means of knowledge, and what its value then was,

Answer

Yes Sir, I suppose I was. I did own at that time half an acre in the same lot West of this land. I should think that land was worth two thousand dollars at that time.

Interrogatory 6th,

In that estimate do you mean to include the improvement on the land? If not, what were they worth?

Answer

Yes, it might be worth more and it might not. I would not like to put it too high.

Direct examination of witness closed -

And being cross examined said witness ratifies as follows -

Cross Interrogatory 1st

What exceptions did Mr. Whitcomb take to what Mrs. Sutherland had said?

Answer

Well, he did not take to me the particular

exceptions. We were speaking of a conversation that he and Mrs. Sutherland had had some time previous. He did not name to me what the exception was.

Cross Interrogatory 2nd

Did not Mr. Whitcomb state that he had bought the interest of Mr. Sutherland in that land or something to that effect?

Answer

I don't think he did.

Cross interrogatory 3rd

Did he not state that he should be obliged to go into a chancery suit for the purpose of getting a deed for this land from those who then held the legal title to it?

Answer

Not that I remember.

Cross Interrogatory 4th

Are you sure that nothing was said upon that subject?

Answer

I am not sure - but nothing that I can remember.

Cross Interrogatory 5th.

(Did not Whitcomb state that Sutherland had purchased the land of him and instead of paying for it had since borrowed money of him, which he failed to pay, or something to that effect?)

Answer

I don't think he ever made any such statement to me.

Cross Interrogatory 6th.

(Did you not decline to hear anything from Whitcomb in relation to this matter, and was not that the reason of the sudden termination of your conversation with him?)

Answer

I can't tell the particular reason why it ended so. It was in Mr. Ogden's office and my attention or his might have been called away. I don't know.

Cross Interrogatory 7th.

(Did you not in your answer to the third direct Interrogatory make a remark not taken down by the commissioner to the effect that you told Mr. Whitcomb that you did not wish to hear anything about it, and that the

192 The conversation ended?

Answer

I didn't make any such remark.

Cross Interrogatory 8th

For what purpose was Mr. Whitcomb in Mr. Egden's office?

Answer

I don't know that I do know what he was there for

Cross Interrogatory 9.

Had you any acquaintance with him previous to that time?

Answer

A very little.

Cross Interrogatory 10

At what time was it you had this conversation with Mr. Whitcomb?

Answer

I was under the impression that it was in April 1853. I think it was about that time?

Simon Doyle.

The direct examination of Harry Warner was resumed.

Interrogatory 8th

Do you know whether or not the six hundred dollar loan from Mr. Whitcomb to Mr. Sutherland which you have spoken of was secured upon any real estate?

Answer

I should think it was.

Interrogatory 9th

On what property was it secured?

~~Objection to Dept. Counsel~~ Objected to by Dept. Counsel

Answer

On the two acres, I should think on the East two acres of Block 48, on the property that Sutherland now lives on.

Interrogatory 10th

From whom did you learn that the same loan was so secured?

~~Objection to Dept. Counsel~~ Objected to by Dept. Counsel.

Answer

By Mr. Whitcomb.

The direct examination of witness was here closed and witness was further cross examined by Dept. counsel.

Cross Interrogatory 25th

When did you have your first conversation with Mr. Whitcomb upon the subject of this land or of his dealings with Mr. Sutherland?

Answer

I should think it was in '49 or '50 as I answered before.

Cross Interrogatory 26th

Is that the conversation of which you have given the details in your previous examination?

Answer - No Sir.

Cross Interrogatory 27th

When did that take place and where?

Answer

It was between the Spring and fall of 1851, or near the two acres.

Cross Interrogatory 28th

When did you purchase your acre in Lot 48, and what did you give for it?

Answer

I don't know as I can tell Mr. W. called it three

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hundred dollars. I got it of my brother, didn't care much about the value of it. I think it was in 1849 or 1850

Cross Interrogatory 29th

When did you sell it and what did you get for it?

Answer

In the fall of 1851 or 1852 - I can't tell for \$850⁰⁰

Cross Interrogatory 30th

At what time did you propose to sell it to Mr. Whitcomb & for what price?

Answer

I think it was in 1851 or 1852 I won't be certain. Six hundred dollars I offered it to him for.

Direct examination resumed by Complainant's Counsel.

Interrogatory 11th

When you bought the acre in lot 48 did you consider you paid its value, and was it not considered by you in the light of a present?

Answer

I didn't think I paid. It was a present in part.

Harry Warner

The further examination of witnesses was continued to Tuesday Oct. 17th at 8 o'clock A. M. by the consent of parties.

October 17th. the parties with their respective counsel met pursuant to agreement.

Stephen Bronson Jr. a witness on the part of complainant was produced, sworn and testified as follows

Interrogatory 1st

Are you acquainted with the parties to this suit Complainant and Defendants? If yes, How long have you known them?

Answer

I have known some of them four or five years I may not have known them all.

Interrogatory 2nd

What is your business?

Answer — Banking.

Interrogatory 3rd

Were you acquainted with the value of Lot 48 Canal Trunk subdivision of Section 7 Town 39 N of Range 14 East, on the first day of August 1880 If yes, state what its value was per acre, and your

means of knowledge.

Answer

I should have to answer I didn't know at that time though I might and have forgotten —

Interrogatory 4th

Do you recollect of making an offer for the said land or a part of it? If yes, What was your offer and at what time was it made?

~~Objection by Defense~~

Objected to by Defts. Counsel

Answer

I made a conditional offer of twenty four hundred dollars for said Lot 48. I don't know how much there was of it, in 1851 or 1852

Interrogatory 5th

Do you recollect what part of said Lot was for which you made that offer?

Answer

No Sir, but I think it was the part claimed by Mr. Sutherland. I don't know who resided on it.

Interrogatory 6th

Do you recollect of having in your possession a note given by George H. Pratt to E. B. Sutherland

H920

and secured by a mortgage? If yes, State all you know about said note, the date of said note & time that it was in your possession.

Answer

I had one or more notes made by Mr. Pratt for \$225⁰⁰/₁₀₀ left with me by Mr. Sutherland, the securities for loaned money. The amount loaned upon one note was paid, and the note taken out of my possession by Mr. Anderson. (H. C. I believe) It was delivered by me to Mr. Anderson by request of Mr. Sutherland. I think it was in the Spring of 1852, the date and maturity of the note I have forgotten. It was secured by a mortgage as well as by some other notes ~~and~~ if there ~~were~~ ^{were} other notes in my possession. I have forgotten what disposition I made of them.

Interrogatory 7th

Do you recollect of Mr. Truman Whitcomb having a conversation with you in regard to the said note or notes, and the said mortgage? If yes, State what that conversation was

Answer

I think that Mr. Whitcomb asked me if I held such a mortgage? I answered - I did, he requested it to be retained for the benefits of all notes for which it was given as security - or for his in particular.

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Interrogatory 8th

Did he in any manner describe the note for which he wished you to hold the mortgage as security or did you see his said note? If yes, state how he described said note, as if you saw it by whom it was made and by whom it was given: and the amount.

Answer

I think it was a note for \$225⁰⁰. I don't know that I saw it. Mr. Whitcomb told me that it was given by Mr. Pratt to Mr. Sutherland for the same amount as the one I had which was \$225⁰⁰. The above is my recollection of the matter.

Here the direct examination of Mrs. Benson was closed and Defts. counsel proceeded to cross-examine witness.

Cross Interrogatory 1st

Did you not have the note referred to in your answer to the last Interrogatory, in your possession in 1850 or previous to the year 1852 and had it not been hypothecated to secure the payment of money loaned by you and did not Mr. Whitcomb pay the amount or some portion of the amount for which it was hypothecated?

Answer

It might have been in my possession, I do

not remember. I shall have to make the same answer to the balance of the Interrogatory - I don't remember.

Cross Interrogatory 2nd

Did you not have business transactions with Mr. Sutherland during and prior to the year 1850 by loaning him money and receiving various securities from him for the repayment of the same such as the hypothecating of notes of third parties &c.

Answer

Yes, Sir, I did.

Cross Interrogatory 3rd

Did not Mr. Whitcomb on or about the 2nd of day of August 1850 pay you fifty three dollars on account of a loan made by you to Mr. Sutherland to secure the payment of which this note had been hypothecated and did you not thereupon deliver the same to Mr. Whitcomb?

Answer

I don't remember anything of it.

Cross Interrogatory 4th.

Might this not have taken place and escaped your recollection

Answer

I might

Stephen Bronson Jr.

Henry W. Clark a witness on the part of Complainant was produced sworn and testified as follows—

Interrogatory 1st

Are you acquainted with the parties to this suit and how long have you known them?

Answer

I am with all excepting James W. Bronson. I have known Mr. Sutherland for 22 years, the other I have known for five or six years past.

Interrogatory 2^d

Do you remember of hearing a conversation between Mr. & Mrs. Sutherland, in reference to an agreement or understanding that existed between them prior to their marriage? If yes, State what that conversation was and whether or not you drew a deed to carry into effect that contract?

Answer

Some time in the month of May in 1850 Mr. & Mrs. Sutherland called together at my office and stated that when Mr. Sutherland married Mrs. Sutherland

land she had money of her own which she had received from the estate of her former husband and that since her marriage with Mr. Sutherland, he had used that money with her consent to make a purchase of some real estate on the West side of Chicago River and that there was and had been an understanding between them that she should be secured so that no contingency of business on the part of Mr. Sutherland would affect her interest and advised with me what course it was necessary to take to carry out that arrangement Mr. Sutherland having taken ^{of the contract for} the title of said real estate in his name. I advised them that Mr. Sutherland should convey the said real estate to some responsible person for the use of Mrs. Sutherland and her heirs and about that time or soon after I drew a deed of Trust of said land I think to William Wheeler which was executed and acknowledged before me I think I do not recollect the description of the property, that is all that occurs to me now.

That part of the answer to the last interrogatory giving the conversation between Mr & Mrs Sutherland and witness objected to Defts. Counsel

Here witness was handed a deed of Trust which is attached to these depositions and marked Exhibit "C" and which was introduced in evidence by Complainant
Interrogatory 3rd

Is the deed just handed you and introduced