SUPREME COURT.

April Term. A. D., 1865.

ROBERT B. DENNIS,
ADS.
NIAUTIC BANK AND
JAMES H. WOODWORTH,
Impleaded with
THE MERCHANTS AND MECHANICS' BANK,
WILLIAM H. KING,
DANIEL DAVIDSON,
STEPHEN BRONSON, JR.,
RICHARD K. SWIFT,
FRANCIS S. FITCH, AND
WILLIAM HEWES.

Appeal from Cook.

BRIEF ON CROSS ERRORS.

Dennis having taken an appeal from the decree, and it being stipulated that he may assign cross errors in this cause as a prosecution of his appeal, they are as follows:

CROSS ERRORS ASSIGNED.

1. That the court below should have directed the conveyance of the lands and premises in said decree described to have been made to the said Dennis without the payment of any money whatever.

2. That such conveyance should have been directed to have been made upon the payment of the taxes and interest paid

by the defendants below after the sale upon redemption to Dennis on the 13th day of September, 1858.

3. That such conveyence should have been directed to have been made upon an account being taken, in which Dennis should have been allowed the moneys paid by him to redeem said land from the Sheriff's sale to Wm. H. King.

4. That the Court in stating the account upon which a conveyance was to be made to Dennis, charged him with improper items, and did not allow him proper items.

5. That said account was erroneously taken and stated by the court in this: 1. That the court should have given him credit for all moneys made under the judgment of King against D. & A. Davidson; or, 2, he should not have been charged with any of the items thereof paid before the 27th May, 1857; or, 3, not with those paid before the 13th September, 1858; or, 4, he should have been credited with the payment made by him to redeem, Aug. 27, 1858.

I propose to give first the principal facts material to an understanding of this controversy in their order of time, and references to pages of transcript where they may be found.

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"	"	9.	And defeasance from Bronson to Davidson 167
"	Nov.	7.	All rents paid, and so endorsed on the Swift Lease.....162
"	"	28.	King recovers judgment vs. Davidson for $1,047.76 and costs.....177
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1854. Jan. 23. Dennis recovers judgment vs. Davidson for $6,025.....196
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King's judgment assigned to Fitch & Hewes, but the precise date is not in evidence.

1854. Feb. 6. The Swift lease and its assignment to Bronson recorded; Swift's deed to Bronson made and recorded.....157
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" " 7. Contract between Woodworth, President of Bank, for himself and Bank to convey to Trumbull by W. deed, for $9,500.....134
" " 13. This contract is assigned to Niautic Bank..135
" April 7. And is rescinded on account of doubts as to title, and land to be reconveyed.....135
" " 7. Fitch and Hewes assign King's judgment to Woodworth.....146
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" " 28. Land sold under it to Wm. H. King for $580.26.....181

1858. July 16. Order on Trumbull by M. & M. Bank by Woodworth, Pres't, to convey land to Niautic Bank in payment of a debt due that bank from M. & M. Bank, written on same paper as contains rescission of contract.....137

" " 20. Quit-claim deed from Trumbull to Niautic Bank, recorded August 27, 1858.....237

" Aug. 27. Dennis recovers judgment against Davidson for $9,295 and costs.....189

" " 27. Execution issued and $652.80 paid by Dennis as a judgment creditor to redeem from sale to King.....191

" Sept. 13. Sale under this execution to Dennis for the amount paid to redeem.....199

" " 24. Sheriff's deed to Dennis.....190

The M. & M. Bank claimed that the assignment was security for the following debts of D. Davidson; March 2, 1853, two notes of $500 each, renewed by note July 9, 1853, on which the King judgment was entered. March 9, 1853, note for $2,700, which was renewed June 11, 1853, by note for $2,500, balance being paid. July 2, 1853, note for $500 and an overdraft of $141.53. Bronson gives the amount (p.) as $4,153.56, without interest, which is the $1,000, $2,500 and $500 notes and $141.53 added.

It will be thus seen that on the 19th Oct., 1846, Swift made to Davidson a perpetual lease of the premises at a rent of $100, payable in advance, $50 on the 19th April and October in each year, with the right to purchase the fee on the payment of $700. The rent was all paid up to and including the October payment of 1853, by Davidson. On the 9th March, 1853, Davidson makes an absolute assignment of this lease to Bronson, then cashier of the Merchants' and Mechanics' Bank, and takes from him a defeasance, stating it to be for a security for advances

made or to be made to him by Bronson, or the M. & M. Bank. He borrows from the bank various sums of money on the credit of this, in all $4,153.56. On the 28th of November, 1853, a $1,000 note (one of the advances) is given to Wm. H. King, the attorney of the Bank, by Bronson, its cashier, with instructions to enter up judgment in King's name, which is done, and execution issued same day, and on the 23d January, 1854, Dennis also recovers judgment against Davidson, and issues execution about the 6th February, 1854. Bronson, as cashier of the Bank, agrees with Davidson that if he will consent that Swift may make a deed to him, Bronson, that the bank will cancel and surrender what Davidson owes it, and that is accordingly done on that day, Davidson consenting that the deed should be made, and the bank surrendering all its claims not then in judgment. The lease, and the assignment of it, and Swift's deed to Bronson, are there recorded. About this time the King judgment was assigned to Fitch and Hewes; they collected on it Feb. 26, 1854, $92 75 (p. 179); May 16, 1855, $482 05 (p. 183); on the 6th of May, 1854, the defeasance to Davidson was recorded. Conveyances of the property were made by Bronson to Tracy, Feb. 8, 1854, by Tracy to Wells & Tucker, who gave Wm. King a trust deed to secure the notes given for the purchase money, under which the property is sold by King, for $500, to Woodworth, the President of the Bank, who, on the 26th day of October, 1855, conveys it to the M. & M. Bank, stating that he had taken it for a debt due the bank.

May 12, 1856, Dennis, under an execution issued on his judgment of January, 1854, purchases the land. January 7, 1857, the M. & M. Bank make a deed to Lyman Trumbull for $9,500, and Woodworth gives him at same time a contract that he shall have a good title to it. This deed was made, and $3,500 of the consideration paid with the understanding that if Trumbull did not like the title the contract should be rescinded. Trumbull, on examination, is dissatisfied, and April 7, 1857, this contract is, by written agreement (stating that Trumbull is not satisfied with

the title), rescinded, and when money shall be repaid he agrees to convey the land as the Bank may direct. The original contract had been Jan. 13, 1857, assigned, by writing endorsed on it, to the Niantic Bank, and on the 16th July, 1858, Woodworth directs Trumbull to convey the land to the Niantic Bank in payment of a debt due it, and Trumbull, on presentation of the order, quit-claims the land to the Niantic Bank July 20, 1858. But, in the meantime, Fitch & Hewes make an assignment of the King judgment, in the hand writing of King to Woodworth, dated the 7th April, 1857, the same date that Trumbull rescinds contract; on the 5th May, 1857, execution is issued and land sold May 28, 1857, to King for $580 26. Fitch & Hewes receipt the payment to them of the money pretended to have been paid at this sale, though King says he did not pay any and does not know that any one did. On the 27th August, 1858, Dennis recovers another judgment against Davidson, issues execution, and redeems the land by paying $652 80 to the Sheriff, who sells the land to him on the 13th September, 1858, for the redemption money and interest, and gives him a deed.

There are then three liens upon this property. The assignment to Bronson for the bank, the King judgment and the Dennis judgment, which of these liens is prior. It is said by this court, in Martin *vs.* Dryden, *et al.*, that a creditor is one who, without actual or constructive notice of a prior conveyance or incumbrance, institutes such proceedings or takes such steps as effect a lien on the land, before the recording of such conveyance or incumbrance, whether the debt be prior or subsequent to them, and whether the debtor, at the time of conveying or incumbring, had other property sufficient to pay the debt or not." This rule has become a law of property in this State, and I would hardly have cumbered the case with its quotation, but the counsel insists that because the lease to Davidson was not recorded until February 6, 1854, at same time that the deed from Swift to Bronson was recorded, that therefore the claim of the Bank took precedence. In other words, as among those claiming

under Davidson it was necessary that his title should be recorded in order to have their liens attach. Upon this I will merely refer to Sunple *vs.* Mills, 2 Scam. 316, and Doe *vs.* Reed, ib. 373. Jackson *vs.* Post. 9 Cow., 123. 13 J. R., 471, and 4 Cow., 606; holding it not to be necessary that it should be recorded.

Upon this state of facts then:—

Dennis claims title to this property under each of the judgments, one in favor of King, of November 28, 1853, and the other of himself, of January 23, 1854. The only difference presented by the two claims is in the amount to be paid for a conveyance, if any.

And the first question is: Where was the title to the property when these judgments were recovered and became liens on real estate. Richard K. Swift, on the 19th October, 1846, made to Daniel Davidson, the judgment debtor, a perpetual lease of the land, at an annual rent of $100, with the right to purchase on payment of $700. The accruing rents were paid up to Nov. 1853. This lease was recorded Feb. 6, 1854. On the 9th March, 1853, Davidson made to S. Bronson, Jr., for the benefit of the Merchants' and Mechanics' Bank, of Chicago, an assignment of the lease endorsed upon it, and Bronson made to him a defiasance, stating it to be for the security of advances to be made to him by Bronson or the Bank; the assignment was not recorded until the 6th February, 1854, and the defeasance the 6th May, 1854. Between the making of this assignment and its recording, the judgments of King and Dennis were recovered, executions issued, and they became liens. At that time, so far as the records showed, Davidson owned the interest he had acquired by the Swift lease, and the judgment creditors, to protect their liens, would stand in his shoes as to Swift, and, if no other act had been done, could, on compliance with its terms, call upon Swift for a deed under the lease. But,

15 Pa. (3 Harris) 319
In point

on the 6th February, 1854, Bronson, acting for the M. & M. Bank, his principal, and with the express consent of Davidson, and with the understanding that his debts to the M. & M. Bank were to be paid by the arranegment, produced to Swift this assignment, and claiming under it, paid him $730, and obtained a deed from him as assignee of Davidson. This terminated the relation of landlord and tenant, as between Swift and Davidson and his assignees, and the fee passed from Swift to Bronson; but yet charged with the rights of the creditors of Davidson, whose claims then were only in judgment.

The King judgment, when entered up the proof shows, belonged in fact to the M. & M. Bank, and it further appears that the note upon which it was entered up was a renewal of the first notes given on the faith of the assignment to Bronson, such renewal being also upon the faith of the same security. The M. & M. Bank sell this judgment to Fitch & Hewes, who cause the execution issued under it January 6, 1854, to be levied on the land in question, which is returned not sold April 7, 1857, the judgment is ostensibly assigned to J. H. Woodworth, the President of the Bank, execution is issued May 7, 1857, levied on the land, and sold thereunder to William H. King, the Attorney of the Bank, for $520 20, but Fitch & Hewes receipt the amount on the execution. From this sale Dennis redeems as a judgment creditor, by paying $652 80, and takes a sheriffs' deed.

I claim that the Bank was virtually the owner of this judgment, and also held the land under the transfer to Bronson, and upon Dennis' redemption from this sale it is estopped from setting up any other title, and he is entitled to a deed simply on payment of taxes and interest since.

It will be seen that there is no proof of any consideration in fact being paid by either Tracy or Wells & Tucker for the conveyances to them respectively. The consideration of Wells & Tucker's deed is $6,000, and the notes secured by trust deed

are $6,000, on which Woodworth bids in the property for $500, and in his deed to the Bank recites that it was taken for a debt due the Bank. He then contracts to sell it to Trumbull, but Trumbull, dissatisfied with the title, deeds the property, upon the order of the M. & M. Bank to the Niautic Bank, who does not prove that it ever paid a dollar; so that so far as all these outside parties are concerned, the contest is narrowed down to the claims of the M. & M. Bank on the one hand, and Dennis on the other.

Dennis, under the judgment recovered by him January, 1854, perfected his lien by a sale under an execution issued upon it, and is under that also entitled to a conveyance.

So that under either and both he is entitled to it, and the only question is the terms.

The amounts paid by the parties defendant were the $730 to Swift for a conveyance, and the taxes since.

Claiming, under the King judgment, what of these shall the complainant pay? As a judgment owned by the M. & M. Bank, and under which it sold the property, I have above claimed an equitable estoppel.

But another view of this may be presented. It appears that just before this deed was made to Bronson by Swift, Bronson, as the agent of the M. & M. Bank, agreed with Davidson that if he, D., would consent that Swift should convey the land to Bronson for the Bank, it would cancel and discharge the debts he owed the Bank, to secure which this assignment was held, and among which was the debt in judgment. Davidson assented to this proposition and directed Swift to convey, and thereupon the Bank discharged his indebtedness to it, and surrendered the notes it held; at least they are not produced when called for on the trial, and no other reason is given for their non-production, or

can be assigned under the proofs. This arrangement paid this judgment so far as the Bank was concerned, and it could not be collected by them again equitably.

But it is claimed, or may be claimed, that at this time this judgment had been assigned to Fitch & Hewes, and is now held by Woodworth. (I may remark here, there is no proof that any money was paid by them for this assignment.) Woodworth and the Niautic Bank, who file a joint answer, assert that it was assigned. Conceding that to be so, how and what do they take? This claim in judgment is one of those secured by the assignment of the Swift lease, which of course is a mere incident to the debt, and passes with it, for the debt is the principal thing, and carries with it the collaterals. Then as between Fitch & Hewes and the M. & M. Bank, they, F. & H., were entitled to collateral to satisfy the part of the debt assigned to them in preference to the M. & M. Bank.

A sale by competent authority to satisfy any of the claims for all of which a fund or property is held, of that fund or property, discharges it from the rest of the claims. It was competent for these parties to have applied to a court of chancery, and have had the property sold to pay these claims, including their advances, amount paid Swift, and taxes, to protect such claim; or they could do as they did here, sell it under the legal lien they had for a portion of the claims. And having sold it under the legal lien, can they set up the equitable lien, to compel the party buying to pay them more—that is, to pay the advances they had made to protect their legal lien?

So that whether we take this assignment to Woodworth as a mere cover, and the Bank really holding it, or that Woodworth held it as a *bona fide* purchase, either way the result is the same so far as the purchaser at the sale under that judgment is concerned.

By whom was the Sheriff's sale under the King judgment caused to be made? I claim that the whole proof shows that it was done by the M. & M. Bank. For it had made these advances to protect its security. The legal fee was then vested in Trumbull for it. Trumbull, on the 7th April, 1857, before Sheriff's sale, vacates his contract, and thereafter held the land for the M. & M. Bank, and on same day F. & H. assign judgment to Woodworth. 5th May, 1857, execution is sued out, and on the 28th May land sold to King. In July, 1858, after Davidson's redemption from this sale had run out, land is conveyed to Niautic Bank by Trumbull, in pursuance of an order by Woodworth, as President of the M. & M. Bank. Then, at the time of this sale the title was held by Trumbull, who had paid nothing, for the M. & M. Bank, who again held it as a security for advances, for a portion of which it was sold. It was so sold by Woodworth, the President of the Bank, to and assisted by King, the attorney of the Bank, who pays no money, under cover of a pretended receipt by Fitch & Hewes for the proceeds of the sale, endorsed on the execution after they had transferred it to Woodworth. Having so sold upon a claim or lien which would have given them the *legal* and *equitable* title to the property, and cut out all other liens, shall they now be at liberty to make a third person, who redeems from, or who bids at, their sale and pays them, pay a further balance of their claim, which they left unpaid? Upon this view of the case, we are entitled to a deed on paying what taxes they have paid since that sale.

But, under Dennis' own judgment, upon what terms is he entitled to a conveyance.

The arrangement of the 6th Feb. 1854, paid the King judgment as between Davidson and the Bank. The whole of it, or nearly so, has since been collected out of his (D.'s) property, and what Dennis paid to redeem. Would Davidson, under the proof in this case, be entitled to recover from the M. & M. Bank, the amount so realized out of his property, and if so, is not Dennis entitled to those credits? He has a

judgment unsatisfied, that of (August 27, 1858) on which they ought to be applied.

When the Bank surrendered its evidence of indebtedness, for which it held the assessment as security, and took a deed from Swift, with the consent of Davidson that such surrender should be made, did they not thereby discharge the lien thus held under the assignment and rely entirely on that deed. The case of Campbell *vs.* Carter, 14 Ills., 290, is full to that point. In this case, as in that, the evidence of indebtedness is wholly surrendered and given up, except that in judgment, and that, by the arrangement, was to be deemed paid. Can they now resuscitate that which they deliberately surrendered?

But in any view of this part of the case, Dennis is entitled to a credit for the amount he paid to redeem.

A statement of the various amounts to be paid by Dennis will show more clearly the different aspects of the case above presented.

COMPUTATIONS.

1st. Upon the theory that the King judgment was paid February 6, 1954, and that Davidson's property has since been applied to the payment of part of it,

P.	Sale in Lee county, Feb. 26, 1854		$ 92.75
P.	" Cook " May 16, 1855		482.05
P.	" " " May 28, 1857		560.41
The Bank paid Feb. 6, 1854		$730.00	
Interest to Feb. 26, 1854		2.43	$732.43
Deduct payment of that date (sale)			92.75
Balance		639.68	
Interest to May 16, 1855		46.96	686.64
Deduct payment (sale)			482.05
Balance		204.59	

Interest to May 27, 1857	25.34	
Jan. 7, 1857, paid taxes	58.22	
Interest to May 27, 1857	1.36—	289.51
Payment (sale)		560.41
Over paid		$270.90

The whole amount of taxes paid since that time is $234.42, and of course the Bank is over paid for all its advances.

2d. On the theory that the balance of the King judgment being with others a lien on these premises, and the payment to Swift and the taxes had been paid to protect that lien, and was also a charge and lien, that a sale to satisfy one of the charges or liens, exhausted the right of lien as to the residue, and the party could not claim for such unpaid residue, then the Swift payment of $730 and the taxes paid before sale of May 27, 1857, are discharged, and the taxes and interest paid since are as follows:

May 29, 1857	$38.80	Interest to date of decree	$15.85
March 14, 1858	27.31	Interest	11.40
June 4, 1859	30.48	"	10.51
March 26, 1860	22.99	"	6.79
May 4, 1861	28.18	"	6.48
May 15, 1862	28.19	"	4.84
June 27, 1863	34.48	"	3.81
July 9, 1864	23.99	"	93
	$234.42		$60.41
	60.41		
Bal. to be paid,	$294.83		

3d. On the theory that the King judgment was paid by the arrangement of February, 1854, but Dennis is not entitled

to a credit only of the amount paid by himself to redeem. Aug. 27, 1858. Then:

Feb. 6, 1854, paid Swift		$730.00
Interest to Aug. 27, 1858		190.26
Taxes paid Jan. 7, 1857	$58.22	
Interest to Aug. 27, 1858	5.68	
May 29, 1857	38.80	
Interest	2.90	
March 12, 1858, taxes	27.31	
Interest	75—	133.66
		$1053.92
Deduct paid by Dennis		652.80
		401.12
Interest to date of decree		156.77
Gross Taxes since the same		168.31
Interest since the same		33.36
		$759.56

4th. Theory that the Bank was owner of the judgment, and having caused a sale to be made under it on the 27th May, 1857, from which Dennis redeemed, they are estopped equitably from setting up any further claim than the taxes paid since, which results the same as the second theory. Taxes since sale, $234 42; Interest, $60 41; Total, $294 83.

W. T. BURGESS,

for Dennis.

In the Supreme court.

Robert B Dennis
ads
Woodworth. The Mantic Bank and others

Appeal from Cook Ct. Court.

Defts Reply.

From the manner in which the appellants have entitled this cause this court might presume if it were passed unnoticed that the defendants below were not at all served with process But all were served & defaulted or answered.

It is as well at the outset to understand the history of this case in the court below. For a just appreciation of the case as now presented especially as to the payment of the King judgment by Davidson. which the counsel now so unequivocally admits.

This bill as originally filed did not

make the Atlantic Bank a party. The deed to it was recorded the same day that Dennis returned. As soon as that fact was found out it was made a party to the bill. Parsons examination as a witness brought to light the arrangement of Feby 1854. and the bill was amended to suit the case thus shown and upon the examination of Ring taken Nov. 14. 1863. was added by amendment filed Dec 63 was made a party because Ring showed the assignment of the Ring pickett claim. which upon this was supposed to be made to Ring and so at first testified to by him. (p. 139) — These various amendments are part of the record and on comparing the time of filing them with the time of taking testimony it will be seen that the case of the complainant was modified in the court below as the developments from time to time rendered it necessary or proper

The counsel sets forth under ten general heads the facts about which he assumes there is no controversy but ~~but~~ let us see.

The 1 & 2 are not disputed. The 3d will appear from the assignment. (p 71. 4 of Abst.) and its defeasance (167. 33 of Abst) - The 4. & 5. are not disputed. The 6th contains an admission that I shall comment upon. The 7th is disputed - & I have something then also to say - The 8th is not disputed. The 9th is not disputed except the last clause "that the complainant claims the said premises under said assumption" if by that is understood that Dennis claims only under that. And the 10th is so entirely immaterial not being set up in the pleadings - that I can only say that I am surprised that the learned Counsel should have alluded to it in this court at all -

under the sixth head of facts from the Counsel says "and said Provison took the same (the deed from Swift to Provison at the request of Davidson) "in payment of all indebtedness due from Davidson to the Mechanics and Mechanics Bank" - $4153.56. which includes the King judgment which he on 4 Page says on the 6th Feby 1854 ~~transfer~~ "was owned by said Bank" and repeats, in the above connection again - so that upon one of the principal grounds for relief and its essential incidents or qualifications both parties agree. and the measure of relief is all that is left to be decided upon -

But when the counsel says afterwards under the 9th head that on the 27th day. 1858. Ennis obtains a judgment against Davidson under which he claims the premises he is simply misstating the case made by the complainant in his bill He seems to think that because the Compt did not introduce the sheriffs deed under

that judgment that he has a claim under that judgment. But that is not so. The lien of that judgment is prior and so far as the Nautic Bank is concerned that judgment is the prior lien - and so far as Davidson is concerned the bill having charged a sale and duly brings that as confessed against him that concludes him - Our rights as against the Nautic Bank do not depend upon a sale under that judgment at all The Court can if it sees fit direct a sale to be made to satisfy that judgment or let the proof that is in of a sale having been made under it & then dismiss the bill to allow the creditor to pursue in their own way - The copy of the certificate introduced is competent evidence without accounting for the original at all sec 12. p. 644 1 Pur. Stat. "such certificate or a certified copy thereof, shall be taken and deemed evidence of the facts therein stated"

Has King judgment being thus paid and that fact known to the officers of the bank King hurried on the 25 April 1857. (p. 146) draws up an assignment of it ~~to Fitch~~ from Fitch & Hewes to Woodworth, the President of the Bank. and an execution is May 5. 1857 issued upon it. Mr. King thinks (28 Jur) that the matter of issuing it ~~was talked~~ over between him his partner Mr Scott & possibly others about the propriety of issuing it and (32 Jur.) was not apt to interfere in cases where he was not Attorney and yet he cannot recollect that he authorised it to be done. I am not at all surprised that he wants to throw off the responsibility of issuing execution upon a paid judgment. But he in Jones (34 Jur.) Mr Woodworth of the fact that he had lid the land off under this execution. but did not give such information then as an officer of the Bank I suppose did not address him as he

Prasident He says (37th Ind.) that it is quite likely he would have got a deed under this sale from the Sheriff if the lands had not been redeemed. He paid (16 Ind.) the Sheriffs costs on this sale. but does not tell us why (I suppose a present to some one he does not recollect who) and now asks this court to direct that "there is no evidence that the merchants and mechanics Bank or either of the plaintiffs in error had any thing to do with the issuing of the execution or sale of said property on said writ of judgment".

Here is a paid judgment. unsatisfied of record. the fact of its payment not known to Orlando. and upon the face of the record a prior lien to his. on property claimed by the Bank. now the attorney of the Bank draws up an assignment of it to its president who at the time was acting president of

the Bank in his letter to Turnbull p. 137 dated July 1855. and yet the counsel says that there is no presumption of fraud. Now I do not mean to charge any of the parties with fraud in fact - This was a race among creditors - If by any contrivance the appellants could have got the advantage of Dennis They in so doing felt justified to themselves whatever view the law might take of the transaction But there is such a thing as fraud in law and this whole proceeding from beginning to end under the Brig judgment after it was paid is, as to Dennis grossly so -

Of this arrangement. the payment of this judgment Dennis had no knowledge until upon the examination of this cause the facts come out. The bill is then amended accordingly but upon that we had removed from the Sale. rely: to protect the judgment of January 1854. and it does not lay in the mouth of these parties

foiled in this attempt to deprive Dennis of the benefit of his judgment to gain by the catspaw in fact created by their own acts by saying that the officers of the bank had nothing to do with this question. Non mihi verba is not evidence and though Mr. King says that does not prove the facts true as stated in his agreement. against such an overwhelming array of circumstances.

But however justifiable it may seem to the officers and attorneys of this bank to resort to this mode of protecting property claimed by it against liens claimed by others. yet such conduct does not entitle them to favor at the hands of this Court. The concession is here broadly and unequivocally made that this judgment was on the 6th Feby 1854, then owned by the M. & M. Bank fully paid and I will say here that they got just what they agreed to take as such payment

a deed from Swift and a relinquishment of Davidson's interest in the land. His judgt of Jany 1854 was of record and a prior lien to their assignment: no act that they or Davidson could do could discharge it. They there with this judgment a prior lien arrange with Davidson that if he will convey under his claim to the land and allow or direct Swift to convey to Provison that his debts to the land including this judgment shall be deemed paid and discharged This is the substance of the agreement and it is carried out. The deed is made at Davidson's request. The evidences of debt are surrendered or cancelled. Davidson has not & does not make any claim to the land. The title is taken as confessed against him. It may be that these parties supposed that if they got a deed from Swift to Provison that that would cut out Dennis' judgment. But their mistake of the law cannot help them particularly if made in

an attempt to get an advantage -

It thus bring claimed on the one side and conceded on the other that this pidgment was on the 6th Feby 1854 fully paid. ~~and~~ the record shows that afterwards at different times and including the amount paid by Dennis to redeem the sum of $1135.21. besides Sheriffs costs was collected upon it. (the money paid to redeem is in the Sheriffs hands. they have or can get it and ~~as~~ the Dennis should not lose the interest upon it).

Under these circumstances, this concealment of fact of payment and uprising payment ~~of~~ out of property that we might otherwise have applied on Dennis' pidgment and the attempt to ~~uphold~~ this to the prejudice of Dennis fraudulently entitled Dennis to redeem on the first computation page 12 of my printed brief -

The counsel for the appellants does not seem to comprehend the fact

that when a debt is once paid that is the end of it. and I can so far as he is concerned absolve him from all charge of actual fraudulent intent in this matter because even in this brief of his while admitting over and over again that the judgment was paid he yet complains that the court below "utterly ignored the amount of the Davidson's indebtedness to the Merchants and Mechanics Bank"

The court should have given Dennis a year to redeem or pay amount found due instead of only six months and if Woodworth or any of the parties had any claim other than that upon the court they should have presented it in their answer.

I furnished the counsel my printed brief in advance and this is a reply to his which I saw for the first time yesterday

Chicago May 5. 1865.

W. H. Burgess
for Dennis.

158

Sup Court

Dennis
ads
Woodworth et al
Nautic Bench

Defts Reply

N. Y. Supp

JAMESON & MORSE, PRINTERS, CHICAGO.

SUPREME COURT STATE OF ILLINOIS,

APRIL TERM, A. D. 1865.

IN CHANCERY.

THE NIANTIC BANK & JAMES H. WOODWORTH,
IMPLEADED WITH
WILLIAM H. KING, STEPHEN BRONSON, JR.,
FRANCIS S. FITCH, WILLIAM HEWES,
RICHARD K. SWIFT, DANIEL DAVIDSON, AND
THE MERCHANTS & MECHANICS BANK OF CHICAGO
VS.
ROBERT B. DENNIS.

Appeal from Cook County Circuit Court.

ABSTRACT OF RECORD.

ROBERT B. DENNIS, Complainant,
VS.
THE NIANTIC BANK, JAMES H. WOODWORTH,
WILLIAM H. KING, STEPHEN BRONSON, JR.,
FRANCIS S. FITCH, WILLIAM HEWES,
RICHARD K. SWIFT, DANIEL DAVIDSON,
THE MERCHANTS & MECHANICS BANK OF CHICAGO.

Bill filed October 7, 1858, in Cook Co. Court of Common Pleas.

Engrossed bill filed in Cook Co. Circuit Court, Feb'y 13th, 1864.

Record p. 56

The engrossed bill states that on or about November 27th, 1838, Richard K. Swift, one of the defendants, purchased from the Government of the United States the following tract of land, situate in said County of Cook, and described as follows: The northeast quarter of section 35, township 40, N. R. 13, east of 3d principal meridian, containing 160 acres; and paid therefor the sum of $200; and that a patent was issued to him for the same, bearing date May 21st, 1841.

That on or about the 19th day of October, 1846, the said Richard K. Swift, then being the owner in fee of said Lot, made and delivered to one Daniel Davidson, another of said defendants, a certain instrument under seal, dated that day, and thereby, in consideration of the covenants therein contained to be kept by said Davidson, did demise and lease to
57 him all the undivided one-third part of the said tract of land (above
58 described) called the stone quarry lot—to have and to hold the same to said Davidson, from the 19th day of October, 1846, forever, or until that lease should cease by the terms thereof; and that said Davidson, in consideration of such letting, among other things, covenanted and agreed to pay said Swift, as rent for said premises, the sum of $100 for each year that he or his assigns might hold the possession thereof—such rent to be paid half-yearly—and also to pay all taxes and assessments that might be charged or assessed thereon during the existence of said lease. That it was also agreed that if Davidson should first have performed his cove-
59 nants contained in said lease, then Davidson, at his own option, might pay Swift at any time the sum of $700 over and above the amount of rents, and in addition thereto, and said Swift would execute and deliver to Davidson a good and sufficient deed of the premises leased, and that the time mentioned for the payment of said sums of money was expressly made the essence of the contract.

59 That Davidson entered into possession of the lands described in said lease by paying the taxes thereon, the premises being then, since
60 and now vacant and unoccupied, and paid the rents until November 7th, 1853.

That William H. King, another of said defendants, on the 28th of November, 1853, recovered a judgment in this Court against said Daniel Davidson and Armintar Davidson for $1,047 76 damages, and $5 85 costs.

61 That said King, on the 30th of November, 1853, sued out an execution upon said judgment, directed to the Sheriff of Lee county, which writ was afterwards returned by said Sheriff, with the endorsement thereon, that he had made $92.75 thereon, and that he could find no property in his county, of the defendants, whereof to make the balance.

That said judgment became and was a lien on the real estate in said lease described, and said lands were liable to be sold to satisfy same.

62 That on or about January 13th, 1854, said King sold and assigned said judgment to Francis S. Fitch and William Hewes, who, on May 5th, 1857, sued out an *alias* execution thereon, directed to the Sheriff of Cook

county, and on the same day delivered the same to John L. Wilson, then Sheriff, who levied said writ on the real estate above described; and on
63 the 28th day of May, 1857, said Sheriff sold the same at public vendue to William H. King, for the sum of $580.26, and returned said execution to the Clerk's office, with his return thereon, that he had made the said sum by said sale, and made the certificates of such sale, one of which he had filed in the Recorder's office, and the other delivered to said King.

That on the 27th day of August, 1858, the complainant recovered a judgment in the Circuit Court of Cook county against said Daniel Davidson for $9,295 and costs.

That on the 27th day of August, 1858, he (complainant) sued out an execution upon his judgment, directed to the Sheriff of Cook county, and on same day delivered the same to the Sheriff of said county; that said Sheriff thereupon endorsed upon said execution a levy upon the said lands so sold to William H. King.

64 That on the 27th of August, 1858, said complainant as such judgment creditor, and to redeem said lands from said sale to said King, paid
65 in to said Sheriff in gold and silver coin, the sum of $652.80, the amount for which said lands were sold, and interest thereon at ten per cent. per annum to the last mentioned day, who then received said sum of money and granted to complainant a certificate of such redemption, which certificate was filed for record in the Recorder's office of said county, on the 28th day of August, 1858.

66 That at the time of said redemption, more than twelve and less than fifteen months, had elapsed, and that neither Davidson nor any grantee of his had within said twelve months, nor any other judgment creditor, within three months after the expiration of said twelve months redeemed therefrom.

That said Sheriff, on the 23rd day of September, 1858, sold said lands (having first duly advertised the same) at public auction to the complainant, for the amount so paid for the redemption thereof and ten per cent. interest thereon from the time of redemption, and did thereupon make and execute to the complainant a deed of the lands so sold.

67 That the complainant thereby acquired the title and interest to said land, which was vested in Daniel Davidson at the date of the recovery of said judgment; and particularly the right under said lease to demand and receive from said Swift or his grantees, the same conveyance which Davidson might otherwise have claimed.

That on January 23d, 1854, said complainant recovered a Judgment
68 in Cook County Court of Common Pleas, against said Daniel Davidson for $6,025$\frac{0}{100}$ and costs of suit.

That on January 23d, 1854, complainant sued out an execution upon said judgment, directed to the Sheriff of Lee County, which has been returned, no property found.

That on January 17th, 1856, complainant sued out an alias execu-
69 tion on last mentioned judgment, directed to Sheriff of Cook County, which writ on the 8th of February, 1856, came into the hands of the Sheriff of Cook County, and was, on the day last named levied upon the land above described, and on May 12th, 1856, the Sheriff sold said lands under said execution, at public vendue, to the complainant, for the
70 sum of $6,977.30, and made certificates of said sale,and on the 6th day of October, 1858 (said lands not having been redeemed), the Sheriff made a deed to the complainant of said premises.

That on the 2nd day of November, 1854, said Fitch & Hewes filed their bill of complaint on chancery side of this court, against Daniel Davidson, Arminitar Davidson and Stephen Bronson, Jr., stating the recovery of the judgment by William H. King, and alleging that Daniel Davidson had some interest in the land before described, or some part thereof, and praying among other things that Davidson's property might be made liable to the payment of said judgment, which said bill is still pending.

71 That on or about the 9th day of March, 1853, said Daniel Davidson made the following assignment, endorsed upon said lease.

"Know all men by these presents, that I, Daniel Davidson, in con-
"sideration of one dollar to me paid, by Stephen Bronson, Jr., and for
"divers other valuable considerations, do hereby sell, assign, transfer
"and set over to said Bronson, the within and annexed Indenture from
"R. K. Swift to me, dated October 19, 1846, and all my right, title and
"interest in and to the premises therein described, being one undivided
"third ($\frac{1}{3}$) part of the north-east quarter of section No. thirty-five (35),
"township No. forty (40), north of range No. thirteen (13) E, "called the stone quarry lot.

"Witness my hand and seal this 9th day of March, 1853.

DANIEL DAVIDSON. [SEAL.]

Which said assignment was on the 6th day of February, 1854, filed for record in the office of recorder of Cook County.

72 That said Bronson who was then cashier for said Bank, did on the 9th day of March, 1853, execute and deliver to said Davidson a certain instrument of writing, stating that he had received said assignment as "security for all notes, bills and evidences of debt, which I, the said Bronson, either for myself or for the Merchants and Mechanics Bank of Chicago, may or shall discount for said Davidson within the space of one
73 year from date; and also for all loans I may make to said Davidson as aforesaid, within said period." It was further provided in said instrument that if any note, bill or loan discounted or advanced by Bronson to Davidson, shall be in default if not promptly paid at maturity, then said assignment should be absolute and unconditional; "time being expressly the essence of this condition."

That defendants claim, that soon after November 28th, 1853, it was agreed by and between the Merchants & Mechanics Bank and said Davidson, that if Davidson would give up the right to redeem said lands, and allow Swift to make deed for same to Bronson, that the bank would
74 cancel, give up, and satisfy all indebtedness then due from him to the bank, which said indebtedness consisted of said King judgment,—one note of $2,500.00, one note of $500.00, an overdraft of account at bank of $153.56,—and that said Davidson did give up his right to said land under said assignment, and the said bank discharged said Davidson from said indebtedness.

75 That on February 6th, 1854, Bronson produced to Swift the assignment endorsed on the lease—offered to pay and did pay him the $700, specified in the lease, and claimed a deed for the land, which Swift executed and delivered.

That he is not advised what, if any, advances were made to Davidson by Bronson or the bank, but charges that the assignment of lease was
76 made for the sole use and benefit of the bank, and that Bronson had no interest in the same, and that no money was advanced or loaned upon the faith of said security.

That on 8th February, 1854, Bronson conveyed the land to Sherman P. Tracy, but it was a mere sham, done for the benefit of the bank and to keep land away from Davidson and his creditors.

77 That on July 26th, 1854, Tracy, at the suggestion of the bank, sold the land to C. C. Wells & Co., for $6,000, for which Wells & Co. gave three notes of $2,000, each, secured by trust deed on the land to William H. King, which also was to keep the land from Davidson and his creditors.

That said notes were transferred to the bank, and King sold the land under the trust deed to defendant Woodworth on the 18th October, 1855, and said King thereupon conveyed the land to Woodworth.

78 That on October 26th, 1855, Woodworth quit claims to the bank, reciting in his deed that the land had been taken for indebtedness due the bank.

That on January 7th, 1857, the bank conveyed the land to Lyman Trumbull, who took it in payment of an indebtedness then due him from the bank, and with full knowledge of such notice, as should have put him on inquiry as to complainants' and Davidson's rights.

That the legal estate, which at the dates of the recovery of the judg-
79 ments of November 28th, 1853, and the 23d of January, 1854, was of record in said Swift under terms of said lease for use of Davidson, hath become vested in Lyman Trumbull, and complainant, as assignee of Davidson, is entitled to demand from Trumbull a conveyance thereof, upon paying such sums, as upon taking an account, under the equities of the case, the court may find the complainant bound to pay to redeem said lands.

80 Complainant offers to pay any money loaned or advanced to Davidson, on the assignment of the lease, if any, should the court so award.

Complainant denies having any notice of said assignment, or the defeasance thereof, at the time of rendition of judgment of the 28th January, 1854.

That James H. Woodworth purchased from Fitch and Hewes the said judgment of November 1853, and took an assignment of same to himself under date of April 7th, 1857, and then for the purpose of cutting off the lien of complainant on said land under his judgment, he caused the execution of May 5th, 1857, to be issued and said lands to be sold thereunder; that said King paid no money upon his said purchase under
81 said execution, but bid the same off for the benefit of Woodworth, or whoever owned said judgment.

82 That King never in fact paid any consideration for the note, that the judgment was entered up in his name for the benefit of the Merchants and Mechanics Bank, it being the real owner, and he its attorney at the time.

That on 20th July, 1858, Trumbull conveyed by quit-claim deed to the Niantic Bank, his interest in the land described: the consideration therein expressed being one dollar.

83 That the Niantic Bank paid no consideration to Woodworth for the conveyance by him, or if any was paid, it was taken in payment of a pre-existing debt to said Bank, and with knowledge of complainants' rights.

84 That by reason of the various matters stated in the bill, the defendants are equitably barred from setting up any claim to or lien upon said premises against the complainant.

Prayer for accounting; and conveyance of the land to complainant.

Answer under oath waived.

85 Prays summons against defendants.

Bill signed, Robert B. Dennis.

7 Venue changed to Cook County Circuit Court, December 12, 1862.

48 Appearance of Daniel Davidson entered.

86 Disclaimer of the Merchants and Mechanics Bank of Chicago.

87 Disclaimer of William H. King.

88 February 13, 1864, the joint and several answer of the NIANTIC BANK and JAMES H. WOODWORTH filed.

They say that the Niantic Bank is the owner in fee of following described premises: The undivided one-third part of the northeast quarter of section thirty-five, township forty, N. R. 13 east, in Cook county, Illinois.

89 That on February 6th, 1854, Richard K. Swift was the legal owner of said premises, and on that day Swift and wife conveyed said premises to Stephen Bronson, Jr., by deed, and by a regular chain of title, the Niantic Bank, for a good and valuable consideration, became and is the owner of said premises.

Admit that on the 19th of October, 1846, Swift leased said premises to Davidson as stated in bill; and aver that on the 9th of March, 1853, Daniel Davidson duly assigned said lease and contract to Stephen Bronson jr., and that by that assignment and transfer Bronson succeeded to all the rights and privileges of said Davidson in and to the said indenture of lease and contract, and to said premises.

90 Said defendants aver that Davidson was not in possession of said premises after March 9, 1853, by paying taxes thereon or otherwise, and that Davidson did not pay rents under said lease after said assignment to Bronson.

Said defendants admit the recovery of judgment by King against the Davidsons on November 28, 1853, but deny that Davidson held said lease and contract when said judgment was recovered; or that Davidson had made all payments then due by the terms of said lease; or that Davidson ever held the lease and contract after March 9, 1853.

Said defendants admit that King sued out execution on said judgment on the 30th of November, 1853, directed to the Sheriff of Lee
91 County, but defendants are not informed whether said execution was returned as alleged in said bill. They deny that said judgment ever became or was a lien on the premises described; and deny that said premises, or any portion thereof, were ever legally sold to satisfy said judgment.

Said defendants admit that King assigned said judgment to Fitch & Hewes, but do not know at what time; and that Fitch & Hewes afterwards assigned said judgment to defendant Woodworth.

Said defendants deny that said judgment was ever assigned to the Niantic Bank, or that the Niantic Bank ever had any interest in said judgment.

Said defendants admit, that about May 5, 1857, an alias execution was issued on said judgment, and that it was levied on said premises,
92 and that on May 28, 1857, the sheriff sold said premises by virtue of said execution to said King; but they deny that said alias execution was sued out by said King, or by these defendants.

Said defendants aver that said sale to said King, under said execution, was null and void, so far as the rights of the Niantic Bank are concerned; that Davidson had no interest in said premises, subject to levy and sale on said execution.

Said defendants have been informed that the complainant, on August 27th, 1858, recovered a judgment against Daniel Davidson for $9,295.00, as alleged in said bill; but defendants are informed that said judgment was recovered by collusion with Davidson, and that it was not for a bona fide indebtedness from Davidson to complainant, and was a fraudulent confession of judgment by Davidson.

93 Said defendants are informed that on August 27th, 1858, the complainant sued out execution on his judgment, and delivered same to sheriff of Cook County; and to redeem said premises from said sale to King, paid said sheriff $652.80, and that sheriff gave certificate of redemption.

Said defendants are not informed whether, on September 23, 1858, the sheriff of Cook County sold said premises to complainant as alleged, or whether said sheriff executed to complainant a deed of said premises.

Said defendants deny that on 23d September, 1858, or on 27th August, 1858, or at any other time since March 9th, 1853, said Davidson had any interest in said premises liable to levy and sale under any judg-
94 ment or execution, and deny that the complainant, at any time, had any right under such lease, to demand or receive from Swift, or any other person, a conveyance of said premises.

Said defendants deny that said complainant acquired any right, title estate or interest in or to said premises by virtue of any sale or pretended sale, or any deed or conveyance.

Said defendants have been informed that complainant, on or about January 22d, 1854, recovered a judgment in the Cook County Court of Common Pleas, against Daniel Davidson for $6,025.00; but defendants have no knowledge or information whether complainant sued out an execution on said judgment, as alleged. Defendants have been informed, and believe it to be true, that said judgment was without consideration, and fraudulent and void as to these defendants.

95 Said defendants aver that the last mentioned judgment was merged in, and constituted the consideration of the judgment which complainant obtained against Davidson on August 27th, 1858; and that said judgment, recovered on January 24th, 1854, was thereby extinguished, and became null and void.

Said defendants deny that complainant acquired any title or interest in or to said premises, on account of levy, sale and conveyance last aforesaid.

Said defendants are ignorant as to whether said complainant sued out an execution on said last mentioned judgment, or whether the Sheriff levied said execution on said premises, as alleged in said bill; or whether said premises were, on or about May 12, 1856, sold by said Sheriff to complainant under said execution, or whether said Sheriff made a deed to complainant, on or about October 6, 1858, as alleged in said bill.

Said defendants aver, that if said last mentioned levy, sale and conveyance were made as alleged, said last mentioned judgment was thereby fully satisfied and discharged.

Said defendants admit that, on March 9, 1853, said Davidson duly executed to said Bronson, an assignment and transfer of the said lease and contract, which assignment was annexed to said lease and contract, and was with said lease and contract filed for record in the office of the recorder of Cook county, on the 6th day of February, 1854, and was recorded in book 72 of deeds.

97 Said defendants are ignorant whether said Bronson, on said 9th day of March, 1853, signed and delivered to Davidson an instrument in the words and figures alleged in said bill.

Said defendants aver, that if said Bronson did sign and deliver to Davidson said instrument, that said instrument and the agreement became inoperative and void, by reason of the non-performance by said Davidson of the said agreement.

Said defendants admit that, on the 6th of February, 1854, said Swift and wife conveyed said premises to said Bronson by deed; which said deed was filed for record in the Recorder's office of Cook county, on the day and year last mentioned.

98 Said defendants aver that the Merchants and Mechanics Bank of Chicago, or said Bronson as its cashier or agent, on the 9th or 10th of March, 1853, discounted to said Davidson his note for the sum of $2,700, at forty-five days, or thereabouts; and also advanced to said Davidson, on the said note, the sum of $2,700; and on or about the 2nd day of
99 July, 1853, discounted to said Davidson a note for $500, at thirty days, or thereabouts; and on or about the 11th of June, 1853, discounted to
100 said Davidson a note for $2,500, at forty-five days; and on or about July 9, 1853, discounted to said Davidson a note for $1000, at twenty days, or thereabouts; and on or about July 9, 1853, advanced to Daniel Davidson
101 $1,000, on a note made by Daniel Davidson and Armintar Davidson, of that date; and in the month of March, 1853, discounted to Daniel Da-

vidson two other notes, each for the sum of $500, one payable forty-five, the other sixty days after date; and on or about the 15th of March, 1853, advanced to Daniel Davidson $1,000, on said last two notes.

Said defendants say that, on June 1, 1853, said Daniel Davidson was indebted to the Merchants and Mechanics Bank in the further sum of $143.56, which the said Bank had, on or about the 27th day of May,
102 1853, advanced to said Davidson, at his request, which said sum was, on June 1, 1853, past due and unpaid.

Said defendants say that neither of said notes so discounted were promptly paid at maturity, but that the same were in default of payment when they respectively became due and payable, and continued so in default up to and including the 6th day of February, 1854. That all of said notes drew interest at the rate of ten per cent. per annum. That from the 9th of March, 1853, to the 15th of July, 1853, there had been
103 discounted, loaned and advanced to said Daniel Davidson, by said Merchants & Mechanics Bank, or by said Bronson, sums amounting in the aggregate to $8,843.56, all of which was due and payable before August 15, 1853, and default in the payment of all which had been made, and such default in the payment of said sums continued until February 6, 1854.

Said defendants say that if Bronson executed to Daniel Davidson the instrument purporting to bear date March 9, 1853, as alleged, the same became null and void prior to August 15, 1853; and that said assignment of said lease and contract, by Davidson to Bronson, became absolute and unconditional.

104 Said defendants say that, on or about February 6, 1854, when Swift and wife conveyed said premises to Bronson, said Bronson paid to Swift $700, the consideration named in said conveyance from Swift to Bronson; and also $30 for rent then due and unpaid to Swift, under said lease, which said sums were paid for and on account of the Merchants and Me-
105 chanics Bank, and in consideration of said conveyance.

Said defendants say that they and the Merchants and Mechanics Bank have paid all taxes on said land, from and including the year 1853, to the present time, amounting to $400 or thereabouts; and that said Niantic Bank and its grantors have been in possession of said lands since March 9th, 1853.

Said defendants say that all discounts, loans and advances to said Davidson, by said Bronson and said Merchants and Mechanics Bank, from March 9th, 1853, to March 9th, 1854, were made upon the faith, strength and credit of said assignment of said lease and contract by Davidson to Bronson as aforesaid; and that said assignment was made
106 and received for the benefit of the said Merchants and Mechanics Bank, and said Bronson.

Defendants admit that Bronson conveyed said premises to said Tracy, but deny said conveyance was a sham; and deny that Tracy paid no valuable consideration for said premises; and deny that he held the same in trust for the Merchants and Mechanics Bank, or that Tracy held said premises to cover them up and keep them away from Davidson or his creditors, or to prevent Davidson's creditors from redeeming same, as alleged in bill.

107 Defendants admit that Tracy sold and conveyed said premises to Charles C. Wells & Co., as stated in bill, but they deny that such sale and conveyance was made at the suggestion or request of the Merchants and Mechanics Bank, or that said sale was a cover or device to keep the property from Davidson, or those claiming under him.

Defendants admit that the Wells & Co. notes were afterwards transferred to the Merchants and Mechanics Bank, who caused said King to sell said premises; and that Woodworth became the purchaser at such sale.

Defendants say, that Woodworth afterwards sold and conveyed said premises to the Merchants and Mechanics Bank, and said bank afterwards conveyed the same to Trumbull, and that said Trumbull sold and conveyed the same to the Niantic bank for a good and valuable consideration.

Defendants deny that Trumbull took the premises on account of an
108 indebtedness, or with knowledge or notice of any equities of the complainant or Davidson.

109 Defendants deny that the judgment in favor of King was purchased from Fitch and Hewes for the purpose of cutting off the lien of complainant under his said judgment, or that these defendants, or the Merchants and Mechanics bank, caused said execution of May 5th, 1857, to be issued or said premises sold thereunder.

Defendants do not know whether or not King paid any money upon his purchase of said premises, but they deny that King made such purchase for the benefit of the Merchants and Mechanics Bank, or of either of these defendants.

110 Defendants aver, that the Niantic Bank purchased the premises in good faith and for a valuable consideration, and without any knowledge or notice of any claim or equity outstanding against said premises.

111 Defendants deny that complainant ever demanded a conveyance of said premises from Niantic bank, or ever offered to pay the bank any sum of money on account of a conveyance.

Defendants say the Merchants and Mechanics Bank has no interest in said premises, and had none while Trumbull held title thereto.

114 Defendants say, that soon after the judgment of November 28th, 1853, and before any other judgment was entered against Daniel Davidson, said Davidson and the Merchants & Mechanics Bank made an agreement by which the bank should take and have the said premises, and a deed therefor from Swift, and all the interest and claim of Davidson therein; and said bank, in consideration thereof, should cancel the indebtedness of Davidson to it. That said Davidson and said Bronson
115 personally applied to Swift, and directed Swift to execute said deed to Bronson as aforesaid, dated February 6th, 1854, and that thereafter said bank did not have, or claim to have, any indebtedness due it from Davidson, but took and accepted Davidson's interest in said premises, in payment of all indebtedness due it from Davidson.

116 Defendants say that on the 12th of September, 1855, said Woodworth purchased of Ayers & Hamilton their interest in said premises (they claiming to have some interest therein) and paid them $200 therefor, and took from them a deed bearing date the day and year last aforesaid, which said deed was filed for record in the Recorder's office of
117 Cook County, on the 12th of September, 1855.

Answer signed by Niantic Bank and James H. Woodworth; by King & Scott, Solicitors.

118 Replication to answers.

119 Replication to answer.

On the hearing the complainant offered in evidence:

131 1st. The deposition of Lyman Trumbull.

137 2d. The deposition of William H. King.

147 3d. The deposition of Stephen Bronson, jr.

157 4th. The lease and contract from Swift to Davidson.

170 5th. The record in the case of King *vs.* Davidson *et al.*, in Cook County Court of common pleas.

184 6th. The record in the case of Dennis *vs.* Davidson *et al.*, in Cook County Circuit Court.

191 7th. The record in the case of Dennis *vs.* Davidson *et al.*, in Cook County Court of common pleas, with executions, &c.

198 8th. Sheriff's deed to complainant.

201 9th. Certificate of redemption.

242 10th. Testimony of Timothy Bradley.

And the defendants, the Niantic Bank and James H. Woodworth, offered in evidence:

202 1st. The lease from Swift to Davidson, and the assignment thereof from Davidson to Bronson.

210 2d. Deed from Swift and wife to Bronson.

213 3d. Deed from Bronson to Tracy.

4th. " " Tracy to Wells & Tucker.

5th. Trust deed from Wells & Tucker to William H. King.

6th. Trustee's deed from King to Woodworth.

214 7th. Deed from Woodworth to Merchants and Mechanics Bank.

216 8th. " " Merchants and Mechanics Bank to Trumbull.

9th. " " Trumbull to the Niantic Bank.

239 10th. " " Dennis to Crosby.

242 11th. Receipts for $292.64, taxes paid.

LYMAN TRUMBULL, a witness produced and sworn on the part of the complainant, deposes as follows:

132 1*st Interrogatory.* What is your name, and where do you reside?

Ans. Lyman Trumbull, and reside in Chicago.

2*d Int.* Who, if any of the parties to this suit do you know?

Ans. I do not know that I know any of the officers of the Bank of Niantic, nor any of the officers of the Mechanics Bank, except Mr. Woodworth. William H. King and R. K. Swift I have seen.

3*d Int.* Did you ever receive a deed of the undivided one third of the northeast quarter of section thirty-five, town forty, north range thirteen east, in Cook County, Illinois, called the "Stone Quary Lot;" if so, from whom, and for what consideration, and what disposition, if any, did you make of the deed and the land? state the circumstances as they occurred.

Ans. I had a deed for the land mentioned, and made a casual examination for it this morning, not finding it among my papers. My impression is, the deed to me was from James H. Woodworth and wife, though of this I am not certain, without reference to the deed. The consideration for the deed was nine thousand five hundred dollars, of which thirty-four hundred dollars was paid down at the time the contract was made, at the city of Washington, on the 2d day of March, 1857; three thousand dollars more was agreed to be paid on the fifteenth day of
133 March then next, and the balance, of three thousand dollars, on the first day of May then following. I have in my hand the original agreement under which I made the purchase; I here offer it in evidence, marked Exhibit "A." I made the purchase with the understanding, that if, when I came to Chicago, the title or purchase should not be satisfactory, Mr. Woodworth, in whom I had full confidence, would refund the money advanced, and cancel the purchase. Subsequently, on coming to Chicago, I was not satisfied about the title, and the purchase was rescinded, or rather I re-conveyed the property to the Niantic Bank, in pursuance of a request from Mr. Woodworth, as President of Merchants & Mechanics Bank, he having paid back the purchase money I had advanced, with interest; which will be fully explained by a written memorandum entered into between said Woodworth and said Trumbull, on the seventh day of April, 1857, which I offer in evidence, as explanatory of the transaction. I do not know where the deed to me now is; it is possible it was never taken from the Recorder's office, or I may have returned it to Mr. Woodworth when I re-conveyed the property in pursuance of his request, which is in writing, on the memorandum above referred to, dated April 7th, 1857, marked Exhibit "B." My purchase from Mr. Woodworth was a *bona fide* transaction, and I should have retained the property, but for the apprehension that there might be some question raised about the title; fearing that, I abandoned the property, receiving back what I had

134 paid. The whole transaction was carried on between Mr. Woodworth and myself, and he was the only person with whom I dealt in regard to it.

[Signed] LYMAN TRUMBULL.

Subscribed and sworn to before me, this Nov. 9th, 1863.

A. J. BROWN, N. P.

134 "Exhibit "A," to foregoing deposition, is an agreement between James H. Woodworth, President of the Merchants and Mechanics Bank of Chicago, for himself as well as for said bank, and Lyman Trumbull, dated January 7, 1857, states that Woodworth, as actuary of said bank, and in his own right, has sold to said Trumbull the undivided one-third part of the N. E. quarter of sec. 35, town. 40, N. R. 13, east, in Cook county, Ill., for $9,500, $3,500 of which has been paid in hand; and Trumbull agrees to pay $3,000 on the 15th of March next, and $3,000 on
135 the first of May next; upon payment of which sums a deed is to be executed and delivered to Trumbull.

135 For a full and valuable consideration received of the Niantic Bank of Rhode Island, I do, for myself and the Merchants and Mechanics Bank of Chicago, hereby assign and transfer to the said Niantic Bank all my interest, and the interest of the Merchants and Mechanics Bank, in and to the moneys arising out of the foregoing agreement, and hereby authorize the said Niantic Bank to collect the same. In witness whereof I have hereunto set my hand, the 13th day of January, 1857.

"Exhibit B," to foregoing deposition, is an instrument bearing date the 7th day of January, 1857, signed by J. H. Woodworth and Lyman Trumbull, stating that a contract in writing was made between Lyman Trumbull and James H. Woodworth, President of the Merchants and Mechanics Bank of Chicago, acting for said bank, and in his individual capacity, for the purchase (by Trumbull,) of the undivided one third part of the N. E. quarter of section 35, township 40, N. of R. 13, east, for $9,500. Which contract has been partly complied with by said Trum-
136 bull, by payment of $3,500 of the purchase money, and by said bank, by the execution of a conveyance of said land to Trumbull; and, as there is some question about the title to said land, as conveyed to Trumbull, it is agreed that said contract of purchase be rescinded, and that said contract be canceled and refunded to said Trumbull. Trumbull agrees, upon repayment to him of the money paid on said purchase, to re-convey to said Woodworth, or to such person as he shall direct, all the right and title which was conveyed to Trumbull, or which he acquired under or by virtue of the deed from said bank.

CHICAGO, July 16, 1858.

137 *Hon. Lyman Trumbull : Dear Sir*—As President, and by order of the Merchants and Mechanics Bank of Chicago, I hereby request you to convey, by quit claim deed, the parcel of land described in the foregoing agreement, to the "Niantic Bank," at Westerly, in R. I., the same being applied in payment of a claim held by the bank against the Merchants and Mechanics Bank aforesaid.

[Signed,] J. H. WOODWORTH, *Pres.*

Deed executed, in accordance with above request, July 20, 1858, and enclosed to Hon. J. H. Woodworth, at Chicago.

WILLIAM H. KING produced, sworn and examined, on part of complainant, testified as follows:

1*st Inter.* Are you one of the defendants in this suit?

Ans. I believe I am.

138 2*nd Inter.* Do you know Daniel Davidson, one of the defendants, and how long have you known him?

Ans. I do, and have known him about ten years, I think over ten years.

3*rd Int.* Are you the plaintiff in a certain judgment entered in what was the Cook County Court of Common Pleas, in November, 1853, in your favor and against said Daniel Davidson and one Aminter Davidson.

Ans. I was the plaintiff in a judgment against Daniel Davidson and Aminter Davidson, I think entered about that time, in that court.

4*th Inter.* Who in fact owned the cause of action or claim upon which said judgment was entered, at the time of entering the same?

Ans. I understood at the time or soon after, that it was owned by the Merchants and Mechanics Bank of Chicago.

5*th Inter.* For whose use and benefit was said judgment entered up?

Ans. For the party who owned the cause of action, I suppose.

6*th Inter.* Did you afterwards transfer or assign said judgment to any one, and if so to whom?

Ans. My impression is I transferred it to Fitch & Hewes.

139 7*th Inter.* Can you state when that transfer took place?

Ans. I cannot state the time.

8*th Inter.* Was the said judgment ever transferred to you?

Ans. I believe it was, by Fitch & Hewes; I cannot state when; I suppose it was before the last execution was issued on said judgment.

9*th Inter.* Who received the consideration, if any, paid by Fitch & Hewes, for the assignment to them?

Ans. I do not recollect.

10*th Inter.* Did you receive it for your own use as owning the judgment?

Ans. I think not.

11*th Inter.* By whom was the consideration, if any, paid for the re-assignment to you of said judgment?

Ans. I think by James H. Woodworth; I am not positive.

12*th Inter.* Who sued out the last execution on the judgment on which the land in controversy was sold?

140 *Ans.* I do not recollect

13*th Inter.* Who furnished the Sheriff with the description of said lands?

Ans. I do not remember, if I knew at the time.

14*th Inter.* Who gave the Sheriff directions as to the levy to be made under said execution?

Ans. I do not remember, but I presume I did.

15*th Int.* Who bid off the property at the sale made under said execution?

Ans. I believe I did.

16*th Inter.* Did you pay any money at such sale, and if so to whom?

Ans. I think not, except I presume I paid the Sheriff's costs.

17*th Int.* For whose benefit did you bid off said land and hold the certificate of sale?

Ans. I think it was for the benefit of James H. Woodworth.

18*th Int.* What business connection had you, if any, with or for the Merchants' and Mechanics' Bank from November, 1853, to November, 1858, inclusive?

141 *Ans.* Mr. Scott and myself were attorneys and counsel for the Mercants' and Mechanics' Bank, a portion of that time, but I think not as early as November, 1853, yet it may have been as early as that, but my present impression is that it was not. I feel quite positive we were not attornies for the bank as early as 1853.

19*th Int.* How came you by the claim upon which said judgment was entered, and for what purpose?

Ans. I think Stephen Bronson, jr., gave me the claim or note for the purpose of entering judgment upon it, and told me to enter it up in my name.

20*th Int.* What reason did he give, if any, for that?

Ans. None, to my recollection.

21*st Int.* In what capacity was Stephen Bronson, jr., acting for the Merchants' and Mechanics' Bank at that time?

Ans. He was cashier of the bank.

22*nd Int.* In what capacity has James H. Woodworth acted for said bank?

Ans. Mr. Woodworth was elected President of said bank late in the fall of 1854 or in the winter of 1854 and 5, and the bank stopped or closed its business I think in 1856. For some time after that, but for how long I cannot say, the bank was engaged in winding up and closing
142 its business. I do not mean to be understood to be exact as to dates. I think the bank sold its banking house and lot upon which the banking house stood, in the summer in 1856, and I do not recollect of its having any place of business after about that time.

23*d Int.* Why was this judgment transferred to you by Fitch and Hewes?

Ans. I do not reccollect, if I ever knew.

24*th Int.* Do you recollect the fact of a bill being filed by them to enforce the collection of this judgment in the said court where it was entered, to which the Merchants' and Mechanics' Bank was a party defendant, and seeking to make the land in controversy in this suit liable for the payment of it?

Ans. I have heard that Fitch & Hewes filed a bill, but the contents of the bill I have forgotten, if I ever knew.

25*th Int.* Who drew up Bronson's anwer to said bill?

Ans. I have understood that my partner, Mr. Scott, drew up his answer.

26*th Int.* Who negotiated for the transfer of said judgment from Fitch and Hewes to you?

Ans. I don't recollect.

143 27*th Int.* Did you do so?

Ans. I do not recollect of doing so, yet I may have done so.

28*th Int.* Were you consulted by any body as to the propriety or necessity of issuing said last execution, or as to the issuing it before the same was issued?

Ans. I do not remember that I was consulted in relation to the issuing of said execution before it was issued, yet I think the matter of issuing it was talked over.

29*th Int.* By, or between whom?

Ans. I don't distinctly remember, I think between Mr. Scott and myself, and I don't know but by others.

30*th Int.* In what capacity was Mr. Scott acting at that time? Was he not as the attorney of the bank?

Ans. I think not.

31*st Int.* How did you and Mr. Scott come to be talking about this execution?

Ans. I cannot say. My impression is we were not then attorneys for the bank. Yet we may have been up to that time, and longer. I do not recollect whether we then were, or not.

32*nd Inter.* You did not usually interfere with legal proceeding in which you were not authorized to do so by parties interested?

Ans. We were not apt to.

144 33*d Int.* Is it not then almost a certainty, that either you or your partner, Mr. Scott, had, with the parties interested in this judgment, or from them, some conversations or declarations about the issuing of this execution?

Ans. It is possible; but I do not recollect.

34*th Int.* Did you not inform some of the officers of said bank, soon after you bid off the land, the fact that you had so bid it off?

Ans. I don't think that I informed any of the officers of the bank, *as officers* of the bank, that I had bid it off; but I think I informed Mr. Woodworth of the fact; I don't recollect that I did any other.

35*th Int.* State how soon after the sale you informed him of it?

Ans. I do not remember. But it was before the time of redemption ran out.

36*th Int.* Did you, after the expiration of fifteen months, apply for a deed thereunder, from the Sheriff?

Ans. I understood the premises were redeemed from the sale, and do not remember applying for a deed.

145 37*th Int.* You would have obtained a deed had not the premises been redeemed?

Ans. Quite likely.

Witness, William H. King, now desires to correct his answers to the following named interrogatories: To the 8th, says—The judgment was not transferred to me by Fitch & Hewes. In answer to the 14th interrogatory, says—I have no recollection of giving the Sheriff directions

to levy on the execution. In answer to the 18th interrogatory, says—I think we had done a little business for the bank in the summer of 1853. In answer to the 23d interrogatory—It was not transferred to me by Fitch & Hewes, to my knowledge, information or belief. In answer to 26th interrogatory—There was no negotiation, to my knowledge or belief, for a transfer of the judgment from Fitch & Hewes to me. In answer to the 27th interrogatory, says—I never did so, to my recollection or belief.

38*th Int.* What has led you to make the change in your answer to the 8th interrogatory, as stated above?

Ans. Because I wanted the fact to appear just as it exists; and I find that the assignment was made to James H. Woodworth, and not to me. Mr. Woodworth handed me the assignment a few days ago, since my last examination.

39*th Int.* If you can, produce that assignment.

Ans. I now hold it in my hand. It bears date April 25, 1857, and marked "Exhibit C."

40*th Int.* In whose handwriting is the body of that instrument?

Ans. In my handwriting.

(Signed,) WM. H. KING.

Subscribed and sworn to before me, November 14, 1863.

A. J. BROWN, Notary Public.

Copy of the assignment above referred to, marked "Exhibit C":

Cook County, Court of Common Pleas—

WILLIAM H. KING, *vs.* DANIEL DAVIDSON and ARMINTER DAVIDSON.	November 28, 1853, judgment entered in favor of plaintiff, and against defendant, for $1,047.76 damages. Plaintiff's costs, $4.70; defendants' costs, $1.30—$1,053.76.

For value received we, Francis S. Fitch and William Hewes, do hereby sell, assign, transfer, set over and convey, to James H. Woodworth, of Chicago, the above mentioned judgment, and all our right, title, interest, claim and demand, in, of, and to the same, and the moneys due and to grow due thereon; to have and to hold the same to the said Woodworth, his executors, administrators, and assigns, to and for his

and their use and benefit for ever. And we guarantee that there is due on said judgment, and unpaid thereon, the sum of $608.34; and we au-
147 thorize and empower the said Woodworth, his executors, administrators or assigns, to use any legal means to collect said judgment.

Witness our hands and seals this 25th day of April, 1857.

FRANCIS S. FITCH, [*Seal.*]
WM. HEWES. [*Seal.*]

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

1*st Int.* What is your name, residence, and present occupation?

Ans. Stephen Bronson, Jr.; residence, Wheaton, Du Page county, Illinois; Major in the military service U. S., in the Twelfth Illinois Cavalry.

2*nd Int.* What occupation or employment were you engaged in in the month of March, 1853?

Ans. In banking. I was cashier of the Merchants and Mechanics Bank, Chicago.

3*d Int.* Were you then acquainted with Daniel Davidson.

Ans. I was.

4*th Int.* Look at the paper writing now shown to you marked exhibit "C." and state by whom the same is signed and executed. Said exhibit purported on the back of it to have been recorded in the Record-
148 er's office of Cook County, Illinois, the 16th day of May, 1854, in book 75 of deeds, page 590?

Ans. I signed that.

5*th Int.* To whom did you deliver it?

Ans. To the best of my recollection, to Daniel Davidson.

CROSS EXAMINED BY MR. KING FOR DEFENDANTS.

1*st Cross Int.* Do you recollect when you delivered that to Daniel Davidson?

Ans. About the time of the date it was executed and delivered.

2nd Cross Int. Look at paper now shown and handed to you marked Exhibit No. 1, and state who executed the same, purporting to have been executed by Daniel Davidson?

Ans. Daniel Davidson executed it.

3d Cross Int. Please state the occasion and how Daniel Davidson came to execute the paper marked Exhibit No. 1?

Ans. From my best recollection it was for the purpose of obtaining the use of some money; it was given in security; it was so understood at the time.

4th Cross Int. Was the paper marked Exhibit "C" given to Daniel Davidson at the same time?

149 *Ans.* It was.

5th Cross Int. Did Daniel Davidson obtain any money from you or the Merchants and Mechanics Bank of Chicago, on account of or on the strength of the said paper executed by him marked Exhibit No. 1. If yea, how much?

Ans. He did receive money at different times on the strength of that security. He received one thousand dollars in different sums, five hundred dollars each, both on the 2d of March, one a note for sixty days and one for forty-five days. Received twenty-seven hundred dollars on the 9th of March, 1853, (the others were 53). Received twenty-five hundred dollars on the 11th of June, 1853. It was a re-discount of the twenty-seven hundred dollar note previously mentioned, reducing the twenty-seven hundred dollars, two hundred dollars by payment. On the 2d day of July, 1853, five hundred dollars. On the 9th of July, one thousand dollars, a discount of the two first mentioned notes, dated the 2d of March. Over draft of and for one hundred and forty-three dollars and fifty-six cents, the date of which I have not got; it was May 27, 1853. That was all I recollect that was given on that contract or agreement. It may be possible I may be mistaken as to the note bearing date July 2, 1853. It may not belong to the account of Daniel Davidson.

5½ Cross Int. Was not the one of July 2, 1853, made or endorsed by Daniel Davidson?

150 *Ans.* It was endorsed by Daniel Davidson.

6*th Cross Int.* Was or not the money obtained on the note, July 2, 1853, from the Merchants and Mechanics Bank on the strength of the paper marked "Exhibit No. 1," executed by Daniel Davidson. (Objected to on account of form.)

Ans. I think it was.

7*th Cross Int.* On what security was the money obtained on the note dated July 2, 1853, endorsed by Daniel Davidson?

Ans. I think upon the security given by him on the 9th of March, 1853.

8*th Cross Int.* Please look at the paper marked "Exhibit No. 2," now shown and handed to you, purporting to be a deed executed by R. K. Swift and Melissa A., his wife, to yourself, and state who executed the same?

Ans. R. K. Swift and Melissa A., his wife. I did not see her sign it, but I did him.

9*th Cross Int.* Why was the said deed marked Exhibit No. 2, executed by Swift and his wife, so executed to you?

Ans. For the purpose of conveying the land described in it to me.

10*th Cross Int.* Was or was not it executed to you on account of
151 the matters contained in the paper marked "Exhibit No. 1," executed by said Daniel Davidson?

Ans. In part on that, and on personal application to Mr. Swift by Daniel Davidson.

11*th Cross Int.* What was the indebtedness of Daniel Davidson to the Merchants and Mechanics Bank of Chicago, for monies loaned him by the said Merchants and Mechanics Bank, and for the said Daniel Davidson's over-drafts on the said Merchants and Mechanics Bank on the 28th day of November, 1853, which had been advanced to him, or loaned to him, or discounted to him on the strength of the paper marked "Exhibit No. 1"?

Ans. As near as I can now calculate from the books, and my recollection, four thousand one hundred and fifty-three dollars and fifty-six cents, including the note of July 2, 1853, principal of the notes exclusive of interest.

12*th Cross Int.* Was that indebtedness due and payable on the said 28th day of November, 1853?

Ans. It was all due, and had been, some months before.

13*th Cross Int.* What rate of interest did those notes draw?

(Question objected to, and notes called for.)

Ans. Ten per cent. I believe, from my best recollection.

14*th Cross Int.* Had, or had not Daniel Davidson paid any of the indebtedness which you spoke of as existing on the 28th day of November, 1853, up to, and including the 6th day of February, 1854, or any
152 one for said Davidson, or on his behalf.

Ans. I recollect of no payment being made, unless it be on the thousand dollar note put in judgment, which note bore date, 9th of July, 1853. I don't know how that stood.

15*th Cross Int.* Do you know of any payment being made on that judgment, on the note bearing date July 9th, 1853, up to Feb. 6th, 1854.

Ans. I cannot remember that any payment was made, but I have an impression that there was something paid at one time or another; how it was, I cannot tell.

16*th Cross Int.* Did you pay Richard K. Swift any money at or about the 6th day of Feb., 1854, on account of the execution of the deed by said Swift and his wife to you, bearing date the 6th day of Feb., 1854; if so, how much, and for what reason?

Ans. I am positive I paid seven hundred dollars. I think I paid thirty dollars besides, as rent, for the purpose of getting the title to the land mentioned in the deed.

17*th Cross Int.* Did you pay this seven hundred and thirty dollars on your own account, or on the account of the Merchants and Mechanics Bank of Chicago?

Ans. On account of the bank.

153 18*th Cross Int.* Was there any arrangement or agreement between you and the said Daniel Davidson in November or December, 1853, or thereabouts, in relation to the Merchants and Mechanics Bank of Chica-

go or yourself taking, and having, and holding the land described in the said deed from Swift to yourself, for the indebtedness owing by said Daniel Davidson to the said Merchants and Mechanics Bank? if so, state what that was, as near as you can recollect.

Ans. My recollection is, that previous to the execution of the deed, some few weeks, or a week, I cannot remember the precise time, I pressed him for payment, as I had previously done many times before. He had promised to make sale of the land, and pay the money months before the first of February, and at different times, which he failed to do, being unable to sell it, as he told me. About the first of February I proposed to take the land; at the same time I told him I did not want the land, but wanted the money, I needed it in the business. An arrangement or understanding was made by which I should have the deed from R. K. Swift, and take the land. We went together to R. K. Swift, and gave directions to have a deed made out. I understood it to be in satisfaction of his indebtedness to the bank. I then paid the amount due, seven hundred and odd dollars, to R. K. Swift, and received the deed.

19*th Cross Int.* Was it not agreed between you and Daniel Davidson, at or before the first day of January, 1854, that he, said Davidson, had forfeited all his rights and privileges which he had under and by
154 virtue of the agreement signed by you, dated March 9th, 1853, and marked Exhibit "C."

(Question objected to as being leading.)

Ans. I do not know that there was any agreement or understanding between him and myself on that point.

20*th Cross Int.* Did you not understand that the said agreement, signed by you, dated March 9, 1853, was null and void, by the said Davidson making default in the payment of his, said Davidson's, indebtedness to Merchants and Mechanics Bank.

Ans. I did.

21*st Cross Int.* Did not said Daniel Davidson concede and admit that he had no claim to the premises mentioned and described in the instrument signed by you, and bearing date March 9th, 1853, on account of said Davidson's making default in the payment of his indebtedness to the Merchants and Mechanics Bank.

(Question objected to.)

Ans. My recollection is that he did.

22*d Cross Int.* Was, or was not that admission in the month of November, 1853? (Question objected to as leading.)

Question withdrawn.

23*d Cross Int.* When was that admission made?

Ans. I do not remember the time; it was after default was made in payment.

155 24*th Cross Int.* Do you remember whether you surrendered and delivered to the said Daniel Davidson the notes held by the Merchants and Mechanics Bank against him, on account of, and for the reason of that agreement, by which the Merchants and Mechanics Bank should have the land for said Davidson's indebtedness to said bank.

(Question objected to.)

Ans. I do not remember delivering them to him. I remember taking them from the bills receivable preparatory to delivering them. I counted them no longer from that time, as bills receivable to the bank. Whether I delivered them to him or some of the clerks, I can't state. Davidson did not go with me to Swift at the time I got the deed; he was with me the day before and ordered the deed. I do not say that the notes were ever delivered to my own knowledge.

25*th Cross Int.* Have you any doubt in your own mind, that the notes were delivered to Daniel Davidson.

Ans. I dont know whether they ever were delivered or not. If not delivered, they were left in the bank when I left. They were not counted in as assets of the bank after that time, after the execution of the deed.

DIRECT EXAMINATION RESUMED.

156 1*st Direct Interrogatory.* Did you not see the note for one thousand dollars given in renewal of the two notes, given March 2d, 1853, as you stated above, last in the office of the Clerk of the Superior Court of Chicago, on file there.

Ans. I believe I did.

2*d Int.* Was it made payable to you and endorsed by you.

Ans. I believe it was.

3*d Int.* Who was present with you at the time you examined said note.

Ans. Mr. Burgess.

4*th Int.* Was not the arrangement you speak of between you and Davidson, partly in pursuance of which you say you got a deed made from Swift, made the day you and Davidson went to him.

Ans. It might have been made that day, it might have been made before, I cannot say.

5*th Int.* Did the $4,143\frac{56}{100}$ mentioned in your answer to the 11th Cross Interrogatory, include the twenty-five hundred dollar note of June 11th, 1853; the five hundred dollar note of July 2, 1853, and the one thousand dollar note of July 9, 1853, and the over draft of one hundred and forty-three 56-100 dollars.

Ans. Yes sir, those were the sums.

(Signed), STEPHEN BRONSON, Jr.

Subscribed and sworn to before me.
Andrew J. Brown, *Notary Public.*

157 "EXHIBIT No. 1," referred to in the foregoing deposition.

"This indenture, made this 19th day of October, in the year of our Lord one thousand eight hundred and forty-six, between Richard K. Swift of the first part, and Daniel Davidson of the second part, both of Chicago, County of Cook and State of Illinois—witnesseth: that the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators and assigns, hath demised and leased to the said party of the second part, all that certain lot or piece of land, situate, lying and being in the said County of Cook, and described as follows, to-wit: one undivided one-third ($\frac{1}{3}$) part of the north-east quarter of Section No. (35) thirty-five, in township No. forty (40), north of Range No. (13) thirteen, east of the (3) third principal meridian, called the stone quarry lot; to have and to hold the said above described premises, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, from the 19th day of October, in the year of our Lord one thousand eight hundred and forty-six, forever, or until this lease shall cease by the terms hereof. And the said party of the second part in consideration of the leasing of the premises aforesaid, by the said party of the first part to the said par-

ty of the second part, doth covenant and agree with the said party of the first part, his heirs, executors, administrators and assigns, to pay the said party of the first part as rent for the said demised premises, the sum of
158 one hundred dollars for each and every year's time the said party of the second part, his heirs, executors, administrators, or assigns may hold possession of the above described premises, and payable in manner to-wit: fifty dollars on the day and date hereof, and a like sum of fifty dollars at the end of each and every half year from and after the date hereof. And also that he will pay or cause to be paid all taxes and assessments that may be laid, charged or assessed on said demised premises pending the existence of this lease; or, if at any time after any such taxes or assessments shall have become due or payable, the said party of the second part or his legal representatives shall neglect to pay such taxes or assessments, it may be lawful for the said party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by said party of the first part, shall be deemed, and taken and are hereby declared to be so much additional and further rent for the above demised premises, due from and payable by the said party of the second part, his executors, administrators or assigns, and may be collected in the same manner, by distress or otherwise, as is hereinafter provided for the collection of other rents to grow due hereon. And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned, he will yield up the said demised premises to the said party of the first part in as good condition as when the same were entered upon by the said party of the second part, loss by fire, or inevitable accident and ordinary wear excepted. It is further agreed by the said party of the sec-
159 ond part, that neither he nor his legal representatives will underlet said premises or any part thereof, or assign this lease without the written assent of said party of the first part, first had and obtained thereto. And it is mutually covenanted and agreed by and between the parties hereto, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment, whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants, agreements or conditions herein contained, to be kept by the said party of the second part, his executors, administrators and assigns, and at any time within sixty days thereafter; it shall and may be lawful for the said party of the first part, his executors, administrators, agent, attorney or assigns, at his or their election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the said party of the second part, or any other person or persons occupying in or upon the same to expel, remove or put out, using such force as may be necessary in so doing; and the said premises to again repossess and enjoy as in his first and former estate; and to distrain for any rent that may be due thereon, upon any property be-

longing to said party of the second part, whether the same be exempt from execution or distress by law or not; and the said party of the second part, in that case hereby agrees to waive all legal rights which he may have, to hold or retain any such property under any exemption laws now in force in this State, or in any other way; meaning and in-
160 tending hereby, to give to the said party of the first part, his heirs, executors, administrators or assigns a valid and first lien upon any and all the goods, chattels or other property belonging to the said party of the second part, as security for the payment of said rent, in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, his heirs, executors, administrators or assigns, as aforesaid, or in any other way, the said party of the second part, his executors, administrators and assigns, doth hereby covenant and agree to surrender and deliver up said above described premises and property peaceably to the said party of the first part, his heirs executors, administrators and assigns, immediately upon the determination of said term as aforesaid, and if he shall remain in possession of the same three days after notice of such default, or after the termination of this lease, in any of the ways above named, he shall be guilty of a forcible detainer of said demised premises, under the statute, and shall be subject to all the conditions above named, and to eviction and removal forcibly or other wise with or without process of law as above stated. And the said party of the first part further agrees, that if the said party of the second part shall first faithfully and without delay, pay the rents aforesaid, on the days on which the same shall become due and payable as aforesaid; and also first perform all his covenants and agreements herein contained, then and in such case only, if the said party of the second part shall at any
161 time at his own option, pay to the said party of the first part, his heirs or assigns, over and above the amount of the rents which may have become, due hereon, the still further sum of seven hundred dollars, then the said rent to cease and then the said party of the first part will, at his own dwelling house in Chicago, execute and deliver in person, or by attorney duly authorized, a good and sufficient warrantee deed or deeds, and thereby assign and convey to the said party of the second part, his heirs and assigns, a good and indisputable title, and all the right, title and interest of the said party of the first part to the above described premises with their appurtenances. And it is further mutually covenanted and agreed by and between the parties hereto, that if the said party of the second part shall fail to pay the rents, or other sums of money hereinbefore mentioned, or any part thereof, at the time or any of the times before specified for the payment thereof, or shall fail to comply with any of his covenants or agreements, or any of the terms herein contained, then the agreement by the said party of the first hereinbefore contained, to convey the aforesaid premi-

ses to the said party of the second part, to be absolutely null and void either in law or equity, and no longer binding upon the said party of the first part. And it is expressly agreed and understood that the time mentioned for the payment of the aforesaid sums of money is the essence of the covenants and agreements herein contained, any law or usage to the contrary notwithstanding.

In testimony whereof, the said parties have hereunto set their hands and seals the day and year first above written.

162 (Signed), R. K. SWIFT, [SEAL.]
DANL. DAVIDSON, [SEAL.]

In presence of
HENRY A. SWIFT.

ENDORSEMENT ON SAID LEASE:

"Oct. 19, 1846. Fifty dollars rent paid on the within.
R. K. SWIFT.

"April 19, 1847. Fifty dollars paid on the within to date.
R. K. SWIFT.

"Oct. 19, 1848. Fifty dollars rent paid on the within to date.
R. K. SWIFT.

"April 19, 1848. Fifty dollars paid on the within to date.
R. K. SWIFT.

"Nov. 18, 1848. Fifty dollars rent due. Oct. 19, 1848, paid on the date last above named. R. K. SWIFT.

"April 19, 1849. Fifty dollars rent paid due this day.
R. K. SWIFT.

"Oct. 29, 1849. Fifty dollars rent paid to Oct. 19, 1849.
R. K. SWIFT.

"April 19, 1850. Fifty dollars rent paid 6 months in advance.
R K. SWIFT.

"Oct. 19, 1850. Fifty dollars rent paid 6 months in advance.
R. K. SWIFT.

"Oct. 27, 1852. All the rents due up to the 19th inst. on this lease are paid. R. K. SWIFT.

"Nov. 7, 1853. All the rents due up to the 19th of October, 1853 (eighteen hundred and fifty-three) have been paid.
R. K. SWIFT."

The assignment of above lease and contract from Davidson to Bronson, is fully set forth on the 44th page of this abstract.

"EXHIBIT No. 2," TO BRONSON'S DEPOSITION,

Is a deed from R. K. Swift and Melissa A., his wife, to Stephen
164 Bronson, jr., bearing date February 6, 1854, for the one undivided one-
165 third part of the N. E. quarter of sec. 35, township 40, N. of R. 13, E. of 3d P. M., in Cook Co., Illinois, called the stone quarry lot.

"EXHIBIT C."

167 "This certifies, that I have this 9th day of March, 1853, received from Daniel Davidson an assignment of an indenture of lease from R. K. Swift to said Davidson, dated Oct. 19, 1846, for one undivided one-third part of the north-east quarter of section 35, town. 40, N. R., 13 E., and also an assignment of an agreement from John Deniston to said Davidson, dated January 27, 1853, for lots 94, 95 and 96 in Butterfield's addition to Chicago, as security for all notes, bills and evidences of debt
168 which I, the said Bronson, either for myself or for the Merchants and Mechanics Bank of Chicago, may or shall discount for said Davidson within the space of one year from date, and also for all loans I may make to said Davidson as aforesaid, within said period. Further, it is specially provided and agreed, that in case any note, bill, or loan discounted or advanced to said Davidson by me the said Bronson as aforesaid, shall be in default and not promptly paid at maturity, then the said assignment and each of them shall be absolute and unconditional and this receipt shall be null and void and of no force in law or equity, time being expressly of the essence of this condition.

(Signed,) STEPHEN BRONSON, JR.

"Filed for record May 16, 1854, and recorded in book No. 75 of deeds."

Complainants objected at the time to the statements of witnesses as to the indebtedness of Davidson referred to by them, and which were evidenced by notes or other instruments of writing, unless the same were produced or their absence accounted for, and the court overruled the objection and allowed the deposition to be read.

170 to 178 Complainant also introduced in evidence and read the lease from Swift to Davidson, dated October 19, 1846 (hereinbefore recited.)

Complainant also introduced and read in evidence the record in the case of William H. King *vs.* Daniel Davidson and Arminter Davidson, in the Cook County Court of common pleas.

Judgment Nov. 28, 1853, in favor of plaintiff.

Damages, $1,047.76, and costs of suit.

Nov. 30, 1853, execution issued to Sheriff of Lee County.

179 Levy of above execution on one horse, Feb. 1, 1854.

Return of Sheriff on said execution, that he had made $92.75 by sale of property.

Receipt of Smith & Levanway, plff's atty's, of $92.75 from Sheriff, on said execution.

180 Alias execution issued on above judgment, May 5, 1857, to Sheriff of Cook county.

181 Sheriff's return on said alias execution, that on May 5, 1857, he levied said execution on undivided one-third part of N. E. quarter of section 35, township 40, N. R. 13, E. of 3d P. M.; and of sale of said land to William H. King, May 28, 1857, for $580.26; and after deducting his fees, $19.85, the balance, $560.51 paid to pl'ff.

182 Receipt of Fitch & Hewes of $560.41 on sale, in full for damages and costs, dated May 28, 57.

Execution upon above judgment, dated January 6, 1854, directed to Sheriff of Cook county.

183 Return of Sheriff upon last above execution, that on March 20, 1854, he levied upon Davidson's interest in lot 8, block 30, in Ogden's addition to Chicago, and south 30 feet, block 1, in block 54, in original town of Chicago; and the undivided one-third of section 35, township 40, range 12, E. in Cook county; and that on May 16, 1855, he sold the south 30 feet of lot 1, block 54, for $500, to Francis Fitch and William Hewes, and
184 after deducting the costs, $10,50, he paid balance, $482.05 to plaintiffs.

Receipt on last execution, signed J. H. Woodworth, for six dollars costs, from C. P. Bradley, late Sheriff.

Receipt on said execution, to Cyrus P. Bradley, late Sheriff of Cook county, for $482.05, dated May 16, 1855, signed Fitch & Hewes.

Complainant also introduced, and read in evidence, the record in the case of Dennis vs. Daniel Davidson, in Cook county Circuit court, and
189 executions issued thereon. Judgment entered August 27, 1858.

Damages, $9,295, and costs of suit.

189 August 27, 1858, execution issued on above judgment to Sheriff of Cook county.

August 27, 1858, levy of said execution on Davidson's interest in undivided one-third of N. E. quarter of section 35, township 40, N. R. 13, east of 3d P. M.

190 Certificate of sale of said premises, on said execution, Sept, 23, 1858, to Robert B. Dennis, for 657.70, amount of redemption money, with interest, placed in his (Sheriff's) hands to redeem said premises from sale to William H. King, made on the 28th of May, 1857; and that he (Sheriff,) had made deed therefor.

Received the deed mentioned in the within return, September 24, 1858.

(Signed,) W. T. Burgess, Pl'ff's Att'y.

192 to 197 Complainant also introduced and read in evidence the record in case Robert B. Dennis vs. Daniel Davidson et. al., in Cook county Court of Common Pleas, and executions issued thereon, as follows:

January 23, 1854, judgment for plaintiff.

Damages, $6,025, and costs of suit.

January 23, 1854, execution on above judgment to Lee county.

January 27, 1854, return of Sheriff on execution: No property found in his county.

198 Complainant also introduced, and read in evidence, a Sheriff's deed from John L. Wilson, Sheriff of Cook county, to Robert B. Dennis, bearing date September 23, 1858, of the undivided third part of N. E. quarter of section 35, township 40, range 13, east, in Cook county, Illinois, which deed was filed for record, September 24, 1858.

201 Also a certificate of redemption to Robert B. Dennis, from Sheriff of Cook county, recorded August 28, 1858, to redeem from the sale to Wm. H. King (as aforesaid), showing that Dennis had placed in said Sheriff's hands $652.80, to redeem said premises from said sale.

202 The defendants, the Niantic Bank and James H. Woodworth, then introduced and read in evidence, the lease made by Richard K. Swift to Daniel Davidson, bearing date October 9, 1846, (hereinbefore fully set forth, and marked "Exhibit No. 1,") and the assignment thereof by Davidson to Bronson, under date of March 9, 1853, (a copy of which is contained in the abstract of the bill), which said lease and said assignment were filed for record in the office of the Recorder of Cook county, State of Illinois, on February 6, 1854, and were recorded in said office in book 72 of deeds, page 408.

210 Said defendants, the Niantic Bank and Woodworth, also introduced and read in evidence a deed from R. K. Swift and wife to Stephen Bronson, Jr., bearing date February 6th, 1854, conveying the undivided one-third of N.E. ¼ section 35, town 40, N. R. 13 E., called the Stone Quarry lot, in Cook county, Illinois, which said deed was recorded in the recorder's office of Cook county, Illinois, February 6th, 1854, in book 72 of Deeds, page 415, (said deed being referred to in Bronson's deposition as "Exhibit No. 2.")

213 Said defendants also introduced and read in evidence, deeds of conveyance, as follows (conveying same land described in the lease from Swift to Davidson):

216 Stephen Bronson, Jr., and wife to Sherman P. Tracy, dated Feb. 18, '54, recorded Feb. 19, '54.

219 Sherman P. Tracy to Wells and Tucker, dated July 26, '54, recorded Oct. 20, '54.

222 Wells and Tucker to William H. King, trust deed, dated July 26, '54, recorded Sept. 22, '54.

229 William H. King to James H. Woodworth, trustee's deed, dated October 15, '55, recorded Oct. 26, '55.

214 James H. Woodworth to Merchants and Mechanics Bank, deed, dated Oct. 26, '55, recorded Jan'y 29, '57.

216 & 235 Merchants and Mechanics Bank to Lyman Trumbull, deed, dated Jan'y 7, '57, recorded Jan'y 9, '57.

237 Lyman Trumbull and wife to the Niantic Bank, deed, dated July 20, '58, recorded Aug. 27, '58.

139, 140 Said defendants also introduced and read in evidence a deed from Robert B. Dennis (complainant) and wife to James B. Crosby, of the premises before described, dated November 1st, 1862, recorded Nov. 4, 1862.

To the introduction of last mentioned deed, the complt. by his solr. objected.

242 In all cases where there were certificates of acknowledgment, or of recording attached to Exhibits, they were read as parts thereof.

Said defendants introduced and read in evidence, receipts for payment of taxes on the land deeded by Swift and wife to Bronson, as follows:

Jan. 11, 1857,	paid	for	1853–4–5	$58.22
May 29, 1857,	"	"	1856	38.80
March 12, 1858,	"	"	1857	27.31
June 4, 1859,	"	"	1858	30.48
March 26, 1860,	"	"	1859	22.99
May 4, 1861,	"	"	1860	28.18
May 15, 1862,	"	"	1861	28.19
June 27, 1863,	"	"	1862	34.48
July 9, 1864,	"	"	1863	23.99
				$292.64

242 The complainant then called Timothy Bradley as a witness on part of complainant, who testified as follows:

"I am Deputy Sheriff. Have no deed to Dennis, the complainant. Have the execution and certificate of sale. A deed was made out under the certificate; John L. Wilson, late Sheriff, has it. The deed was
243 made out, but not delivered. There has been no redemption from that date, of the land, that I know of. The deed was left in Wilson's papers. I have the execution and certificate of sale. The sale was made by James Andrews, late Sheriff of Cook County. The deed was never delivered, because the fees were not paid; the plaintiff promised to pay

them, but never did. Mr. Burgess said he was willing to pay the fee for making out the deed. I did not deliver it; I thought the first thing was to pay the fees on the execution. (Defendants, Niantic Bank and Woodworth, by their counsel, objected to that portion of Bradley's testimony, in which he testifies that "Mr. Burgess said he was willing to pay the fee for making out the deed;" and also objected to the witness stating the reason why the deed was not delivered; which objections were overruled, and the testimony admitted by the court; and the defendants, the Niantic Bank and Woodworth, by their counsel, then and there duly excepted to the decision of the court, in overruling the said objections, and in admitting the testimony objected to. On his cross examination, the witness, Bradley, further testified: "The execution has never been returned; the certificate has never been delivered, the fees not being paid." (Said defendants objected to that part of the testimony which states "the fees not being paid," and moved to strike it out; which objection and motion the court overruled, to the overruling of which defendants excepted.)

244 The complainant offered in evidence a copy of a certificate of sale made by James Andrews, Sheriff, to complainant, certified to by Wm. L. Church, Clerk of Circuit Court, as having been filed in his office for record, on 6th October, 1858. The certificate states that said Sheriff, on 12th May, 1856, sold above described premises to complainant, on execution, and that he will be entitled to deed for same on 12th Aug., 1857, unless
245 sooner redeemed. To the introduction of which said copy of certificate, as evidence, the defendants, Niantic Bank and Woodworth, duly objected, on the ground:

"*First*, The original certificate has never been delivered, as testified by the witness, Bradley.

"*Second*, That it is not only not shown that the original certificate has been lost, but it is shown that it is in possession of the witness, Bradley, and never has been delivered to the complainant or any one else.

"*Third*, That the copy of the certificate is not admissible in evidence.

"*Fourth*, That no foundation has been laid to authorize the admission of the copy of the certificate in evidence."

246 Which objections the court overruled, and allowed said copy of the certificate to be read in evidence. To which overruling of said objections, and admitting said copy to be read in evidence, said defendants, by their counsel, duly excepted.

DECREE ENTERED MARCH 4TH, 1865.

120 ROBERT B. DENNIS
vs.
THE NIANTIC BANK, THE MERCHANTS AND MECHANICS BANK OF CHICAGO, JAMES H. WOODWORTH, WILLIAM H. KING, DANIEL DAVIDSON, STEPHEN BRONSON, JR., AND RICHARD K. SWIFT. } IN CHANCERY.

And now at this day come the parties, by their solicitors, and the Court now here being fully advised in this cause, after mature deliberation upon the evidence submitted, and arguments of counsel had, doth order, adjudge and decree, that the said complainant is entitled to the lands and premises described in the bill of complaint, and known as the
121 undivided one-third part of the north-east quarter of section thirty-five (35), in township forty (40), north of range , east of the third principal meridian, in the county of Cook, and State of Illinois, on paying the money, which was paid to the said Richard K. Swift, in pursuance of the contract between said Swift and said Daniel Davidson, to procure a deed from him and his wife, to said Stephen Bronson, Jr., and interest thereon from the time of such payment, the 6th day of February, A. D. 1854, and also the taxes assessed upon the said land, paid by said defendants or any of them, and interest thereon, which amounts are as follows:

Amount paid Swift	$ 730.00
Interest thereon for ten years and 26 days	441.17
Taxes paid as per receipts filed	292.64
Interest thereon	85.54
In all, the sum of	$1,549.35

one thousand five hundred and forty-nine dollars and thirty-five cents.

It is therefore ordered, adjudged, and decreed, that upon the payment of the said sum of money into Court, to the clerk thereof, for the use of the defendant, the Niantic Bank, or to its solicitor for its use,
122 within six months from this date, with interest thereon, at six per cent. per annum till paid; and, within ten days after the payment thereof, the said Niantic Bank make, execute, and deliver to the said complainant a deed conveying said lands and premises to him, his heirs and assigns, in fee simple absolute, with covenants against its own acts only. And in case it shall fail, neglect, or refuse so to do, within said space of ten days, then that John S. Burgess be, and he is hereby appointed Special Commissioner, on behalf of the said Niantic Bank, to execute the same for it, and on its behalf: the execution of which deed by such Commis-

sioner, shall be by him reported to the Court. And it is further ordered, that the complainant, complying with this decree, by paying said money as aforesaid, the defendants in this suit, and each of them, and all persons in their name or on their behalf, are hereby enjoined and restrained from setting up or insisting upon any right, title, estate or interest in said lands adverse to the title of the complainant and his assigns, under this decree and said deed, and such injunction is hereby made perpetual. And it is further ordered, that the said defendants, or any of them, or any person or persons who, since the commencement of this suit, shall
123 or may have come into possession of said premises by, from, through or under them, or any of them, quit, and surrender the quiet possession thereof to the complainant, his solicitor or agent, on production to them of said deed, and a duly signed receipt for the payment of said money above ordered to be paid. And it is further ordered, that the defendants, the Niantic Bank and James H. Woodworth, pay the costs of suit to be taxed; the Court reserving to itself the power to further extend, for a reasonable time, the time for the payment of said sum of money, upon good cause shown.

And the said Niantic Bank, and James H. Woodworth except to this decree, and pray an appeal therefrom to the Supreme Court of this State, and it is allowed to them on filing bond, in the penalty of five hundred dollars, conditioned according to law, with security to be approved by the Court, in twenty days from this date.

And the said complainant also excepts to this decree, and prays an appeal therefrom to the Supreme Court of this State, which is allowed on his filing bond in the penal sum of five hundred dollars, conditioned according to law, with W. T. Burgess as security."

124 Defendants appeal bond.

126 Stipulation, by complainant's solicitor, as to defendant's appeal bond.

129 Complainant's appeal bond.

IN THE SUPREME COURT OF THE STATE OF ILLINOIS,

THIRD GRAND DIVISION,

To the April Term, A. D., 1865.

THE NIANTIC BANK AND JAMES H. WOODWORTH IMPLEADED WITH RICHARD K. SWIFT, DANIEL DAVIDSON, STEPHEN BRONSON, JR., THE MERCHANTS AND MECHANICS BANK OF CHICAGO, WILLIAM H. KING, FRANCIS S. FITCH AND WILLIAM HEWES,
Plaintiffs in Error.

vs.

ROBERT B. DENNIS,
Defendant in Error.

ASSIGNMENT OF ERRORS.

And now the said Niantic Bank and James H. Woodworth, plaintiffs in error, by King and Scott, their solicitors, come and say that in the record and proceedings aforesaid, there is manifest error, in this, to-wit:

1st. The Circuit Court erred in admitting on the trial of the cause in said Circuit Court on the part of the complainant, incompetent, improper, irrelevant and immeterial evidence.

2d. The Circuit Court erred in overruling the objections made by the said Niantic Bank and James H. Woodworth on the trial of the cause in said Circuit Court.

3d. The Circuit Court errred in ordering, adjudging and decreeing that the complainant is entitled to the lands and premises described in the bill of complainant, and known as the undivided one-third part of the north-east quarter of section thirty-five, in township forty, north of range, east of the third principal meridian, in the County of Cook and State of Illinois, on paying the money which was paid to the said Richard K. Swift, in pursuance of the contract between said Swift and said Daniel Davidson, to procure a deed from him and his wife to said Stephen Bronson, jr., and interest thereon from the time of such payment, the 6th day of February, A. D. 1854, and also the taxes assessed upon said land paid by said defendants or any of them, and interest thereon, in all the sum of one thousand five hundred and forty-nine dollars and thirty-five cents.

4th. The Circuit Court erred in ordering, adjudging and decreeing, that upon the payment of the said sum of money into court, to the clerk thereof, for the use of the defendant, the Niantic Bank, or to it or its solicitor for its use, within six months from this date, with interest, at six per cent. per annum, till paid, and within ten days after the payment thereof, the said Niantic Bank make, execute and deliver to the said complainant a deed conveying said lands and premises to him, his heirs and assigns in fee simple absolute, with covenants against its own acts only, and in case it shall fail, neglect or refuse so to do, within said space of ten days, then that John S. Burgess be, and is hereby appointed special commissioner on behalf of the said Niantic Bank, to execute the same for it, and on its behalf.

5th. The Circuit Court erred in ordering that the complainant complying with this decree, by paying said money as aforesaid, the defendants in this suit, and each of them, and all persons in their name or behalf, are hereby enjoined and restrained from setting up or insisting upon any right, title, estate or interest in said lands, adverse to the title of the complainant and his assigns under this decree and said deed; and such injunction is hereby made perpetual.

6th. The Circuit Court erred in ordering that the said defendants, or any of them, or any person or persons who, since the commencement of this suit, shall, or may have come into possession of the said premises, by, from, through or under them, or any of them, quit and surrender the quiet possession thereof, to the complainant, his solicitor or agent, on production to them of said deed, and a duly signed receipt for the payment of said money above ordered to be paid.

7th. The Court erred in ordering that the defendants, the Niantic Bank and James H. Woodworth, pay the costs of suit to be taxed.

8th. The Circuit Court erred in reserving to itself the power to further extend the time for the payment of said sum of money.

By reason whereof, the said plaintiffs in error, the said Niantic Bank, and James H. Woodworth pray that the said decree and orders may be reversed, &c.

KING & SCOTT,

Solicitors for said Plaintiffs in Error.

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Supreme Court

Atlantic Bank
et. al.
vs
Robert B. Dennis

Abstract of Record

Filed Apl 15. 1865
Q. Leland Clk