

DEPOSITION OF WM. S. MOSS.

AUGUSTUS O. GARRETT,
MARY G. GARRETT,

vs.

WILLIAM S. MOSS,
AMOS P. BARTLETT,
MOSES PETTINGILL,
WILLIAM RUSSELL,

In the Tazewell County Circuit Court.

IN CHANCERY.

Interrogatories propounded to William S. Moss, a witness produced for the defendants in the above entitled cause, by the defendants:

1. What is your age, place of residence and occupation?
2. How long have you resided in and near Peoria?
3. Are you acquainted with the lands in controversy, owned or claimed by those defendants, William Russell. *in this suit* If so, what in your opinion was its actual cash value in July, 1843, and your means of knowledge upon that subject?
4. Was or was not money at that time very scarce and difficult to procure?
5. Was or was not said land offered to you after the commissioner's sale? If so, by whom, and what price? Had you or not the means to purchase the same if you had desired to do so? If so, why did you not purchase said land?
6. State how far said land lies from main public square in the city of Peoria.
7. Did you purchase or sell, or know of any other persons purchasing or selling any other land near the city of Peoria about or subsequent to the 10th day of July, 1843? If so, describe the same, its ~~limits~~ location, with regard to the main public square in Peoria, its quality as compared with Russell's land, and the price for which it was bought or sold.
8. Do you know whether the said Augustus O. Garrett had any opportunity to redeem said land from said sale or not? If so, state your means of knowing ~~and~~ the terms upon which he might have made such redemption.
9. Was or not William Russell present at the commissioner's sale of said lands, or had he to your knowledge any information relative thereto until long after said sale?
10. State whether you ever entered into any combination, contract or conspiracy with any person or persons, or whether you ever did any act whatever to prevent any and all persons from attending and bidding at said sale?
11. What time in the day did said sale take place, and how many persons were present at said sale?
12. Do you know any thing else of benefit to the defendants, Russell, Pettengill and Bartlett.

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And the said William S. Moss, being duly sworn according to law, in answer to foregoing interrogatories to him propounded, says as follows :

The complainants objected to the testimony of Wm. S. Moss, to be heard in evidence in this cause. Because, 1st, the said ~~William S.~~ Moss is a party defendant in this cause ; 2nd, said Moss is incompetent as a witness in this suit.

Ans. to 1st Int. My age is from fifty-five to sixty; residence Peoria; occupation farmer.

Ans. to 2nd Int. I have resided in and ^{near} Peoria about eighteen or nineteen years.

Ans. to 3rd Int. I am acquainted with the land in controversy ; said lands were worth in 1843 from 12 to 15 dollars per acre in cash. My means of knowledge was that Pettengill and Bartlett offered me the land purchased by them at the sale, frequently, for what they paid for it ; I had the money to buy, but did not want the land, and money at that time very scarce, and I could have purchased lands at other places for less money.

Ans. to 4th Int. Yes, it was.

Ans. to 5th Int. Pettengill and Bartlett offered me the lands purchased by them, repeatedly, at what it cost with interest and costs, and insisted on my taking it, as they wanted to use the money in their business, which I refused to do because I thought I could do better with my money.

Ans. to 6th Int. Said lands lie about three-fourths of a mile from main public square.

Ans. to 7th Int. I knew Tobias S. Bradley's purchase, as stated in his answers to int'y 7 in his deposition. In 1844 I purchased of Aquilla Wren 3 78-100 acres out of the south-east qr Sec. 4, then joining Town of Peoria, and 98½ acres of the south part north-east qr of Sec. 4 in Township 8 N 8 E, and joining first piece, for thirty-seven hundred dollars—one thousand cash, nine hundred in one year, nine hundred in two years, and nine hundred in three years, without interest, on the south-east part of said land, the 3 78-100 acres above described. On said land was a farm-house which Wren said cost eleven hundred dollars ; the 98½ acre tract was all under fence, and about thirty acres of said land under cultivation, together with an orchard of about three to four acres, with a stable on the same.

Ans. to 8th Int. Bartlett informed me that he had offered Garrett the land purchased by him, and Mr. Garrett informed him he would redeem the land, but never did, and that he Bartlett would not wait any longer on him, but would sell to some one else, offered to me as above stated.

Ans. to 9th Int. I did not see William Russell at the sale ; he had no information of said sale, to my knowledge.

Ans. to 10th Int. Answered, I never did.

Ans. to 11th Int. I cannot say at what time or day the sale took place ; there were several persons present ; cannot say how many ; I am certain the sale took place between 10 o'clock A. M., and 4 P. M. of said day, but cannot say whether before or after dinner.

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Ans. to 12th Interrogatory. Nothing that I know of.

Cross Interrogatories.

Int. 1st. Are you one of the parties to this suit? Ans. to 1st Int. I am one of the parties defendant to this suit.

Re-examined by Defendants.

Int. 1st. Have you any interest in this suit as far as Russell, one of the defendants, is concerned. Ans. to 1st above. I have not.

STATE OF ILLINOIS, } ss.
Tazewell County

William S. Moss

I, Merrill C. Young, Clerk of the Circuit Court, within and for said County and State, do hereby certify the foregoing seven pages to be a true and exemplified copy of the interrogatories propounded to William S. Moss, and the answers of the said Moss thereto, together with the exceptions entered by the complainants thereto, filed October 2nd, 1854, in a certain cause wherein Augustus O. Garrett and Mary G. Garrett, were complainants, and William S. Moss, Amos P. Bartlett, Moses Pettengill and William Russell, defendants in chancery in said Circuit Court, as fully as the same appears of record in my office.

[Seal.]

Witness, Merrill C. Young, Clerk, and the seal of said Court, at Pekin, this 29th day of April, 1858.

Merrill C. Young Clerk

It is agreed by the parties that all the papers documents and exhibits included in the abstracts filed in this case are to be taken and considered as part of their record whether included in this record or not
May 10. 1858.

W. P. Pease atty
Manning & Merriam
for complts.

" Augustus A. Garrett

" Mary G. Garrett

" as

" William J. Moss

" Amos A. Bartlett

" Moses Pettingill

" William Russell

In the Jaywell
Eminent Court
In Chancery

Interrogatories

produced to William J. Moss a
witness produced for the defendants
in the above entitled cause, by the
defendants

" 1. What is your age, place of residence
" + occupation

" 2. How long have you resided in and
" near Perrin?

" 3. Are you acquainted with the lands in
" controversy, owned or claimed by
" these defendant William Russell;
" If so, what in your opinion was
" its actual cash value in July 1843, and
" your means of knowledge upon that
" subject?

* ~~It is~~ was not said land offered to
open after the commissioners' sale, ~~if~~

4. Was or was not money at that time
 "very scarce and difficult to procure?
5. Was or was not said land offered
 "to you after the commissioners' sale?
 "If so, by whom and what price? Had you
 "or not the means to purchase the
 "same if you had desired to do so.
 "If so, why did you not purchase said
 "land?
6. State how far said land lies from
 "main public square in the City of
 "Perrin
7. Did you purchase or sell, or know of
 "any other persons purchasing or
 "selling any other land near the City
 "of Perrin about or subsequent to the 10th
 "day of July 1843? If so, describe the same
 "its location with regard to the Main
 "Public Square in Perrin, its quality as
 "compared with Russell's land and the
 "price for which it was bought or sold?
8. Do you know whether the said Augustus
 "O. Garsett had any opportunity
 "to redeem said land from said
 "sale or not? If so, state your means

(5)
of Knowledge and the terms upon which
he might have made such redemption

"9 Was or not William Russell present
at the Commissioner's sale of said
land; or, had he to your knowledge
any information relative thereto until
long after said sale?

"10 State whether you ever entered into any
combination, contract, or conspiracy
with any person, or persons, or whether
you ever did any act whatever to
prevent any and all persons from
attending and bidding at said sale.

"11 What time in the day did said sale
take place & how many persons were
present at said sale

"12 Do you see any thing else of benefit
to the defendants, Russell Pettingill
& Bortlett

" — And the said William J. Moss
being duly sworn according to law
in answer to following interrogatories
to him propounded says as follows:

" The compliments object to the
 " testimony of Mr J Moss to be read in
 " evidence in this cause

" Because 1st, the said Moss is a
 " party defendant in this cause

" 2nd said Moss is incompetent as a
 " witness in this suit

" Ans to 1st Int. My age is from fifty five to six;
 " residence Perrin; occupation farmer

" Ans to 2nd Int. I have resided in and near
 " Perrin about eighteen or nineteen years

" Ans to 3d Int. I am acquainted with the land
 " in controversy, said land was worth
 " in 1843, from 12 to 15 dollars per acre
 " in cash, My means of knowledge was
 " that Pettingill and Bartlett offered
 " me the land, purchased by them at
 " the sale frequently for what they had
 " paid for it, I had the money then
 " to buy the land but I do not want
 " the land and money at that time
 " very scarce and I could have pur-
 " chased lands at other places for less
 " money

"Ans to 4th Int, Yes it was.

"Ans to 5th Int Pillingill and Burdett offered
"offered me the land purchased by them
"repeatedly, at what it cost with interest
"and cost; and insisted on my taking
"it, as they wanted to use the money
"in their business, which I refused
"to do, because I thought, I could do
"better with my money

"Ans to 6th Int, said land lies about $3/4$ of a
"mile from the Main Public square.

"Ans to 7 Int, I knew of Tobias Boudley's purchase as stated in his answers to Int 7
"in his deposition, In 1844 I purchased
"of Aquilla Men $378/100$ acres out of the
"South East Quarter section 4 then
"forming Town of Plover and $98 1/2$
"acres of the south part North East
"quarter of section 4 in Township 8 N
"8 E and giving first price for
"Thirty seven Hundred Dollars - one
"thousand cash, nine hundred in
"one year, nine hundred in two years
"and nine hundred in three years
"without interest, on the south east
"part of said land, the $378/100$ acres

"above described on said ^{land} was a farm
 "house, which was said, cost eleven
 "hundred dollars. The 98 1/2 acre tract
 "was all under fence and about thirty
 "acres of said land under cultivation
 "together with an orchard of about three
 "to four acres with a stable in the
 "same

"Ans to 8th Int Bartlett informed me that he
 "had offered Garritt the land purchased
 "by him and Mr Garritt informed him
 "he would redeem the land but never
 "did, and that he Bartlett would not
 "wait any longer on him; but would
 "sell to some one else and offered to one
 "as above stated.

"Ans to 9th Int I did not see William Russell
 "at the sale, he had no information
 "to said sale to my knowledge

"10th Int answered, - I never did.

"11th Int Ans. I cannot say at what time or
 "day the sale took place; there were several
 "persons present; cannot ^{say} how many;
 "I am certain the sale took place

" Between 10 o'clock A.M. & 4 P.M.,
" of said day but cannot say whether
" before or after dinner

" 12 Int and Nothing that I know of.

Cross Interrogatories

" Int 1st Are you one of the parties to this

" suit

" Ans to 1st I am one of the parties defendant to this

" suit

Re-examination by defendants

" Int 1st Have you any interest in this suit

" as far as Russell one of the defendants

" is concerned

" Ans to Int 1st above I have not

" Wm. J. Moss

State of Illinois

Fayette County ss

I Merrill C Young
Clerk of the Circuit Court within and
for said County and State do hereby
certify the foregoing seven pages to
be a true and exemplified copy
of the Interrogatories propounded to
William J. Moss, and the answers

of the said Moss thereto, together with
the exceptions entered by the Complainants
thereto, ^{filed October 2nd 1854} in a certain cause wherein
Augustus C. Garrett and Mary J. Garrett
were complainants and William J. Moss
Amos P. Bartlett, Moses Pettigill and
William Russell defendants in Chancery
in said Circuit Court, as fully as
the same appears of record in my
office

Witness Meemie C. Young
Clerk and the seal of said
Court at Pekin this 29th
day of April 1858

Meemie C. Young Clerk

Filed in Court
Garrett vs
Moss et al
Chancery

Verified copy
deposited W. J. Moss

Filed May 13. 1858
L. Deland
Clerk

Dec 4 21

It is agreed that this deposition may be
filed with the Record in the Supreme Court and
made part of the record in this cause

May 6 1858

Manning & Munroe
per contracts
J. H. P. Pople

Augustus P. Bennett	} Supreme Court of Illinois
Augustus G. Bennett	
May S. Bennett	
Supp in Error	
William S. Moss	
William Russell	} 1st Div. 1837
Moses Pettigill	
Amos P. Bartlett	
Left in Error	} Error & General

And said plaintiffs in Error say that there is manifestly error in the proceedings in this Cause in the Circuit Court for the following reasons

- 1st The Court below erred in dismissing the Bill of Complaint
- 2^d The Court erred in refusing the prayer in said Complaint & Bill of Complaint -

And for other good Causes wherefore said plaintiffs in Error say that the decree of said Court ought to be reversed and a decree rendered in conformity with the prayer of Complaints Bill of Complaint -

Almon & Minner
attys for plffs in Error

And the respondents came & say that there is no error in this Record & pray that the decree may be affirmed
Hiple for Defs.

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¹³⁵
Augustus P. Gamett
Luther
puffs in arm

William S. Moss
Luther
Luther in arm

Ernest & J. J. J. J.

Filed May 13, 1858
L. Leland
C. K.

See for Record \$ 5-8.

STATE OF ILLINOIS, SUPREME COURT,
THIRD GRAND DIVISION.

AUGUSTUS O. GARRETT

vs.

WILLIAM S. MOSS,
AMOS P. BARTLETT,
MOSES PETTINGILL, AND
WILLIAM RUSSEL.

APRIL TERM, A. D. 1858.

ARGUMENT OF DEFENDANTS' COUNSEL.

STATEMENT OF CASE.

On the 14th Sept., 1840, Garrett and wife made a mortgage to Moss on the S E 1-4 of Sec. 5, 8 N., 8 E., for \$1000, due at one year, with 12 per cent. interest. At May term, 1843, a decree of foreclosure was rendered in favor of Moss by default, the money, \$1326.66, found due upon the mortgage, to be paid in 10 days, or mortgaged premises to be sold after being advertised three successive weeks. H. O. Merriman, one of the complainant's counsel, was appointed commissioner to make the sale.

On the 8th day of February, 1841, Garrett and wife made another mortgage to Pettingill and Bartlett for \$510, with ten per cent. interest. At the same May term, 1843, a decree of foreclosure was rendered in their favor for \$629.10, with the same order of sale made in the case of Moss, and William Mitchell appointed commissioner to make the sale.

The decrees were rendered on the 5th day of June, 1843, and the sales were made July 10th, 1843.

The notices were published for three weeks successively, as appears by the reports of the commissioners.

Before the time of sale, Moss agreed with Pettingill & Bartlett, that he would bid the amount due on his mortgage on that part of the tract, about 80 acres, lying south of the Farmington road, and to release the residue from his mortgage.

This agreement was reduced to writing. See page 3 of Abstract.

The quantity sold was 135 acres. Moss bought the part south of the Farmington road for \$1327.43, and Pettingill & Bartlett the residue for \$632.67, being \$14.51 cents per acre.

The original bill was filed Oct. 19, 1847, four years and three months after the sales under the decrees; seeking to set aside the sales solely upon the ground of a fraudulent combination and conspiracy between Moss, Pettingill, and Bartlett, and H. O. Merriman, one of the commissioners, to prevent bidders from attending the sale; and that the land was sold for less than its value.

In this bill no claim was made or set up that the land was susceptible of a better division than was made; or that it ought to have been subdivided and sold in smaller parcels; or that it had not been advertised according to the order of the Court.

Moss filed his answer and amended answer to the original bill, and in the latter set up and asserted another title to the lands acquired through Ballance, who had purchased the same at Sheriff's sale, upon executions

against Garrett and others, issued against them upon judgments obtained against them as securities of Bryant, late Sheriff of Peoria county. *See p. 20 of Abstract.*

Garrett then filed a supplemental bill, setting out the record judgment and proceedings under which Moss's new title was acquired, alleging that such sale was also fraudulent and void because the land in controversy, with other lands, were sold *en masse*, and below their value, and praying also that the same might be set aside. *See p. 28 of Abstract.*

But it was not until July 31, 1854, more than seven years after the filing of the original bill, that it was discovered that the land, at the time of sale, ought to have been put up in smaller lots; or that the sale had not been advertised according to law. At this time an amended bill was filed, setting up these pretended facts.

The amended answer of Moss was filed June 9th, 1848.

This answer sets up the further facts, that after the sale to Moss on the foreclosure, Garrett should have the avails of the spring on the land which was sold, and by Moss deeded to the "Peoria Water Company" for \$250, which Garrett received; and also that Garrett might redeem from the sale in one year. Garrett received the \$250 for the spring, in stock of the "Peoria Water Company." *See Hamlin's Testimony, p. 39 of Abstract.*

After the death of Wm. Mitchell, a paper is found by his administrators, by which Pettingill and Bartlett give to Garrett 35 days' time in which to redeem from their sale. This paper is dated July 10, 1843.

At the October term of the Circuit Court of Peoria county, Garrett applies to the court for an order setting aside the sale made under their decree, alleging and setting forth precisely the same causes therefor as are stated and set forth as grounds of relief in the plaintiff's original bill filed in this cause. Affidavits were filed and evidence heard for and against said motion, and a decision made thereon overruling the same; and Garrett prayed an appeal to the Supreme Court, which was not prosecuted or perfected.

In the affidavits filed by Garrett upon this motion, he distinctly states and admits, that he had made the contract with Moss that he might redeem the premises in one year after the sale. *See page 82 of Abstract.*

If I correctly understand the argument of the plaintiff's counsel here, he insists upon five main reasons for setting aside the sales under the decrees.

1st. That there was a fraudulent combination between Moss, Pettingill, and Bartlett to prevent bidders from attending the sales.

The evidence relied upon in support of this proposition is:

1st. The contract between Moss, P. and B., made before the sale, that Moss would bid the amount of his decree upon that portion of the land lying south of the road, and release the residue from the lien of his mortgage.

It has always been a mystery to me how this contract could be construed into a combination to prevent bidding at the sale, or into an

agreement not to bid against each other; and I cannot understand the force of the argument of the plaintiff's counsel in this respect. It is simply an agreement on the part of Moss, that he will not take the entire land for his debt, but will release a portion thereof from the lien of his mortgage, and will bid the amount of his mortgage upon a portion of the land. How can Garrett complain of this? How would this be calculated to deter any bidder, if he knew it, from attending and bidding at the sale, provided he wanted to bid a higher sum? What is there in the contract from which an inference can be drawn that Moss, and Pettingill and Bartlett are not to bid against each other if they please? The evidence in the case warrants the conclusion, that at the time each would have been highly gratified if the other had done so. It is beyond my powers of conception to understand how, if Moss had openly proclaimed in the streets before, or at the sale, that he would bid the amount of his decree upon the land lying south of the Farmington road, that such statement would tend to prevent others from attending and bidding at the sale, provided they were willing to bid more. If, indeed, he had made such statements, and then purchased in the land for a less sum, there might have been cause of complaint.

There is no difficulty in extracting from this record the true reason of this agreement being made.

Moss had the prior lien, his money had been due more than two years, Pettingill and Bartlett's lien was junior to that of Moss, and they were necessary parties to the same bill of foreclosure. There was no money in the country at the time, which they could raise to pay Moss, and they resorted to the expedient which was left them in order to secure their own debt, of filing an answer, which was likely to cause delay in obtaining the decree in favor of Moss, until they could procure the money to pay him off. Moss wanted his money, and therefore made the contract or agreement upon the consideration therein stated. There is not a pretence, as is intimated in the argument of the plaintiff's counsel, that P. and B. were thereby abandoning any rights of Garrett, or that the decree rendered was in any respect unjust or inequitable. The bill in this case states affirmatively that both decrees were just and equitable, and offer is made to pay them. Besides Garrett, if he had any rights, was entirely capable of protecting them. P. and B. might waive theirs if they pleased. "*The consideration specified in the contract has*" not "*a significance.*"

Besides this, there is no evidence in the record that any one person except the parties to the contract knew any thing whatever of its existence, until after the sale.

The assumption by plaintiff's counsel, that the contract must have been known, from the fact that P. and B. and Moss went publicly on to the land, and made a survey and division before the sale, is unfounded both in law and in fact. No reasonable inference of the kind could be drawn from such a state of facts, had they existed; and in fact they never did exist.

McFadden, who made the survey, stated at first that he thought it was before the sale, but upon examining the charges for the same in his books,

he was satisfied that it was made after the sale. There could be no object, or necessity in making it before. It was done only for the purpose of procuring a proper description of the land upon which to make the deeds.

There is no implication from this agreement, that Moss is to take the south, and P. and B. the north part of the tract, as urged by the plaintiff's counsel, or that no smaller quantities should be offered for sale; but only, however it might be sold, or in what parcels or quantities, Moss would bid a sum sufficient to cover his claim upon that portion of the land lying south of the road. There is no understanding, intimation, or agreement in the contract, that the land shall not be subdivided and sold in smaller quantities; all this is left to the judgment and discretion of the commissioners, and in this case the evidence shows that it was properly and prudently exercised.

If Garrett had really desired that the land should have been subdivided and sold in smaller parcels, it would have been easy for him to have made a request of the kind, and it would have been time enough for him to complain when such a request, being reasonable, had been denied.

2d. It is stated by plaintiff's counsel, that the notice of the sale was not published as required by the decree; that the decree directed a publication to be made for three successive weeks; and that, although the publication was made in papers issued in three successive weeks, all upon the same day of the week, because only (as he says) nineteen days, instead of twenty-one, intervened between the first publication and the day of sale, the sale for such reason is either *void*, *voidable*, or *fraudulent*, and I really cannot tell which position is intended to be assumed.

The decree and sale certainly were not void, even if the notice was defective in form, or in point of time.

There can be no serious imputation of fraud upon the parties, even if the notice was but 19 instead of 21 days. It is not at all probable that the complainants below ever thought that there existed a necessity that the publication should be more or less than three successive weeks, in a regular newspaper published on the same day in each week.

When was this important discovery, that plaintiff had been defrauded by this want of two days' time in the notice, first made? No notice is taken of it in 1843, when Garrett made his motion to set aside the sale made by Pettingill and Bartlett. It is not mentioned in the original bill in this case, filed Oct. 19, 1847, and is introduced for the first time in the complainant's amended bill, filed July 31st, 1854, more than eight years after the final reports of the commissioners, and the confirmations of the sales made by them, by the Circuit Court, had been made.

Admitting that the decree required the notice to be published fully 21 days from the day of the first publication, how can the party take advantage of such irregularity?

The reports of the commissioners show, that the notices were regular and in accordance with the decrees.

If the report was untrue in fact, the party could only avail himself of

the objection by filing exceptions to the confirmation of the report of sale, before final decree.

Without this he could not even reverse the decree upon a writ of error, and will be presumed to have waived the irregularity.

The Court had full and entire jurisdiction over the parties and the subject matter.

It had power to set aside the sale upon terms, or to open the biddings if application is made before, and perhaps after the decree, if made at the same term; and, although the decree of sale may not have been literally complied with, the Court may, in its discretion, it being apparent that no injustice has been done, and no objection being interposed, confirm the same. The same authority that made the original decree, has power to declare that a substantial compliance therewith, there being no fraud nor no injury resulting to the party, shall be sufficient.

It is barely possible that such an irregularity might afford ground for reversing the decree on an appeal or writ of error, (the point being saved in the record,) but the decree, as is attempted by this bill, can never be, for such or any similar reason, collaterally impeached. So far as this particular point is concerned, this is a mere collateral proceeding. Garrett could not, at any time within five years after the passing of the decrees, for this reason alone, have maintained a bill to set aside the decrees. There is no taint of fraud about it. It is pure accident or mistake; it is not even alleged now that it affords any evidence of a fraudulent intent. It has no relation to, nor is it in any respect aided by any other matter or charge contained in the bill. It stands alone; making its first appearance in 1854, without any averment that it had not been previously ascertained and known, or that it, in any respect, affected the sale of the land to the prejudice of the owner; and that, too, after the report of the commissioners had been made and filed, with the certificate of the printer, shewing when the first and last publications had been made, of all which all persons in interest were bound to take notice; and what is more remarkable, after a statute of limitations bars a writ of error, and eight years after Garrett had made an application to set aside Pettingill and Bartlett's sale, without mentioning this as one of the reasons for such interposition of the Court. It stands alone, upon the naked question as to whether a Court of Chancery will reverse its own decree, after a lapse of eight years, when no writ of error could reverse it, upon the single point, that the land sold under the same was advertised nineteen instead of twenty-one days, as required by a decree.

In 1843, when this land was sold under the decrees, it would not have brought in cash \$25,00 per acre. In 1854, when Garrett first discovered that he had been injured and defrauded by this want of notice, it was worth from \$500 to \$1000 per acre. For more than four years after the conveyances under the sales, he stood quietly by, seeing portions of it sold and conveyed to others; a rapid increase in its value—large and expensive improvements made; and did not even suspect, so far as Moss was concerned, that he had been cheated or defrauded by a conspiracy to prevent bidders attending at the sale, much less that this want of notice in any manner had contributed to defraud, oppress, or injure him.

I believe that there is no such proceeding known in chancery practice,

as the filing of a bill in chancery, to reverse or set aside a decree in chancery for irregularity apparent upon the record in obtaining or entering up the decree.

An appeal or writ of error will not lie from a chancellor to himself, occupying the same judicial position and exercising the same judicial powers.

If there is an erroneous decree made by a Circuit Court sitting as a Court of Chancery, and such error is or might properly be made part of the record, it can be corrected only by the Supreme Court. Litigation would indeed be endless, if parties are permitted to file bills to correct errors in decrees, either with or without limitation; there would be no security whatever for titles or property. Records, judgments, decrees, and deeds would be wholly worthless; however ancient in date, or however long they may have been considered as conclusive of the right.

But when something occurs, or some fraud is perpetrated, which has no necessary connection with the record, and the party is thereby wronged or injured, and he has no other means of obtaining justice, it is both right and reasonable that he should have a hearing in a Court of Chancery, and should be entitled to redress.

But when the jurisdiction of a Court over the person and the subject matter has attached, and a judgment or decree has been rendered, such judgment or decree is conclusive against the parties, the world, and "the balance of mankind," until reversed on error or appeal in a superior court, or opened, reheard, or set aside in the same court while the record is still before it.

The principle is familiar, and I know of no conflict in the authorities:

1 Smith's Ind. R. 381.

Field vs. Ross' ex'rs., 1 Monroe 133.

Grignores Lessee vs. Astor, 2 Howard 319.

McPherson vs. Cunliffe, 11 S. & R.

Griffith and others vs. Bogart et al., 18 Howard 159.

12 John. 521.

The case in 1 Monroe is in point upon the question of notice. The law of Kentucky required that, as to non-resident defendants, publication should be made two months. The Courts had decided that this meant two calendar months, and that the first publication must be two full months before the session of the Court at which the judgment or decree should be entered.

The publication was eight weeks only. After the period of time for the prosecution of a writ of error had elapsed, a defendant applied to the Court to have the decree set aside, upon the ground that he had not legal notice of the pendency of the suit.

The application was refused, and it was decided that he came too late; that he should have prosecuted his writ of error to reverse the judgment if voidable for such reason, and that he could not thus come in and attack the legality or regularity of the proceedings.

as the filing of a bill in chancery, to reverse or set aside a decree in chancery for irregularity apparent upon the record in obtaining or entering up the decree.

An appeal or writ of error will not lie from a chancellor to himself, occupying the same judicial position and exercising the same judicial powers.

If there is an erroneous decree made by a Circuit Court sitting as a Court of Chancery, and such error is or might properly be made part of the record, it can be corrected only by the Supreme Court. Litigation would indeed be endless, if parties are permitted to file bills to correct errors in decrees, either with or without limitation; there would be no security whatever for titles or property. Records, judgments, decrees, and deeds would be wholly worthless; however ancient in date, or however long they may have been considered as conclusive of the right.

But when something occurs, or some fraud is perpetrated, which has no necessary connection with the record, and the party is thereby wronged or injured, and he has no other means of obtaining justice, it is both right and reasonable that he should have a hearing in a Court of Chancery, and should be entitled to redress.

But when the jurisdiction of a Court over the person and the subject matter has attached, and a judgment or decree has been rendered, such judgment or decree is conclusive against the parties, the world, and "the balance of mankind," until reversed on error or appeal in a superior court, or opened, reheard, or set aside in the same court while the record is still before it.

The principle is familiar, and I know of no conflict in the authorities:

1 Smith's Ind. R. 381.

Field vs. Ross' ex'rs., 1 Monroe 133.

Grignores Lessee vs. Astor, 2 Howard 319.

McPherson vs. Cunliffe, 11 S. & R.

Griffith and others vs. Bogart et al., 18 Howard 159.

12 John. 521.

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The application was refused, and it was decided that he came too late; that he should have prosecuted his writ of error to reverse the judgment if voidable for such reason, and that he could not thus come in and attack the legality or regularity of the proceedings.

But I insist that there was not even *error* in the publication of the notices of sales by Moss, and P. & B.

The notices by the decrees were to be inserted in Moss's case for 3 weeks *successively*—in P. & B.'s for 3 *successive* weeks before the sale. There was a literal as well as substantial compliance with the terms and conditions of the decree. They were published in 3 papers, printed on Wednesday of three successive weeks before the sale. No authority is referred to shewing that such a decree requires that 21 days shall intervene between the publication day of the first notice and the sale.

The only case to which my attention has been called by plaintiff's counsel as bearing upon this question is that of *Denning vs. Smith*, 3 John. Ch. R. 332.

I have examined this case. It has no analogy to the one at bar.

There was in that case no judgment or decree, no suit, no action of a Court, no confirmation of the proceedings. A sale was made by a mortgagee, under a statute of the State of New York, requiring a certain and specific notice to be given, with which the Court intimated that he had not complied. But the sale was set aside mainly upon the ground that the notices were not posted in public places; that the sale was made inside the Court House; and that no person was permitted to be present except the purchaser, who had come there expressly at the request of the mortgagee to bid in the land. I think that Court decided right, but I cannot see how it bears any resemblance to the present case.

The positions assumed by the plaintiff's counsel, that the amended bill, setting up the want of notice, refers to, and should be considered as having been filed as part of the original, and that no special hour was mentioned when the sale would take place, I pass without further comment, under the impression that the first is entirely untenable, and that the latter cannot be made or raised in a proceeding of this kind.

It is the usual method of advertising sales of real estate in this State.

3d. It is insisted that the conversations which passed between Merri-man and Hotchkiss, and Bartlett and Hotchkiss, tend strongly to prove the existence of a combination to keep bidders from the sale, in order that Moss and Bartlett might buy in the land themselves at a low price.

When the whole evidence is examined and analyzed, it will be found that this position is wholly groundless. The whole evidence amounts only to this: That Hotchkiss had some money and wanted to buy some land, provided he could get at such price as he thought was reasonable, was clear of incumbrances, and the title perfect. He wished, as he says, to attend this sale, and asked Merriman if it would probably be made, and Merriman thought not, but said he would let him know if it did.—He asked Bartlett, and Bartlett told him his impression was that the sale would not take place.

And this is all the fraud, all the alleged combination and conspiracy between Moss and P. and B. to get Garrett's land for nothing—and this Court is seriously and urgently called upon to decide, that a sale is fraudulent and void, because of the mere possibility that if Hotchkiss had been notified, he would probably have attended the sale, and made a

higher bid. Moss had no knowledge of either of these conversations, and in fact, was not present at the sale. He neither said nor did anything, nor authorized anything to be said or done—and even Hotchkiss does not pretend to know whether, if he had been present, he would have bid upon the land or not.

It appears, moreover, from Washburn's evidence, that Merriman was active in calling the attention of people to the fact that the sale was about to take place.

The whole matter is fully explained by Bartlett's testimony. Garrett had promised to pay the money before the sale, and Bartlett believed he would do so. Merriman, being a commissioner to sell, had been advised of this, and therefore both formed an honest opinion that the sale would not be made, and, like honest men, when asked what their opinions were, they gave them. If this constitutes a fraudulent combination to prevent competition at the sales, then they are guilty; but Moss was not, for he knew nothing of the transaction.

Bartlett is a competent witness in this case.

At this time I suppose the law to be settled, that a defendant in chancery may be a witness for his co-defendant, although he may be liable for costs, and charged with a conspiracy.

Wilson v. McDonald, 6 John Ch. 201.

2 Cowen 139.

Ormsby v. Bakewell, 7 Ham. 98.

Bartlett was released from his covenants of warranty in his deed to Russel. No decree could be rendered by which he would even be liable for costs; and if his evidence is taken to be true, it is conclusive upon every question of this controversy, both as to Moss and Russel. He states positively that he never did any act or thing to prevent persons bidding at the sale; tried all he could to get bidders; did not want the land—wanted his money—offered to sell his claim to Moss before and after sale—Moss would not buy—land sold for its value—offered it after he purchased it to Sweat and others for about the same he paid. Garrett told him before the sale, he would pay the money—had made arrangements to do so before the day of sale—believed he would do so—gave Garrett 3 months after the sale to redeem by paying debt, interest and costs—Garrett agreed to redeem it—about six months after the sale sold to Russel for about \$100 advance on his purchase. Was present, at the sale,—several persons were there—thinks he may have told persons he thought there would be no sale—he did think so, because Garrett had promised to pay the money, and he relied upon this promise. No man can read this testimony and believe it, (and I assure this court that the witness's word for truth has never yet been questioned,) and retain the most remote suspicion that he, or Moss, or any one else ever made an effort to prevent competition at this sale.

The assumed confidence of the Plaintiff's Counsel upon this point, is more than equalled by his client's *impudence*. He (the client) goes to Bartlett, the creditor, and gives him positive assurances that he will pay the money before the day of sale; Bartlett believes him, and, when

inquired of by third persons whether the sale would take place, in the sincerity of his heart, trusting that Garrett was honest in his intentions, and had not lied to *him*, he says he thinks it will not—that Garrett will pay the money as he had agreed; and now out of this confidence which Bartlett had reposed in Garrett's honesty and truthfulness, the latter manufactures a conspiracy on the part of Bartlett to prevent competition at the sale, and steal away his land.

Garrett says—Certainly, I told you I would pay the money, but you had no right to believe or repeat it; and when you trust my word on such occasions, and especially if you intimate an opinion of my honesty to others, I will hold you accountable for a combination and conspiracy to ruin me.

Moss, whose deposition was suppressed, was also a competent witness, so far as *Russel's* interest is concerned.

There is no necessary connection in their several rights and interests; it does not follow that, if the one sale shall be set aside, the other will be also. *Moss* has no interest in common with *Russel*.

Moss and *Russel* are not charged with any combination as between themselves to injure the plaintiff; they have no interest in each other's land. *Russel* was not at the sale and knew nothing of it till long afterwards. In no manner, matter, or thing, have they acted in concert, or been mutually interested.

It is said that the paper found in the hands of *Mitchell* is to be disregarded, that it is there without Garrett's consent or knowledge. It must be presumed that Garrett knew of this paper, and that it was made at his request, and put into the hands of the commissioner for his benefit; or that it is another *symptom* of this *conspiracy*, got up by P. and B. to create an impression that they preferred their money to the land.

When the land was so very valuable, and *Moss* and P. and B. were wantonly trying to grasp it all for a pittance; it is unaccountable that P. and B. should sign a paper and put it into the hands of the commissioner authorizing its redemption upon the payment of the debt.

A co-defendant in chancery having an interest, may be examined touching matters concerning which he has no interest.

Adams' Equity, 796.

Pope vs. Andrews, 1 S. & M. Ch. 135.

Whipple vs. Vanransalear, 3 John. Ch. 612.

Farley vs. Bryant, 32 Maine 474.

Holgate vs. Palmer, 8 Paige 461.

Post vs. Darst, 8 Paige 639.

Lupton vs. Lupton, 2 John. Ch. 625.

Lingon vs. Henderson, 1 Bland. 268.

Sproule vs. Samuel, 4 Scam. 138.

Any other doctrine than this would at once settle the principle, that no complainant or defendant could be a witness for his co-complainant or co-defendant, because he might by possibility be liable for costs.

The evidence of *Moss* is highly important and material for Russel, and should not have been suppressed, and it is competent and proper for this Court now to consider it for the purpose of affirming the decree in this case.

The fact that eight months after their purchase, Pettingill and Bartlett sold and conveyed to Russel, upon an advance only of \$70.35 over their purchase, shews very clearly that they did not buy for the purposes of speculation; and Moss' evidence shews that he had money to invest, and did not want the land even at their purchase price.

Moss is not chargeable with notice of any acts or declarations of Merriman, not authorized by him.

He was not his agent or attorney to make the sale; he was the commissioner and officer of the Court, having no power or authority except to make the sale under the decree; and had he acted improperly, (which is denied,) the purchasers at the sale are not to be affected by his conduct or conversations.

Suppose Merriman did tell Hotchkiss that he would give him notice if the sale came off and did not, it was an undertaking of a mere matter of accommodation, which he might or might not perform, as he chose, and which he might easily forget. Are Moss and Russel, or P. and B. presumed to have notice of what they never authorized, and had no possible means of knowing?

The authorities cited by plaintiff's counsel upon this point are good law enough, but they have no application here.

I have carefully examined the authorities referred to by plaintiff's counsel, upon the question of setting aside judicial sales.

I admit the law to be, that if the purchaser combine with any person to prevent competition at such sales, they may be set aside either at law or in equity. But there is no one decision tending to shew that this case comes within the spirit or meaning of the rule.

In the case of *Harrison et al. vs. Doe*, 2 Black. 1, the sale was held void because there was no bid. The law required an appraisement, and that no bid should be received for less than one half that sum. The appraisement was \$4640, and the land was struck off for \$565, to the plaintiff in execution.

The Court decided there was no legal bid, and consequently no sale.

The case of *Lawrence vs. Speed* is all on one side.

The sale was not advertised according to law. A motion was made in the Circuit Court to set it aside, which was denied; an appeal was taken to the Supreme Court, and the judgment of the Circuit Court affirmed.

The other cases cited do not in any respect vary the principles.

The counsel for the plaintiff misapprehends our position, if he supposes that we contend that a Court of Equity will not set aside a sale on account of fraud.

All that we contend for is, that for a mere irregularity appearing upon the face of the record, and where the party may have a perfect remedy by writ of error or appeal, a Court of Chancery will not interfere to set aside its own decrees, upon an original bill filed for that purpose; that

for a supposed irregularity in the notice of the sale alone, the Circuit Court would not and could not have entertained jurisdiction of this cause, the whole matter being apparent upon the record.

But we never have denied that, if there was a fraudulent combination between M., and P. and B. to prevent bidders from attending the sales, and that the plaintiff has not waived his rights by prior or subsequent agreements, and is not barred by lapse of time or by titles subsequently acquired by these defendants, that this bill will lie.

But we have insisted, and do still insist, that if a bill in chancery is filed, stating several reasons for setting aside a sale, some of which are within the jurisdiction of the chancellor to hear and some not; that he cannot set the sale aside for any reason which, if stated alone in a bill by itself, would not have given him jurisdiction and authorized his interference.

Tares are not *wheat*, though they may be bound together in the same bundle.

4th. The next position taken to establish the point is, that the land was sold for less than its actual value.

The price for which it was sold was \$14.51 per acre.

It is impossible to tell from the evidence what was the actual cash value of the land at the time of this sale. According to the testimony of the witnesses, it ranged from nothing up to \$125 per acre.

Asahel Hale, Wm. Hale, John Hamlin, plaintiff's witnesses, put it at about \$35 per acre; Cole, Coleman, Ruggles, Ellis, Stephens, also plaintiff's witnesses, think the S E 40 worth from \$90 to \$125. None of them, except Stephens, knew of any sales being made, and he only of an acre or two in a favorable location.

Bryan, defendant's witness, says he sold the N E 1-4 of 8, which adjoins this tract and lies nearer the city, in 1844, for \$10 per acre, with a clear and undisputed title. Bradley bought the undivided half of the S W 1-4 of the same section, in Oct., 1845, at \$16.66 per acre, and the next spring the other undivided half at the same price.

In the spring of 1848, he bought the E 1-2 of the N W 1-4 of 5 in same Section, with thirty acres improved and under cultivation, for \$12,50 pr. acre.

Underhill sold land adjoining this, in 1843, at \$8,00 per acre, worth about half as much as this land.

Bryan, Armstrong, Frye, Dickinson, Underhill, Bartlett, and Moss state that the land sold for its full, or about its full value at the time, and they and all the witnesses whose attention is called to the subject, state that there was no money in the country, no sales for cash, plaintiff's were compelled to buy in lands on their executions.

Really, the only reliable evidence as to the value of this land at the time of the sale must be derived from the fact of what other lands, near to or adjoining and similarly situated, were actually sold for at or about the same time.

If this criterion is adopted, this land brought its full value.

These extravagant notions of these witnesses of the plaintiff, of the

value of this land, have been formed by what may be termed a "*hind-sight prophecy*."

They see what it is worth now, and are satisfied in their own minds that they foresaw it then, and then sagely conclude, that if they had had the money they would have given \$100 an acre for the land, and would have made a fine speculation at that; but not having it, like most speculators in those times, they lost a fortune.

Land, like every article of merchandize, is worth what it will bring in money, and if there is no money to buy it, it is worth nothing except for use; and this land, at this time, was worth nothing except for farming purposes, and for that no better than the adjoining lands.

If the land was worth so much as the plaintiff and his witnesses seem to think, why did not he or they redeem it? He had three months on P. and B.'s purchase, and one year on that of Moss to do it in.

The truth is, the land was sold for its full value then—it has risen since.

It is admitted, that mere inadequacy of price is not sufficient ground for setting aside a sale; but insisted, that this will have weight when there are other causes for so doing.

I have seen some such dicta as this in some book; I do not remember when or where. I never could understand it. If there is any good cause for setting aside a sale, it is enough. It cannot be helped by no cause at all—no such aid is needed.

Upon this point I refer to
3 John. Ch. 290.
2 Paige Ch. 99.
11 Gill. & J. 1.

5th. The lands sold were susceptible of division, and were sold *en masse*, as is contended by the plaintiff; and numerous authorities are cited to show that for such cause sales will sometimes be set aside.

The land was divided by an east and west line of a main public road, leading from Peoria to Farmington, in Fulton county, running through the centre of the quarter section, nearly parallel with the bluff back of Peoria, leaving eighty-two acres on the south, and fifty-three on the north of the road.

This division was a natural and proper one. McFadden, their witness, says no better one could have been made, and there is nothing to show that any subdivision would have produced a better price. Indeed, it is urged as a strong reason in the original bill for setting aside the sale, that Hotchkiss, who they say was prevented from attending, wanted to buy the front eighty acres. Of course he wanted "*an undivided front*."

A sale made as this was, never has been set aside for such a reason.

None of the authorities cited by the plaintiff's counsel come within gunshot of such a case as this.

In the case in 9 Paige 261, the Master sold separate town lots not contiguous to each other; application was made upon the report of the Mas-

ter for a re-sale, accompanied with an offer to bid and deposite \$5000 more than the sale. The Supreme Court ordered a re-sale on terms.

The case in 1 Dana 185; 3 Black. 376; and 6 Wend. 524, are all cases where valuable lands were sold upon very small judgments, and for more than sufficient to satisfy the executions, thereby clearly shewing that a less quantity would have been sufficient.

In the second, the execution was for \$20, the land worth \$1500, and it was sold for \$351.25.

In the third, the land was worth \$10,000; judgment \$100; sale for \$2646.

In the case in 6th John. Ch. 411, two tracts, one 209, the other 236 acres, were sold together for \$780, on an execution for \$10.25.

And this, I take it, is the rule which runs through all the cases, that where it is entirely clear and certain that it is unnecessary to sell the whole tract to make a debt, and this is known to the officer and the party making the sale, the division into smaller parcels and quantities ought to be made before the sale. It must appear that the sale was fraudulently made, and designed to secure the land and not the debt.

From this case no such presumption can arise. True, it is stated by some of plaintiff's witnesses that the land might have been subdivided advantageously, but the evidence is far from shewing that, if divided, it would have produced a better price. At the time of sale it was worthless except for farming purposes, or as a fancy picture of a beautiful place for residences. There were plenty of such places in Illinois at the time, *very cheap for cash*. No farmer would want a farm of less than eighty acres, and if he was much of a farmer he would need more.

Again, Garrett knew that the sale was about to take place, and if he had desired it to be sold in smaller parcels, he could have easily requested the commissioners to do so; and if he had done so, and paid the expense of such subdivision, and they had then refused so to sell it, it would have presented a very different question.

The point made by the defendant's counsel, that Garrett can set aside this sale because he had, after his mortgage, sold a part of the land to Holland, and Holland to Hamlin, and had broken his covenants in his deed by refusing to pay his mortgage, and permitting the land to be sold, and the title of his grantee thereby divested, is so far-fetched, uncertain, and ambiguous, that I believe I will not attempt to unravel it. I will merely say, that I apprehend that neither Hamlin nor Holland could compel Moss and P. and B. to make their money out of the land not sold by Garrett, unless they instituted proceedings for that purpose before the sale, and could clearly show that the unsold land would pay the debt.

The further points which the defendants' make in this case are:

1st. That Russel is a *bona fide* purchaser from P. & B., and that however much of irregularity or of fraud there may have been in the transaction, of which he had no notice, his title cannot thereby be affected.

The decision of the Court overruling the exceptions to the Commissioner's report, at least for all the reasons therein assigned, and also for all which were then, or might with reasonable diligence have been known, is "*res adjudicata*." He was not bound to look behind this decree; *Chief Justice Blakeley's* general impressions about titles are not authority. Russel thought, and he had a right to believe, that the opinion, decision, and decree of a Circuit Court, upon a question within its jurisdiction, could be more safely trusted than that of any ancient Dogberry of a Justice, who used to certify to *skelentons* of judgments, and spell *Transcript* with a "*h*."

With the single exception of the objection to the notice, the same reasons are assigned and urged in support of this bill as were filed and insisted upon for setting aside the sale in the Circuit Court. Both seek to accomplish the same object. These reasons embrace the entire equity of this bill. The last cause, set up in 1854, is an intruder, an interloper, and, if of any account in its proper place, has no business here. The questions presented by the motion were decided upon full hearing, and the decision thereon can only be reviewed upon appeal or writ of error.

In addition to the authorities before cited, I refer to 1 Dana 410.

2d. This bill is bad for multifariousness. I have before endeavored to shew that Moss and Russel have no necessary connection. It is not even charged that they conspired together: and if Moss and P. and B. did, upon the conveyance by P. and B. to Russel, their interest in the conspiracy did not pass with the land.

They claim through separate sales and by distinct conveyances. Moss never had a particle of interest in the sale to P. and B., in Russel's land, nor had Russel any in that of Moss; and, moreover, Moss claims his title also through another channel, to wit: through the judgment, sale, and deed, made and rendered upon Bryant's bond, as defaulting Sheriff. The plaintiff's counsel say we should have demurred to the bill; that advantage can not be taken at the hearing after answers filed.

Our answer to this is that we did demur for that very reason, and the Court overruled it.

Another is that we understand that by the law and chancery practice in this State, the defendant may avail himself of any good cause of demurrer apparent on the record, upon the final hearing of the bill, and that it is now the constant practice to withdraw demurrers, or omit to file them on this account.

That the bill is bad for the cause last mentioned, it seems to me is clear.

Ryan vs. Trustees Shawneetown, 14 Ills. 25.

Story's Equity Plead., Sec. 272—284, and 530—540.

Sec. 272 is peculiarly applicable to this case. It is settled also, by these authorities, that a Court on its own motion, at any stage of the proceedings, may dismiss a bill for multifariousness; and may permit the party to insist upon it after answers filed. Under such circumstances we ought not to be considered as having waived the point, because the Court erroneously decided the demurrer against us.

I submit also, whether the title acquired by Moss, through Ballance, is not a good and perfect title.

The judgment under which it was obtained was for \$10,000, rendered Oct. term, 1839, and was a prior lien to Moss' mortgage. Four executions had been issued, and returned no sale for want of bidders; the sale was made on the fifth execution, in 1846. This land and some other tracts were sold *en masse*, to satisfy a judgment, it being the amount of damages assessed under the general judgment in favor of Peoria county, of \$470.30 cents, and costs and interest. The land was bought by Ballance for \$225; he assigned his certificate of purchase to Moss; the land was not redeemed, and a deed was made to Moss on the 6th June, 1848.

Now upon what ground or principle is this sale to be set aside?

That the lands were sold *en masse*? This alone, as has been already shewn, is not sufficient.

It ought further to appear, that they could conveniently have been sold otherwise; that the party seeking to set aside the sale is prepared to do as well as to ask equity. He must pay or offer to pay the debt and interest, and reimburse the purchaser for his trouble and expenses. Ballance purchases at the sale. He is not presumed to know that any portion of the judgment has been paid. He is an innocent purchaser. He assigns to Moss, who is ignorant that there has been any fraud or irregularity in the sale or elsewhere. In fact there was none. Five executions had already issued, and no sale made for want of bidders. The lands were offered separately and no bidders. They were all encumbered by a judgment of \$10,000, and this tract had already been sold and deeded under the decrees upon Moss's, and P. and B.'s mortgages. It is not at all surprising that they could not have been separately sold, and under the circumstances it is fairly to be inferred that they would produce the better price by being sold together. Sales of this sort are not to be set aside, unless there is some proof that the defendant in the execution has sustained some injury, or that a separate sale would be more beneficial to him.

Moss was compelled to purchase the certificate of purchase to save his land, which he had purchased under the decree, and now Garrett asks to set aside this sale also, as I think without cause, and without an offer to refund Moss his money.

It is said that this judgment was paid before the assignment of the certificate to Moss, and that Moss knew it; and to sustain this position they offer in evidence several credits to Bryant by the County Court, as payments on the judgment.

No payment could be made after the sale which could affect Ballance or Moss, except it amounted to a redemption of the land.

The money belonged either to Ballance or Moss, and not to the county; and if it had been otherwise, there is no evidence that Moss or Ballance had any knowledge of the payments.

There is no legal ground shewn for setting aside this sale.

It does not appear by the bill and answer that Mary L. Garrett, the wife of A. O. Garrett, was the owner in fee of the land in dispute, or that the legal title was in her, nor do I understand that such was in fact

the case. The bill contains the general allegation, that they being owners, &c., of the land, mortgaged the same to Moss and P. and B., which is admitted by the answer; nothing more. There is nothing in the record which warrants the conclusion that the title was in the wife, or that she was otherwise interested, or had any other claim to the land than her dower right, for the relinquishment of which she had executed the mortgage with her husband. And even if this were so, she having become deceased, her representatives do not succeed to her rights. They do not inherit her disabilities. The right to prosecute a writ of error on account of the disability of coverture, is a personal right, not descendable, inheritable, or assignable.

At common law, when the parties to a writ of error or other suit died, the suit abated, and the parties succeeding to the interests of the deceased were compelled to commence a new suit. Our statute, for the purposes of convenience, and to avoid delay, has provided for the substitution of heirs, executors, &c.; but the principles of law applicable to the parties remain the same.

If Mary G. Garrett had been prosecuting a writ of error to reverse these decrees, and had died pending the suit, her heirs might have been substituted as parties; but the substitution being made, they would occupy exactly the position as they would had the common law remained in force and the suit had abated, and they themselves had prosecuted their original writ. The plea of the statute of limitations could have been interposed to bar their writ then, or the further progress or prosecution of the writ or proceeding under the statute now. At the time of the passing of the original decrees, the present heirs or representatives of Mary G. Garrett had no interest in or title to her property, and if, after the lapse of five years, she had died without suing out a writ of error to reverse the decrees, the statute would bar the right of her representatives forever from suing out such writ; and in case of her death pending the suit, the same reasoning and analogy would prohibit its further prosecution.

If, then, at the time of the filing of this bill, Mary G. Garrett could not have been, on account of her coverture, affected by the statute of limitations, or prevented from setting up causes and reasons for setting aside these sales after the lapse of five years, still her legal representatives do not in that respect succeed to her rights and disabilities.

The language of the statute is: "But when a person thinking himself aggrieved by any decree or judgment that *may* be reversed in the Supreme Court shall be an *infant, feme covert, &c.*, when the decree was passed, the time of such disability shall be excluded from the computation of the said five years." Purple's Stat. Vol 2, p. 828, S. 53.

Now the legal representatives of Mary G. Garrett, who had no interest until her death, could not in any legal sense have been or considered themselves aggrieved by the passing of the decree. They were not parties to, nor had they any interest in, the controversy.

The statute makes no provision in favor of the assignees or legal representatives of the party laboring under disabilities.

Again, it is said that the defendants cannot now avail themselves of the statute of limitations, because they have not set it up nor insisted up-

on it in their answer. If this were even so, and this decree should be reversed for the want of notice only, I apprehend that, under the circumstances of this case, it being a most just and meritorious defence, the Court would remand the cause, with leave to the defendants to amend their answer in this respect.

But I am confident the general rule cited by the plaintiff's counsel cannot apply to a case like this.

There can be no necessity or propriety in setting up in an answer that which already is manifest and apparent on the face of the pleadings.

The complainants themselves set up their own laches, and shew by their own averments in the bill, that they are not entitled to prosecute this writ on account of the lapse of time. What necessity can there be for the defendants to turn round and reiterate the same statement, and say that by their own shewing the complainants are barred from prosecuting their suit.

When the defence is not presented by the complaining parties themselves, there is a necessity on the part of the defendants to set it up, otherwise the Court could not notice it. But in cases like the present, the rule is, or ought to be otherwise.

I believe I have now touched upon all the points and questions made or alluded to in this record, and I beg leave here to repeat, that my firm conviction is that the plaintiffs have not sustained a single position which they have assumed.

The defendants made no effort to prevent competition at the sale, nor did they form any combination or conspiracy for that purpose.

No person was prevented from attending the sale through any representations of theirs, or any authorized by or known to them.

The contract between Moss and P. and B. was unknown till after the sale, and if it had been known would have had no tendency to induce others not to bid.

The land was not sold *en masse*, but was divided and sold in such parcels as would most probably produce the best prices.

It was sold for its full value, or at least for as much as could at that time have been realized in cash for the same.

If it had been sold *en masse*, and for less than its value, it would have been no cause for setting aside the sales.

It is also clearly shewn that defendants did not want the land, that Garrett had ample time to redeem it, and agreed to do so—and failed. That Russel was an innocent purchaser, without notice of fraud, if there was any—that any rights that the plaintiffs might by possibility have had, are cut off by the subsequent title, acquired under the sheriff's deed; that the claim set up as against Russel, is put forever at rest by the former and prior adjudication upon the motion to set aside the sale—and that the entire claim is stale, unjust, and unconscionable.

That the notices of sale were in fact made in compliance with the decree, and if they were not, the irregularity could only be reached by writ of error or appeal to the Supreme Court, and affords no basis for the jurisdiction or equitable interposition of a Court of Chancery.

I submit the case to this Court, with full confidence that it will receive that careful and candid attention which its magnitude and importance to the parties, and the many questions of law involved imperatively demand, and when such investigation shall have been made, it will be found that there is no error in this record.

N. H. PURPLE,
Defendant's Solicitor.

57
Garrett et al.
vs
Ross et al.

Recd, Envs, former
Stipula & Depts argt.

found that there is no error in this record.

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That the notices of sale were in fact made in compliance with the ge-

N. H. PURPLE,
Defendant's Counselor.

Augustus T. Garratt
 Augustus G. Garratt
 Mary S. Garratt
 William S. Moss
 Moses Pettibill
 Amos P. Battell
 William Russell

Supreme
 Court
 3^d Circuit
 Division of
 Illinois

Replevin error April Term 1839

Do Atty for Plaintiff
 Atty for Defendant

Take notice that on the
 opening of Court on the second
 day of May next and during
 the present term of said Court
 or as soon thereafter as Counsel
 can be heard we shall make
 a motion for a rehearing in
 said Cause before a Justice
 to be filed ^{in said Cause} of which the
 annexed is a copy - & you are
 then & there apprised & wish
 said motion if you desire

proper
 April 28. 1839

Wm. S. Moss
 Attorney for Plaintiff

Augustus O. Garrett
Augustus G. Garrett
Mary S. Garrett

plaintiffs in error

vs

William S. Moss
Moses Pettingill
Amos P. Burdett
William Russell

Defts. in error

In Supreme
Court of Illinois
3d Criminal Division

To the Honorable
Judge of said
Court.

Your Petitioners the said
plaintiffs in error respectfully rep-
resent unto your Honor.

Now the said cause was ar-
gued at the April Term of said Court
A.D. 1858, then during vacation af-
ter said Term of said Court the said
Court decided said cause adversely to
your petitioners and affirmed
the ~~decision~~ of the Court below.

Your petitioners further state
that in the said decision of said
Supreme Court, and in the opinion
published the said Court did not
refer to the interest of the said
Mary G. Garrett, the wife of pe-
titioner Augustus O. Garrett.

in said ~~petition~~ ^{premises}, the pleadings in said cause showing that she had an interest and that she was entitled to all the benefits of law and equity resulting to a married woman, - and which point your petitioners conceive was overlooked by said court in the formation of said decision.

Your petitioners further state that the ~~premises~~ ^{in controversy} in said suit, was the South East quarter of section five in township eight north in Range eight east of the fourth principal meridian, except twenty five acres or thereabouts, and situated in Peoria County Illinois, and that as your petitioners are informed and believe at the time of said argument of said cause, one of your Honors P. J. Canton claimed a portion of the premises in controversy through said defendant William S. Moss, and that your Honor P. J. Canton sat on the bench during said argument although doubtless in ~~adversely~~ ^{adversely} ~~interest~~ ^{interest}.

But for the causes aforesaid and
and because in the opinion of your
petitioners the said opinion and
decision are in other respects er-
roneous your petitioners pray
said Court to grant a rehear-
ing in said case at such time
as to your Honors shall seem prop-
er.

And as in duty bound your
Petitioners will ever pray,

Augustus O. Gerrard

Mary S. Gerrard

Augustus O. Gerrard

by Manning Merriman
their attys

State of Illinois }
County of Peoria } ss.

Augustus O. Gerrard be-
ing first duly sworn deposes and
says that he heard read the fore-
going petition and that the same is
true in substance and in fact, that
so far as the legal points are concerned
therein he is advised by Counsel and
verily believes the same to be true, and
that the matters therein stated, to be
on information and belief he believes
the same to be true. - Augustus O. Gerrard

Subscribed and sworn to before
me this 26th day of April, 1859

J. A. McCoy J. P.
Notary Public

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Augustus O. Garrett
et al.

William S. Moss
et al.

Suggestions of D. H. in Error

Filed May 5. 1859

L. Leland
clerk

J. H. Pople
for Dfts in Error

Clark will please hand this to the Court
P. M. Pople
Perin. Apr 30. 59

The Record in this case did not show that Mary L. Gamett had any interest in the premises except a possible Right of Dower contingent upon ~~the~~ her surviving her husband. She died before the decision of the Suit in the Circuit Court, This is my recollection - at all events before the trial of Error was sent out in this case - Therefore neither she - nor her heirs could possibly have any interest to be noticed by the Court - I have no knowledge - nor belief that Judge Eaton had any interest in the premises - The Petition does not pretend to show how that interest arose if he had; the parties should have suggested the matter to the Court at the time of the argument - Whether he had or had not, is no ground for a rehearing of the case if it is decided right. And it is so decided beyond all question.

Augustus C. Sanitt }
vs } In Supreme Court
Wm. S. Moseley } April Term 1859

Suggestions by Defendant upon
the re-hearing Ordent in this Cause

I take it for granted that
the re-hearing is allowed only upon
one or both the Causes assigned in
the Petition

- 1 That the Court in its decision did
not notice the interest of Mrs
Sanitt in the premises
- 2 That Judge Catron sat out tried the
Cause and had at the same time
an interest in the land

In relation to the last reason, it
does not appear from the Record that
he had any such interest— If he had
and had known it at the time, of
Course he would not have taken part
in the decision— And although, perhaps
for the purpose of avoiding any sus-
picion, or intimation that a Judge

who had sat, and heard a cause in the result of which, even without his knowledge of the existence of such interest at the time, he had an interest - a re-hearing might well be allowed; Let I Submit, that this can be no possible ground for reversing a decree or Judgment,

It is due perhaps to a party as a right that his cause should be tried, heard and decided by Judges wholly unprejudiced and disinterested

And I take it for granted that this and this alone is the ground upon which the Motion for a re-hearing was Sustained

With regard to the Supposed interest of Mrs Garratt - I presume that the matter was not noticed by the Court for the simple reason, that the Record no where shows that she had any interest in or title to the land

Upon this question as well as upon all others arising in this cause - I refer the Court to my printed argument filed at the former hearing, and ask the Court carefully to examine and consider the same, as my argument upon this rehearing

If I am not present when the case
is called in its order, I submit it.
So far as I am concerned upon these
suggestions.

A. P. Pringle

May 12. 1859.

362.
Sanittrottus
m

Proprottus

Suggestions upon
Re-hearing

M. P. P.

Filed May 13. 1839
L. Leland
Clerk

Please give this to the
court - (P. P.)

Augustus O. Garrett
Augustus G. Garrett
Mary S. Garrett
 ^e plaintiffs in error

William S. Moss
Moses Pettingill
Amos P. Bartlett
William Russell
 ^e defendants in error

In Supreme Court
of Illinois
3d Grand Division

To the Honorable
Judges of said Court

Your Petitioners the said plaintiffs
in error, respectfully represent
unto your Honors -

That the said Cause was argued
at the April Term of said Court
A.D. 1868. That during vacation, after
said Term of said Court the
said Court decided said Cause
adversely to your petitioners
and affirmed the decree of the
Court below.

Your Petitioners further state
that in the said decision of
said Supreme Court and in the
opinion published by the said
Court did not refer to the interests
of the said Mary S. Garrett the
wife of Petitioner Augustus O.

Garnett in said premises, the
shadings in said cause showing
that she had an interest, and
that she was entitled to all the
benefits of her equity resulting
to a married woman - and which
point your petitioners conceive
was overlooked by said court in
the formation of said decision.

Your petitioners further state
that the premises in controversy
in said suit was the south east
quarter of section five in township
eight north in Range eight east
of the fourth principal meridian
except twenty five acres or thereabouts
and situated in Davis County
Illinois, and that as your
petitioners are informed and
believe at the time of said
argument of said cause, one
of your Honors, S. S. Eaton claimed
a portion of the premises in controversy
through said defendant William
S. Moss, and that your Honor
S. S. Eaton sat on the bench
during said argument although
doubtless inadvertently.

But for the causes aforesaid and

because in the opinion of your
petitioners the said opinion and
decision are in other respects
erroneous. your petitioners pray
said court to grant a rehearing
in said cause at such time as
to your honors shall seem proper.

And as in duty bound your

Petitioners will ever pray,
Augustus O. Garrett
Mary S. Garrett
Augustus G. Garrett
by Maudy T. Minner
their attys

State of Illinois
County of Peoria.

Augustus O. Garrett being
first duly sworn deposes and says
that he read and the foregoing
petition and that the same is true
in substance and in fact, that
so far as the legal points are
concerned therein he is advised by
counsel and truly believes the
same to be true, and that the
matter therein stated to be on
information the best he believes

The same to be true } Augustus O. Garrett
Subscribed & sworn to before me this 26th

day of April 1859

Samuel W. McCoy
Notary Public

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Augustus C. Garrett
et al. vs

William S. Moss
et al.

Petition for Rehearing

Filed May 5, 1859
L. Leland
Clerk



Augustus B. Garret
Augustus G. Garret
Mary S. Garret

William D. Moss
Moses Pettigill
Amos P. Beckett
William Russell
Sept 1839

Supreme Court
3^d Grand Division
of Illinois
April Term 1839

To A. A. Purple

Atty pro officio ern

I have notice that on
the opening of Court on the second
day of May next and during the
present term of said Court or
as soon thereafter as Counsel can
be heard we shall make a
motion for a rehearing in said
Cause upon a petition to be
filed in said Court of which
the annexed is a copy. & you
can then & there appear & resist
said motion if you deem

proper
April 28, 1839

Moses D. Manning
atty for the plaintiffs

A. O. Garrett et al
vs
William S. Pross et al

Notice of Motion for
Rehearing —

Rec'd a copy of the
within notice this
29th day of April 1859

Filed May 5, 1859
L. Lehard
clerk

AUGUSTUS O. GARRETT, MARY S. GAR-
RETT, AUGUSTUS G. GARRETT,
PLAINTIFFS IN ERROR,

vs.

WILLIAM S. MOSS, MOSES PETTENGILL,
AMOS P. BARTLETT, WM. RUSSELL,
DEFENDANTS IN ERROR.

SUPREME COURT

OF

ILLINOIS,

THIRD GRAND DIVISION.

This was a bill in Chancery, filed in Peoria Circuit Court by Augustus O. Garrett and wife, Mary G. Garrett, on the 19th day of October, 1847, as follows:

To the Honorable Judge of the ninth Judicial Circuit of the State of Illinois, in Chancery sitting:—Humbly complaining, sheweth unto your Honor, your orator, Augustus O. Garrett, and Mary G. Garrett, your oratrix, that your orator and oratrix, being the owners in fee simple of the southeast quarter of section five, in township eight north, range eight east of the fourth principal meridian, (excepting twenty-five acres at the northwest corner of said quarter conveyed by your orator and said Mary G. Garrett, his wife, to one William Russell, on or about the 19th day of September, A. D. 1840,) afterwards, that is, on or about the fourteenth day of September, 1840, your orator and oratrix mortgaged the said tract of land (excepting, as aforesaid,) to one William S. Moss, to secure to him the payment of one thousand dollars, with interest thereon at the rate of twelve per centum per annum, payable quarterly; and afterwards, that is, on or about the eighth day of February, in the year of our Lord 1841, your orator and oratrix again mortgaged the same tract of land, before mortgaged to said Moss as aforesaid to Moses Pettengill and Amos P. Bartlett, to secure to them the payment of five hundred and ten dollars, on or before the first day of June, A. D. 1841, with interest thereon at the rate of ten per cent. per annum. Your orator and oratrix further show that in default of the payment of the said sums of money, secured to be paid as aforesaid, the said Moss commenced an action against your orator and oratrix and others for the purpose of foreclosing his said mortgage, on the chancery side of the said Court, and at the May term of said Court, A. D. 1843, obtained a decree against your orator and oratrix, that they should pay the said sum of money and interest then due on his said mortgage, amounting to the sum of one thousand, three hundred and twenty-six dollars and sixty-six cents, within ten days, to-wit, within ten days from the fifth day of June, A. D. 1843, and in default of such payment, that the said premises so mortgaged to the said Moss as aforesaid, or so much thereof as might be necessary to pay the said last-mentioned sum, should be sold to the highest and best bidder for cash, which said decree, after directing the manner of said sale, appointed Halsey O. Merriman commissioner to make the said sale; which said decree, with, all and singular, the mat-

ters and things aforesaid, remains of record in the said honorable Court, and to which, for greater certainty, your orator and oratrix beg leave to refer your honor. And your oratrix and orator show that in the said last-mentioned action, Moses Pettengill, Amos P. Bartlett, Charles A. Buck, Charles W. McClellan, Charles Kettelle, Leonard Holland, Orrin Hamlin and Thomas Donaho were made co-defendants with your orator and oratrix, but that the payment of said money was decreed to be made by your orator and oratrix, and that the said decree was obtained by default of all of said defendants excepting the said Pettengill and Bartlett, and the said Bartlett and Pettengill answered jointly, admitting substantially the merits of the said Moss's bill of complaint, and further setting up the said mortgage of the said Bartlett and Pettengill, and praying a decree of the said Court that so much of the said mortgaged premises as might be necessary to pay the amount of the said Bartlett and Pettengill's mortgage might be decreed to be sold, as by reference to the joint answer of the said Bartlett and Pettengill, now remaining among the records of the said honorable Court, reference being had thereto, more fully and at large will appear. And your oratrix and orator show that in the said last-mentioned cause Norman H. Purple and Halsey O. Merriman then being attorneys and counsellors at law, and solicitors in chancery, and doing business in partnership as such, in the town of Peoria in the said county, were the solicitors of the said William S. Moss, and conducted the said cause for him in said Court, as by the records of the said cause now in said Court, reference being had thereto, more fully and with certainty will appear, and that the said Halsey O. Merriman is the same person who was appointed commissioner in the said cause to sell the said mortgaged premises. And your orator and oratrix show that afterwards, at the May term of the said Court, A. D. 1843, the said Amos P. Bartlett and Moses Pettengill having before that time filed their bill and commenced their suit for that purpose, against your orator and oratrix, together with Charles A. Buck, Charles W. McClallen, Charles Kettelle, Leonard Holland, Orrin Hamlin, and Thomas Donaho, obtained a decree against your orator and oratrix, that your orator and oratrix should pay to the said Bartlett and Pettengill the sum due upon the said mortgage made to the said Bartlett and Pettengill as aforesaid, amounting to six hundred and twenty-nine dollars, within ten days from the date of the said decree, which decree was dated June 5, 1843, and in default thereof, that the said premises mortgaged to the said Bartlett and Pettengill as aforesaid, or so much thereof as might be necessary to pay the said last mentioned sum, should be sold to the highest and best bidder for cash, which said decree, after directing the manner in which said sale should be made, appointed William Mitchell a commissioner to make said sale. And your orator and oratrix show that the said last-mentioned decree was obtained against your orator and oratrix by default, all of which by the records of said last-mentioned cause now remaining of record in the said Court, reference being had thereto, more fully and at large will appear. And your orator and oratrix show that before the obtaining of the said decrees, to-wit, on or about the first day of June, A. D. 1843, the said William S. Moss entered into an agreement with the said Bartlett and Pettengill,

and reduced the same to writing, in substance as follows, to-wit :

"Agreement made and entered into this first day of June, A. D. 1843, between William S. Moss of the one part, and Moses Pettengill and Amos P. Bartlett of the other part ; witnesseth, that whereas the said Moss has commenced a suit against Augustus O. Garrett, Moses Pettengill and Amos P. Bartlett and others, in the Peoria county Circuit Court of the State of Illinois, for the foreclosure of a mortgage held by the said Moss, given to him by the said Augustus O. and Mary G. on the southeast quarter of section number five, in township number eight north, range number eight east of the fourth principal meridian, to secure the payment of one thousand dollars and interest, as is alleged by said Moss in his bill filed in said suit, which suit is now pending and undetermined in said Court. Now it is agreed by the said Moss that in consideration that the said Moses Pettengill and Amos P. Bartlett will make no defense to the rendition of a judgment of foreclosure in said suit at this term of said Court, and the making of a decree by said Court, ordering so much of said land to be sold as will satisfy the mortgage of said Moss, and so much of the remainder to be sold as will satisfy a mortgage on the same premises held by said Pettengill and Bartlett, executed to them by said Augustus O. and Mary G., that then on the sale of said land under the decree of the said Court to be rendered in said suit, the said Moss will bid the amount of his said mortgage on that part of the said mortgaged premises lying south of the Peoria and Farmington road, running through said land from east to west near the centre of said quarter section, and will release the remainder of said land from any incumbrance or claim held by him on the same by reason of the said mortgage to him, or by reason of said judgment of foreclosure. Witness my hand and seal, affixed the day and year first above written."

N. H. PURPLE.

WM. S. MOSS. [SEAL.]

And your orator and oratrix show that the aforesaid agreement, although fraudulent as against your orator and oratrix, and showing a combination and arrangement between the said William S. Moss of the one part, and the said Bartlett and Pettengill of the other part, to defraud your orator and oratrix, yet did not contain nor express, but on the contrary was intended to conceal the further fraudulent understanding and arrangement between the said Moss, Bartlett and Pettengill. Your orator and oratrix show that at the time of making the said agreement above set forth, and afterwards and before the sale hereinafter mentioned, it was understood and agreed between the said Moss of the one part, and the said Bartlett and Pettengill of the other part, that in consideration of the said agreement above set forth, and in consideration that it would be to their pecuniary advantage respectively and mutually, and in disregard of your orator's and oratrix's rights, and to defraud your orator and oratrix in that behalf, that the said Moss should not bid against the said Bartlett and Pettengill, on the said part of the said mortgaged premises lying north of the Peoria and Farmington road mentioned in the said written agreement, when the said mortgaged premises should be offered for sale under the said decree obtained as aforesaid, in favor of the said Bartlett and

Pettengill, and on the other hand that the said Bartlett and Pettengill should not bid against the said Moss on the said part of said premises, lying south of the said Peoria and Farmington road, when the same should be offered for sale by virtue of the said decree, and further that inasmuch as it was expected that your orator and oratrix would not appear in the said causes, but permit the said decrees to be obtained by default, because the money so secured as aforesaid, was properly due to the said Moss and Bartlett and Pettengill, that they the said Moss and Bartlett and Pettengill should obtain decrees for the payment of the said sums of money at as short a day as possible, and that the said premises should be advertised for sale but a very short time, if they could by any means procure such decrees of the said Court; and further, that in the meantime, before the time of the said sale to be advertised as aforesaid, that the said Moss, Bartlett and Pettengill should give out, pretend and report by themselves, their agents and attorneys, that the said mortgaged premises were of little value, and of less value than the sum secured by the said mortgages, and that the title of your orator and oratrix in said premises was not good, and to dissuade purchasers from attending the said sale, and that on the morning of the day of said sale, they should report and cause it to be believed if possible, among any persons intending to purchase said premises, that the said sale would not take place on the day fixed upon for said sale, but that the said sale would be postponed to another and future day, and that the matter had been compromised between the said Moss, Bartlett and Pettengill of the one part, and your orator and oratrix on the other, so that the said premises would not be sold, all to induce purchasers and bidders to remain away from the said sale, and then to cause said premises to be sold very early in the morning of the day of sale, so that the said Moss, Bartlett and Pettengill could buy in all the said premises, according to their said fraudulent and corrupt agreement, to the injury of your orator and oratrix as aforesaid, and your orator and oratrix show that in pursuance of the said corrupt agreement and understanding of the said Moss, Bartlett and Pettengill, they obtained the said decrees, and procured to be fixed, the shortest possible time for the payment of the said money due on the said mortgages, that is *ten days*, after the expiration of which ten days the said mortgaged premises were to be sold as aforesaid, on default of your orator and oratrix to pay said sums due on said mortgages as aforesaid, and your orator and oratrix show that they made no defence to the obtaining of the said decree on the part of the said Moss, and well hoped that the said Moss would have allowed to them a reasonable time in which to pay the said sum due upon this said mortgage after the obtaining of the said decree as aforesaid; but the said Moss in pursuance of the said corrupt agreement, procured to be given only ten days, and your orator and oratrix show that in further pursuance of said agreement, the said Moss procured a decree that the said premises should be advertised for sale only a very short time, that is, only three weeks, and your orator and oratrix show that in further pursuance of said corrupt agreement, the said Moss, Bartlett and Pettengill gave out, reported and pretended that the said mortgaged premises were of little value, and that the title of your orator and oratrix

thereto was not good, all before the day of said sale, and by such means the said Moss, Bartlett and Pettengill endeavored to dissuade purchasers from attending the said sale, all to wrong and defraud your orator and oratrix on that behalf.

And your orator and oratrix show that your oratrix having failed to pay the said sum of money in the decree of the said Moss mentioned, the said Halsey O. Merriman, Commissioner as aforesaid (and still then being the attorney of the said Moss) advertised the said mortgaged premises for sale at the Court House door, in the town of Peoria aforesaid, on the 10th day of July A. D., 1843, between the hours of 10 o'clock A. M., and 4 o'clock P. M., of the same day, and early on the morning of the said day of sale, the said Moss and said Bartlett and Pettengill caused it to be reported in and about the said town that the said last mentioned sale would not be made on that day, all in pursuance of the said corrupt ageement for the purpose of preventing purchasers from attending the said last mentioned sale.

And your orator and oratrix show that on the morning of the said last mentioned day of sale, there were persons who attended at the door of the said Court House for the purpose of bidding at the said sale, and with the intent and means to bid more than the amount of the said sum due on the said mortgage of the said Moss on the said premises hereinafter described, as being bid off by said Moss, and with the intent and means to bid and pay more than the amount bid by the said Bartlett and Pettengill on the premises, hereafter described, as being bid off by the said Bartlett and Pettengill. And your orator and oratrix show that the sale of the said mortgaged premises, under the decree of the said Bartlett and Pettengill was set and advertised for the same day, hour and place of the sale of the said mortgaged premises under the said decree of the said Moss, and upon the said persons attending for the purpose of purchasing as aforesaid, such persons were informed by the said Moss or by some persons in his hearing, or by the said Merriman, Commissioner and attorney as aforesaid, that there would not be a sale of the said premises on that day, and that said sale in all probability would be postponed, and therefore that it would be useless for such persons to remain for the purpose of purchasing said mortgaged premises, but that if said premises should be sold that the said persons should have further notice thereof, and thereupon the said persons desirous of purchasing as aforesaid went to Amos P. Bartlett, and informed him that they desired to purchase said mortgaged premises if the same were to be sold on that day to wit: the said day of sale, and the said Bartlett, told the said persons so desiring to purchase, that it was probable that said sale would not be made, but that the sale would be postponed, as the matter was about to be compromised, but that if there should be a sale, he the said Bartlett would let the said persons desiring to purchase as aforesaid, know of the fact, so that they might have an opportunity of bidding.

And in particular your orator and oratrix show that your orator before the said day of sale had had conversations with one Joshua P. Hotchkiss, then residing in

the said town of Peoria, and learned from the said Hotchkiss that he was desirous of purchasing the said mortgaged premises, and especially the "front" eighty acres, which front eighty acres included very nearly the same tract bid off by the said Moss hereinafter mentioned. And your orator and oratrix show that the said mortgaged premises were very valuable, and that very many were desirous of purchasing them at the time of the said sale as well as the said Hotchkiss, and that the said tract bid off by the said Moss far exceeded in value the amount bid thereon by the said Moss, and that the said last mentioned tract was worth at least five thousand dollars at the time of the said sale. And your orator and oratrix knowing all these things, were content to let the said premises be sold under the said decree, provided the said sale was conducted fairly and no fraudulent means used to prevent open and honorable competition among the bidders at said sale. And your orator and oratrix show that on the said morning of the said sale, the said Hotchkiss went to the door of the said Court House where the said sale was advertised to be made, about the hour of ten o'clock of the forenoon, for the purpose of bidding at the said sale, and the said Commissioner Merriman being there met by the said Hotchkiss and told of the said purpose of said Hotchkiss informed him that there would probably be no sale on that day, but that the decree or matter would be compromised, and that the said sale would be postponed, and that it would be unnecessary for the said Hotchkiss to remain as the said Hotchkiss should have notice if the said sale proceeded that day, whereupon the said Hotchkiss left the said place of sale. And your orator and oratrix charge that the said conversation last above mentioned, was had in the hearing and by the approval, and with the assent of the said Moss, and that the said Moss and his said attorney in that behalf participated therein.

And your orator and oratrix show, that immediately thereafter, and on the same morning of the same day, the said Hotchkiss went to the said Amos P. Bartlett and informed the said Bartlett of his desire to bid at the said sale, and the said Bartlett in like manner told the said Hotchkiss that there would be no sale on that day as said Bartlett believed, that it was unnecessary for said Hotchkiss to attend said sale for the purpose of bidding, but if the sale did proceed, he said Bartlett would let him said Hotchkiss know, so that he, Hotchkiss, might attend and bid at said sale. And your orator and oratrix show that immediately after the said Hotchkiss left the said place of sale, and the said Bartlett (the said Bartlett on behalf of himself and the said Pettingill, being combined and confederated with the said Moss as aforesaid) the said Moss while it was yet early in the day, to wit, at the hour of eleven o'clock in the forenoon, and before any bidders and purchasers of said mortgaged premises had arrived or had proper time to arrive, except those who had been so fraudulently induced to leave the said place of sale by the false representations of the said Moss, his agents, attorneys and confederates, in that behalf procured the said mortgaged premises to be exposed to sale at public auction, there then being present no persons excepting the said Commissioners Mitchell and Merriman, the said Moss and Bartlett and the attorneys and agents of the said Moss, Bartlett and Pettengill, and thereupon the said

Moss bid the sum of one thousand three hundred and twenty-seven dollars and forty-three cents, (being the amount found his due in the said decree and interest thereon), for all that part of the said mortgaged premises, lying south of the center of the road dividing the same, running from Peoria to Farmington, and the said part of the said mortgaged premises last described, was struck off to the said Moss for the sum aforesaid, which was done in accordance with the said corrupt and fraudulent agreement and understanding between the said Moss and the said Bartlett and Pettengill. And your orator and oratrix show that although the said Hotchkiss during all the day of the said sale remained in the said town of Peoria, and at his usual place of business, and at a very short distance from the said place of sale, that is at the distance of one hundred rods or thereabouts, which the said Moss and Bartlett and their agents and attorneys in that behalf well knew, yet they, the said Moss and Bartlett nor their agents nor the said commissioner did not nor would let the said Hotchkiss know of the said sale at the time thereof, but fraudulently concealed the same from the said Hotchkiss. And your orator and oratrix show that the said Hotchkiss was prepared to bid and would have bid at the said sale far more than the said Moss for the said tract of land so bid off by the said Moss as aforesaid, to wit, the sum of two thousand dollars, if it had been necessary to secure the purchase of the said land to the said Hotchkiss, all of which was prevented by the fraud of the said Moss his agents, attorneys and confederates as aforesaid, to the wrong and injury of your orator and oratrix. And your orator and oratrix show that but for the said fraudulent transactions on behalf of the said Moss, other persons would have attended at the said sale and bid upon the said tract of land far more than the sum at which the said tract was struck off to the said Moss. And your orator and oratrix show that immediately after the said sale to the said Moss, the residue of the said mortgaged premises was exposed to sale by the said William Mitchell under the decree of the said Bartlett and Pettengill at the same place. And your oratrix and orator show that although the said Bartlett was present on behalf of the said Bartlett and Pettengill at both of said sales, and the said Moss was present in person and by his attorney, yet in pursuance of the said fraudulent agreement neither did the said Bartlett for himself nor on behalf of the said Bartlett and Pettengill bid against the said Moss on the tract struck off to the said Moss; nor did the said Moss bid against the said Bartlett and Pettengill when the residue of the said mortgaged premises was exposed to sale, and thereupon the residue of the said mortgaged premises was struck off and sold to the said Bartlett and Pettengill for the amount due the said Bartlett and Pettengill under their said decree. And your orator and oratrix show that before the making of the said corrupt and fraudulent agreement of the said Bartlett and Pettengill of the one part, and the said Moss of the other part, and after the making of said agreement, and before said sale, they, the said Moss, Bartlett and Pettengill, for the purpose of making and carrying out said agreement and of ascertaining how much of said mortgaged premises would fall to their shares respectively, and in contemplation of the said corrupt agreement, and also afterwards for the purpose of carrying out said

agreement procured a surveyor and went upon the said mortgaged premises and surveyed and set apart to the said Moss all that part of said mortgaged premises lying south of the said Peoria and Farmington road, and to the said Bartlett and Pettingill all that part of said mortgaged premises lying north of the said road, thereby parceling out between them the said mortgaged premises in view of making and carrying out the said agreement and to defraud your orator and oratrix as aforesaid. And your orator and oratrix show that before the said sale it became rumored abroad and came to the knowledge of persons intending to bid at said sale, that some agreement in reference to the sale of said mortgaged premises and bidding thereat had been made between the said Moss and Bartlett and Pettengill, and that they had combined for the purpose of preventing and putting down all competition at the said sale, and thereby such persons were prevented from attending said sale as they otherwise would have done.

And your orator and oratrix show that not only were the said premises offered for sale immediately after the first hour of sale mentioned in the advertisement of said sale arrived, and before bidders had time to arrive and collect at the place of sale, but further by the procurement of the said Moss, Bartlett and Pettengill the said premises when offered for sale were cried but a very short time, that is about *one minute*, to prevent the arrival and collection of bidders at said sale.

And your orator and oratrix show that on account of the great value of the said mortgaged premises, and on account of a great many persons desiring to bid on the same, and that many of said persons resided and did business in hearing of the said place of sale, if said premises had been cried in the usual tone of voice of criers in such cases. It was reasonable and just and equitable that said premises should have been cried for a much longer space of time, to wit : one hour, to give time for the said bidders to arrive. Yet the said Moss, Bartlett and Pettengill knowing all these things, corruptly colluding and combining as aforesaid, procured said premises to be sold without giving such reasonable time for the arrival of the said bidders as aforesaid, all to wrong and defraud your orator and oratrix as aforesaid.

And your orator and oratrix show that the said corrupt agreement and the said corrupt and fraudulent doings and practices of the said Moss, Bartlett and Pettengill and their confederates in that behalf were kept entirely secret and concealed from your orator and oratrix until after the said sale, so that your orator and oratrix were prevented from preventing or counteracting their effect.

And your orator and oratrix show that the said sales were made in thirty-five days after the obtaining the said decrees in favor of the said Moss, Bartlett and Pettengill, and were made without the right of redemption from said sales, that if the said sales had not been fraudulent the titles of the said Moss, Bartlett and Pettengill would have become absolute to the said tracts of land bid off by them at the time of said sales, knowing which the said Moss, Bartlett and Pettengill hurried

on the said sales in all things, not for the purpose of securing their said debts, but for the purpose of buying in said property far below its real value, in manner and by the means aforesaid. Amendment "D," hereto attached.

And your orator and oratrix show that after the said sale the said Halsey O. Merriman, commissioner as aforesaid, executed to the said William S. Moss a deed for the said premises so sold to the said William S. Moss, as aforesaid, as by reference to the said commissioner's report, now remaining of record in the said cause, in favor of the said Moss, reference being had thereto, more fully and at large will appear.

And your orator and oratrix show that in all the said fraudulent transactions of the said Moss, the said Bartlett and Pettengill, and the said Bartlett on behalf of the said Bartlett and Pettengill, were combined and confederated with the said Moss. And your orator and oratrix show that in like manner they made no defense to the obtaining of the said decree in favor of the said Bartlett and Pettengill in like manner, well hoping that the said Bartlett and Pettengill would have allowed to your orator and oratrix a reasonable time in which to have paid off the said mortgage to the said Bartlett and Pettengill, in the decree to be obtained by them; but the said Bartlett and Pettengill, in pursuance of the said fraudulent and corrupt agreement, procured to be allowed in such decree only an unreasonably short time for such purpose, to-wit: ten days: and further, in pursuance of such agreement, and in like manner as the said Moss procured a decree that said premises mortgaged should only be advertised for sale only a very short time, that is, only three weeks.

And your orator and oratrix show that under the said corrupt agreement between them, the said Moss in his said cause and the said Bartlett and Pettengill in their said cause, procured to be decreed in both said causes the same time for the payment of the said sums to be paid in both said causes, and the same time for the said premises to be advertised for sale, so that the said mortgaged premises could be offered for sale at the same time and place under both said decrees, in order that the said Moss, Bartlett and Pettengill could more effectually work in concert under their said fraudulent agreement, as by reference to both said decrees, remaining of record as aforesaid, more certainly will appear.

And your orator and oratrix show that, they having failed to pay the said sum of money in the said decree of the said Bartlett and Pettengill mentioned, the said William Mitchell by procurement and advice of the said Bartlett, acting on behalf of the said Bartlett and Pettengill, acting under the said decree of the said Bartlett and Pettengill, advertised the said mortgaged premises for sale at the Court-House door in the said town of Peoria, on the tenth day of July, A. D. 1843, between the hours of 10 o'clock of the forenoon and four o'clock of the afternoon of that day, which was the same time and place at which the said mortgaged premises were to be sold as advertised, under the decree of the said Moss

as aforesaid, and for the purpose of preventing purchasers from attending the said sale as well in favor of the said Bartlett and Pettengill as in favor of the said Moss, the said Bartlett represented as aforesaid.

And in like manner as aforesaid, purchasers attended at the door of the Court House aforesaid, with the intent and means to bid more than the amount bid by the said Bartlett and Pettengill on the said tract bid off by them as aforesaid, and that the said premises bid off by the said Bartlett and Pettengill were of far greater value than the amount bid therefor by the said Bartlett and Pettengill, to wit: of the value of three thousand dollars at the time and place of said sale, and that knowing these things, your orator and oratrix were content to let the said tracts of land be sold fairly as aforesaid under said decree, but the said Bartlett having dissuaded the said Hotchkiss from attending said sale, and other bidders as aforesaid, and in conjunction with the said Moss, having procured the said part of said mortgaged premises lying south of the Peoria and Farmington road was to be sold to said Moss, immediately procured the residue of said mortgaged premises to be exposed to sale, which upon the bid of said Bartlett was struck off and sold to said Pettengill and Bartlett for the sum of six hundred and thirty-two dollars and sixty-seven cents, the amount then due the said Bartlett and Pettengill under their said decree; and your orator and oratrix show that the said Hotchkiss would have bid more to wit: two thousand dollars, and others would have bid more had they not been fraudulently prevented from attending said sale for the said last mentioned tract of land, than was bid for the same by the said Bartlett and Pettengill, and that after the said sale, the said Mitchell made a deed for the said last mentioned tract of land, to the said Bartlett and Pettengill, all of which was done, obtained and procured through fraud as aforesaid, and the said deeds of the said Moss and the said Bartlett and Pettengill became in equity void in the hands of the said Moss and the said Bartlett and Pettengill respectively.

And your orator and oratrix show that the said Bartlett and Pettengill, well knowing that the said sale to them was void on account of the said fraud, and the said deed and title thereby procured, was worthless in their hands for the purpose of pretending that the same was transferred to an innocent purchaser afterwards, to wit: On or about the eleventh day of April, A. D., 1844, bargained and sold and conveyed, or pretended to bargain and sell and convey, the said part of said mortgaged premises so purchased by the said Bartlett and Pettengill at the said sale, to one William Russell, and thereupon executed a deed of the said last mentioned tract of land to the said William Russell, conveying, or purporting to convey the title in fee of said premises to the said Russell.

And your orator and oratrix show that at the time of the said agreement, bargain and sale between the said Russell of the one part, and the said Bartlett and Pettengill of the other part, and before that time the said Russell well knew that the said sale of the said tract of land last mentioned, made by the said William Mitchell under the said decree in favor of the said Bartlett and Pettengill was

fraudulent and void, as against your orator and oratrix, and that the said Bartlett and Pettengill had obtained said sale in manner stated in this bill, for the purpose of defrauding your orator and oratrix in manner set forth in this ; and in particular your orator and oratrix show that the said Russell charged said Bartlett and Pettengill with having obtained said sale by fraudulent means, and on that account refused to purchase said last mentioned tract of the said Bartlett and Pettengill, unless said Bartlett and Pettengill would agree to repay the said Russell the purchase money paid by him to said Bartlett and Pettengill for the said last mentioned tract together with interest thereon, at the rate of twelve per centum per annum, provided the said sale made by the said Mitchell should be set aside, and thereby the said title purchased by the said Russell should fail. And thereupon the said Bartlett and Pettengill agreed so to repay the said purchase money to the said Russell with interest as aforesaid, in case the said sale made by the said Mitchell as aforesaid should be set aside as fraudulent, and thereupon, and not before or otherwise the said Russell agreed to purchase said last-mentioned tract of land of the said Bartlett and Pettengill, and to accept the said deed of the said Bartlett and Pettengill, and so your orator and oratrix show that the said Russell had notice of the fraud in the said sale made by the said Mitchell before the said Russell's said purchase, and his accepting of the said deed.

And further in *particular* your orator and oratrix show that before the said Russell purchased the said last mentioned tract of land of the said Bartlett and Pettengill, in a conversation with said William Mitchell, in the town of Peoria, the said William Mitchell expressly informed the said Russell that there was probably fraud in the said sale, made under the said decree in favor of the said Bartlett and Pettengill, and there and then informed the said Russell that there had been an agreement, which said Mitchell believed to be fraudulent, as against your orator and oratrix, between the said Moss, Bartlett and Pettengill, in regard to making the said sales, made by the said Mitchell and the said Merriman, and in regard to the bidding thereat. And the said Mitchell then and there otherwise informed the said Russell of and concerning the said fraudulent practices and doings of the said Moss, Bartlett and Pettengill in procuring the said sales under said decrees. And so your orator and oratrix show that the said Russell was a purchaser of the said Bartlett and Pettengill with full notice of all the said fraud, and that he holds his said tract of land purchased from the said Bartlett and Pettengill, subject to all the equities and charges which existed against it in favor of your orator and oratrix, when held and owned by the said Bartlett and Pettengill.

And your orator and oratrix show that notwithstanding the said fraud of the said Moss and Bartlett and Pettengill that still your orator and oratrix are willing to do justice towards them, and that the said mortgage of the said Moss was and is just, and the sum decreed to be paid by your orator and oratrix to the said Moss is just, and ought to be paid, together with legal interest thereon up to the present time, and that the same is legally a lien upon all the said mortgaged premises, and that the sum decreed to be paid as aforesaid by your orator and oratrix

to the said Bartlett and Pettengill is just, and ought to be paid to the said Bartlett and Pettengill, with legal interest thereon, and that the same is legally a lien on said mortgaged premises next after the lien of the said Moss as aforesaid. And so your orator and oratrix are willing and hereby offer to have the said premises exposed to fair sale at auction under the said decrees, (when the said fraudulent sales shall have been set aside by your Honor,) in their proper order, for the satisfaction of the said sums, with interest as aforesaid.

And your orator and oratrix show that the value of the said mortgaged premises far exceeds the amount of said sums and interest up to the present time. And your orator and oratrix show that the said mortgage of the said Moss is the elder mortgage, and that by said decree the whole of said mortgaged premises, or so much thereof as will be sufficient to satisfy the said demand of the said Moss, should be first exposed to sale, and afterwards the residue, if any, for the satisfaction of the said demand of Bartlett and Pettengill.

And your orator and oratrix have frequently and in a friendly manner, desired the said Moss and the said Bartlett and Pettengill to set aside the said fraudulent sales and to permit the said mortgaged premises to be again in a fair manner exposed to sale at public auction for the satisfaction of their said decrees, or otherwise to do equity to your orator and oratrix in the premises, and have frequently requested the said Russell to release the said premises purchased by him as aforesaid to the said Bartlett and Pettengill for such purpose. And your orator and oratrix well hoped that the said Moss, Bartlett and Pettengill and Russell would have complied with such reasonable requests.

But now so it is, may it please your Honor that the said Moss, Bartlett and Pettengill and Russell utterly refuse to comply with such reasonable requests, but on the contrary, combining and confederating with certain persons unknown to your orator and oratrix, but who when discovered your orator and oratrix pray may be made parties defendants hereto, with apt words to charge them in this behalf, pretend and give out that said sales were not fraudulent, and that said Russell had no notice of any fraud therein. All which sayings, actings, doings and pretences are contrary to equity and good conscience, and tend to the manifold wrong and injury of your orator and oratrix in the premises. And forasmuch as your orator and oratrix are only properly relievable in a court of equity where such things are properly cognizable, and where adequate relief can alone be given.

To the end therefore that the said William S. Moss, Amos P. Bartlett, Moses Pettengill and William Russell may be made parties defendants hereto, and be compelled to answer all and singular the matters and things aforesaid, and that as fully and particularly as if the same were here again repeated, and they severally particularly interrogated thereunto, but not under oath, for to that end your orator and oratrix hereby expressly waive the oaths of the said Moss, Bartlett

Pettengill and Russell to their answers respectively hereto. And that by decree of this Honorable Court, upon a final hearing of this bill, the said sale made by the said Halsey O. Merriman may be set aside, and the said mortgaged premises again exposed to sale for the satisfaction of the said sum due the said Moss as mentioned in his said decree, and interest thereon up to the time of sale hereafter to be made. And that in like manner the said sale made by the said William Mitchell may be set aside, and the said mortgaged premises again fairly exposed to sale in like manner to satisfy the amount due the said Bartlett and Pettengill, as found by their said decree, and interest thereon up to the time of the sale for that purpose hereafter to be made, and this notwithstanding the said sale to the said Russell, whose title to said premises your orator and oratrix pray may be subjected by decree of this Honorable Court to all the equities existing in favor of your orator and oratrix against the said Bartlett and Pettengill, and that the said conveyance from the said Bartlett and Pettengill to the said Russell may be taken and considered as void as against your orator and oratrix, and that your orator and oratrix may have such other and further relief in the premises as shall accord with equity and good conscience.

May it please your Honor that the people's summons in chancery issue out of the Circuit Court in and for the county of Peoria and state of Illinois, summoning the said defendants severally to appear before your Honor in the said Court on the day fixed therefor by law, to answer all and singular the matters and things aforesaid, and to stand to, abide by and perform the decree of your Honor in the premises. And your orator and oratrix will ever pray, &c.

AUGUSTUS O. GARRETT,
MARY G. GARRETT.

By their Solicitors, SANGER & MANNING.

ANSWER OF WM. RUSSELL.

A. O. GARRETT, *et. ux. vs.* M. PETTENGILL, A. P. BARTLETT AND
WM. RUSSELL.

The answer of Wm. Russell to the bill of complaint of A. O. Garrett and wife exhibited against him and others.

This Respondent, saving and reserving &c., for answer to said bill, so far as he is advised, it is material for him to answer thereunto, answering says, that he is informed and believes it to be true, and therefore he admits, that on the fourteenth of Sept. 1840, the complainants were the owners in fee of S. E. 5, 8 N. 8 E. of 4th principal meridian, except 25 acres at the North East Corner which they had conveyed to this respondent.

This respondent is also informed and believes it to be true that on or about said Sept. 14th, they mortgaged the said land (except said 25 acres) to William S. Moss, to secure the payment of one thousand dollars with 12 per cent. interest.

That on February 8 1841, complainants mortgaged same land they had mortgaged to said Moss to said Pettengill and Bartlett to secure the payment of \$510 at 10 per cent interest.

That said Moss and said Pettengill and Bartlett commenced suit in Chancery, and obtained decrees, as is alleged in said bill, that sales of the premises were had upon said decrees at the times and for the sums mentioned in the said bill, and that deeds were made and delivered, as the plaintiffs have alleged. And this respondent further answering says, that he has made diligent inquiry about there having been an agreement or arrangement between said Pettengill and Bartlett and Moss relative to the manner of bidding, to wit: that they should not bid against each other, as is charged in said bill, and he is informed and believes and he therefore charges the same to be untrue, and that no such arrangement or agreement was ever made as is alleged in said bill, and this respondent has no knowledge that said Pettengill and Bartlett procured a surveyor and surveyed out that portion of the land which they were to bid for, pursuant to said agreement, and calls for the proof. And respondent denies that he has any knowledge or belief that there was any such agreement as is alleged, or that such agreement was made known to other persons, and thereby competition at such sales was prevented, and persons then and thereby prevented from bidding at said sales or attending the same.

Respondent admits that said Bartlett soon after said sales, about Sept. after, contracted to sell the land so bid off by him, to this respondent; that this respondent has no knowledge that it was done to embarrass the complainants' claim (if they had any) and to prevent their obtaining redress, nor does this respondent believe it to be true, that said Bartlett was influenced by any such motives, and calls for the proof thereof, but this respondent avers that he, respondent bought the said land of said Bartlett, and took a conveyance thereof of said Pettengill and Bartlett in good faith, and paid the full value of said land to said Pettengill and Bartlett, and neither at the time of said sale or conveyance, nor till a long time afterward, did he ever hear or learn that said Garrett imputed any wrong to any one on account of said sales or any of them, nor does this respondent now believe that there was any fraud, misconduct, or other wrong, as charged in said bill, but he believes that the whole of these transactions were, on the part of said Pettengill and Bartlett, and he knows that so far as he, this respondent is concerned, that they were honest and *bona fide*, and respondent positively denies that at the time he took the deed of said Pettengill and Bartlett, he had any knowledge whatsoever of any such agreement or arrangement, as is alleged in said bill, or that the said commissioners' sale was fraudulent or illegal, or that complainants intended to endeavor to set aside said sale as fraudulent and void.

This respondent further answering says, that he has no knowledge or belief that said Mitchell hurried on said sale, or that it was hurried on at the request of said Bartlett, as is alleged in said bill, and he does not believe said allegation

or any part thereof to be true, and calls for the proof thereof. Respondent admits that said land lies near Peoria, and that the same is valuable, but what it would have brought at fair public auction he has no knowledge or opinion, except what is founded upon or derived from the public sale had by said Mitchell as aforesaid, and the respondent gave as much for the land as he then thought, and still thinks was its then cash value, and respondent here states that from all he knows or can learn of proceedings of this kind, that said Pettengill and Bartlett did in this case precisely what creditors almost always if not always do in this State, in cases where debtors do not fulfill their engagement, and neglect and refuse to pay their honest debts and permit their property to be sold upon a decree in Chancery, or on execution, viz: they bid the amount or about the amount of their debt, for the land offered for sale, and respondent understands and believes it to be true that creditors very rarely if ever, in this State, bid for land thus sold, more than the amount of the debts for which said land is sold, and this respondent is unable to see what cause or ground of complaint the said A. O. Garrett has inasmuch as if he had paid his debt to said Pettengill and Bartlett according to his agreement, his property would not have been exposed to sale to pay the same, and Pettengill and Bartlett would have received only their honest dues by the operation, and this respondent to show that said Pettengill and Bartlett have acted with entire fairness towards the said Garrett, states that he has been informed, and believes, and therefore charges that after said sale of said fifty-two acres by said Mitchell, they agreed with said Garrett to give him time, some 30 days or more, to redeem said land from said sale, by paying the amount of the said decree and cost, yet the said Garrett neglected to do so, or to pay any part thereof.

And this respondent further answering says that he has, since the commencement of this suit, been referred to certain proceedings had in this court relative to said sales, that said complainant filed certain affidavits and made a motion in this court to set aside said sale so made by said commissioner, and that upon a fair hearing of the proofs and allegations, this court overruled the said motion (a. x.) (a. x.) (a. x.) but he never heard or was in any way informed or knew that said Garrett had attempted or intended to set aside said sale till after this respondent had purchased said land of said Bartlett and had paid a large portion of the purchase money. And respondent avers that the remedy and relief sought by said motion were precisely the same as is sought by their bill in this case and the proceedings herein, and he submits to the court, whether said complainants shall be permitted to renew their complaints and harass this court with a repetition of their claims, when they have once had their day in court and have been fully heard, and the adjudication of the court has passed against them. Respondent refers to the affidavits on file and the record in the case of Pettengill and Bartlett against said complainants in said bill referred to, and makes them part of this answer, if the same are not already made part of the complainants bill herein.

This respondent says that he cannot state the exact time when he completed

his bargain to purchase said land of Pettengill and Bartlett, but thinks it must have been between the first and tenth day of September, 1843. Upon the completion of the contract respondent paid \$475, part of the purchase money, by a draft on New York, which was placed to the credit of Pettengill and Bartlett, as respondent understood. And this sum of \$475 was thus paid in pursuance of the terms of said contract of purchase, and was thus placed to the credit of Pettengill and Bartlett in New York, on the 20th of said September, as this respondent was advised by his correspondents in New York, and this he believes to be true. Respondent further states that at the time of the contract of sale no deed was given by Pettengill and Bartlett, but their bond or agreement was made to this respondent, conditioned to convey said land at a subsequent day, on the performance of certain conditions by this respondent, to wit: the payment of the residue of the purchase money. And on April 11th, 1844, said Pettengill and Bartlett made and delivered to this respondent a deed of said land, a copy of which is filed herewith, and the original will be procured at the hearing of this cause. Said bond or agreement was given up to said Bartlett when said deed was delivered to respondent, the same as respondent is informed was then destroyed.

Respondent says that it would be most injurious and palpably unjust to him to permit said sale to be set aside, and the said complainants to redeem as prayed for in their bill of complaint, inasmuch as this respondent bought said land in good faith, not suspecting any fraud or illegality of proceedings, and has made large and valuable improvements thereon, and has paid for said land the sum of \$728.

And now this respondent having fully answered said complainants' bill prays that the same may be dismissed and he recover his costs in this behalf expended.

WILLIAM RUSSELL.

STATE OF ILLINOIS, }
PEORIA COUNTY. } ss.

This day came the above named William Russell and subscribed the above answer before me, and made solemn oath that the matters and things in the said answer stated were true according to the best of his knowledge and belief.

JACOB GALE, Clerk.

Peoria, October 20, 1846.

DEED—PETTENGILL AND BARTLETT TO RUSSELL:

This indenture, made this eleventh day of April, in the year of our Lord, one thousand eight hundred and forty-five, between Moses Pettengill and Lucy his wife, Amos P. Bartlett and Sarah M. his wife, all of Peoria, Peoria county, state of Illinois, of the first part, and William Russell of Peoria county and state of Illinois, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of seven hundred and twenty-eight dollars, paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell unto the said party of the second

part his heirs and assigns, a certain tract or parcel of land, situated in the County of Peoria and State of Illinois, and described as follows: being a part of the south-east quarter of section number five (5), in township number eight (8), north, range eight (8), east, and bounded as follows: Beginning at a stone set in the old mound made for the quarter section corner, between sections four and five; thence running south nineteen chains and seventy (70) links, to a stone in the centre of the Peoria and Farmington road; thence west along the said road twenty-six (26) chains and eighty-six links, to a stone for a corner; thence north nineteen (19) chains and twenty-eight (28) links to a stone set for a corner; thence east on a true line, twenty-six (26) chains and eighty-one links to the place of beginning, containing fifty-two and 28-100 acres be the same more or less.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining to have and to hold the said premises, as above described, with the appurtenances unto the said party of the second part, his heirs and assigns forever. And the said party of the first part for themselves and their heirs, executors and administrators, do hereby covenant to and with the said party of the second part, his heirs and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form as aforesaid, that they are free from all incumbrance, and that the above largained premises in the quiet and peaceable possession of the said party of the second part his heirs and assigns against the claim of all persons whomsoever will forever warrant and defend. In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MOSES PETTENGILL, [Seal.]

LUCY PETTENGILL, [Seal.]

AMOS P. BARTLETT, [Seal.]

SARAH M. BARTLETT. [Seal.]

STATE OF ILLINOIS, } ss.
PEORIA COUNTY.

I, Jonathan K. Cooper, a Justice of the Peace in and for said county, do certify that on this day appeared before me Moses Pettengill and Lucy his wife, and Amos P. Bartlett and Sarah M. his wife, whose names appear signed to the foregoing deed of conveyance, and who are personally known to me to be the identical persons who signed the same, and acknowledged that they had executed the same as their voluntary act and deed, for the uses therein expressed. And Lucy Pettengill and Sarah M. Bartlett, wives of the said Moses Pettengill and Amos P. Bartlett, having been by me made acquainted with the contents of said deed, and being by me examined separate and apart from her husband, acknowledged that they had executed the same, and relinquished their dower in the premises therein conveyed voluntarily, freely and without any compulsion of their said husband. Given under my hand and seal at Peoria, this 12th day of April, 1844.

JONATHAN K. COOPER, J. P.

STATE OF ILLINOIS, } ss.
 PEORIA COUNTY,

RECORDER'S OFFICE.

I, Charles Kettelle, Recorder in and for said county, do hereby certify the within deed is recorded in said office, in Book 6, pages 208 and 209, on this 15th day of April, 1844.

CHARLES KETTELLE, R. P. C.

ANSWER OF MOSS.

STATE OF ILLINOIS, } ss.
 PEORIA COUNTY,

*Circuit Court Peoria County,
 May Term, 1848.*

The answer of William S. Moss, one of the defendants, to the bill of complaint of A. O. Garrett and Mary G. Garrett, complainants:

This defendant, now and at all times saving and reserving unto himself all benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' bill of complaint contained for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, saith, that he admits it to be true that complainants did own the premises alleged in said bill, and did mortgage the same to this defendant, at the time and for the sum and interest as alleged in said bill. Defendant further admits it to be true that he did procure the foreclosure of said mortgage at the time and in the manner alleged, and did obtain a decree of foreclosure as alleged. Defendant admits it to be true that the said named Pettengill and Bartlett did have and did foreclose their described mortgage as alleged, and did obtain a decree of foreclosure as alleged. Defendant admits it to be true that he did execute to said Pettengill and Bartlett an agreement which purports to be copied truly in complainants' bill, but as complainant is not in possession of the original agreement, he refers to the original on file in this court, as he is informed and believes, and admits that he executed that original agreement on file. Defendant denies the other allegations, statements and charges of said bill in the whole, and in each and every particular, except the allegation that he did, at the sale set forth in said bill, purchase the tract of land alleged south of the Farmington road for the sum alleged, and did receive a deed therefor from the Commissioner, as alleged, which said last-mentioned allegations he admits to be true.

Defendant denies that there was any other agreement or understanding with the said Pettengill and Bartlett or any other person or persons, except the written agreement before referred to, as alleged in said bill, and he calls for the proof. Defendant denies each and every charge and allegation of corrupt and fraudulent agreement, undertaking, combination or confederacy by the defendant with the said Pettengill and Bartlett, or any person, as alleged in said bill, and calls for the proof. Defendant denies each and every charge, allegation and statement of false

or fraudulent statements, or fraudulent acts or refusals before said sales, and at said sales, as alleged in said bill, and calls for the proof. Defendant denies that any person or persons were hindered and prevented from bidding at said sale as alleged by any act, or false or fraudulent statement or representation of defendant or of any person authorized or induced by defendant, and calls for the proof.

Defendant denies each and every allegation, charge and statement of said bill wherein fraud, falsehood and deceit, or fraudulent, false or deceitful acts or representations, are alleged against him, and calls for the proof. Defendant denies each and every statement, charge and allegation of said bill charged on him, combination, confederacy or conspiracy between him and the said Pettengill and Bartlett or any other person or persons, for the purpose of wronging, cheating or defrauding the complainants, and calls for the proof. And finally, defendant denies each and every charge, statement, allegation and insinuation of said bill, whether relating to the acts of defendant alone or with others, and whether relating to words spoken or acts done, either by the said defendant or by his procurements or influence, and denies each and every portion of said bill, except as before expressly admitted by defendant, and calls for proof of all except as before admitted. And having thus fully answered, he prays to be hence dismissed with his costs, &c.

WILLIAM S. MOSS.

REPLICATION TO MOSS' ANSWER.

STATE OF ILLINOIS,
COUNTY OF PEORIA,

} ss.

PEORIA CIRCUIT COURT,
MAY TERM, A. D. 1848.

AUGUSTUS O. GARRETT AND MARY G. GARRETT,

COMPLAINANTS,

vs.

WILLIAM S. MOSS, AMOS P. BARTLETT, MOSES PETTENGILL
AND WILLIAM RUSSELL,

DEFENDANTS.

And the said complainants, saving and reserving to themselves all and all manner of exception to the manifold errors and insufficiencies and uncertainties of the answer of the said defendant, William S. Moss, for replication to the said answer, saith, that the said answer is untrue in substance and fact, and that notwithstanding said answer, their said bill and each and every of the statements and allegations therein are true, and that they, the said complainants, will aver and prove their said bill to be true when and wheresoever this Honorable Court shall direct, without this, that anything in the said answer not herein sufficiently replied unto, confessed and avowed, traversed or denied, is true, and this said complainants again pray as in their said bill they have above prayed, &c.

AUGUSTUS O. GARRETT,
MARY G. GARRETT.

By SANGER & MANINNG, their Solicitors.

AMENDED ANSWER OF WILLIAM S. MOSS.

PEORIA CIRCUIT COURT, MAY TERM, 1848.

WILLIAM S. MOSS *et. al. ats.* AUGUSTUS O. GARRETT AND MARY G. GARRETT, HIS WIFE.

The said defendant, William S. Moss, by leave of the Court, first, had and obtained by way of a separate amended answer to the complainants' bill of complaint, answering thereto saith, that after he became the purchaser of the south part, embracing all lying south of the Farmington road of said quarter section of land, being upwards of fifty acres less than was mortgaged by this defendant as charged in said bill, this defendant and the said Augustus O. Garrett agreed that the said purchase should stand good, and as a consideration for said Garrett's agreement to that effect, this defendant agreed with said Garrett that he the said Garrett should have the avails of the sale of the use of the spring on the side of the bluff, situate on the south side of the said quarter section of land, and might sell the use of the same to a Water Company then formed or forming in the town or city of Peoria. And this defendant charges that in pursuance of said agreement the said A. O. Garrett did sell the right of using the water out of said spring to said Water Company for two hundred and fifty dollars or thereabouts, and the said Moss did execute his deed to said Water Company for the same. And this defendant also by way of avoidance of said bill, charges that after the defendant became the purchaser as aforesaid, it was agreed between said Garrett and himself that the said Garrett should have one year to redeem said land, and that said Garrett neglected and refused to redeem in pursuance of said agreement, whereupon it was agreed between this defendant and the said Garrett, that said Garrett should have six months more to redeem the said land, but the said Garrett again neglected and refused to redeem in pursuance of said second agreement. And upon the expiration of the said six months, without redemption as aforesaid, the said Garrett expressed his satisfaction to the defendant that he, this defendant had become the purchaser and owner of said south part of said quarter section.

This defendant also says that said south part of said quarter section was during the time said Garrett had the right of redemption as aforesaid, of much less value than it was when the bill in this case was filed; that the said Garrett neglected to redeem when said land was of but little value, and has kept this defendant of his money unconscionable, and is now induced to seek to set the purchase of this defendant aside, only because said land has greatly risen in value.

This defendant, when he became the purchaser, took the risk that said land might fall in value, and now claims in consideration thereof that he is entitled to the full benefit of the increased value thereof. And this defendant further charges by way of avoidance of the matters set up in said bill of complaint, that at the October Term of this Court, for the year 1839, the people of the State of Illinois for the use of Peoria County, recovered a judgment of said Court against Thomas Bryant, Charles Ballance, John C. Caldwell, Augustus O. Garrett and Luther

Sears for the penalty of a bond, amounting to ten thousand dollars and costs of suit, upon which also at the same time, damages were assessed against said Bryant and others, to the amount of \$470.30 for which sum and costs, execution was awarded, directing said Sheriff to make the last mentioned sum and costs, and this defendant says that the said Augustus O. Garrett, who is complainant in this bill, and against whom this judgment aforesaid was rendered is the same person.

And this defendant further saith that execution was duly issued on said judgment, on the 8th day of June, 1840, and returned on the 4th day of November, 1840. Also that an alias execution was issued on said judgment, on the 5th day of November, 1840, and during the life time thereof, was levied on the quarter section of land mentioned in said bill, as the property of said A. O. Garrett, and was returned on the 27th of January, 1840, no sale for want of bidders.

And thereupon, on the 21st of February, A. D. 1842, a venditioni exponas was issued directing the Sheriff of Peoria County to proceed to sell said quarter section of land, which said last writ was on the 20th of October, 1842, returned no sale for want of bidders, and thereupon on the 4th day of September, 1845, a second writ of venditioni exponas was issued, directing said Sheriff as aforesaid, and a third venditioni exponas was issued, directing said Sheriff as aforesaid, on the 20th of December, A. D., 1845, upon which last mentioned writs or one of them, the said quarter section of land was by said Sheriff, in pursuance of due and legal notice, exposed to public sale, and thereupon one Charles Ballance became the purchaser thereof, he being the highest and best bidder for the same, and the said sheriff thereupon made said Ballance a certificate of purchase therefor, and afterwards the said Ballance assigned the said certificate of purchase to this defendant, and thereupon the Sheriff of Peoria County, on the 6th day of June, A. D., 1848, long after the expiration of said Garrett's right to redeem from said sale to Ballance, made, executed and delivered a deed as such sheriff, to this defendant as assignee of said Charles Ballance for the whole of said quarter section of land, which deed this defendant will produce and prove on the hearing hereof, whereby this defendant as against the said complainants, became the owner of the whole of said tract of land, so that if all the matters and things charged in said bill are true, there would be no utility in inquiring into and determining the regularity and legality of the sale complained of in said bill, or in setting aside said sale, and it would in consequence of the new title herein set up on the part of this defendant, be manifestly unjust for the Court to decree a conveyance of said land or any part thereof from this defendant back to the said complainants or either of them.

And having thus fully answered, the defendant prays to be hence dismissed with his costs.

WM. S. MOSS.

FORD & METCALF, for Defendant Moss.

STATE OF ILLINOIS, }
 PEORIA COUNTY. }

William S. Moss, the defendant above, being duly sworn, deposes that the facts set forth in his foregoing answer, so far as stated of his own knowledge, are true in substance and in fact, so far as stated from the information of others, he believes to be true to the best of his knowledge, remembrance and belief.

WILLIAM S. MOSS.

Subscribed and sworn to before me, this 9th day of June, 1848.

JACOB GALE, Clerk.

AMENDMENT "D." Filed July 31st, 1854.

Complaining, further sheweth unto your Honor, your orator and oratrix, by way of amendment to their original bill, filed herein, leave of this court for that purpose being first had, that by the said decrees of foreclosure, made in the said causes mentioned in your orator and oratrix's original bill of complaint, the said William Mitchell and Halsey O. Merriman commissioners to make sale of said mortgaged premises, as in said original bill stated, were each of them directed and required to give public notice of the time and place of sale of said premises, for the space of three successive weeks, by inserting advertisements of the same in the Peoria "Democratic Press," for three successive weeks before sale of said mortgaged premises, in said original bill stated and set forth, the same then being a newspaper printed and published in the town of Peoria, county of Peoria, and state of Illinois, as by reference to duly authenticated copies of said decrees hereto attached and marked, exhibits "C and D," and made part hereof, will more fully show.

But complainants further show that although the said period of three weeks notice in said decrees required was, under the circumstances unreasonably and oppressively short, and tended to deprive your orator and oratrix of a reasonable time within which to pay the sums of money then due on said decrees of foreclosure, and save the said mortgaged premises from sale and sacrifice. Yet the said William Mitchell and Halsey O. Merriman as such commissioners, acting under the directions of and conspiring with the said William S. Moss and the said Pettengill and Bartlett to bring on the said sale of said mortgaged premises, and in furtherance of the said fraudulent purposes in said original bill, charged and set forth, and contrary to the spirit and directions in said decrees of foreclosure, did not give the said three weeks notice of sale, as directed therein, nor in any other manner whatever, but on the contrary, complainants show and charge that the said commissioners fraudulently, as aforesaid, sold the said mortgaged premises on the 10th day of July, A. D., 1843, the time mentioned in said original bill, without giving in any manner whatever the notices of sale, for the length of time, and in the manner of said decrees of foreclosure required.

Complainants further show that they were advised and belived that by force

and effect of the said decrees of foreclosure, the said commissioners could not make said sale of said mortgaged premises in said original bill mentioned before the expiration of thirty-one days, from the adjournment of the said time of the Circuit Court, at which said decrees of foreclosure were obtained, and that they had by force and effect of said decrees of foreclosure, at least thirty-one days within which to pay the said sums of money, by said decrees due from the adjournment of said May Term of said court, when said decrees were made, and thereby save said premises from sale.

Complainants further show that the said May Term of said Circuit Court of Peoria County mentioned in said original bill, at which said decrees were obtained, adjourned on the 10th day of June, A. D., 1843, and that the said premises could not be sold under said decrees before the 12th day of July then next, that is to say, the 12th day of July, 1843.

Complainants show, as in said original bill stated, that the said sale of said mortgaged premises by said commissioners was made on the 10th day of July, 1843, two days before the expiration of the time within which by said decrees the said complainants had to pay the said sums of money in said decrees mentioned.

That complainants have in consequence of the want of notice of sale, as aforesaid, and by reason of said sales being made before the expiration of the time in which they were in right and justice entitled to pay the said sums of money, and thereby save said premises from sale and sacrifice, been greatly injured and defrauded and they therefore charge that the said sale of said premises, by reason of the premises aforesaid, was, and is fraudulent and void, as against complainants.

Complainants further show and charge that the said Moss, Pettengill and Bartlett were purchasers of said mortgaged premises, with full notice and knowledge of said want of notice of said sale, and with notice that the said premises were sold by said commissioners before the time at which the same could have been sold under and by force and effect of said decrees of foreclosure. Complainants further show that the relative position and location of said mortgaged premises to the town and city of Peoria at the time of said fraudulent sale rendered the same very valuable; that the same at the time of said sale was reasonably worth the sum of eight thousand dollars, the amount as stated in said original bill; that the southeast corner of said southeast quarter of section five joins up to the northwest corner of the quarter section of land upon which Munson & Sanford's addition to the town of Peoria was laid off.

That the said mortgaged premises at the time of said fraudulent sale was susceptible of natural and convenient division and subdivision into eighty, forty, twenty or ten acre lots, and could have been so divided and subdivided and conveniently described in lots of the quantities aforesaid, as the said mortgages of the said Moss and the said Pettengill and Bartlett covered the whole of said tract

(with the exception of the said twenty-five acres at the northwest corner mentioned and excepted in the original bill) free from incumbrance, claim or title of any other person or persons at the time when the same were given.

Complainants further show that the front eighty acres of said mortgaged premises is so situated as to come up to and include the greater part of the bluff overlooking the town (now city) of Peoria, and that the said front eighty acres was at the time of said fraudulent sale desirable and in great demand for the purpose of residences, for which last name purpose the same was at the time of said fraudulent sale more valuable than any other lands situated the same distance from the town of Peoria. That the said front eighty acres, had it been divided and sold in separate parcels of forty, twenty or ten acre lots by said commissioners, as by the said decrees of foreclosure, and in justice to said complainants, said commissioners should have done, the said front eighty acres would have paid and doubly paid off the whole amounts in said decrees specified. That the southeast quarter of the said southeast quarter would have sold for enough and more than enough to have paid off the whole of said mortgage money due said Moss, and that the southwest quarter of the said southeast quarter would have sold for enough to have paid off the said amount due said Pettengill and Bartlett on their mortgage, had the same been sold in separate parcels & such quantities & descriptions. But complainants show and charge that the said Mitchell and Merriman, commissioners as aforesaid, contrary to the spirit and object of said decrees of foreclosure, in fraud of the law and fraudulently as against said complainants, acting under the direction of and in conspiracy with said Moss, Pettengill and Bartlett, and in furtherance of the fraudulent purposes in said original bill mentioned and charged, did not nor would sell the said premises in separate parcels, according as the same could have been conveniently divided and subdivided and sold, but on the contrary said commissioners fraudulently as aforesaid put up, offered for sale and did sell the whole of said mortgaged premises en masse, whereupon the same were struck off and sold to said Moss, Pettengill and Bartlett, according to the said fraudulent and corrupt agreement mentioned and set forth in the original bill, of all which the said Moss, Pettengill and Bartlett then and there had notice.

Complainants further show unto your Honor that the said Moss, Pettengill and Bartlett, their agents, solicitors and attorneys, conspiring and confederating together, to injure, defraud and oppress complainants by sacrificing the whole of said mortgaged premises to pay off the said sums of mortgaged money, and with the further design, not only so to sacrifice the whole of said mortgaged premises, but to speculate pecuniarily off the said complainants, the said William S. Moss made and entered into said fraudulent and corrupt written agreement with said Pettengill and Bartlett, at the time and in the manner in said original bill described, whereby and by force and effect of the same, the said Moss, Pettengill and Bartlett corruptly and fraudulently as against the rights of complainants contrary to, and in fraud of said decrees of foreclosure, and corruptly and fraudu-

lently against the statute in such case made & provided, agreed between themselves that the whole of said mortgaged premises should be sold and sacrificed to pay off the said sums of money in said decrees mentioned, and that the said mortgaged premises should not be sold by said commissioners in separate parcels, as the same conveniently could and should have been done.

They further show that in pursuance of said fraudulent and corrupt written agreement, and to carry out the said fraudulent objects stated and charged in original bill, the said commissioners at the time of said sale, did put up, offer for sale and sell the said premises. And the said Moss, Pettengill and Bartlett did bid off the whole of said mortgaged premises, according to and in pursuance of said fraudulent and corrupt agreement, in consequence of which the whole of said mortgaged premises were sold and sacrificed, to the great wrong, injury and oppression of complainants.

Complainants further show that on the 12th day of June, A. D. 1841, complainants made and executed to Leonard Holland, of Peoria county and State of Illinois, in due form of law, a deed of conveyance, conveying to said Leonard Holland in fee simple, a part of the said mortgaged premises, to wit: fifty acres being part of the North half of said south east quarter of section five, commencing at the north east corner of twenty-five acres of land on said north half of said quarter section previously sold by complainants to William Russell, thence running east to the eastern boundary line of said quarter section, thence south along said line to the center of public highway, leading from Peoria to Farmington, through said quarter section, thence west along the center of said public highway to the south east corner of said Russell's land, thence north along said Russell's line, to the place of beginning, supposed to be fifty acres more or less, which said last named deed was duly recorded in the office of the Recorder of Peoria county, on the 12th day of June, A. D., 1841.

That the said Leonard Holland, on the 30th day of December, 1842, duly conveyed the said last named tract of land to Orin Hamlin, then of said county, that both of the said last named deeds of conveyance contained the usual covenants of warranty of title, that at the May term of the circuit court of said Peoria county, A. D., 1845, the said Orin Hamlin recovered a judgment against the said Augustus O. Garrett, in a certain suit or action of covenant then in said Court pending for the sum of fifteen hundred and forty-seven dollars and twenty cents damages, and six dollars and sixty-two and a half cents costs, that the said action was instituted by said Orin Hamlin against said Augustus O. Garrett upon his said Augustus O. Garrett's covenant of warranty, contained in the said deed of conveyance, made by complainant to said Leonard Holland wherein it was alleged that there had been a breach of said covenant of warranty, by reason of an eviction by said Moss, Pettengill and Bartlett, and other persons claiming under them by virtue of the title acquired through the said foreclosure of said mortgage, which said judgment the said Augustus O. Garrett fully paid, on the 25th day of November, A. D., 1853.

Complainants further show that the said decrees of foreclosure were taken by default against them for the reason that the said mortgaged money therein mentioned was justly due, as stated in said original bill, and the said Leonard Holland and Orin Hamlin, defendants to said bills of foreclosure, well knowing the great value of said mortgaged premises at the time of the pendency of said foreclosure suits, and knowing and believing that the said premises would, if properly sold by said commissioners, be sold in separate parcels and small lots, as the same was susceptible of division, and that only a small portion of said mortgaged premises would be required to be sold to pay off the said mortgages, and being informed and confidently believing that the said commissioners, under the direction of said Moss, Pettengill and Bartlett would first expose to sale such part of the said mortgaged premises, lying south of said Farmington and Peoria road, as had not been conveyed by complainants to said Leonard Holland, or by said Holland to said Orin Hamlin, the said Leonard Holland and Orin Hamlin made no defence to the obtaining of said decrees of foreclosure, but the same were taken in like manner by default against them, said Holland and Hamlin. That the said Moss, Pettengill and Bartlett, as also said commissioners well knew at the time of said sale by said commissioners, that the said complainants had previously conveyed by deed as aforesaid, the said premises lying north of said Peoria and Farmington road, to said Leonard Holland, and that by the spirit of said decrees of foreclosure, and in justice and equity to said complainants they ought to have sold at said commissioners' sale that part of said mortgaged premises lying south of said Peoria and Farmington road, then remaining unsold, to said Holland.

Complainants now therefore show and charge that the said Moss, Pettengill and Bartlett, their agents and attorneys, fraudulently as aforesaid, with a view to unjustly injure and oppress complainants as aforesaid, with full knowledge that complainants had deeded with covenants of title, as aforesaid, to said Holland a part of said premises aforesaid, and with full knowledge that a sale of the said last mentioned part of said premises under said decrees of foreclosure, without redemption, would render him, said complainant, Augustus O. Garrett, liable to an action at law and great damage, in favor of said Holland or Hamlin, and that complainants would in consequence thereof be wrongfully and unjustly injured. Yet the said Moss, Pettengill and Bartlett, their agents and attorneys combining and confederating to injure, defraud and unjustly oppress complainants, and in pursuance of their said fraudulent and corrupt written agreement, as aforesaid, designing to sacrifice the whole of said mortgaged premises without regard to the consequences to complainants, did not nor would sell the said part of the said mortgaged premises lying south of said road, in such parts or parcels as would have satisfied said decrees of foreclosure, and save complainant from great cost and damage on the said covenants to said Holland and Hamlin, but on the contrary sold said premises *en masse*, and in pursuance of the corrupt agreement aforesaid, by reason of which the said action of covenant was commenced against said Augustus O. Garrett, and he compelled to pay said judgment as aforesaid.

Complainants further show that a short time before the said commissioners sale, it was reported and caused to be given out to the public by said Moss, Pettengill and Bartlett, the said commissioners and the agents and attorneys of said Moss, Pettengill and Bartlett, that the said sale would not take place, and that the said foreclosure suits were compromised between said complainants and said Moss, Pettengill and Bartlett, and that in case there should be a sale, that they, the said Moss, Pettengill and Bartlett, and their agents and attorneys, or some of them, would give purchasers notice of said sale, that they might have a reasonable time within which to attend said sale, in consequence of which reports persons wishing to purchase at said commissioners' sale did not attend on the morning of said sale, as stated and charged in said original bill.

Complainants further show and charge that the said Moss, Pettengill and Bartlett, their agents and attorneys combining to injure and unjustly oppress complainants, and to carry out their said fraudulent intent, did not nor would go around and inform persons wishing to purchase at said sale, nor in any other manner whatever give such persons so wishing to purchase notice that the sale would be made, but on the contrary the said Moss, Pettengill and Bartlett, their agents and attorneys concerned in said commissioners' sale, fraudulently neglected to give said notice after the circulation of said reports of no sale, and before the time when the sale took place, in consequence of which fraudulent neglect and misrepresentations on the part of said Moss, Pettengill and Bartlett, their agents, solicitors and attorneys, the said sale was a great surprise to said complainants and to other persons wishing to purchase at said sale, and operated greatly to injure and defraud said complainants in the premises.

Complainants further show that the said mortgage executed by complainants to said William S. Moss, was, as stated in said original bill, executed on the 14th day of September, A. D., 1840, and recorded in the office of the recorder of said Peoria county, on the 4th day of November, 1840, that the said mortgage given by complainants to said Pettengill and Bartlett was executed on the eighth day of February, A. D., 1841, and was junior to the said mortgage so given to Moss, as in said original bill stated, that the said Pettengill and Bartlett were duly made parties defendant to the said foreclosure suit, instituted by said Moss, and answered the said bill of complaint filed by Moss, and thereby in substance admitted all the material allegations and statements in said Moss's bill of complaint.

They further show that said Moss by reason of his said mortgage, being senior in point of time to the mortgage of said Pettengill and Bartlett, he, said Moss, upon a hearing of his said foreclosure suit, was first entitled in equity and justice to a decree ordering the said mortgaged premises or so much thereof as was necessary to pay off his (said Moss's) mortgage, including principal and interest, and that the said mortgaged premises or such part thereof as might be necessary to pay off Moss's mortgage should have been first sold and the proceeds arising therefrom, applied in payment of his, said Moss's mortgage, the interest thereon and

cost of foreclosure, and that the said mortgage of the said Pettengill and Bartlett being junior and subject to the said mortgage of said Moss, they, said Pettengill and Bartlett were in justice and equity only entitled to a decree ordering the surplus money remaining after satisfaction of said Moss's mortgage to be paid upon the decree in favor of the said Pettengill and Bartlett, or that such part of said mortgaged premises remaining after the payment of said Moss's mortgage as might be necessary to satisfy the mortgage of said Pettengill and Bartlett should be sold for that purpose. But complainants show and charge that the said Moss, Pettengill and Bartlett fraudulently combining as aforesaid, to sacrifice the whole of said mortgaged premises to pay off said mortgages, and better to carry out their said fraudulent and corrupt agreement, through their solicitors procured the said decrees of foreclosure to be drawn up in form as shown in said decrees hereto attached, without regard to priority of right, and in the same form as if only one of said mortgages had existed upon said premises, and fraudulently as aforesaid, procured the said mortgages to be made on the same day, and bearing the same date and the same time to wit: "ten days," within which complainants have to pay the said mortgage money to be fixed in each of said decrees of foreclosure, and fraudulently as aforesaid procured to be fixed in said decrees, the same length of time for the notice of said Commissioner's sale, and fraudulently procured the said decrees of foreclosure to be drawn up in form and substance the same and alike, that they might more effectually act in union and in harmony in carrying out the said corrupt and fraudulent agreement. That the said Moss, Pettengill and Bartlett fraudulently as aforesaid, designing to carry out the said fraudulent object, procured through their said commissioner, Mitchell, that part of said mortgaged premises bid off by said Pettengill and Bartlett to be first offered for sale and sold to them under the decree of the said Pettengill and Bartlett.

They further show that the said Moss, Pettengill and Bartlett, combining as aforesaid, procured the said part of said premises bid off by said Moss next to be sold by said commissioner, Halsey O. Merriman, and the same was then and there bid off by said Moss, according to and in pursuance of said fraudulent agreement.

Complainants now therefore pray the Court that the said Moss, Pettengill and Bartlett and Russell, and each of them, may be duly summoned to appear before this court on some day to be fixed, and then and there, full, true and perfect answers make to all and singular, the matters and things in this amended bill charged and set forth (hereby expressly waiving the oath of them and each of them to the answers and each of them to the amended bill) and that upon a hearing of this amended and said original bill, the said court may grant such relief as in said original bill prayed, and complainants will ever pray, &c.

MANNING, LANDER & JOHNSON, Sol's for Comp'ts.

SUPPLEMENT.

Complainants show unto your Honor, that on the 19th day of October, 1847, they filed the original bill in this cause, against William S. Moss, Moses Petten-

gill, Amos P. Bartlett and William Russell, praying in substance that the sale of the mortgaged premises in said original bill mentioned, made by Halsey O. Meriman, commissioner to make sale as therein stated, be set aside, and mortgaged premises be again exposed to sale for the satisfaction of the sum of money due the said Moss on his mortgage as mentioned in the decree of foreclosure, in favor of said Moss in said original bill stated, together with interest on the same, up to the time of such sale.

And in like manner that the sale made by William Mitchell of a part of said mortgaged premises in said original bill mentioned may be set aside and the same again fairly exposed to public sale in like manner to satisfy the amount due the said Pettengill and Bartlett, due upon the said decree of foreclosure in said original bill mentioned, together with interest thereon up to the time of sale for that purpose, and this notwithstanding the sale of part of said premises to said Russell as in said original bill mentioned, whose title to said premises complainants therein prayed might be subjected by decree of this Court to all the equities existing in favor of complainants against the said Bartlett and Pettengill, and that the said conveyance from said Pettengill and Bartlett to said Russell be taken and considered as void as against complainants, and that complainants have such other and further relief as to this honorable Court might appear just and equitable. And complainants show further that the said defendants have answered the said complainants' original bill so filed herein. And complainants now, by leave of this Court first obtained, further show by way of supplement that on the 26th day of October, A. D. 1839, at a term of the Circuit Court held within and for the county of Peoria and State of Illinois, the People of the State of Illinois, for the use of Peoria county, recovered against Thomas Bryant, Charles Ballance, the said Augustus O. Garrett, Luther Sears and John Caldwell a judgment for the sum of ten thousand dollars, which judgment was for the penalty in a certain official bond executed by said Bryant, then Sheriff of said Peoria county, as principal, and by the said Charles Ballance, Augustus O. Garrett, Luther Sears and John Caldwell as his, said Bryant's, sureties, wherein it was assigned that there was a breach of the covenant in said bond. That afterwards, on the 8th day of June, A. D. 1840, a writ of execution duly issued upon said judgment from said Court for the sum of four hundred and seventy dollars and thirty and one half cents, on assessment of damages previously made for the breach of said covenant in said bond, which said execution was duly returned by the Sheriff of said Peoria county on the 4th day of November, 1840, by order of plaintiff in execution.

That afterwards, on the 5th November, 1840, an alias writ of execution issued from said Court to the Sheriff of Peoria county, in due form of law, for the sum of five hundred and seventy and 30-100 dollars and thirty and 56-100 dollars costs.

And afterwards, on the 27th day of January 1842, the said last-named writ was returned by the Sheriff of Peoria county, endorsed on the back thereof with a

credit of one hundred and eighty-five dollars and eleven cents, which last-named sum was paid by said Bryant, the principal debtor, and with the further return thereon that said Sheriff had levied, December 21, 1840, upon the following described real estate, to-wit: the southwest quarter of section number 23, in township number eight north of range number seven, east of the 4th principal meridian, the northwest quarter of section number twelve, in township number eleven, north of range number seven (7), east of the 4th principal meridian, and the southeast quarter of section five, in township eight, north of range eight, east of the 4th principal meridian, and also that the said Sheriff had made no sale of said real estate levied on, for want of bidders.

That afterwards, on the 21st day of February, A. D. 1842, a writ of *venditioni exponas* fi. fa. issued again on said assessment of damages for the sum of two hundred and eighty-five dollars and nineteen cents principal sum, and the further sum of seventeen dollars and forty-three cents cost, which last named writ was on the 20th day of October, A. D., 1842, duly returned by the sheriff of Peoria county, no sale for want of bidders.

That afterwards on the 4th day of September, A. D., 1845, a writ of *venditioni exponas*, alias fi. fa., issued from said Circuit Court, directed to the sheriff of said Peoria county, for the sum of four hundred and seventy dollars and thirty cents damages, and the further sum of nineteen dollars and six and a half cents costs, being the whole sum assessed as aforesaid on said breach of covenant in said bond with costs then due on the same, which said last named writ was on the 20th day of December, 1845, returned by the sheriff of Peoria county, with substantially the following endorsement, thereon, to wit: "That I did, on the 20th day of December, 1845, in pursuance of the attached advertisements offer the within tracts of land for sale, severally, to the highest bidder, at the door of the Court House, Peoria county. No bid was made for either of said tracts, whereupon I there and then offered all three of said tracts together, and Charles Ballance bid two hundred and twenty-five dollars therefor, which was the highest bid offered. I struck off said tracts to said Ballance, and executed a certificate of purchase for the same."

Signed,

SMITH FRYE, Sheriff.

Complainants further show that upon sale by said sheriff of said three tracts of land a certificate of purchase was executed to said Charles Ballance in due form of law by said sheriff, that sometime after the expiration of two years from the time of said sheriff's sale, and after the time of redemption from said sale had expired, the said Charles Ballance assigned said certificate of purchase for said three tracts of land to the defendant herein, William S. Moss.

That afterwards on the 6th day of June, A. D., 1848, and since the filing of said original bill herein, the then sheriff of Peoria county upon presentation of

said certificate of purchase by said Moss, made and executed to said Moss as assignee of said Ballance, a sheriff's deed conveying to said Moss the mortgaged premises in said original bill mentioned, to wit: the south-east quarter of section number five, township eight north of range eight east of the fourth principal meridian, under which purchase the said Moss now claims title against complainants.

Complainants further show that the said Charles Ballance was a co-surety with the complainant Augustus O. Garrett on said official bond, and as such was a co-defendant with said Augustus O. Garrett in said suit, on which said judgment and assessment of damages was obtained, and had as aforesaid, and as such co-defendant and co-surety was equally bound and equally liable in equity to pay his contributive share of said assessments of damages with the said complainant, Augustus O. Garrett. And as such co-defendant and co-surety, complainants submit to this court whether said Ballance has by such purchase, or could in equity and justice purchase in the said south-east quarter of section five the property of complainants, and thereby acquire title to the same, as against complainants.

Complainants further show that the lien acquired upon said mortgaged premises by virtue of said judgment and assessment as aforesaid was so acquired in the month of October, A. D., 1839, at which time complainants owned said mortgaged premises, and was prior to the said mortgage given by complainants to said Moss, Pettengill and Bartlett, mentioned and set forth in said original bill, and was a subsisting lien upon the same for the amount due upon said assessments of damages, from and after the said month of October, 1839, up to and until the time of the said sale to said Ballance.

Complainants further show that at the time of the issuing of the said last-mentioned writ of venditioni exponas alias fi fa upon which said mortgaged premises were sold to said Ballance, there was only due upon said assessment a balance of about the sum of one hundred dollars, including the damages, interest and costs that the said Thomas Bryant, the principal debtor, had previously paid upon said assessment of damages the whole sum originally assessed, excepting the balance aforesaid. Complainants further show that the said last-mentioned alias writ of venditioni exponas was erroneously and illegally issued for the sum of four hundred and seventy and 30-100 dollars, and thirteen dollars and six and one half cents cost, when only about the sum of one hundred dollars was due upon the same as aforesaid, and that the said premises under and by virtue thereof was sold to said Ballance for said sum of two-hundred and twenty-five dollars, without any right as against complainant whatever, but on the contrary was void and of no effect, and the title acquired thereunder in like manner void, of all which the said Ballance and the said Moss had notice.

Complainants further show that at the time of said sale to Ballance under said

last-named writ of venditioni exponas the said Ballance was owner of the said southwest quarter of section 23, township 8 north, range 7 east, and also owned the said northwest quarter of section 12, township 11 north, range 7 east of the 4th principal meridian, and that the said two last-named tracts of land, together with the said mortgaged premises owned by said complainants, were altogether worth the sum of twelve thousand dollars. That the said tract of land owned by complainants was at the time of said sale to Ballance worth eight thousand dollars.

And your orators show that two of said three tracts belonging to said Ballance and one to your orators, and the same being bid off for a sum in gross, said Ballance acquired no title as against your orators by his said purchase, but in any event, said Ballance only acquired a lien on your orators' said land, to secure him for contribution from your orator, Augurtus O. Garrett, as his co-security. And your orator shows that said assessment has been since fully paid, whereby said lien is and has been satisfied and extinguished. And your orators show that said Moss had full notice at the time of the assignment of said certificate of purchase of the rights of said Ballance therein. That the said tracts of land were each of them susceptible of division and could have been conveniently sold in separate parcels by dividing the same into half-quarter or quarter sections each, and that if the same had been so offered and sold any one of the said quarter sections would have sold for more than enough to have paid off the said last-named writ of execution.

Complainants further show that one acre in the southeast corner of the southeast quarter of said section five would have sold for more than enough to have satisfied the said amount due on said last-mentioned writ of execution, had the said Smith Frye, Sheriff as aforesaid, offered for sale such quantity and description. But complainants show and charge that the said Sheriff, fraudulently as against the rights of complainants, did not nor would sell the said premises so levied upon as aforesaid, in separate parcels as aforesaid, as in justice and equity he was bound to do, but on the contrary sold the same en masse for the trivial sum of two hundred and twenty-five dollars to the said Ballance as aforesaid.

Complainants further show that at the time, and long before the time when said Ballance assigned his said certificate of purchase to Moss of the said south east quarter of section five, the said Ballance had been fully paid by said Bryant, all the money and interest on the same that ever said Ballance had been compelled to pay on account of said suretiship and on account of the assessment of damages against said Ballance and others, and that said Ballance at the time of said assignment of said certificate of purchase, had no other right, title, claim or demand either in law or equity, against the said premises of said complainants, except by virtue of said purchase as aforesaid.

All of which said Moss, at the time of receiving said certificate of purchase

had notice. Complainants therefore submit to this Honorable Court whether the said Moss, by virtue of such assignment of said certificate obtained any title whatever to said south east quarter of section five, as against complainants.

Complainants further show and charge that the said Moss, well knowing that the title to said mortgaged premises by him acquired by his purchase at the complainants' sale, under the mortgage in said original bill mentioned, and particularly set forth, was and is void.

Complainants further show that said Moss, Pettengill and Bartlett combining and confederating with said Charles Ballance, pretending by purchase from said Ballance his, said Ballance's certificate of purchase as aforesaid, under which he, said Moss might cover up and protect his said fraudulent purchase and title acquired through and under the decree of foreclosure, and commissioner's sale stated in said original bill, and that the said Moss now fraudulently pretends that it would be uselessness in this Court to set aside said commissioner's sale, under which he, said Moss claims title to said mortgaged premises, while at the same time he holds a good and perfect title to said premises by virtue of his purchase from said Ballance as aforesaid.

Complainants further show that on the 6th day of June, 1848, and since the filing of said original bill, the said Moss, Pettengill and Bartlett fraudulently combining and confederating as aforesaid, for the purpose of carrying out the said fraudulent purposes, the said Moss and his wife executed and delivered to said William Russell by the procurement of said Pettengill and Bartlett a deed conveying to said Russell all that part of said mortgaged premises lying north of the Peoria and Farmington road, and which part had been previously sold by said Pettengill and Bartlett, as stated in said original bill.

Complainants further show that the said title intended to be conveyed by said last mentioned deed to William Russell by said Moss and wife, was the pretended title acquired by said Moss through the purchase of said premises by Charles Ballance as aforesaid, and that the said pretended claim so purchased by said Russell, was and is void and of no effect, as against complainants.

And they further show and charge that the said Moss, Bartlett and Pettengill and William Russell, fraudulently contriving to carry out said Moss, Pettengill and Bartlett's fraudulent and corrupt agreement, procured to be made, and said Moss did make said last named deed of conveyance to said Russell for the purpose of covering up and protecting the fraudulent title previously conveyed to said Russell by said Pettengill and Bartlett of that part of said premises lying north of said Peoria and Farmington road as stated in said original bill, of all which said Russell had notice.

All of which acting and doings and pretences are contrary to equity and good conscience, and tend to injure and wrong complainants.

And forasmuch as complainants and each of them, are remediless at law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable.

To the end therefore, that the said William S. Moss, Moses Pettengill, Amos P. Bartlett and William Russell and their confederates, may by their several and respective answers, full, true and perfect answers make to all and singular the matters and things in this supplemental bill stated and charged, (complainants hereby waiving pursuant to statute in such case made and provided, the said answers of them or either of them being made under oath) and that they shall so answer not only to the best of their respective knowledge and remembrance, but also to the best of their several and respective hearsay, information and belief. And that upon a fair hearing of the said original bill, and the hearing of this supplemental bill, by a decree of this honorable court, the said sale made by the said Halsey O. Merriman, commissioner as aforesaid be set aside as in the prayer of said original bill prayed, and the premises again be exposed to sale for the satisfaction of the sum due the said Moss as mentioned in his said decree, together with interest thereon up to the time of sale thereof, for that purpose.

And in like manner, the said sale made by the said William Mitchell, commissioner, as aforesaid, be set aside and the said mortgaged premises again fairly exposed to sale in like manner, to satisfy the amount due the said Pettengill and Bartlett on their said decree of foreclosure, and interest thereon up to the time of sale for that purpose, hereafter to be made, and this notwithstanding the said sale to the said Russell, whose title to said premises complainants prays may be subjected, by decrees of this court, to all the equities existing in favor of complainants against the said Pettengill and Bartlett, and that the said conveyance from said Pettengill and Bartlett to said Russell may be taken and considered as void as against complainants. And that the said deed from said sheriff of Peoria county to said Moss, executed upon said certificate of purchase, given to said Ballance, of said mortgaged premises may be set aside, and as against complainants considered void. And that the said deed made by said Moss and wife to said William Russell of that part of said premises therein deeded be in like manner set aside and considered as against complainants void.

And further, that the said sale of the said mortgaged premises made by the sheriff of Peoria county to said Charles Ballance, under and by virtue of said writ of venditioni exeponas, alias fi fa, be in like manner by decree of this court set aside and as against complainants considered void and of no effect. And the complainants have such other and further relief as may be just or that the nature of their case may require.

May it please your Honor to grant unto complainants a writ of summons in chancery, returnable according to law, commanding the said William S. Moss, Moses Pettengill and Amos P. Bartlett, and William Russell, by a certain day,

to be there fixed, to appear before said court and there and then answer all and singular the matters and things aforesaid in this supplemental bill contained, and then and there abide such order and decree as shall be agreeable to equity, and complainants will pray &c.

MANNING, LANDER & JOHNSON,
Solicitors for Complainants.

ANSWER OF PETTENGILL AND BARTLETT.

The answer of Moses Pettengill and Amos P. Bartlett, to the complainant's original amended and supplemental bill, filed in this cause; the said defendants answering, say that the answers of William Russell and William S. Moss, filed in this cause, are in all respects true and correct, and they refer to and adopt the same as their answer in this cause to the said original bill, and for answer to the said amended and supplementary bill, the said defendants, Moss, Pettengill and Bartlett and Russell, answering say, that all the charges and allegations in the same contained, not admitted in the answers of the said Moss and Russell to the original bill filed in this cause, are untrue, and they deny each and every allegation therein contained, and having fully answered, they pray to be dismissed with their costs.

PURPLE for Deft's.

REPLICATION.

The replication of the said complainants to the answer of the said defendants to the original, supplemental and amended bill of said complainants, which answer was filed in said cause on the 3d day of October, A. D., 1854, and the amended answer of Wm. S. Moss, filed June 9th, A. D. 1848.

These repliants now and at all times hereafter, saving and reserving all right of exception to the manifest errors, evasions, uncertainties and insufficiencies in said answers, for replication thereto say that the said answers are untrue in every respect and particular, and that notwithstanding said answers the said complainants' original, supplemental and amended bills are true, and that they, said complainants will ever sustain and prove them true, whensoever and wheresoever this honorable court shall direct, and they pray as above in their said bills they have prayed.

MANNING, LANDER et. al. for Complainants.

AUGUSTUS O. GARRETT AND MARY G. GARRETT }
vs.
WILLIAM S. MOSS, AND OTHERS. }

And now comes the said complainant, Augustus O. Garrett, and by leave of the Court for that purpose had and obtained, amends the said bill heretofore filed in said cause, in manner following, together with the new parties complainant hereafter mentioned. Augustus O. Garrett aforesaid, Augustus G. Garrett, a minor,

who appears and complains by his next friend, Augustus O. Garrett and Mary S. Garrett, further show unto your honor that on or about the 25th day of January, 1856, the said Mary G. Garrett died, leaving as her only heirs at law, the said Augustus G. Garrett and Mary S. Garrett, both her children, and that your orator, Augustus O. Garrett, being the father of the said Augustus G. and Mary S. born in lawful wedlock, as the offspring of the said Augustus O. and Mary G. Garrett, your orator, the said Augustus O. hath become and is tenant by the curtesy of the real estate of the said Mary G. Garrett, for and during the term of the natural life of the said Augustus O. Garrett.

And your orators pray that said Augustus G., by his said next friend, and the said Mary S. in her own name may be made parties complainant hereto, as representatives of the rights of the said Mary G. G., deceased, and your orators pray as above they have prayed.

MANNING et. al. Solicitors for Complainants.

And now afterwards to wit, on said 8th day of said term the following proceeding was had in said entitled cause, to wit:

AUGUSTUS O. GARRETT & MARY G. GARRETT,	} <i>In Chancery.</i>
vs.	
WILLIAM S. MOSS, AMOS P. BARTLETT, MOSES	
PETTENGILL, WILLIAM RUSSELL.	

Now on this day comes again the said complainant, Augustus O. Garrett, and on his motion leave is granted to make new parties complainants to the bills herein filed, and this cause is continued.

DEPOSITIONS.

DEPOSITIONS OF JOHN HAMLIN, ASAHIEL HALE AND WILLIAM HALE.

The said Asahiel Hale, being first duly sworn according to law, deposes and says in answer to the several interrogatories directed to be put by the said party complainant as follows, to-wit:

Interrogatory 1st.—What is your name, age and residence, and are you acquainted with the parties to this suit, or either of them, and if acquainted, how long have you been acquainted with them, or either of them?

My name is Asahiel Hale, aged sixty-two years, residence Peoria, Peoria county, Illinois. I am acquainted with them all, but can't say how long. Have known Augustus O. Garrett ever since 1833. I have known William S. Moss ever since 1837 or 1838. I have known them all about that length of time.

Int. 2d.—Are you acquainted with the localities of the southeast quarter of section five, in township eight north base line, in range eight east 4th principal me-

ridian, State of Illinois? If yea, state how long you have known said tract of land, and describe its location relative to the city of Peoria.

I have known said tract of land ever since November, A. D. 1831. It is one half mile west and half mile north of the old town of Peoria.

Int. 3d.—Do you or not know about what the value of said tract of land was on or about the 10th day of July, 1843? If yea, state as near as you can about its value per acre at said time, and also your means of knowledge on the subject.

Ans.—Said land was worth at time from thirty to forty dollars per acre. My knowledge is based on the price of my own land adjoining said land, and between said land and the city of Peoria, which I sold at fifty dollars per acre in the year of 1842 or 1843. Said ground I sold in lots of one to six acres each.

CROSS-EXAMINATION.

Interrogatory 1st.—Are you acquainted with the location and quality of the land of the southwest quarter of said section in said township? If yea, state the value of said land in 1842 or 1843.

Ans.—I think said land was worth in 1842 or 1843 about twenty-five dollars per acre.

Int. 2d.—Do you consider said land of the same quality as the other land spoken of in soil?

Ans.—I consider it of as good quality in soil as the first land spoken of.

Int. 3d.—Were you acquainted with the east half of northwest quarter of said section and township in 1842 or 1843? If yea, state its value and quality at that time.

Ans.—I Considered it worth about that time ten dollars per acre.

Int. 4th.—What was the value at that time of the improvements on last-named tract of land?

Ans.—The improvements at that time were worth about five hundred dollars.

Int. 5th.—What was the value of northeast quarter of section four in said township at that time?

Ans.—I think at that time that land was worth about twenty dollars per acre.

Int. 6th.—What was the value of the southwest of three in said township in 1842 and 1843?

Ans.—I think it was worth about twenty dollars per acre at that time.

Int. 7th.—What was its location as to the old town of Peoria?

Ans.—About one-half mile east.

ASAHEL HALE.

The said William Hale being first duly sworn according to law, deposes and says, in answer to the several interrogatories directed to be put by the said complainant as follows, to wit:

Interrogatory 1st.—What is your name, age, residence, and are you acquainted with the parties to this suit, if yea, how long have you known them, and how long have you resided in Peoria?

Ans.—My name is William Hale, aged seventy years, residence Peoria, in Peoria county, state of Illinois. I have known Augustus Garrett, and all the parties to this suit, from twelve to fifteen years. I have resided in Peoria since 1836.

Int. 2d.—Are you acquainted with the location of the south-east quarter of section five, in township eight north, eight east, of fourth meridian, state of Illinois? If yea, state how long you have known said tract of land, and describe its relative location to the city of Peoria.

Ans.—I have known it since the fall of 1835, and it comes one half a mile west with the old town of Peoria.

Int. 3d.—Do you or not know about what the value of said tract of land was on or about the 10th day of July, 1843? If yea, state its value at that time, and state also your means of knowledge on the subject.

Ans.—About that time, I think, it was worth from thirty-five to forty dollars per acre. My means of knowing its value is, my residing here at that time, and from what land sold for before and after that time.

CROSS-EXAMINATION.

Interrogatory 1st.—Are you acquainted with the south-west and north-west quarters of same section in same township? If yea, state their value on or about the 10th July, 1843.

Ans.—About fifteen or twenty dollars per acre.

Int. 2d.—What do you think was the value of the south-west quarter of three in said township in 1843?

Ans.—I think about that time it was worth about from fifteen to twenty dollars per acre.

Int. 3d.—What is the distance from said last named land to the old town of Peoria?

Ans.—About one half mile east.

Int. 4.—What do you think was the value of the north-east quarter section four in said township at that time?

Ans.—I think at that time it was worth about fifteen dollars per acre.

Int. 5.—How far is the last named tract of land from the old town of Peoria?

Ans.—One half mile north of the old town.

WM. HALE.

The said John Hamlin being first duly sworn according to law, deposes and says, in answer to the several interrogatories directed to be put by the said complainant, as follows, to wit:

Interrogatory 1st.—What is your name, age, and residence, and are you acquainted with the parties to this suit? If yea, how long have you known them, and how long have you resided in Peoria?

Ans.—John Hamlin is my name, my age fifty-three, I reside in Peoria, in the county of Peoria, state of Illinois. I have resided in Peoria thirty-two years.

Int. 2d.—Are you acquainted with the south-east quarter of section five, in township eight north, eight east, 4th principal meridian, state of Illinois? If yea, state how long you have known said tract of land, and describe its location relative to Peoria.

Ans.—I have known it thirty years, it is located one half mile west of the north-west corner of the old town of Peoria, on the Bluffs west and north of Peoria.

Int. 3d.—State what the location and quality of said land is in comparison of other lands around the city of Peoria and the same distance therefrom, and whether said land is well located for farming purposes.

Ans.—It is located on the Bluff, it is of a rich black soil, well adapted to farming purposes, and I think a little better than any other entire quarter the same distance from Peoria.

Int. 4th.—What in your opinion was the value of said land about the 10th day of July, A. D., 1843? and state your means of knowledge on the subject.

Ans.—I think the value of said land was about from thirty to forty dollars per

acre at that time Having but little means of knowledge of the value of land at that time, not dealing in lands myself.

CROSS-INTERROGATORIES.

Interrogatory 1st.—Did you know of any sales of land within two or three miles of Peoria at that time, and what did they sell for, and what were the lands?

Ans.—I do not recollect any sales.

Int. 2d.—Do you know the north-west and south-west of five, in same township now owned by T. S. Bradley? If yea, what were they worth in 1843?

Ans.—I think it was worth from ten to fifteen dollars per acre, on or about the 10th July, 1843.

Int. 3d.—What is the difference in value between the south-east and south-west quarter of section five in said township

Ans.—On account of the location of the south-east quarter, I think it worth, at that time, double in value to the southwest quarter.

Int. 4th. Do you know the lands that William S. Moss purchased of Aquilla Wren in 1844, now owned by Smith Frye? If yea, was the same worth more or less then than the said south-east quarter in said section five in said township?

Ans. I know it, and I think it was at that time worth less than the said south-east of five, and was worth from twenty to twenty-five dollars per acre at that time.

Int. 5th. Which was the furthest from the Court House in Peoria?

Ans. The land now owned by Smith Frye is a little nearest to the Court House.

Int. 6th. Were any of said lands at that time valuable for any other purposes than for farming?

Ans. I think they were not.

Int. 7th. Did Augustus O. Garrett, plaintiff, say to you that William S. Moss, defendant, had given him one year to redeem said land?

Ans.—I do not recollect of his telling me so.

Int. 8th.—At the time Moss deeded the spring on said land to the Peoria Water Company, did not said Garrett receive pay for said spring himself at the time said spring and land was deeded to said Peoria Water Company by Moss, for two hundred and fifty dollars in stock of said Company?

Ans.—I have understood from Mr. Garrett and others belonging to said Company that Mr. Garrett did receive two hundred and fifty dollars in stock of said Company for said spring.

Int. 9th.—Was not money very scarce in 1843, about the time of sale of the Garrett land, being the said land aforesaid.

Ans.—I think money was not plenty at that time.

Int. 10th.—Do you know of any person having money at that time who would have given more for the land at that time than it sold for.

Ans.—I did not know of any person.

JNO. HAMLIN.

DEPOSITION OF JOSHUA P. HOTCHKISS.

Deposition of Joshua P. Hotchkiss, taken before James M. Cunningham, a Justice of the Peace, in and for the County of Peoria, on the 3d day of April 1854, at the office of J. P. Hotchkiss, in said city of Peoria, in pursuance of the next notice and agreement, and to be used in evidence in certain cause now pending in the circuit court of Tazwell Co., in the State of Illinois, wherein Augustus O. Garrett and Mary G. Garrett are complainants, and William S. Moss, Moses Pettengill, Amos P. Bartlett and Wm. Russell, defendants.

J. P. Hotchkiss sworn and examined.

Interrogatory 1.—Are you acquainted with the parties to this suit, Augustus O. Garrett and Mary G. Garrett, his wife, complainants, and William S. Moss, Moses Pettengill, Amos P. Bartlett and Wm. Russell, defendants, and if so how long have you been acquainted with them severally?

Ans. 1.—I was acquainted with all the parties mentioned in the interrogatory, except Wm. S. Moss, Mary G. Garrett, and William Russell, in 1843, and was not personally acquainted with them till 1844 or afterwards.

Int. 2.—Were you acquainted with William Mitchell and Halsey O. Merriman both of Peoria during their lives, and if so, when did you become acquainted with them severally?

Ans. 2.—I was acquainted with both Wm. Mitchell and Halsey O. Merriman during their lives. I became acquainted with Mr. Merriman in April, 1843; I cannot say exactly when I became acquainted with Mr. Mitchell.

Int. 3.—Do you know anything in regard to a sale of the south east quarter of section five in township eight north, range eight east of the 4th principal meridian, or any part thereof, made at the Court House in the city of Peoria, made by

either said Mitchell or said Merriman under a decree against said Garrett, which sale was made on or about the 10th day of July, A. D., 1843?

Ans. 3.—I do know that said land was advertised for sale. I was not present at the sale, but knew from report that it was sold. It was advertised to be sold by Messrs. Merriman and Mitchell, as commissioners; cannot say whether there was one or two advertisements.

Int. 4.—As whose property was it advertised to be sold? Was it a sale by virtue of any decree of court, or process of law, or otherwise? In whose favor was it to be sold?

Ans. 4. I understood it to be sold as the property of Mr. Garrett. It was a sale by process of law, and was sold in favor of Wm. S. Moss, Moses Pettengill and Amos P. Bartlett, as I understood.

Int. 5. Did you have any conversation with any of the parties or either of said Commissioners before the said sale in regard to becoming a purchaser at said sale, or in regard to said sale in any manner? If so, state when and where said conversation took place, and what it was; and state any other thing you know in regard to the matter in controversy in this cause.

[The above interrogatory is objected to by the counsel of the defendants, so far as the same relates to any conversations with complainants or either of the commissioners.]

Ans. 5. I had conversations with Mr. Garrett, Bartlett, Merriman, and, I suppose, Mr. Mitchell; with Bartlett a short time before the sale, at his place of business, I had a conversation. I went to Mr. Bartlett and asked him if the sale would take place. He answered that he thought the matter would be arranged, but that I had better go and see the commissioner. This was a day or two previous to the sale. After that immediately I went and saw Mr. Merriman. I asked Mr. Merriman if the sale would take place as advertized, and received for answer from Mr. Merriman that it probably would not. I said to Mr. Merriman I wished to be sure about when the sale would take place, as it would be difficult for me to be there except for the express purpose of making purchase. I told Mr. Merriman I was desirous of purchasing property, and that if that sale was made I would bid upon it, or that I intended to bid upon it. He said in reply that there was no probability that the sale would be made, but that if it was made I should be informed of it, that is if the sale went on he would let me know of it. A very short time previous to the sale, I think early in the day of the sale, I called again at Mr. Merriman's office, he was absent, and I went from there to the Court House to make inquiry of the other commissioner in reference to said sale, there learned from a person I supposed to be the other commissioner that there probably would be no sale. I think I called on Mr. Bartlett and informed

him that I wanted to purchase the land referred to. This was when I called upon him at his place of business referred to in this deposition. From inquiries I made, I believe the man I saw at the Court House was the other commissioner, Mr. Mitchell. The sale took place in the early part of July, 1843. I had at that time a place of business in Peoria, and believe I was there on that day. Mr. Merriman must have known where my place of business was. I received no notice that the sale was going on, and did not know of it till after it was over. I had from two to five thousand dollars at my command on that day for the purpose of purchasing that or any other property I found desirable. I intended to purchase that property if it sold for a price that pleased me. I had examined the property; cannot say how much I would have given for said land on the day of sale. I knew very little about the price of property in this county, and would have been governed very much by the occurrences that took place on the day of sale. I desired to purchase that property because it pleased me.

CROSS-INTERROGATORIES.

Int. 1. When did Mr. Mitchell die?

Ans. 1. I think he died in 1850. I knew him three or four or five years before he died.

Int. 2. From having known him that length of time have you any recollection he was the man you talked with as commissioner at the Court House?

Ans. 2.—I cannot state positively. I don't recollect the personal appearance of the man I conversed with. I cannot say whether it was on the day of sale or a short time previous to the sale that I conversed with Bartlett and the commissioner in relation to the sale.

Int. 3.—If you had been at the sale, can you state whether you would have bid at all or not on the land?

Ans. 3.—That would have depended upon the price at which it started.

Int. 4.—Did you know personally anything about the title to the land?

Ans. 4.—I did not.

Int. 5.—If you had known that there was a judgment against Augustus O. Garrett for the sum of ten thousand dollars, as one of the securities of Thomas Bryant, Sheriff of Peoria county, which was a lien, prior to the mortgages on which the land was sold, would you have bid anything on the land at the sale?

Ans. 5.—Not unless satisfied that arrangements would be made by which the land in question would not be taken for said judgment?

Int. 6.—Did you intend to purchase that property unless you could get it at a reasonable price,

Ans. 6.—Not unless I could get it at what I considered a reasonable price. I had not made up my mind what that reasonable price would be.

J. P. HOTCHKISS.

DEPOSITION OF ENOCH P. SLOAN.

Enoch P. Sloan being first duly sworn, doth depose and say in answer to the several interrogatories as follows, to wit :

Int. 1.—Are you acquainted with the parties to this suit ?

Ans. 1.—I am acquainted with Augustus O. Garrett, Wm. S. Moss, Moses Pet-tengill, and Amos P. Bartlett.

Int. 2.—What is your trade and occupation, and what was it during the months of June and July, A. D., 1843, and in what office did you work during said two months ?

Ans. 2.—I am a printer by trade, and am now engaged in publishing the "Peoria Weekly Democratic Press." During the months of June and July, A. D. 1843, I was a jour. printer, and worked in the office of "Peoria Democratic Press."

Int. 3.—Were you acquainted with the business in the said office, the days of publication of said "Democratic Press," and the rules in regard to publishing notices in said newspaper during all said two months ? If so, state them.

Ans. 3.—The "Peoria Democratic Press" was a newspaper, and did such business as is common among such papers, such as publishing advertisements, the news of the day and miscellaneous matter. It was published on Wednesday of each week. The rule in publishing advertisements is to follow copy as near as practicable. Such a rule has always been observed in that office, to the best of my knowledge.

Int. 4.—Will you look at the newspaper now presented to you and state whether the same is a genuine number of said newspaper, and attach the same to your deposition ?

Ans. 5.—The newspaper hereto attached is a genuine number of the "Peoria Democratic Press."

Int. 5.—Will you examine the two notices found on the 2d page of the newspaper now presented to you, the one signed by "Halsey O. Merriman, Commissioner," dated June 17, A. D. 1843, and June 21, 1843, the other signed "William Mitchell, Commissioner," dated 19th day of June, A. D. 1843, and June 21, 1843,

and state when they were first inserted and published in said newspaper, and why said notices each bear different dates, and which is the date of the first publication?

Ans.—The Notices referred to were first published on the 21st day of June, 1843, in said paper. The date in the body of the notices is understood by the compositor to be the day on which the advertisement was written. The last date is the publisher's, put there for his own convenience, and is not considered as a part of the notice. It is merely a guide to tell when the notice was first published, but that the publisher is enabled to certify with certainty when the notice first appeared in his paper.

Int. 6.—State whether there were any other notices except those in said newspaper shown you, of the sales mentioned in said notices published in said "Democratic Press" between the 14th day of June, A. D. 1843, and the tenth day of July, A. D. 1843, for the term of three successive insertions, once in each week.

Ans.—I am not aware of there being any other notices published in that paper of the character described by this interrogatory.

Int. 7 —If there was any such publications of such other notice in the "Democratic Press," as mentioned in the last interrogatory, would not such other notice necessarily be in the newspaper exhibited to you?

Ans.—A notice published on the 14th day of June, 1843, that had to be published three weeks successively, once in each week, ought to appear in the issue of the 21st, also in the issue of the 28th, (the date of the paper attached to the answer of 4th question.)

[The foregoing interrogatories and the answers thereto are objected to by the defendants, because the interrogatories are leading and the answers not responsive.]

CROSS-EXAMINATION.

Interrogatory 1.—Have you any knowledge whether the notices referred to by you were published in the "Democratic Press" more than week or not?

Ans. I have not.

Int. 2d. Have you made any examination of other papers of the "Peoria Democratic Press," between the 14th of June and the tenth of July, A. D., 1843, to ascertain whether any such publications had been made or not?

Ans. I have not.

Int. 3d. What do you mean by saying in answer to the 7th interrogatory, that

a notice published on the 14 of June, 1843, that had to be published three weeks successively, once in each week, ought to appear in the issue of the 21st and 28th of that paper? Do you mean to say that if there were other publications of the same notice in other papers of different weeks, that such other notices would necessarily appear in the paper of the date of the 28th of June, filed with your description in this cause?

Ans. What I mean to say is this: The "Peoria Democratic Press" was published on Wednesday of each week, and that the 14th of June 1843, being Wednesday, a notice published on that day that had to receive three publications successively in that paper would appear on the 21st and also on the 28th. I do not mean to say that other publications of the same notice in other papers of different weeks, that such other notices would necessarily appear in the paper of the date of the 28th of June, filed with my deposition in this cause.

ENOCH P. SLOAN.

DEPOSITION OF CHARLES H. RUGGLES.

Charles H. Ruggles being first duly sworn doth depose and say, in answer to the several interrogatories, as follows, to wit:

Int. 1st. What is your name and residence, and how long have you resided in Peoria?

Ans. My name is C. H. Ruggles, lived in Peoria since about eight years.

Int. 2d. Are you and were on the 10th of July, 1843, acquainted with the location and value of the south-east quarter of section five, township eight, north range, eight east?

Ans. Yes I am.

Int. 3d. What was the value per acre of the south-east quarter of the south-east quarter of said section five, on or about the 10th day of July, 1843?

Ans. From one hundred to hundred and twenty-five dollars per acre.

Int. 4th. Answer the same question as to south-west quarter of said south-east quarter of said section five, on or about the 10th of July, 1843.

Ans. From fifty to seventy dollars per acre.

Int. 5th. What was the value of the north half of said quarter section five, on or about the 10th of July, 1843.

Ans. From fifty to seventy-five dollars per acre.

CHARLES H. RUGGLES.

CROSS-EXAMINATION OF CHARLES H. RUGGLES.

Int 1st. Where did you live in July, 1843?

Ans. In St. Louis, Mo. I owned land at that time in this town. I was often up here, and was as familiar with the price of land at that time as I am now.

Int. 2.—Did you know of any land being sold near Peoria, or within two miles thereof in the year 1843, and if so, what land, to whom was it sold, and for what price?

Ans.—There was land changing hands all the time, but I could not swear that land had been sold at that particular time.

Int. 3.—What was the value of the northeast quarter of section eight, in the same township and range, in July, 1843.

Ans.—Not knowing the land by the description here given, and no map being on hand, I am not sure where the quarter lays.

Int. 4.—Do you know whether money was plenty or scarce about Peoria, and did you know of any persons who had money to buy land with in July, 1843?

Ans.—Money was scarce. I knew of a person who had money to buy land with in the summer of said year.

CHAS. H. RUGGLES.

DEPOSITION OF WM. H. ELLIS.

William H Ellis, being first duly sworn, doth depose and say in answer to the several interrogatories as follows, to wit:

Interrogatory 1.—Are you acquainted with the parties to this suit?

Ans.—I am acquainted with all. I have been acquainted with all of them since about seventeen years.

Int. 2.—Are you and were you on the tenth day of July, 1843, acquainted with the location and value of the southeast quarter of section five, in township eight north, range eight east of the fourth principal meridian?

Ans.—Yes, I lived on it at that time.

Int. 3.—What was the value for the acre of the southeast quarter of said southeast quarter of said section five on said tenth day of July, A. D. 1843.

Ans.—I cannot say; but if it had been mine I would not have sold it for less than one hundred dollars per acre, which I consider it was worth.

Int. 4.—What was the value of the southwest quarter of said southeast quarter of section five on the tenth day of July, 1843?

Ans. I think sixty dollars per acre.

Int. 5. What was the value per acre of the north half of said southeast quarter of said section five on the tenth day of July, 1843.

Ans. I think it was worth fifty dollars per acre. I wanted to buy the land mentioned in this interrogatory at that time. I should have paid fifty dollars per acre if I could have got the money to pay for it, if I could not have got it cheaper.

Int. 6. Was the southeast quarter of said southeast quarter of said section five valuable for any purpose except farming purpose on said tenth day of July, 1843, and if so in what did its other value consist?

Ans. It was valuable for building lots. There was a good spring on it.

Int. 7. State whether or not lots for the purpose of residences on the bluff were valuable on or about the tenth day of July, 1843.

Ans. I lived on the Bluff myself, and considered them valuable for such purpose.

CROSS-EXAMINATION.

Int. 1st. Did you know the north-east quarter of section eight, in the same township and range, in July, 1843, and what was its value?

Ans. I did know it, I don't think it was worth over forty dollars per acre.

Int. 2d. Which piece of land lies nearest to the main public square in Peoria?

Ans. The north-east quarter of section eight.

Int. 3d. What, in your opinion, was the west half of said section five worth in July, 1843?

Ans. I do not think it was worth over from fifteen to twenty dollars per acre.

Int. 4th. What was the south-west quarter of said section five worth in July 1843?

Ans. I think it was worth about twenty-five dollars per acre.

Int. 5. How much was the south-east quarter of said section five worth in July, 1843?

Ans. I think about fifty dollars per acre.

Int. 6th. Did you know of any land being sold lying within one mile of Peoria, for cash, in the year 1843?

Ans. I do not know of any such land being sold in that year.

Int. 7th. Was not money very scarce at that time? and were there any cash buyers of land in the county to your knowledge at that time?

Ans. It was. There were no cash buyers of land in the county at that time to my knowledge.

Int. 8th. Do you believe that the south-east quarter of section five could have been sold at that time for cash at twenty dollars per acre?

Ans. I do not know that it could have been sold at ten dollars per acre. I do not know of any person that had money to buy with.

Int. 9th. Do you know that Moses Pettengill and Amos P. Bartlett claimed to be the owners of the north fifty-two acres of the south-east quarter of section five aforesaid, in 1843?

Ans. I heard Bartlett himself say that they did own those acres. I understood from some person that they wanted to sell the land.

Int. 10th. Did you ever make any application to them to purchase it?

Ans. I do not think that I ever did.

Int. 11th. Why did you not?

Ans. I had no money to pay for it.

W. H. ELLIS.

DEPOSITION OF GEO. C. McFADDEN.

Geo. C. McFadden, being first duly sworn, doth depose and say in answer to the several interrogatories as follows, to wit:

Interrogatory 1. Are you acquainted with the parties to this suit? What is the place of your residence? and how long have you lived in Peoria?

Ans. I lived in Peoria since 1835. I know all the parties.

Int. 2. State whether or not you, as the acting Surveyor for Peoria county during the months of June and July, 1843, and whether you surveyed the south-

east quarter of section five, township eight north, range eight east, in Peoria county, and at what time, at whose instance, and in what manner you surveyed the same; and also attach a plat of said survey to this requisition.

Ans. I was surveyor of Peoria county in June and July, 1843, I surveyed said land some. I am pretty certain it was before the sale on the mortgages. I think it was at the instance of Moss and Bartlett; they were both present at the time. It was divided by Peoria and Farmington road.

Int. 3. State whether or not said tract of land at the time of said survey was susceptible of division by running a direct line through the centre of the same north and south.

Ans. It could have been divided in that manner north and south just as well as east and west. I do not know that the land would have sold any better by running the line from north to south than it did as it was divided.

CROSS-EXAMINATION.

Interrogatory 1. Can you state with any certainty whether you made that survey before or after the sale of that land?

Ans. From a charge in my books against Capt. Moss, I should think it was after the sale.

Int. 2. Did you know of any land being sold for cash near Peoria in 1843?

Ans. I do not recollect. Think money was pretty scarce at that time.

Int. 3. Which in your judgment was worth at that time the most money,—the the southeast quarter of section five or the northeast quarter of section eight north, eight east, in Peoria county, and how much was the difference, if any, per acre?

Ans. I do not think there was much difference at that time.

G. C. McFADDEN.

DEPOSITION OF DENNIS BLAKELEY.

Dennis Blakeley, being first duly sworn, doth depose and say in answer to the several interrogatories as follows, to wit:

Interrogatory 1. What is your age and residence, and are you acquainted with the parties to this suit?

Ans. I am sixty-two years old, have lived in Peoria since 1836, and am acquainted with the parties.

Int. 2. State whether or not you ever had a conversation with William Russell (one of said defendants) in regard to the purchase of a part of the southeast quarter of section five, in township eight north of range east, from said Pettengill and Bartlett, or either of them, and whether said conversation was before or after such purchase, and state all of such conversation, as far as you can recollect.

Ans. Wm. Russell come into my office some ten or more years ago and told me he talked of buying the back eighty of the Garrett quarter, as it was called, lying on the Bluff. I asked him of whom, he said of Pettengill and Bartlett; I told him he had better not buy it, for there was some defect in the title; he said Pettengill and Bartlett would warrant and defend; I told him that would not be good, as he would lose his improvements, and only get his money back with interest. A few days afterwards he came in again and said he had been talking with Pettengill and Bartlett about that land on the Bluff, and they told him they would make the title good, and if they did not they would give him twelve per cent. for the use of his money. And it was in the bank (I think) in New York, and drawing only six per cent., and they wanted to use it in New York city. I told him to let it remain there for there was a dispute about the land, the sale was illegal, and he could not hold it. He said Bartlett told him they would get the title perfected, and that Garrett could not do anything about it. I told him the papers, or something about the sale was wrong; I do not even recollect what the error or defect was. He said that he would take it anyhow, because Pettengill and Bartlett would be good enough to him. That is, as near as I can recollect, the conversation at present. When Russell came into the office he said that he talked of buying the said tract of land, and asked me, "What do you think about it?" and that is the way the conversation commenced.

DENNIS BLAKELEY.

CROSS-EXAMINATION.

Int. 1st. What is and has been your occupation for the last ten years? Have you ever studied or practiced law? Did he consult you as a lawyer or as a judge of law? and did you ever examine the title to said real estate before said conversation or afterwards?

Ans. Justice of the peace in Peoria; I have never studied or practiced law, except in my practice as justice of the peace; I do not know in what capacity he consulted me; I never examined the title of said real estate before said conversation nor afterwards.

Not being able to complete the taking of the depositions of all the witnesses, by reason that they could not be found, I adjourn the further taking of the same till the 25th of August, A. D., 1854, then to be continued at the same place, and between the same hours, mentioned in the annexed notice.

J. G. LUEDER, N. P.

Pursuant to the adjournment as above stated, on the 25th day of August, A. D., 1854, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, at the office of Messrs. Manning and Merriman, I continued the taking of said depositions as follows, viz :

DEPOSITION OF AMOS STEVENS.

Amos Stevens being first duly sworn doth depose and say, in answer to the several interrogatories, as follows, to wit :

Int. 1st. Were you in July, 1843, acquainted with the location and value of the south-east quarter of section No. five, township eight north, range eight east, in Peoria county? If yea, state what in your opinion was the value per acre of the south-east quarter of said south-east quarter of section five at that time.

Ans. I have been acquainted with that land since 1833, and think that the south-east quarter of said quarter was worth one hundred dollars per acre in July, 1843.

Int. 2d. What was the value of the south-west quarter of said south-east quarter of section five in July, 1843?

Ans. Forty dollars per acre.

Int. 3d. What was the value per acre of the north half of said south-east quarter of section five in July, 1843?

Ans. Forty dollars per acre as then improved.

Int. 4th. State whether or not the south-east quarter of said south-east quarter of section five was valuable for any other purposes excepting for farming purposes, in July, 1843, and in what did such other value consist?

Ans. It was valuable for its elevated spring, and for its delightful building spots along the brow of the Bluff.

Int. 5th. State whether or not lots on the brow of the Bluff, situated near to and adjoining said south-east quarter of the south-east quarter of section five in July, 1843, were then laid off and built upon for the purpose of residences.

Ans. There were three or four houses built at that time on lots a little north-east, and occupied as residences.

Int. 6th. How, in your opinion, would the said south-east quarter of said south-east quarter of section five compare in July, 1843, with the adjoining Bluff lands in point of location and value?

Ans. In location the most inviting and pleasant, and in value higher than any equal amount of Bluff land in the vicinity of Peoria.

Int. 7th. State whether or not you ever introduced one Joshua P. Hotchkiss to said Augustus O. Garrett as a purchaser for said south-east quarter of section five or any part thereof. And if yea, at what time did you so introduce him? whether such introduction was before or after the commissioner's sale of said tract of land?

Ans. Yes. Previous to the commissioner's sale of that land I introduced Mr. J. P. Hotchkiss to Mr. Garrett as a purchaser of his interest in the south-east quarter of section five, eight north, eight east, Peoria county.

Int. 8th. State whether or not you was engaged in the employ of said Hotchkiss in July, 1843, and in what capacity you was employed. And state whether the said Hotchkiss in July, 1843, wanted to purchase said tract of land and what part of the same did he wish to purchase, and for what purpose. And state whether the said Hotchkiss at that time had money for the purpose of purchasing said land, and to the best of your knowledge what amount of money he had for that purpose?

Ans. I was then in the employ of Mr. Hotchkiss as clerk, and knew he wished to purchase for a permanent residence the land stated in my 7th answer, and that he had funds to the amount of four or five thousand dollars for that purpose.

CROSS-EXAMINATION.

Int. 1st. What makes you think the south-east quarter of the south-east quarter of section five, eight north, eight east, was worth \$100 per acre in July, 1843?

Ans. Because I previously paid \$100 myself for land less eligibly situated than the said land. It was the general estimate of the value for land situated on the Bluff.

Int. 2. What land did you purchase?

Ans. I purchased one acre of land from Aquilla Wren, for which I paid \$100 in cash.

Int. 3. On what quarter section was that land?

Ans. It was on the northeast quarter of section 4, 8 north, 8 east.

Int. 4. What became of said land?

Ans. It is there yet.

Int. 5. Who owns it now?

Ans. I do not know.

Int. 6. Was it ever improved?

Ans. It was not improved then, but it is now.

Int. 7. Is it occupied now?

Ans. It is not occupied now as a dwelling place. I suppose it is occupied by J. P. Hotchkiss, and stands under fence, but I cannot positively say so.

Int. 8. Has any person ever lived on it to your knowledge?

Ans. There has no person lived on it to my knowledge.

Int. 9. Did you ever sell it?

Ans. After I had had it some time, I sold the one-half of it to Charles Kettelle in 1839 at \$100; the other half I sold to J. P. Hotchkiss at \$125, in 1847 or 1848.

Int. 10. When did you buy it?

Ans. In 1837, 1838, or 1839, but I think about 1838.

Int. 11. Did you make deed to the purchaser?

Ans. I did.

Int. 12. Did you take the benefit of the Bankrupt Law? and if so, when?

[This question was objected to by complainants.]

Ans. I did, in 1842 or 1843.

Int. 13. What in your opinion was the value of the southwest quarter of section five, 8 north, 8 east, in July, 1843?

Ans. I think it was worth about \$25 per acre.

Int. 14. What was the value of the northeast quarter 8 north, 8 east, at the same time?

Ans. I think it was worth about \$50 per acre.

Int. 15. Did you know of land being sold for cash within one mile of Peoria in the year 1843? If so, who sold? to whom was the sale made? and who were the purchasers? and what was the price?

Ans. I think about 1843 there were two tracts of land sold for cash. One was bought of Giles C. Dana by the city of Peoria, for a burying place, being two acres, it is my impression at \$100 per acre. The other tract of one acre was bought of one Adams, living in Jacksonville, by J. P. Hotchkiss, at \$100 for one acre, in or about the year 1843. The acre is situated on northeast quarter of section 4, 8 north, 8 east. The burying ground is within one mile from the corporation as it then existed. Those were all the cash sales of land within one mile of the city of Peoria, I believe, that I knew of in that year.

Int. 16. How much of the southeast quarter of said section five is on the brow of the bluff?

Ans. About 80 rods.

Int. 17. How do you know that Mr. Hotchkiss had four or five thousand dollars to purchase land for a permanent residence, and to invest in this Garrett land?

Ans. From his own statements to me, and from my knowledge as his book-keeper.

Int. 18. How much money did you see him have at any time in July, 1843?

Ans. I cannot say how much money he had in July, 1843; but he had a deposit in his safe in his store, also a deposit in St. Louis at that time, but for the deposit in St. Louis I have only his word. He had four thousand dollars in vested funds which he could draw at any time.

Int. 19. How much had he in the safe in July, 1843?

Ans. I cannot say the amount. He had during that year one thousand dollars deposited in his safe. I did not count the money. It was tied up in bags and marked. I had reason to think it was right.

Int. 20. When and in what was his two thousand dollars funds invested? and had you any knowledge on that subject except from his statements?

Ans. It was invested in trade, which he was entitled to draw for on the firm of J. P. Hotchkiss & Co., of which he was one of the partners, and of which stock in trade he was owner of about five-sevenths, having himself five thousand dollars invested, while he was only obliged to invest two thousand.

Int. 21. In July, 1843, had this firm of J. P. Hotchkiss & Co. any money on hand over and above their liabilities?

Ans. They had.

Int. 22. How much?

Ans. To the best of my knowledge one fourth of twenty thousand dollars.

Int. 23. Where was that money kept?

Ans. It was kept in J. P. Hotchkiss & Co.'s safe.

Int. 24. Did you ever see it in July, 1843?

Ans. I cannot say that I saw that amount of money in it at any one time.

Int. 25. Did you ever see any amount of money belonging to said company? and if so what amount in July, 1843?

Ans. I cannot recollect particularly, but we often had as high as two thousand dollars in the safe.

Int. 26. If Mr. Hotchkiss was anxious to buy this land why did he not do it either of Garrett or of the purchaser after the sale? Do you know of his making any efforts or application to buy it of either Garrett or the purchaser?

Ans. I know that I introduced Mr. Hotchkiss to Mr. Garrett as a purchaser of the land. I cannot say of my own knowledge whether he made any effort or application to buy it of either Garrett or the purchasers after the sale.

Int. 27. What, in your opinion, could the north-east quarter of section eight, eight north, eight east, have been sold for in cash in the year 1843?

Ans. I think Hotchkiss would have given thirty dollars in cash per acre with a good title.

AMOS STEVENS.

Interrogatories propounded to E. B. Coleman.

1st. Int.

Were you in the month of July A. D. 1843, acquainted with the location and value of the south east quarter of section five, township 8 north, of range 8 east, of the 4th principal meridian in Peoria county, if yea, state what in your opinion was the value of the south-east quarter of said south-east quarter per acre, at that time.

2nd. Int.

What was the value per acre of the south-west quarter of said south-east quarter of section five, in July 1843?

3rd. Int.

What was the value per acre of the north half of said south-east quarter of section five, in July 1843?

4th. Int.

State whether or not the said south-east quarter of said south-east quarter of section five was valuable for any other purposes except farming purposes, in July 1843; and in what did such other value consist?

5th. Int.

State whether or not lots on the brow of the bluff situated near to and adjoining said south east quarter of said south-east quarter of section five, in July 1843, were then laid off and built upon for the purpose of residences?

6th. Int.

How, in your opinion, would the south-east quarter of said south-east quarter of section five compare in July 1843, with the adjacent bluff lands in point of location and value?

The said E. B. Coleman, being first duly sworn, deposes and says in answer to the several interrogatories directed to be put by the said parties litigant as follows on the part of complainants.

Ans. to 1st. Int.

I was acquainted with said described land, at that time. I should judge at that time it would have brought from ninety to one hundred dollars per acre.

Ans. to 2nd. Int.

I should judge that tract to be worth at that time, at least from twenty-five to thirty dollars per acre, and possibly more.

Ans. to 3rd. Int.

I should judge at then, that tract was worth forty dollars per acre.

Ans. to 4th. Int.

It was valuable for building purposes and residences, more than for farming purposes, part of it at least.

Ans. to 5th. Int.

On the land immediately adjoining, lots were laid off and built on for residences, at that time.

Ans. to 6th. Int.

It would compare well in location with other lands on the brow of the bluff, and was more valuable than the adjacent lands on the south-west.

Cross-Examination.

Int. 1st.

What was the value of the south-west quarter of section five, 8 North, 8 East, in 1843, per acre.

Ans. to 1st.

Twenty dollars per acre.

Int. 2nd.

How much was the same land worth in 1844, and 1845?

Ans. to 2nd.

About the same price.

Int. 3rd.

What was the value of the north-east 8, in 8 N, 8 E., in 1843, per acre?

Ans. to 3rd Int.

It would have been valued at forty or fifty dollars per acre, probably higher.

Int. 4th.

What was the value of the north-east of 4, 8 N, 8 E., in the year 1843, per acre?

Ans. to 4th. Int.

I should judge twenty-five dollars per acre, or perhaps thirty dollars per acre.

Int. 5th.

How many houses were built on the bluff, on lots not in land on the land adjoining the south-east quarter of the south-east quarter of section five, in said township, in 1843.

Ans. to 5th.

Seven or more were built on lots laid off by Asahel Hale. I do not know if he recorded the plat of said lots or not.

Int. 6th.

Did you know of any land being sold within two miles of the court house, in the city of Peoria, in the year 1843. If so, who sold, and who was the purchaser. How many acres were sold, and what was the price per acre, for cash sales?

Ans. to 6th.

I have no definite recollection of any sales being made that year for cash, or otherwise.

Int. 7th.

What in your opinion could any of the lands upon which you have fixed the value in this your deposition have been sold for in cash, in July 1843?

Ans. to 7th. Int.

The south-east quarter of the south-east of section 5, would have brought the

amount I valued it at. But I doubt if the others would at a forced sale. Money was scarce at that time, and was some more plenty in 1844 and in 1845, real estate advanced from 1843 to 1845, gradually from first to last period.

E. B. COLEMAN, Jr.

Deposition of A. S. Cole:

1st. Are you now, and were you in July 1843, acquainted with the south-east quarter of section five, township 8 north, of range eight east, of the 4th principal meridian in Peoria county?

Ans. I am, and have been since 1835.

2nd. What was the value per acre of the south-east quarter of the south-east quarter of said section in July 1843?

Ans. It was worth at that time one hundred and twenty-five dollars per acre, and much more at present.

3rd. What was the value per acre of the south-west quarter of said south-east quarter of section five in July 1843?

Ans. It was worth at that time seventy-five dollars per acre for farming or gardening purposes.

3rd. What was the value per acre of the north half of said south-east quarter of section five, in July, 1843?

Ans. It was worth at that time seventy-five dollars per acre, for farming or gardening purposes.

4th. State whether or not said south-east quarter of the south-east quarter of said section five in July 1843, was valuable for any other purposes, excepting farming purposes, and in what did such other value consist.

Ans. It was very valuable for residences at that time and ever since.

5th. State whether or not in July 1843, lots for residences situated on the brow of the bluff, in the vicinity of and adjoining the land in dispute were valuable, and whether lots for that purpose had previous to that time, and were then laid off and built upon for the purpose of residences, on land adjoining to the said south-east quarter of said south-east quarter of section five.

Ans. Yes, and the front of the above south-east of the south-east was much more valuable than those that were built on.

6th. How would the south-east quarter of the south-east quarter of said section in July 1843, compare with the adjacent bluff ground, in point of value and location?

Ans. The front of the above was the handsomest bluff land, there was, or is now.

A. S. COLE.

With which foregoing depositions was filed, and attached a copy of the "Peoria Democratic Press," a newspaper published in said city of Peoria, Peoria County, Illinois, containing the following advertisements, which advertisements together with the caption of said paper, are in the words and figures following, to-wit : marked A.

PEORIA DEMOCRATIC PRESS.

VOL. IV.

Peoria, Illinois, Wednesday, June 28th, 1843.

No 20.

Advertisement.

In the Peoria County Circuit Court.—William S. Moss vs. Augustus O. Garrett, Mary G. Garrett, Moses Pettengill, Amos P. Bartlett, Charles A. Buck, Charles W. McClallan, Chas. Kettelle, Leonard Holland, Orin Hamlin, Thomas Donoho.

In Chancery to foreclose Mortgage.

Decree for the sum of \$1326 66, entered June 5, 1843, during May term, 1843.

By virtue of the decree of said Court, dated June 5, 1843, made in the above entitled cause, at the May term of said Court, commenced and holden at the Court House, in said County, on the 29th day of May, 1843, I, as Commissioner by said Court, appointed for that purpose, shall proceed to sell at public auction, to the highest and best bidder, for cash, at the door of the court-house, in the town of Peoria, in said County of Peoria, at the hour of 10, A. M., on the tenth day of July next, the south-east quarter of Section No. 5, in Township eight north, of Range No. 8 east of the fourth principal meridian, excepting twenty-five acres in the north-west corner of said quarter, owned by William Russell, or so much thereof as will be sufficient to satisfy said decree in full, and upon such sale, an absolute deed will be given to the purchaser or purchasers thereof.

Dated at Peoria, this 17th day of June, 1843.

June 21st, 1843.

HALSEY O. MERRIMAN, Com'r.

STATE OF ILLINOIS, } ss.
PEORIA COUNTY.

Moses Pettengill, Amos P. Bartlett, vs. Augustus O. Garrett and Mary G. Garrett, Chas. A. Buck, Chas. W. McClallan, Chas. Kettelle, Leonard Holland, Orin Hamlin, Thomas Donoho.—Foreclosure of Mortgage in Chancery.

By virtue of a decree of the Circuit Court of Peoria County, sitting as a Court of Chancery, made at the May term of said Court, A. D. 1843, I shall, between the hours of 10 o'clock in the forenoon, and four o'clock in the afternoon, on Monday the 10th day of July, next, at the court-house door, in the town and county of Peoria aforesaid, sell at public auction, to the highest bidder, for cash, the following real estate, situated in said Peoria Co., to-wit: A certain tract or parcel of land, being the south-east qr of Sec. five, in Township eight, north of the base line, of range eight east of the fourth principal meridian, except twenty-five acres which has been sold and deeded to Wm. Russell by the aforesaid Augustus O. Garrett and Mary G. Garrett, his wife, or so much thereof as may be necessary to pay the sum of money due the complainants, and upon sale of the said land, or any part thereof, a good and sufficient deed of conveyance will immediately be executed and delivered to the purchaser or purchasers of the premises, on the part so sold, conveying the same and all right, title and interest of the said Augustus O. Garrett and the said Mary G. Garrett, in the same, to the said purchaser or purchasers, their heirs and assigns, forever.

Dated at Peoria this 19th day of June, A. D. 1843.

June 21, 1843.

WM. MITCHELL, Com'r.

GARRETT, et. al. }
 vs } Testimony of Complainants.
 MOSS, et. al. }

C. M. WASHBURN testified as follows: I was present at the sale; do not know what parties were to the suit, suppose it was a commissioner's sale; the land was the S. E. 5, T. 8 N. 8 E; sale was in July 1843; I was in Judge Peters' office at the time, and came out to the sale at the door of the court-house. The sale was made about 10 o'clock in the morning; H. O. Merriman sold fast; he cried the sale from 5 to 10 minutes; Mitchell about the same time. Mr. Mitchell, Mr. Merriman, A. P. Bartlett, Smith Frye and others, ten or more in all, were present; sale was made under foreclosure of mortgage; do not know in whose case; Merriman came in and asked if we were not going to the sale; cannot recollect whether there was more than one bidder at the sale; not acquainted particularly with the land at the time; it was all prairie between town and the land. A gentleman from Mississippi, don't recollect his name, think it was Truesdale, in 1844, said to me, Washburn I have bought the Garrett land, and said he was to give for the 80 acres of the S. E. 5, T. 8 N. 8 E, \$8000—\$4000 cash, \$4000 in land near Jackson, in Mississippi.

Cross Examination.—This gentleman said in presence of Mr. Garrett, that he had bought the land. This was in June, 1844; I was only acquainted with him while he was in Peoria a few days; I never saw him afterwards. Merriman came into the office of Mr. Peters and Mr. Gale's office in the court-house, and gave notice that he was going to make a sale. Mr. Mitchell was Circuit Clerk at the time; I know Mitchell was Clerk of Circuit Court at the time, for he gave me a license to practice law, on the 23d of March, 1843, at precisely 9 o'clock in the morning.

STATE OF ILLINOIS, }
 Tazewell County. } ss.

I, Merrill C. Young, Clerk of the Circuit Court for the said county, do certify that the foregoing notices of sale, signed respectively by "Wm. Mitchell, Commissioner," and "Halsey O. Merriman, Commissioner," are truly copied from the newspaper attached to the deposition of Enoch P. Sloan, and on file in the cause wherein A. O. Garrett, et. al. are plaintiffs, and Wm. S. Moss, et al defendants, and that the other paper is a copy of the minutes of complainants evidence, taken by Judge Davis, on the trial of said cause, as the same appears in my office. Witness Merrill C. Young, Clerk, and the seal of said Court, hereto attached, this 4th day of May, 1858. MERRILL C. YOUNG, Clerk.

DEPOSITION OF RALPH HAMLIN.

1st. Do you know the parties to this suit? Ans. I do.

2nd. What do you know about the written instrument hereunto attached, marked "A?"
 Ans. The papers have been in the possession of Wm. Mitchell, deceased, from about the time of the date of said paper up to and until the death of said Mitchell, since which time it has been in my possession, as the Administrator of said Mitchell, who died in the year 1849.

3rd. Are you acquainted with the hand writing of Amos P. Bartlett, and if so, state your means of knowledge, and in whose hand writing said paper and the signature is written?—

Ans. I am some what acquainted with the hand writing of said Bartlett by seeing him write frequently, and believe the said paper and signature of Pettengill and Bartlett to be the hand writing of said Amos P. Bartlett. I think the said Pettengill and Bartlett were co-partners at or about the time that said paper is dated.

Cross Examined by Complainant.—1st. Do you know anything about the execution and delivery of said paper? Ans. No.

RALPH HAMLIN.

Exhibit "A" attached to said deposition :

I hereby agree that if A. O. Garrett shall before the 15th day of August next, pay us the amount of a decree in chancery obtained by us against said A. O. Garrett and Mary G. Garrett, at the last Term of the Circuit Court, held in and for Peoria County, together with the interest on the same, at ten per cent. per annum, and the costs of Court, and all other costs which may have accrued in consequence of said judgment, we will execute to him a quit claim deed of the land which we have this day purchased at a sale by the Master in Chancery on said judgment.

PETTENGILL & BARTLETT.

Peoria, July 10th, 1843.

Interrogatories on the part of the Defendants to Isaac Underhill, Tobias S. Bradley, Smith Frye, Edward Dickinson :

1st, What is your age, place of residence and occupation.

2d, How long have you resided in or near Peoria.

3d, Are you acquainted with the south-east quarter of section 5, in township eight, north, 8 east, in Peoria County. If so, state how far the same lies from the main public square, in the city of Peoria, and what in your opinion was its actual cash value, all things considered or what could it have been sold for in cash per acre, on or about the 10th of July, 1843.

4th, Was or was not money at that time very scarce, and difficult to procure.

5th, Did you or not about that time purchase or sell any land near Peoria ; if so, when ; what was the description of the same ; how far from the Court House in Peoria, or main public square, and what was its value compared with the land in controversy, or did you know of any such land having been purchased or sold. If so, state its description and character, location and price, and its value compared with the land in question in this suit.

6th, Do you know anything further of benefit to the defendant ; if so state the same.

7th, To Smith Frye—Would said land in your opinion have sold for more in cash down at the time of sale than was paid for it.

8th, To Isaac Underhill—What in your opinion would said land in controversy have sold for in cash in 1843.

1st, Cross-Interrogatories to Smith Frye—How far does the land which you purchased lie back from the brow of the bluff.

2d, Does not a considerable portion of the land purchased by Moss lie immediately on the brow of the bluff.

3d, How much is the land purchased by you worth per acre now.

4th, How much is the land purchased by Moss worth per acre now.

5th, How much is that part of the land purchased by Moss, which lies immediately on the bluff, worth per acre now.

6th, How much is that land purchased by Bartlett worth per acre now.

7th, Is not the proportionate difference between the land purchased by you and the land in controversy at this time about the same that it was in 1843.

8th, What was the difference in value per acre between that part purchased by Moss and that part purchased by Bartlett at the time of their purchases.

9th, What is the value of the whole land in controversy at this time.

STATE OF ILLINOIS, }
PEORIA COUNTY. } ss.

The deposition of Tobias S. Bradley, Smith Frye, Isaac Underhill, Edward Dickinson and William S. Moss, taken at the office of Purple and Sanger, in the city of Peoria, county of Peoria, and State of Illinois, on the 7th day of August, A. D., 1847, before John T. Lindsay, Public Notary in and for the city of Peoria, in said county and State, in a certain suit in Chancery, pending in the Circuit Court of Tazewell County, Illinois, wherein Augustus O. Garrett and Mary G. Garrett are complainants, and William S. Moss, Amos P. Bartlett, Moses Pettengill and William Russell are defendants on the part and behalf of the defendants pursuant to the notices hereto annexed. The said Tobias S. Bradley, having been first duly sworn according to law, to the first interrogatory on the part of Defendant answering, says :

Answer to first Interrogatory—My age is fifty-three years, residence Peoria, farmer and distiller.

Answer to second Interrogatory—I have resided in Peoria ever since the year 1847.

Answer to third Interrogatory—I am acquainted with the land described, and said land is from half to three-quarters of a mile from the main Public Square in the city of Peoria. I purchased the undivided one half of the south-west quarter of section No. five, in said township, of the Lafayette Bank of Cincinnati, some time in October, 1845, for the sum of sixteen dollars, sixty-six cents per acre, and the following spring, I purchased of Griffin Taylor, of Cincinnati, the other half of said quarter section for the same price ; and in the fall of 1845, purchased the undivided half of west half of the north-west quarter of section number five, in said township, for the same price aforesaid, and in the following spring, I purchased the other half of said west half for the same price, and some time in the Spring of 1848, I purchased the east half of the said north-west quarter of the heirs of Richard Jones, for the sum of one thousand dollars ; on the last named tract of land there was about thirty acres fenced and in cultivation, and a comfortable house on the same, and I have no means of knowing the value of the land in controversy in the year 1843, except as above stated. My land lies west, and adjoining the land in controversy.

Ans. to 4th int'y. I have no knowledge on the subject.

Ans. to 5th int'y. Some two hundred acres of land I purchased is as valuable for farming purposes as the land in question. As for other purposes, I could not say what difference there was in the value of the land. I would have made some difference in the value. The balance of this interrogatory is answered in my answer to 3rd interrogatory.

Ans to 6th interrogatory. I know of nothing further of benefit to defendants.

Cross Examined. Interrogatory 1st. Did you or not purchase any of the land in controversy of Wm. S. Moss, at any time since the year 1843. If yea state what part, at what time you so purchased, and at what price, and state whether you are yet the owner of any part of said land, and also state what direction from said Peoria city said land is situated.

Ans. to 1st interrogatory. I did not purchase any land of Wm. S. Moss in said tract.—He gave me a piece of said land which I still own; the amount was an acre and three quarters, and on the bluff back of Peoria where I live. Said land was given me by Wm. S. Moss some time in 1848 or 1849, and I went on and made improvements on said piece of land.

Interrogatory 2d. What is the relationship of you and William S. Moss?

Ans. to 2nd interrogatory. We are brother-in-laws. TOBIAS S. BRADLEY.

And the said Smith Frye, having been first duly sworn according to law, to the interrogatories on the part of defendant, answering says:

Ans. to 1st interrogatory. My age is forty-eight; residence in the city of Peoria; occupation a farmer.

Ans. to 2nd interrogatory. I have resided in and near Peoria for about nineteen years.

Ans. to 3rd interrogatory. I am acquainted with said land, and it lies some little over three quarters of a mile from the main public square, in the city of Peoria. I do not think I can answer as the value of the land at that time, what it was worth, or what it would bring for cash.

Ans. to 4th interrogatory. Money was very scarce at that time, and almost impossible to get.

Ans. to 5th interrogatory.—I did purchase some land near Peoria about the month of August or September 1843. Five acres and a quarter out of the north-east quarter in the north-west corner of said quarter, in Section 4 in said Township 8 north 8 east, in Peoria County, and south half of the south-east quarter of Section thirty-three, in Township 9, north 8 east, in said County, for the sum of twenty-five hundred dollars; one thousand dollars in cash, the balance in three years, without interest. The house on the land, as I was informed, cost seventeen hundred dollars, and was built in the year 1837; there was a barn on the same, which cost two hundred dollars. Five acres of said land was in an orchard; the land was all under fence, but poorly fenced, and about twenty-five acres under cultivation; the nearest point of said land is about one mile and a quarter nearly due north of the main public square in the city of Peoria. I think at that time there was about five dollars per acre between the lands I purchased, and the land in controversy, without regard to improvements. The five dollars per acre above stated has reference to the whole quarter, including the Russell land with Wm. S. Moss's land.

Ans. to 7th interrogatory. I do not think it would have brought any more. Amos P. Bartlett offered the land after the sale for what he had paid for it, and in my opinion there was no money to buy land at that time, as Bartlett remarked, he would sooner have the

money than the land, and I judge that to be the value, as no person would bid any more. This has reference to the whole purchase, as it was all sold at the same time: the Moss purchase as well as the Bartlett purchase. There was no improvements on the land purchased by Moss and Bartlett.

Cross Examination.—Ans. to 1st interrogatory. The land I purchased lies about sixty rods from the nearest corner to the top of the bluff.

Ans. to 2nd interrogatory. It does.

Ans. to 3rd interrogatory. It is worth in cash from one hundred to one hundred and fifty dollars per acre.

Ans. to 4th interrogatory. It is worth in cash about three hundred dollars per acre.

Ans. to 5th interrogatory. It is worth about one thousand dollars per acre.

Ans. to 6th interrogatory. It is worth about two hundred dollars per acre.

Ans. to 7th interrogatory. I think it is about the same.

Ans. to 8th interrogatory. At that time I do not think there was any difference in the value of the land, as it was all regarded at that time as farming land.

Ans. to 9th interrogatory. I have already answered that question in interrogatory 4 and 5.

Interrogatory on part of Defendants.—Interrogatory 1st. How much has the land in controversy advanced in value since 1843? It has increased in value about thirty-three thousand dollars, in my opinion.

SMITH FRYE.

And the said Isaac Underhill having been first duly sworn, according to law, to the interrogatories on the part of defendants, answering, says:

Ans. to 1st interrogatory. Age forty-six; residence Peoria; occupation dealer in real estate.

Ans. to 2nd interrogatory. I have resided in Peoria about eighteen years.

Ans. to 3d interrogatory. I am acquainted with said land, and it lies about 3-4 mile westerly from the main public square in the city of Peoria; cannot tell exactly, money was scarce, and but few cash buyers here at that time.

Ans. to 4th interrogatory. I did not buy or sell any land at that time near Peoria. I knew that about that time or previous to that time, in the year 1840, that Mr. Russell purchased of Mr. Garrett a portion of said Quarter at twenty-five dollars per acre, amounting to twenty-five acres. The land purchased by Russell of Garrett, lay between Russell's residence and the road from Peoria to Farmington, and I do not know of any other road he had to get out in but the one referred to. I think the balance of the land was worth something more than the land sold Russell, although I have my doubt if it would have sold for more at that time on account of the scarcity of money.

Ans. to 8th interrogatory. I do not think said land would have sold for twenty dollars per acre cash in 1843, for the fact that there were no cash buyers here at that time, as property was generally bid in by the plaintiff in the executions on real estate.

Cross Examination.—Interrogatory 1st. How far was that part of said quarter which Russell purchased of Garrett in 1840, from the main public square in Peoria. Does it not lie in that part of said quarter which is farthest from Peoria? Ans. to 1st interrogatory.—

It was about one mile from the main public square in Peoria, and lies farthest from Peoria

Interrogatory 2d. What was the land in controversy worth in 1843, saying nothing in regard to whether there might or might not be money to make purchases of real estate in general. Ans. to 2nd interrogatory. If I could have purchased the land on a long credit I would have given one third more than for cash, say thirty dollars per acre for said land.

Re-examination by defendants.—Interrogatory 1st. From all you know of the circumstances, do you believe the land in controversy could have been sold in 1843 for cash, at more than 15 dollars per acre? Ans. to 1st interrogatory. I could not say, as there were no cash buyers here at that time, to my knowledge.

ISAAC UNDERHILL.

The said Edward Dickinson being first duly sworn according to law, in answer to the several interrogatories propounded to him by defendant, says as follows :

Ans. to 1st interrogatory. My age is fifty ; reside in Peoria ; my occupation physician.

Ans. to 2nd interrogatory. Have resided in Peoria nineteen years.

Ans. to 3rd interrogatory. I am acquainted with said land. It lies three fourths of a mile to the nearest part from said square, and it is impossible for me to say what said land would have sold for at that time in cash, or what it was worth at that time.

Ans. to 4th interrogatory. Yes, it was scarce at that time, and difficult to sell land for cash except at a low price.

Ans. to 5th interrogatory. I sold sixty-five acres, part of the north-east quarter of Section five, in same township, and adjoining lands in controversy, joins on the north of said land, and is situated about one mile from the main public square in the city of Peoria, and I sold it for eight dollars per acre in cash. The land I sold was not worth more than one-half as much as the land in controversy at that time or at the present time.

Ans. to 6th interrogatory. I do not.

EDWARD DICKINSON.

And now afterwards, to-wit at a Circuit Court begun and held at the city of Pekin, in and for the County of Tazewell, and State of Illinois, on the first Monday of May A. D. 1854, and on the 10th day of said May, the following order was had in said cause, to-wit :

AUGUSTUS O. and MARY G. GARRETT,	} IN CHANCERY—May 10th, 1854.
vs.	
WILLIAM S. MOSS, AND OTHERS.	

Now on this day came the parties by their solicitors, and on motion of the solicitor for defendants, it is ordered that the defendants have leave to take the depositions of William S.

Moss and Amos P. Bartlett, two of the defendants in this cause, subject to all legal exceptions as to the relevancy of the testimony, and competency of witnesses; and now on motion of complainants' solicitor, leave is granted to file supplemental bill by the first day of August next, and this cause continued till term in course.

Deposition of Amos P. Bartlett :

Interrogatories by defendants to Amos P. Bartlett :

1. What is your age, place of residence and occupation ?
2. How long have you resided in Peoria ?
3. State whether you are one of the defendants in this suit ; whether you have any interest in the result of the same ?
4. State whether a release has been executed and delivered to you by the defendant, William Russell, previous to your being sworn in this cause ? If so, please attach a copy thereof to this your deposition.
5. State whether you and Moses Pettengill ever had a mortgage against Augustus O. Garrett upon the south east quarter of section five, 8 N 8 E in Peoria County ? If so, for about what sum ; state whether the same was foreclosed and land sold thereon, and if so, about what time, and who was the purchaser.
6. Did you ever have any conversation with one Joshua P. Hotchkiss in relation to said sale ? If so, state the same fully and particularly as near as you can recollect.
7. State whether at any time you ever had any conversation with Wm. S. Moss, or any other person, or ever made any arrangement, or did any acts to prevent persons from bidding at said sale.
8. State whether you desired to purchase said land at said sale ; and what was your object in making said purchase ?
9. State what in your opinion was the actual cash value of the lands purchased by you and the said Wm. S. Moss at said sale ?
10. State whether or not there was conversation or conversations between you and said Garrett previous to said sale, relative to compromises and settlement of said claim in your favor before the day of said sales ; if so, what were those conversations ?
11. At what price did you sell said land purchased by you ?
12. State whether said Garrett had or had not an opportunity of redeeming the land purchased by you at said sale ; If so, when and under what circumstances, and for how long a time after your purchase.

Cross-Interrogatories.

1. Were you present at the time of the sale of said land by the Commissioner ? if so, at what time in the day was such sale made ; how many persons were present ; how long was said sale cried ?
2. You say that up to the day before said sale, you supposed there would be no sale, for the

reason that you believed Garrett would pay off your mortgage. Did you not tell persons within two weeks next preceding such sale that you believed there would be no sale, that in all probability the matter would be settled so that there would be no sale, or something to that effect?

The deposition of Amos P. Bartlett, taken before John T. Lindsay, a Notary Public in and for the city of Peoria, on the first day of August, A. D., 1854, in a certain suit in Chancery, pending in the Circuit Court of Tazewell County, in the State of Illinois, wherein Augustus O. Garrett and Mary G. Garrett are complainants, and William S. Moss, Amos P. Bartlett, Moses Pettengill and William Russell are defendants, at the office of Purple and Sanger, in the city of Peoria, Peoria County, Illinois, between the hours of nine o'clock, A. M. and four o'clock P. M. of said day, pursuant to the annexed notice.

The said Amos P. Bartlett, being by me first duly sworn to speak the truth, the whole truth and nothing but the truth; In answer to the first interrogatory on the part of the defendants, deposes and says:

The complainants object to the examination of Amos P. Bartlett as a witness in the cause, for the following reasons:

1. Said witness is interested in this cause, and in favor of the defendants, Messrs. Russell and Pettengill.
2. Said witness is a party defendant in said cause.
3. Said witness's interest in the event of said cause is such as cannot be released.

Answer to first Interrogatory:

My age is forty years, residence Peoria, occupation merchant.

Answer to second Interrogatory:

I have resided in Peoria eighteen years

Answer to third Interrogatory:

I am one of the defendants in this suit, but have no interest in the result of this suit.

Answer to fourth Interrogatory:

There has been a release executed and delivered to me by Wm. Russell, before I was sworn in this cause; a copy of said release is hereto attached, marked exhibit "A," and made a part of this deposition.

Answer to fifth Interrogatory:

Moses Pettengill and myself had a mortgage against Augustus O. Garrett upon said described land for the sum of a little over five hundred dollars. The said mortgage was foreclosed, and a part of the said land sold thereon in the month of July, A. D., 1843 and the said Pettengill and myself were the purchasers.

Answer to sixth Interrogatory:

I have an indistinct recollection of having a conversation with Joshua P. Hotchkiss, about said land. I do not recollect what the conversation was.

Ans. to 7th interrogatory. I have had no conversation with Wm. S. Moss, or any other person, making arrangements, or doing acts to prevent persons from bidding at said sale, but on the contrary, tried to find purchasers for said land, in order to get our demand.

Ans. to 8th interrogatory. I had no desire to purchase said land, and my only object in purchasing, was to get the debt that myself and Pettengill had on said land.

Ans. to 9th interrogatory. I did at that time offer to Wm. S. Moss, our claim on said land, if he would pay us the money due us, and that Wm. S. Moss refused to take the land and pay us the money; said offer was made by me to Moss before the sale, and after the sale; and further that sale was a public one, and I took a great deal of pains to obtain bidders for said land. The sale was for cash, and I do not think the land was worth more than it brought at the time, judging from the fact that it would bring no more at the sale. I offered said land after I had purchased it, to several persons, for about the same amount I paid for it.

Ans. to 10th interrogatory. I had conversation with Augustus O. Garrett upon said subject, and in said circumstances. Mr. Garrett informed me that he would pay the money before sale, and that he had made arrangements to pay the debt, and I had so much faith in what he told me that I did not believe the land would be sold, up to the day before the sale.

Ans. to 11th interrogatory. I sold said land for about one hundred dollars more than I paid for it, and I sold it about six months after I purchased it.

Ans. to 12th interrogatory. I think I gave Mr. Garrett about three months time to redeem the said land, by paying the debt, interest and costs of sale, and I told Mr. Garrett that he might have said land upon said terms, and I always understood him (Mr. Garrett,) that he would redeem it; and there was no agreement between us that he would redeem said land further than I have stated.

Cross Examination.—Ans. to first interrogation. I was present at the time of sale; I cannot tell the time, but believe it was in the afternoon; there were some persons present, but cannot say how many persons were present. And there were others present than those who took part in the sale or purchase, and I cannot say how long said sale was cried.

Ans. to 2d interrogatory. I did suppose there would be no sale, for the reason that I believed said debt would be paid; and I have no doubt that I did tell persons that I believed there would be no sale, for the reasons before stated, as Mr. Garrett had assured me that he would pay the debt before the sale; and further, if I told persons that I believed there would be no sale, I have no doubt that I told them my reasons for believing there would be no sale, as above stated.

A. P. BARTLETT.

Exhibit "A" attached to said deposition.

Know all men by these presents that I, William Russell, of Peoria, in the County of Peoria, and State of Illinois, for and in consideration of the sum of one dollar, to me in hand paid by Moses Pettengill and Amos P. Bartlett, of the same place, the receipt whereof is hereby acknowledged, have released and discharged, and by these presents do release and discharge the said Moses Pettengill and Amos P. Bartlett, from all liability to me and to my

heirs, executors, administrators and assigns, upon, for, on account of any and all covenants contained in a certain deed, made and executed on the eleventh day of April, A. D. 1844, by said Moses Pettengill and Lucy, his wife, and said Amos P. Bartlett and Sarah M. his wife, to the said William Russell, for the following described real estate, to-wit: A part of the south-east quarter of Section No five (5) in Township number eight, (8) north of Range number eight (8) east; bounded as follows: Beginning at a stone set in the old mound made for the quarter section corner, between Sections four and five; thence running south nineteen (19) chains and seventy (70) links to a stone in the centre of the Peoria and Farmington road; thence west along the said Road twenty-six (26) chains and eighty-six (86) links, to a stone set for a corner; thence north nineteen (19) chains and twenty-eight (28) links to a stone set for a corner; thence east on a true line twenty-six (26) chains and eighty one (81) links to the place of beginning; containing fifty-two and 29-100 acres, be the same more or less.

In witness whereof I have hereunto set my hand and seal this 15th day of July, A. D. 1854.

WM. RUSSELL. [L. S.]

STATE OF ILLINIOS, } ss.
PEORIA COUNTY,

This day personally appeared before me, a Notary Public in and for the city of Peoria, William Russell, to me personally known to be the same person who executed the foregoing release and acknowledged that he had executed the same for the uses and purposes therein mentioned.

Witness my hand and official seal at Peoria, this 26th day of July, A. D. 1854.

[S. L.]

N. H. PURPLE.

DEPOSITIONS OF WM. F. BRYAN AND JAMES C. ARMSTRONG.

Interrogatories propounded on part defendants.

1st. What is your age, place of residence and occupation, and how long have you resided there?

2d. State whether you sold the N. E. quarter of Section 8, 8 north of 8 east. If so, at what time and in what capacity, and whether the same was or was not sold at the best price that could be obtained therefor.

3rd. What is now and what was then the value of the said land per acre as compared with the S E quarter of Section 5, 8 N. 8 E., lying immediately north and adjoining said quarter section?

STATE OF ILLINOIS, } ss.
PEORIA COUNTY,

The depositions of William F. Bryan and James C. Armstrong, of the said County and State, witnesses, produced, sworn and examined before John T. Lindsay, a Notary Public in and for the city of Peoria, in said County and State. On the 6th day of September, A. D. 1854, in pursuance of notice given the plaintiffs in this cause, dated August 22d, 1854, hereto attached and marked "A," to be read in evidence on the trial of a certain cause, now pending in the Circuit Court, held in and for the County of Tazewell, in said State, wherein Augustus O. Garrett and Mary G. Garrett, are the plaintiffs, and William S. Moss,

Amos P. Bartlett, Moses Pettengill and Wm. Russell, are defendants, on the part and in behalf of defendants.

And William F. Bryan being first duly sworn according to law, in answer to the following interrogatories to him propounded, says :

Ans. to 1st interrogatory. My name is William F. Bryan ; residence city of Peoria, and have resided in said place ever since the Spring of 1839, except from the Spring of 1846 to the Fall of 1850.

Ans. to 2nd interrogatory. As one of the administrators of Churchill Samuels' estate, I did sell the undivided one-half of north-east quarter of Section 8, in Township 8 north of range 8 east of 4th principal meridian, at public sale at the door of the court-house in the city of Peoria, on the 5th day of July, 1844, at ten dollars per acre, on a credit of twelve months, and that was the highest price we could get for it, the purchaser was William W. Baun, of Kentucky, who came here purposely to represent the interest of the creditors of said estate in Kentucky, and who bought all the lands offered at said sale for the purpose of paying the debts which he represented. I know there was no person then at the sale who would have given as much for it as the purchaser ; and there was other bidders there, but did not bid as much as ten dollars per acre.

Ans. to 3rd interrogatory. The north-east quarter of Section 8, was more valuable for town lots than the south-east quarter of Section 5, 8 north, 8 east, but not so valuable for farming purposes. For purpose of speculation I would have given more for the north-east quarter of 8, than the south-east quarter of Section 5.

Cross Examination.—Interrogatory 1st. What was the value of the north-east of Section 8, in said Township, per acre, in the year 1843. Ans. to 1st interrogatory. I have no other means of knowing the value of said land, excepting the sale mentioned. I know that at the time it was hard to sell lands, and when sold brought low prices, for the want of money.—We had at that time lands to sell for other persons, adjoining the land in dispute, upon the west, which we sold for \$16 per acre, and the purchaser afterwards refused to take it.

Interrogatory 2nd, What was the difference in value per acre between the south-west of section 5, and the south-east of section 5.

Ans. That part of the land in controversy which is on the face of the bluff is a great deal more valuable than that part back from the bluff, and more valuable than the same amount of land adjoining said tract on the west.

Interrogatory 3rd, Do you or not base your opinion of the value of land in 1843, principally upon the fact of the scarcity of money at that time.

Ans. I have no doubt but the scarcity of money then as in all other times affected the price of lands. I based my opinion upon the offers for lands and the price put upon them by owners. My sales were few.

Interrogatory 4, What in your opinion were lands laying on the bluff in section 4, township 8 N, 8 E, and suitable for building lots worth per acre in 1843?

Ans. In my opinion there was but little demand for lots on the bluff at that time, and there was no sales that I can now recollect, so that I cannot fix any value.

Interrogatory 5, Would said N. E. quarter of section 8 have sold for more at said administrators' sale, had the whole interest in said tract been sold?

Ans. It might have sold for more but I doubt it. I heard no objection made upon the ground of the quarter being undivided. The lands in the county average about fifty cents per acre, good farming lands generally. There was two quarter sections of land of the other side of the river sold for about congressional price, said lands last named were well-timbered, and at the time of sale there was no question of title, the lands were all offered to Mr. Powell and myself by the purchaser after sale, for what he paid for them, but we refused to take them, and declined the offer. We did not want the lands, and did not suppose there was any speculation in them, and in a few weeks repented that we did not take the offer.

WM. F. BRYAN.

And James C. Armstrong being first duly sworn according to law, in answer to the following interrogatories to him propounded says:

Interrogatory 1st, What is your residence and age, and how long have you resided there?

Ans. My name is James C. Armstrong, residence city of Peoria, and I have resided in Peoria ever since the fall of 1834, my age is about 43.

Interrogatory 2nd, Were you acquainted with the south-east quarter of section 5, and the north-east quarter of section 8, in township 8 N, of range 8 east, in July 1843, if so, what was the relative value of said tracts of land at that time, and what would each of said tracts of land have sold for at that time in cash per acre.

Ans. I am acquainted with said tracts of land. The land of the north-east of 8 was the most valuable at that time, being nearest the city of Peoria. It would be impossible for me to tell what land would have sold for at that time, there being few sales of land, cash being very scarce; and I do not recollect of any sales being made for cash, or during that year. The sales that were made then, were made generally at Sheriff's sale, or by foreclosure of mortgage, and bought in by the creditors or the persons holding the claims; and it was impossible as a general thing, to sell at any of the public sales of land for cash, money being very scarce. I had been dealing in lands previous to that time, and considered myself competent to judge of their value. I considered the south-east of 5 worth 50 per cent. more at that time than the south-west of 5, in said township 8 N, 8 E. The south half of section 4, was worth at that time, three or four times as much as the south-east quarter of sec. 5, per acre, on an average. At that time there was not much difference between the north-east quarter of section 4, and the south-east quarter of section 5, in value on an average per acre.

Cross-Examination:

Interrogatory 1st, State whether or not lots for residences on the bluff of section 4, were laid off in 1843, and previous to that time, and built upon for the purposes of residences.

Ans to 1st Interrogatory. I think there were few on the bluff for residences at that time.

Interrogatory 2nd, State whether lots on the bluff for residences were valuable in 1843?

Ans. to 2nd Interrogatory. They were considered valuable for that purpose in comparison to the other property not immediately on the bluff.

Interrogatory 3rd, What was the difference per acre in the value of that part of the south east of 5, laying on the brow of the bluff, and that part of the south-west of section 4, immediately adjoining, at that time?

Ans. to 3rd Interrogatory. That part of the south-east of 5 that comes into the bluff was not as valuable then by 33 per cent. as that part of the south-west of section 4, immediately adjoining.

Interrogatory 4th, Was the south-east quarter of the south-east quarter of said section 5, in 1843, valuable for any other purposes, excepting for farming, if yea, in what did its other value consist?

Ans. to 4th Interrogatory. At that time it was not valuable for any other purpose, but that part on the bluff was more valuable than that in the rear.

Interrogatory 5th, Do you or not base your opinion of the value of land in 1843, principally upon the fact of the scarcity of money at that time.

Ans. to 5th Interrogatory. I do not.

Interrogatory 6th, Had there been money to purchase what would the south-west quarter of said south-east of 5, been worth in 1843, in cash?

Ans. to 6th Interrogatory. I am unable to answer that question.

Interrogatory 7th, What was that part of the south half of section 4, township 8 N, 8 E, lying upon the bluff and suitable for building lots, worth in 1843, per acre, and what is it now worth.

Ans to 7th Interrogatory. I believe it sold in 1843 on the bluff for about fifty dollars per acre, I suppose it is worth now what it sells for, about one thousand dollars per acre, one third cash, the balance in one and four years, in equal payments.

J. C. ARMSTRONG.

DEPOSITION OF WM. S. MOSS.

AUGUSTUS O. GARRETT,
MARY G. GARRETT,

vs.

WILLIAM S. MOSS,
AMOS P. BARTLETT,
MOSES PETTINGILL,
WILLIAM RUSSELL.

In the Tazewell County Circuit Court.

IN CHANCERY.

Interrogatories propounded to William S. Moss, a witness produced for the defendants in the above entitled cause, by the defendants:

1. What is your age, place of residence and occupation?
2. How long have you resided in and near Peoria?
3. Are you acquainted with the lands in controversy in this suit, owned or claimed by those defendants, William Russell. If so, what in your opinion was its actual cash value in July, 1843, and your means of knowledge upon that subject?
4. Was or was not money at that time very scarce and difficult to procure?
5. Was or was not said land offered to you after the commissioner's sale? If so, by whom, and what price? Had you or not the means to purchase the same if you had desired to do so? If so, why did you not purchase said land?
6. State how far said land lies from main public square in the city of Peoria.
7. Did you purchase or sell, or know of any other persons purchasing or selling any other land near the city of Peoria about or subsequent to the 10th day of July, 1843? If so, describe the same, its location with regard to the main public square in Peoria, its quality as compared with Russell's land, and the price for which it was bought or sold.
8. Do you know whether the said Augustus O. Garrett had any opportunity to redeem said land from said sale or not? If so, state your means of knowledge, and the terms upon which he might have made such redemption.
9. Was or not William Russell present at the commissioner's sale of said lands, or had he to your knowledge any information relative thereto until long after said sale?
10. State whether you ever entered into any combination, contract or conspiracy with any person or persons, or whether you ever did any act whatever to prevent any and all persons from attending and bidding at said sale?
11. What time in the day did said sale take place, and how many persons were present at said sale?
12. Do you know any thing else of benefit to the defendants, Russell, Pettengill and Bartlett.

And the said William S. Moss, being duly sworn according to law, in answer to foregoing interrogatories to him propounded, says as follows :

The complainants objected to the testimony of Wm. S. Moss, to be heard in evidence in this cause. Because, 1st, the said Moss is a party defendant in this cause ; 2nd, said Moss is incompetent as a witness in this suit.

Ans. to 1st Int. My age is from fifty-five to six ; residence Peoria ; occupation farmer.

Ans. to 2nd Int. I have resided in and near Peoria about eighteen or nineteen years.

Ans. to 3rd Int. I am acquainted with the land in controversy ; said lands were worth in 1843 from 12 to 15 dollars per acre in cash. My means of knowledge was that Pettengill and Bartlett offered me the land purchased by them at the sale, frequently, for what they paid for it ; I had the money to buy, but did not want the land, and money at that time very scarce, and I could have purchased lands at other places for less money.

Ans. to 4th Int. Yes, it was.

Ans. to 5th Int. Pettengill and Bartlett offered me the lands purchased by them, repeatedly, at what it cost with interest and costs, and insisted on my taking it, as they wanted to use the money in their business, which I refused to do because I thought I could do better with my money.

Ans. to 6th Int. Said lands lie about three-fourths of a mile from main public square.

Ans. to 7th Int. I knew Tobias S. Bradley's purchase, as stated in his answers to int'y 7 in his deposition. In 1844 I purchased of Aquilla Wren 3 78-100 acres out of the south-east qr Sec. 4, then joining Town of Peoria, and 98½ acres of the south part north-east qr of Sec. 4 in Township 8 N 8 E, and joining first piece, for thirty-seven hundred dollars—one thousand cash, nine hundred in one year, nine hundred in two years, and nine hundred in three years, without interest, on the south-east part of said land, the 3 78-100 acres above described. On said land was a farm-house which Wren said cost eleven hundred dollars ; the 98½ acre tract was all under fence, and about thirty acres of said land under cultivation, together with an orchard of about three to four acres, with a stable on the same.

Ans. to 8th Int. Bartlett informed me that he had offered Garrett the land purchased by him for what it cost him, and Mr. Garrett informed him he would redeem the land, but never did, and that he (Bartlett) would not wait any longer on him, but would sell to some one else, offered to me as above stated.

Ans. to 9th Int. I did not see William Russell at the sale ; he had no information of said sale, to my knowledge.

Ans. to 10th Int. Answered, I never did.

Ans. to 11th Int. I cannot say at what time or day the sale took place ; there were several persons present ; cannot say how many ; I am certain the sale took place between 10 o'clock A. M. and 4 P. M. of said day, but cannot say whether before or after dinner.

Ans. to 12th Interrogatory. Nothing that I know of.

Cross Interrogatories.

Int. 1st. Are you one of the parties to this suit? Ans. to 1st Int. I am one of the parties defendant to this suit.

Re-examined by Defendants.

Int. 1st. Have you any interest in this suit as far as Russell, one of the defendants, is concerned. Ans. to 1st above. I have not. WILLIAM S. MOSS.

STATE OF ILLINOIS, }
Tazewell County } ss.

I, Merrill C. Young, Clerk of the Circuit Court, within and for said County and State, do hereby certify the foregoing seven pages to be a true and exemplified copy of the interrogatories propounded to William S. Moss, and the answers of the said Moss thereto, together with the exceptions entered by the complainants thereto, filed October 2nd, 1854, in a certain cause wherein Augustus O. Garrett and Mary G. Garrett, were complainants, and William S. Moss, Amos P. Bartlett, Moses Pettengill and William Russell, defendants in chancery in said Circuit Court, as fully as the same appears of record in my office.

[Seal.]

Witness, Merrill C. Young, Clerk, and the seal of said Court, at Pekin, this 29th day of April, 1858.

MERRILL C. YOUNG, Clerk.

EXHIBITS.

MOSES PETTENGILL & AMOS P. BARTLETT,	}	In Peoria Circuit Court,
vs.		
AUGUSTUS O. GARRETT, AND OTHERS.	}	Foreclosure of Mortgage.
STATE OF ILLINOIS,		
PEORIA COUNTY.	ss.	In the Circuit Court of Peoria County, Of the May Term, A. D., 1843.

To the Honorable John D. Caton, Judge of said Court in Chancery sitting. Humbly complaining, show unto your Honor, your orators Moses Pettengill and Amos P. Bartlett, that on or about the eighth day of February, in the year of our Lord one thousand eight hundred and forty-one, Augustus O. Garrett, of said Peoria County, became indebted unto your orators, in the sum of five hundred and ten dollars, for goods, wares and merchandise, before that time sold and delivered by your orators to the said A. O. Garrett, at his special request, and being so indebted, in order to secure the payment of the said sum of money, with interest, the said Augustus O. Garrett made and delivered unto your orators, a certain promissory note, bearing date the same day and year aforesaid, of which the following is a copy, viz:

\$510 00.

Peoria, February 8, 1841.

One hundred and twelve days after date, I promise to pay Pettengill and Bartlett, or order, Five Hundred and Ten Dollars ⁰⁰/₁₀₀, value received, with interest at ten per cent. per annum.

AUGUSTUS O. GARRETT.

Which note your orators will exhibit, on the hearing this cause, to the Court; and your orators pray, may be considered as a part of this bill of complaint.

And your orators further show unto your Honor, that in order further to secure the payment of the said sum of money, with such interest as might accrue thereon, the said Augustus O. Garrett, and Mary G. Garrett, his wife, whom your orators pray may be made defendants to this their bill of complaint, did on or about the eighth day of February, in the year of our Lord one thousand eight hundred and forty one, by a certain Indenture of Mortgage, bearing date the day and year last aforesaid, made by and between the said Augustus O. Garrett, and Mary G. Garrett, party of the first part; and your orators, party of the second part; and signed, sealed and delivered by the said Augustus O. Garrett, and Mary G. Garrett, to your orators, grant, bargain and sell unto your orators, and their heirs and assigns, a certain tract or parcel of land, situated in Peoria County, State of Illinois, being the south east quarter of section five, in township eight north of the base line of range No. eight east of the fourth principal meridian (except twenty-five acres, which has been sold and deeded to William Russell, by the aforesaid Augustus O. Garrett and Mary G. Garrett, his wife) together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the said premises as above described, with the appurtenances, unto your orators, their heirs and assigns forever. The said Indenture of Mortgage, however, was upon this condition expressed therein, as follows: That if the said Augustus O. Garrett, and Mary G. Garrett his wife, their heirs, executors or administrators, shall pay to the said Moses Pettengill and Amos P. Bartlett, their heirs, executors, administrators or assigns, the sum of five hundred and ten dollars, on or before the first day of June, in the year of our Lord one thousand eight hundred and forty-one, with interest at the rate of ten per cent. per annum, together with the interest that may accrue thereon, in manner particularly specified in a certain note or obligation bearing even date herewith, executed by the said Augustus O. Garrett, to the said Moses Pettengill and Amos P. Bartlett, then and from thenceforth these presents shall be null and void; otherwise they shall remain in full force and virtue.

And your orators further show unto your Honor that after the execution of the said mort-

gage, the same was in due form of law acknowledged before Dennis Blakely, a Justice of the Peace, in and for said Peoria county, and duly recorded in the office of the Recorder of the aforesaid county of Peoria, which said indenture of mortgage, your orators herewith file marked "B," and pray that the same may be taken and considered as a part of this their bill of complaint.

And your orators further show that Charles A. Buck, Thomas Donoho, Charles W. McClellan, and Charles Kettelle, are judgment creditors of said Augustus O. Garrett, and that Leonard Holland, and Orin Hamlin, have or claim some interest in said premises as subsequent purchasers of the same of said Augustus O. Garrett, all of whom your orators pray may be made parties defendant to this bill of complaint with said Augustus O. and Mary G. Garrett.

And your orators further show unto your Honor, that said promissory note has long since become due and payable, and that the sum of five hundred and ten dollars, the principal yet remains due, and unpaid to your orators, together with the lawful interest thereon, at the rate of ten ten per centum. per annum, from the eighth day of February A. D. one thousand eight hundred and forty-one, by reason whereof the said indenture of mortgage and the estate thereby mortgaged have become absolute in your orators, subject only to the equity of redemption in this Honorable court. And that your orators have frequently applied to said defendants, or some of them and requested payment of the principal and interest money due your orators upon the said note and mortgage, but said defendants have wholly neglected and still do neglect and refuse to pay the same or any part thereof, all of which actings and doings are contrary to equity and good conscience, and tend to the manifest injury of your orators.

Therefore your orators respectfully solicit the aid of this honorable court, and pray that the said defendants may be required respectively upon their corporal oaths, to make full, true and perfect answers to all and singular, the allegations herein contained, and the charges above set forth, as fully and particularly, according to the best of their knowledge and belief, as if the same were again repeated, and they interrogated thereto; and that the said defendants may be decreed to pay to your orators the principal sum of money above mentioned, with all the arrears of interest due or to become due thereon; and in default thereof, that the defendants above named may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances; and that all and singular the said mortgaged premises with the appurtenances may by the order and decree of this honorable court, be sold, and out of the money arising from the sale thereof, your orators may be paid the full amount of the principal sum due on the said promissory note and indenture of mortgage, and all interest money due and to become due thereon, together with all costs and charges by your orators in this behalf sustained. That a special commissioner be appointed by this honorable court, to make such sale and payment, and that your orators may have such other and further relief in the premises as may seem proper to your Honor, and the circumstances of the case may require. And may it please your Honor to grant unto your orators the usual writ issuing out of and under the seal of this honorable court, directed to the said defendants, returnable at the May term, A. D. 1843, of this court, commanding them to answer as aforesaid, and to stand to and abide by and perform whatever order or decree may be made by this honorable court in the premises; and your orators as in duty bound, will ever pray, &c.

MOSES PETTENGILL.

AMOS P. BARTLETT.

By their Solicitor, JACOB GALE.

COPY OF MORTGAGE.

This Indenture made this eighth day of February in the year of our Lord one thousand eight hundred and forty-one, between Augustus O. Garrett and Mary G. Garrett, his wife, of Peoria county in the State of Illinois of the first part, and Moses Pettengill and Amos P. Bartlett of Peoria, Peoria county in the State of Illinois, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of five hundred and ten dollars paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell unto the said party of the second part, their heirs and assigns, a certain tract or parcel of land situated in Peoria county, State of Illinois, being the south-east quarter section five, in township eight north of the base line of Range No. eight east of the fourth principal meridian, (except twenty-five acres already sold and deeded to William Russell, by the aforesaid Augustus O. Garrett and Mary G. Garrett, his wife,) together with all and singular the hereditaments, and appurtenances thereunto belonging or in any wise appertaining to have and to hold the said premises as above described with the appurtenances unto the said party of the second part, their heirs and assigns forever. And the said party of the first part for themselves and their heirs do hereby covenant and agree to and with the said party of the second part their heirs and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form as aforesaid and that the above bargained premises in the quiet and peaceable possession of the said party of the second part their heirs or assigns against the claim of all persons whomsoever, they will forever warrant and defend.

Provided always that if the said Augustus O. Garrett, and Mary G. Garrett, his wife, their heirs, executors or administrators shall pay to the said Moses Pettengill, and Amos P. Baartlett, their heirs, executors, administrators or assigns, the sum of five hundred and ten dollars, on or before the first day of June, in the year of our Lord one thousand eight hundred and forty-one, with the interest at the rate of ten per cent. per annum, together with the interest that may accrue thereon in manner particularly specified in a certain note or obligation bearing even date herewith, executed by the said Augustus O. Garrett, to the said Moses Pettengill and Amos P. Bartlett, then and from thenceforth these presents shall be null and void, otherwise they shall remain in full force and virtue.

In testimony whereof the said Augustus O. Garrett and Mary G. Garrett, hath hereunto set their hands and seals the day and year first above written.

AUGUSTUS O. GARRETT, [SEAL.]

MARY G. GARRETT, [SEAL.]

Signed sealed and delivered in presence of

DENNIS BLAKELEY

STATE OF ILLINOIS, }
COUNTY, } ss.

I, Dennis Blakeley, one of the Justices of the Peace for said county do certify that on this day appeared before me, Augustus O. Garrett and Mary G. Garrett, whose names appear signed to the foregoing deed of conveyance, and who are personally known to

me to be the identical persons whose names are subscribed to said deed as having executed the same and acknowledged that they had executed the same as their voluntary act and deed, for the uses and purposes therein expressed. And Mary G. Garrett, wife of the said Augustus O. Garrett, having been by me made acquainted with the contents of said deed, and being by me examined separate and apart from her husband acknowledged that she had executed the same and relinquished her dower to the premises therein conveyed voluntarily, freely, and without any compulsion from her husband. Given under my hand and seal at Peoria, this eighth day of February, eighteen hundred and forty-one.

DENNIS BLAKELEY, J. P. [SEAL.]

STATE OF ILLINOIS, } ss. Recorder's Office.
Peoria County.

I, Charles Kettelle, Recorder of said county of Peoria, do hereby certify the within mortgage, and certificate of proof is this day duly recorded in said office in Book, "I," pages 522, and 523. Given under my my hand and private seal, (no official being provided,) this 9th day of February A. D. 1841.

CHARLES KETTELLE, R. P. C. [SEAL.]

Proceedings in Chancery before the Circuit Court begun and held at the court house in the town of Peoria, within and for the county of Peoria, and State of Illinois, on Monday the 29th day of May, in the year of our Lord, one thousand eight hundred and forty-three, present the Honorable Richard M. Young, Associate Justice of the Supreme Court, of the said State of Illinois, by exchange with the Honorable John D. Caton, Associate Justice of the said Supreme Court, assigned to perform the duties of Judge of the Ninth Judicial Circuit.

Monday June 5th, 1843—Decree of Sale.

MOSES PETTENGILL, AMOS P. BARTLETT,	}	
vs.		
AGUSTGUS O. GARRETT,		To foreclose
MARY G. GARRETT, CHAS.		Mortgage.
W. McCLELLAN, CHAS A. BUCK, CHAS. KETTELLE, LEONARD HOLLAND ORIN HAMLIN, THAMAS DONOHO.		

This fifth day of June A. D. 1843, this cause came on to be heard, and it appearing to the Court that the said defendants, Augustus O. Garrett, Mary G. Garrett, Charles A. Buck, Charles W. McClallen, Charles Kettelle, Leonard Holland, and Orin Hamlin, have been duly served with process in this cause, more than ten days previous to the first day of the present term of this court, and the appearance of the said Thomas Donoho, having been entered by his Attorney, George T. Metcalf, Esq., and the said defendant having been ruled to plead, answer, or demur to said complainant's bill, by the morning of this day and having made default in the premises. It is ordered that the said complainants' bill be taken for confessed by the said defendants. And it appearing to the court upon an account being taken that there is due to the complainants upon the mortgaged deed in the complainants' bill described and set forth of principal and interest, the sum of six hundred and twenty-nine dollars. It is therefore ordered, adjudged and decreed, that the said Augustus O. Garrett, and Mary G. Garrett, parties to the said mortgage deed, pay to the said complainants the said sum of six hundred and twenty-nine dollars, the amount of money due upon said mortgage deed within ten days from the date of this decree, and that in default thereof the said mortgaged premises, viz: a certain tract or parcel of land situated in Peoria county, State of Illinois, being the south-east quarter of section five, in township 8, north of the base line of range No. 8, east of the fourth principal meridian, (except twenty-five acres, which has been sold and deeded to William Russell, by the aforesaid Augustus O. Garrett, and Mary G. Garrett, his wife,) or so much thereof as may be necessary to pay the said sum of money due the complainants on the said mortgaged deed, be sold at public auction to the highest and best bidder for cash, after having given notice of the time and place of said sale by inserting an advertisement of the same for three weeks successively in the "Peoria Democratic Press," a newspaper printed and published in the town of Peoria, county of Peoria, State of Illinois. It is further ordered that William Mitchell, be and hereby is appointed a commissioner to make such sale as aforesaid, and that after making sale as aforesaid, he the said commissioner, shall immediately make, execute, deliver to the purchaser or purchasers of the land, premises, or the part thereof so sold a good and sufficient deed or deeds of the premises or the part so sold conveying the same and all right, title and interest of the said Augustus O. Garrett

and the said Mary G. Garrett, in the same to the said purchaser or purchasers, their heirs and assigns forever.

It is further adjudged and decreed that after such sale, the said defendants, and each of them be forever barred and foreclosed of, and from all equity of redemption of, in and to the premises so sold as aforesaid, that the said defendants, Augustus O. Garrett and Mary G. Garrett pay all the costs of this suit and the proceedings under this decree, and that the said commissioner report his doings under this decree to this court at the next term after such sale.

Proceedings in Chancery, before the Circuit Court, begun and held at the court-house, in the Town of Peoria, within and for the County of Peoria, and State of Illinois, on Monday, the sixteenth day of October, in the year of our Lord one thousand eight hundred and forty-three. Present, the Honorable John Dean Caton, Associate Justice of the Supreme Court of the State of Illinois, and Judge of the Ninth Judicial Circuit; Smith Frye, Sheriff; William Mitchell, Clerk:

SATURDAY, October 21st, 1843.

MOSES PETTENGILL,
AMOS P. BARTLETT,

vs.

AUGUSTUS O. GARRETT, MARY G. GARRETT,
CHARLES A. BUCK, CHARLES W. McCLALLEN,
CHARLES KETTELLE, LEONARD HOLLAND,
ORIN HAMLIN, and THOMAS DONOHO.

} To Foreclose Mortgage.

This day, William Mitchell, Master in Chancery and Commissioner, appointed at the May term of this Court, A. D. 1843, to make sale of the mortgaged premises in the complainants' bill, mentioned and presented his report which is ordered to be filed. Thereupon the defendant, Augustus O. Garrett, by Onslow Peters, his solicitor, presented his exceptions to said report, which is also ordered to be filed.

And the said Master's report was filed in said cause, in the words and figures following, to-wit:

MASTER'S REPORT.

MOSES PETTENGILL,
AMOS P. BARTLETT,

vs.

AUGUSTUS O. GARRETT, MARY G. GARRETT,
CHARLES A. BUCK, CHARLES W. McCLALLEN,
CHARLES KETTELLE, LEONARD HOLLAND,
ORIN HAMLIN, THOMAS DONOHO.

} IN THE CIRCUIT COURT OF
PEORIA COUNTY,

} IN CHANCERY — To FORE-
CLOSE MORTGAGE.

The report of William Mitchell, Master in Chancery, who was ordered to make sale of the land and tenements in the bill mentioned, by a decree of said Court rendered at the May Term, A. D. 1843:

The said William Mitchell, by virtue of, and pursuant to the said order, do hereby report that all and singular the mortgaged premises mentioned in said bill, were on the 19th day of

June, A. D. 1843, by me duly advertised and noticed for sale at public auction, at the court house door in the Town of Peoria, for the 10th day of July, A. D. 1843; that the said notice contained a description of the said mortgaged premises, and was published in the "Peoria Democratic Press," for three weeks, once in each week, previous to the sale of the said mortgaged premises. A copy of said advertisement, with a certificate of publication thereof, is hereto attached, and made part of this report. And I do further report that on the 10th day of July, A. D. 1843, the day on which the said premises were so advertised to be sold, as aforesaid, I attended at the place of sale, and sold all that tract or parcel of land lying north of the centre of the Peoria and Farmington road, which belongs to the said Augustus O. Garrett and Mary G. Garrett, and being a part of south-east quarter of Section five, in Township eight, north of the base line, in Range eight east of the fourth principal meridian, to the said Moses Pettengill and Amos P. Bartlett, the complainants herein, for the sum of six hundred and thirty-two dollars, and sixty-seven cents, they being the highest bidder for the same. And I do further report that I have executed a good and sufficient deed of conveyance for the premises so sold as aforesaid, to the above named purchasers.

All of which is respectfully submitted. Dated at Peoria, this 22d day of August, A. D. 1843.

WILLIAM MITCHELL.

Master in Chancery, and Commissioner.

The advertisement, and certificate attached, are in the words and figures following, to-wit:

[ADVERTISEMENT.]

State of Illinois, Peoria County, ss. In the Circuit Court of Peoria County. Moses Pettengill, Amos P. Bartlett, vs. Augustus O. Garrett, Mary G. Garrett, Charles A. Buck, Charles W. McClallen, Charles Kettelle, Leonard Holland, Orin Hamlin, and Thomas Donaho,—Foreclosure of Mortgage in Chancery.

By virtue of a decree of the Circuit Court of Peoria County, sitting as a Court of Chancery, made at the May term of said Court, A. D. 1843, I shall between the hours of ten o'clock in the forenoon, and 4 o'clock in the afternoon, on Monday, the 10th day of July next, at the court-house door, in the Town and County of Peoria aforesaid, sell at public auction, to the highest bidder, for cash, the following real estate, situated in said Peoria County, to-wit: a certain tract or parcel of land, being the south-east quarter of Section five, in Township eight, North of the base line of Range eight east of the fourth principal meridian, (except twenty-five acres which has been sold and deeded to William Russell, by the aforesaid Augustus O. Garrett, and Mary G. Garrett, his wife,) or so much thereof as may be necessary to pay the sum of money due the complainants. And upon the sale of said land, or any part thereof, a good and sufficient deed of conveyance will immediately be executed and delivered to the purchaser or purchasers, of the premises, on the part so sold conveying the same, and all right, title and interest of the said Augustus O. Garrett, and the said Mary G. Garrett, in the same, to the said purchaser or purchasers, their heirs and assigns, forever.

Dated at Peoria, this 19th day of June, A. D. 1843.

June 21st, 1843.

WILLIAM MITCHELL, Com'r.

[Certificate attached to Advertisement.]

I, John S. Zieber, printer and publisher of the Peoria Democratic Press, a paper printed and published in Peoria, Peoria County, Illinois, hereby certify that the annexed advertisement has been published three weeks successively in the paper aforesaid, the date of first publication of said advertisement being June 21st, 1843, and of the third, being July 5th, 1843. Given under my hand this 8th day of July, 1843.

J. S. ZIEBER,
by E. P. SLOAN.

Saturday, October 28th, 1843.

MOSES PETTENGILL,
AMOS P. BARTLETT,

vs.

AUGUSTUS O. GARRETT, MARY G. GARRETT,
CHARLES A. BUCK, CHARLES W. McCLALLEN,
CHARLES KETTELE, LEONARD HOLLAND,
ORIN HAMLIN, THOMAS DONOHO.

} To Foreclose Mortgage.

This cause came on to be heard upon the exceptions filed herein, to the Master's report, which was argued by counsel, and the court being sufficiently advised in the premises, overruled said exceptions. Thereupon it is ordered by the Court that the Master's report, and all the matters and things therein contained, do stand ratified and confirmed. Whereupon the said Augustus O. Garrett prayed an appeal to the Supreme Court of the State of Illinois.

Deed—Mitchell, Commissioner, to Pettengill and Bartlett.

THIS INDENTURE, made this twenty-second day of August, in the year of our Lord one thousand eight hundred and forty-three, between William Mitchell, Master in Chancery, for the County of Peoria, and State of Illinois, of the first part, and Moses Pettengill and Amos P. Bartlett, of the County of Peoria, and State aforesaid, of the second part.—Whereas at a Court of Chancery held for the County of Peoria, in the State of Illinois, at the court-house in the town of Peoria, on the 5th day of June, in the year of our Lord one thousand eight hundred and forty-three, it was among other things ordered, adjudged and decreed, by the said court, in a certain cause then depending in the said court, between the said Moses Pettengill and Amos P. Bartlett, complainants, and Augustus O. Garrett, Mary G. Garrett, Charles A. Buck, Charles W. McClallen, Charles Kettelle, Leonard Holland, Orin Hamlin and Thomas Donoho, defendants, that the whole of the mortgaged premises mentioned and set forth in the pleadings in this cause, to-wit: the south-east quarter of Section five, in Township eight north of the base line, in Range eight east of the fourth principal meridian, (except twenty-five acres which has been sold and deeded to William Russell, by the aforesaid Augustus O. Garrett, and Mary G. Garret his wife,) or so much thereof as may be necessary to pay the said complainants the sum of money due them on the mortgage deed, be sold at public auction to the highest and best bidder, for cash, after having given notice of the time and place of said sale, by inserting an advertisement of the same for three weeks successively, in the Peoria Democratic Press, a newspaper printed and published in the town of Peoria, County of Peoria, State of Illinois. And whereas, the said William Mitchell, Master in Chancery, and party of the first part to these presents, in pursuance of the order and decree of the said Court of Chancery, did on the 10th day of July, A. D., 1843, between the hours of ten o'clock in the forenoon, and four o'clock in the afternoon of

said day, sell at public auction at the door of the court-house in the town of Peoria, aforesaid, a certain part or parcel of the aforesaid mortgaged premises, and hereinafter particularly described, having first given three weeks previous notice of the time and place of such sale, with a brief description of said mortgaged premises, agreeably to the order aforesaid; at which sale all that tract or parcel of land lying north of the centre of the Peoria and Farmington road, which belonged to Augustus O. Garrett, and Mary G. Garrett, and being a part of the said south east quarter of Section of number Five, (5) in Township number Eight (8) north of the base line, of Range number Eight (8) east of the fourth principal meridian, was struck off to the said Moses Pettengill and Amos P. Bartlett, party of the second part to these presents, for the sum of six hundred and thirty-two dollars and sixty-seven cents, which was the sum of money due on said mortgage deed, it being the highest sum bidden for the same. Now therefore, this present indenture, witnesseth, that the said William Mitchell, Master in Chancery as aforesaid, and party of the first part to these presents, in order to carry into effect the said sale, so made as aforesaid, in pursuance of the decree of the said Court of Chancery, and in consideration of the premises, and of the said sum of six hundred and thirty-two dollars and sixty-seven cents, paid by the said party of the second part to these presents, to the said William Mitchell, Master in Chancery as aforesaid, the receipt whereof is hereby confessed, hath granted, bargained and sold, aliened, released, conveyed and confirmed, and by these presents doth grant, bargain and sell, alien, release, convey and confirm, unto the said party of the second part, and to their heirs and assigns, the following described tract or parcel of land, being a part of the mortgaged premises aforesaid, to-wit: all that part of the south-east quarter of Section five, in Township eight north of the base line of Range eight east of the fourth principal meridian, which lies north of the centre of the Peoria and Farmington road, and which belonged to the said Augustus O. Garrett and Mary G. Garrett.

To Have and to hold the said premises above described, and hereby intended to be conveyed, together with all and singular the rights, members, privileges, hereditaments and appertenances to the same belonging, or in any wise appertaining unto, the said Moses Pettengill and Amos P. Bartlett, party of the second part, their heirs and assigns, to their and each of their only proper use, benefit and behoof, forever.

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

Signed, sealed and delivered in presence of }
RALPH HAMLIN. } WILLIAM MITCHELL,
Master in Chancery and Commissioner.

STATE OF ILLINOIS, }
PEORIA COUNTY. } ss.

This day personally appeared before the undersigned, Notary Public, within and for said County, William Mitchell, to me personally known to be the real person described in the foregoing deed, and whose name appears subscribed thereto as having executed the same as Master in Chancery and Commissioner, and acknowledged the execution thereof, as Master in Chancery and Commissioner, for the uses and purposes therein set forth.

In Testimony whereof I have hereunto set my hand, and affixed my seal Notarial, at my office in Peoria, this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and forty-three.

RALPH HAMLIN, Notary Public.

STATE OF ILLINOIS, }
PEORIA COUNTY } ss.

RECORDER'S OFFICE.

I, Charles Kettelle, Recorder in and for said County, do certify the within Deed is duly recorded in said office, in Book P. pages 92 and 93, on this 22d day of January, A. D. 1848.

CHARLES KETTELLE, R. P. Co.

And on the same day an affidavit of said Augustus O. Garrett, was filed in said cause, in the words and figures following, to-wit:

PETTENGILL & BARTLETT, }
vs. }
A. O. GARRETT, *et uxor*.

AUGUSTUS O. GARRETT, the above named defendant, being duly sworn, doth depose and say, that the sale made by William Mitchell, Esq., of this affiant's land, under the decree of sale herein made, at the last term of this Court, was made in such manner, and under such circumstances as to constitute and render said sale fraudulent as to this affiant.. This affiant says that, after diligent enquiry made, he is informed, and verily believes the facts to be as follows, to wit: At the last term of this Court, one of the complainants, Amos P. Bartlett, for the complainants, entered into an agreement with one William S. Moss, that the complainants, when the said mortgaged premises of this affiant should be sold by a commissioner or master in chancery, under the decree aforesaid, would have offered for sale about fifty-five acres of said land; and that he, the said Bartlett, or the complainants would bid therefor, when the same was offered for sale under their decree, the amount of their debt and costs, and no more. And the said Moss, who obtained a decree of sale and foreclosure, at said last term of this Court, against this affiant, on a mortgage upon the same land, agreed to bid the amount of his debt and cost for the remainder of the land, amounting to about eighty-three acres, when the same should be offered for sale under said last mentioned decree. And it was further agreed between the said Bartlett or the complainants, and the said Moss, as this affiant is informed and verily believes, that the said complainants and the said Moss should not bid against each other at said sales, when the said respective portions of said mortgaged premises, should be sold or offered for sale as aforesaid; but that each should bid for the said respective portions thereof, his or their respective debts and costs, and no more; which agreement this affiant is informed and believes was either in whole or part reduced to writing, and signed by the said Moss, and the complainants, or the said Bartlett for the complainants; and the said Bartlett or the complainants, in pursuance and fulfilment of the agreement and understanding between him or them, and the said Moss, procured the services of a surveyor, and proceeded to survey and run out fifty-five acres of said land, which he was by said agreement to bid upon and bid off at said sale. And this affiant says, that at the time said sales were made, the said Bartlett did appear, and bid for said fifty-five acres, the amount or about the amount of complainant's debt and costs in this case, and the same was, by the said Mitchell, struck off to the said Bartlett or the complainants, for that sum, as by reference to the report of said Mitchell, herein filed, will more fully appear. And at the time of the sale of the said eighty-three, which was made by H. O.

Merriman, Esq., a commissioner duly appointed by the Court for that purpose, the said Moss appeared and bid off the said eighty-three acres, for about the amount of his said debt and costs; which was in fulfilment of the agreement and understanding between the said Bartlett and the said Moss.

And the affiant further states, that by reason of the said agreement and understanding of the said Bartlett and Moss, all competition was prevented between the said Moss, and the said Bartlett. And further, that by reason of said agreement and understanding having been made known to certain other individuals, who were well able to purchase said land, and were desirous of doing so, and but for said agreement and understanding would have appeared at said sales, and bid for said lands: such persons were detained and prevented from attending said sales, and bidding for said lands.

And this affiant further states, that he was unadvised of said agreement and understanding, till after said sales, and was deprived of all means of counteracting the effect thereof; and also, that the said Bartlett, either before or immediately after said sale, and before he had or could acquire any title thereto, contracted to sell said land, or a considerable part thereof, with the view, and for the purpose, as affiant believes, of speculating upon the property and estate of this affiant, and embarrassing and injuring this affiant, and preventing him from obtaining that redress and relief which he was entitled to by the laws of the land.

And this affiant says, that said lands being situated immediately adjoining to the town of Peoria, is very valuable, and at a fair public sale, made without embarrassment or collusion, and left free and open to competition, would have brought a much larger sum of money than the said two mortgaged debts and costs of said suits: the said fifty-five acres of land are worth, and were worth at the time of said sale, from thirteen to fifteen hundred dollars; and eighty-three acres are worth and were worth at the time of the said sale thereof, twenty-five hundred to three thousand dollars; and this affiant believes that said tracts of land would have brought those sums at a fair public sale, where competition was free, and not embarrassed, as in this case, by bargains, agreements and collusions; so that this affiant, by reason of said agreement, understanding and collusion, has been deprived, or if said sale should be confirmed, will be deprived of property worth four thousand dollars or more, for a little less than two thousand dollars: and he verily believes that Justice and Equity, as well as a due regard to the faithful and proper execution and fulfilment of the order and decree of this Court, requires that the sale made under the decree in this case as aforesaid, should be annulled and set aside, and that a new order of sale be made, or that such other relief be granted, and such further order and decree made, as to this Honorable Court shall seem just and reasonable.

AUGUSTUS O. GARRETT.

Affirmed to and subscribed before me this 21st day of October, 1843.

WILLIAM MITCHELL, Clerk.

And afterwards, on the 23rd day of October, A. D., 1843, there was filed in said cause the affidavit of Amos P. Bartlett, the agreement in writing, referred to in the affidavits, and the affidavit of William S. Moss, which are in the words and figures following and attached together in the order copied herein, to wit:

MOSES PETTENGILL, and AMOS
P. BARTLETT, COMPLAINANTS.
vs.
AGUSTUS O. GARRETT, *et als* DEF'TS.

In the Circuit Court of
Peoria County, Illinois.

In answer to the affidavit of said Garrett filed with his motion to set aside the sale made by William Mitchell, Master in Chancery, under the decree of foreclosure, made in this suit at the last term of this court. Amos P. Bartlett, one of the above named complainants, being first duly sworn, on oath states :

That neither at the last term of this court nor at any other term did this affiant enter into such an agreement with William S. Moss, as is set forth in the said affidavit of the said Garrett. That the only agreement ever made or entered into with said Moss by this affiant concerning the said mortgaged premises, or concerning the sale thereof, or in anywise relating to the same, is attached to this affidavit, and marked (A.) That this affiant never agreed with said Moss, that the complainants, when the said mortgaged premises of said Garrett should be sold by a commissioner or Master in Chancery, under the decree aforesaid would have offered for sale about fifty-five acres of said land or any other specified number of acres and that this affiant or the complainants would bid therefor, when the same was offered for sale under their decree, the amount of their debts and costs and no more, or any particular sum.

That neither this affiant nor the complainants ever agreed with the said Moss that the complainants and the said Moss should not bid against each other at the sales on their respective decrees of foreclosure, nor did they ever agree that the complainants or the said Moss would bid no more than their respective debts and costs for the portion of said mortgaged premises, offered for sale under their respective decrees. That so far as any agreement or arrangement which ever was entered into by this affiant or the complainants with the said Moss or any other person interfered in the sale of said mortgaged premises, the said Moss might have bid his debt and costs on an acre of said land or a less quantity if he had chosen to do so, or he or any other person might have bid to any amount on that portion of said land purchased by said Moss, and the complainants were never bound in any manner by any agreement or arrangement with said Moss or any other person as to how much of said mortgaged premises should be offered for sale under their said decree, nor as to how much of the same they should bid off for their debt, or their debt and costs, nor as to how much they should bid on that part of said mortgaged premises bought by them at the sale under their said decree, that there was no agreement or arrangement made between this affiant or the complainants and said Moss, that said Moss should not bid at the sale under their said decree, but so far as is known to this affiant, said sale was an open public and fair sale free to competition in bidding of every one. This affiant further states that it is not true that he or the complainants in pursuance or fulfillment of any agreement or understanding between him or them, and the said Moss procured the services of a Surveyor, and proceeded to survey or run out fifty-five acres of said land ; but that the only survey of any part of said mortgaged premises procured by this affiant or the complainants was made after their purchase for the purpose of ascertaining how much land they had bought under their decree aforesaid, and the bounds of it.

That the agreement made by said Moss with these complainants and hereto attached was

not obtained for the purpose or with the intent of defrauding or in any manner injuring said Garrett but for the sole purpose that said Moss might not by the sale under the decree of foreclosure of his mortgage obtain all the mortgaged premises, and have nothing to apply in liquidation or payment of the mortgage of the complainants, and that therefore the said agreement tended to the benefit of said Garrett as well as the complainants. That this affiant did not suppose at said sale that he was purchasing the land bid off by their complainant's at a speculation, nor did he know or believe that any other person was willing to bid the same or a larger amount for said land, and if any other person had even to the amount of one dollar more than their said debt and costs for said land, this affiant should not have purchased it; and so far was this affiant from supposing that he had made a speculation in said purchase and from desiring to injure said Garrett, that after said sale, on the representation of said Garrett, that he was expecting to receive money from Massachusetts, this affiant agreed with said Garrett to sell said land to him at the amount which it was bid off if he would pay the same to the complainants on or before the fifteenth day of August then next. And after said day of August, said Garrett having failed to pay the said sum for the re-purchase of said land, this affiant on behalf of the complainants contracted to sell the same to one William Russell, for the sum of \$728, partly cash and partly credit, not with any view or purpose of speculating upon the property or estate of said Garrett, or of any embarrassing or injuring him or of preventing him from obtaining any redress or relief he is entitled to by the laws of the land, but because this affiant considered the same a good sale, and that the complainants would thereby obtain the amount formerly due them on said mortgage, and their expenses and trouble in collecting the same.

That Moses Pettengill, the other complainant was absent from this State at the the last term of this court, has been so absent ever since, and is still absent, and on that account this matter has been managed by this affiant, and said Pettengill has done nothing and can have entered into no agreement or arrangement with said Moss about said mortgaged premises.

AMOS P. BARTLETT.

Subscribed to before me, this 23rd October A. D. 1843.

WILLIAM MITCHELL, Clk.

AGREEMENT OF MOSS, WITH PETTENGILL & BARTLETT.

Agreement made and entered into this first day of June, A. D. 1843, between William S. Moss, of the one part, and Moses Pettengill and Amos P. Bartlett, of the other part, witnesseth, That whereas the said Moss has commenced a suit against Augustus O. Garrett, Mary G. Garrett, Moses Pettengill, Amos P. Bartlett and others, in the Peoria County Circuit Court of the State of Illinois, for the foreclosure of a mortgage held by the said Moss, given to him by the said Augustus O. and Mary G., on the south-east quarter of Section No Five, in Township number Eight North, of Range number Eight East of the fourth principal meridian, to secure the payment of one thousand dollars and interest, as is alleged by said Moss, in his bill filed in the said suit, which suit is now pending and undetermined in said Court. Now it is agreed by the said Moss, that in consideration that the

said Moses Pettengill, and Amos P. Bartlett, will make no defense to the rendition of a judgment of foreclosure in said suit at this term of said Court, and the making of a decree by said court, ordering so much of said land to be sold as will satisfy the mortgage of said Moss, and so much of the remainder to be sold as will satisfy a mortgage on the same premises held by said Pettengill and Bartlett, executed to them by said Augustus O. and Mary G. that then on the sale of said land under the decree of the said court, to be rendered in said suit, the said Moss will bid the amount of his said mortgage on that part of the said mortgaged premises lying south of the Peoria and Farmington road, running through said land from east to west, near the centre of said quarter Section, and will release the remainder of said land from any incumbrance or claim held by him on the same, by reason of the said mortgage to him, or by reason of said judgment of foreclosure. Witness my hand and seal affixed the day and year first above written.

WM. S. MOSS. [L. S.]

N. H. PURPLE.

AFFIDAVIT OF WM. S. MOSS.

[Attached.]

STATE OF ILLINOIS, } ss.
PEORIA COUNTY.

Wm. S. Moss, of Peoria County aforesaid, being first duly sworn, on oath doth depose and say, that at the last May Term of the Circuit Court, of said Peoria County, this affiant entered into an agreement with Moses Pettengill and Amos P. Bartlett, complainants in a suit in said court to foreclose a mortgage against Augustus O. Garrett and others, on part of south-east quarter of Section five, of Township eight north in Range eight east of the fourth principal meridian, which agreement is hereto prefixed, marked "A" That said agreement was the only agreement, arrangement or understanding to the recollection of this affiant ever made or understood between this affiant and said Pettengill and Bartlett, or either of them, concerning said land or the sale thereof, or in any wise relating to the same. That there was no agreement ever made between this affiant and said Pettengill and Bartlett, that this affiant should not bid at the sale made under the decree of foreclosure of Mortgage on said land in said suit, made at said May term of this court, or that said Pettengill and Bartlett, should bid the amount of their debt and costs, and no more, on the land purchased by them at said sale, or on any fifty-five acres of said land, but that so far as this affiant has any knowledge, said sale was an open, public and fair sale, free to competition in bidding of every one, this affiant as well as others, and that there was no collusion or misunderstanding between this affiant and said Pettengill and Bartlett, or any other person, to control said sale or prevent competition in bidding at the same, or in any otherwise to injure or defraud said Garrett. That in the opinion of this affiant, the land purchased by said Pettengill and Bartlett at said sale, sold at about its cash value, and for as much as this affiant would be willing to give for the same. That the said Bartlett having soon after the time of said sale, made an agreement with said Garrett to re-sell him said land if he would pay him the sum he had bid for the same, on or before the fifteenth day of August then next, this affiant, at the request of said Garrett, and in good faith, endeavored to find some person who would pay for said land a larger sum than had been bid for the same by said Pettengill and Bartlett, as well as some person who would pay for that part of the said quarter Section purchased on the sale

under his decree of foreclosure obtained at the said term, the amount bid by the affiant for the same, this affiant retaining the spring on the land so bid off by him; and that this affiant was unable to find any person who was willing to buy said tracts of land at any higher price than they were sold for at the said sales.

WM. S. MOSS.

Subscribed and sworn to before me, this 22d day of October, A. D. 1843.

WM. MITCHELL, Clerk.

And afterwards, on the 28th day of October, A. D. 1843, an affidavit of Aquilla Wren and statement of A. M. Hunt and others, was filed in said cause, in the words and figures following, to-wit:

PETTENGILL & BARTLETT, }
 ^{vs.} } In Chancery, Peoria Co. Circuit Court, Oct. term, 1843.
 A. O. GARRETT, *et al.*

AFFIDAVIT OF AQUILLA WREN.

I, Aquilla Wren, do depose and say that I am well acquainted with the land mentioned in the bill of complaint in the above cause, and also mentioned in the affidavits of Wm. S. Moss and Amos P. Bartlett filed herein, and this affiant says that from its location near the Town of Peoria, it is very valuable. All that part of it which lies north of the Peoria and Farmington road, running through said land, he believes to be worth twenty-five dollars per acre. And he also says that he believes the land lying south of said Farmington road, is worth at the present time thirty to fifty dollars per acre, at least, and were I the owner of said land I would not sell it for the prices above mentioned.

A. WREN.

Subscribed and sworn to before me, this 27th October, 1843.

WILLIAM MITCHELL, Clerk.

We the undersigned, concur in the statement of Aquilla Wren, in the above written affidavit, as to the value of the property therein referred to.

A. M. HUNT,
 SMITH FRYE,
 G. C. McFADDEN.

And on the same 28th day of October, an affidavit was filed in the said cause, in the words and figures following, to-wit:

I, Augustus O. Garrett, do depose and say that before the foreclosure of the mortgage of this affiant to said Moss, by said Moss, I entered into an agreement with said Moss, that upon his foreclosure, I should have one year to redeem said land, by paying the purchase or mortgage money, which is still a subsisting agreement between me and the said Moss, and as said Moss was the senior mortgagee, and his mortgage covered the whole of the land, I acted upon the hypothesis that I would be protected in my rights, and have the time agreed upon to redeem; and this affiant says the agreement between the said Moss and Bartlett, as set out in their affidavits, operates injuriously and fraudulently upon this affiant, and the ef-

fect of such agreement had been to prevent competition at the sale, and bar this affiant of his rights.
AUGUSTUS O. GARRETT.

Affirmed before me this 27th day of October, 1843.

WILLIAM MITCHELL, Clerk.

FORECLOSURE OF MORTGAGE.

WILLIAM S. MOSS
vs.
AUGUSTUS O. GARRETT. } In Peoria Circuit Court. May Term, 1843.

To ——— Judge of the Ninth Judicial Circuit, of the State of Illinois, in Chancery sitting.

Complainant William S. Moss, respectfully sheweth unto your Honor, that on the fourteenth day of September, A. D. 1840, Augustus O. Garrett executed his promissory note to complainant in the words and figures following, to-wit:

\$1000.

PEORIA, September 14, 1840.

Twelve months after date, I promise to pay William S. Moss or order, one thousand dollars, value received, without defalcation, with interest at twelve per cent. per annum, payable quarterly from date

(Signed) AUGUSTUS O. GARRETT.

And complainant prays that the original may be made and considered as part of this bill on hearing hereof. And that on the same day and year said Augustus O. Garrett, and Mary G. Garrett, his wife, executed and delivered to your orator a deed of mortgage, duly acknowledged, and thereby conveyed to complainant the south-east quarter of section No. 5, in township No. 8 N, of range No. 8, east of the fourth principal meridian, situated in the county of Peoria, in the State of Illinois, (excepting twenty-five acres at the N. W., corner of said quarter sold to William Russell, which said conveyance was and is subject to a certain condition thereunder, written in effect following to-wit: that if said Garrett, his heirs, executors, or administrators, should pay to complainant, his heirs, executors, administrators, or assigns, the sum of one thousand dollars, with twelve per cent interest, per annum, payable quarterly from the date thereof, then said deed as also one certain note of hand (meaning the said note of hand, above recited,) should be both null and void. A copy of which said deed of mortgage is hereto attached, and marked "A," and the original made part hereof, which said deed was duly recorded on the seventh day of November, A. D. 1840, as more fully appears by the certificate of the Recorder, of Peoria county, Illinois, on said mortgage deed a copy of which is attached and the original made part of this bill.

And complainant avers that the time in said condition of said deed and in said note for the payment of the said sum of money, has long since relapsed, and the said premises in deed forfeited to said complainant, and said Garrett has neglected and refused and still neglects and refuses to pay the said sum of one thousand dollars and the interest thereon, or either, or any part thereof.

And complainant further states that Amos P. Bartlett and Moses Pettengill, of Peoria county, Illinois, claim some interest in said premises as subsequent mortgagees of said premises, or some portion thereof, of said Augustus O. and Mary G. Garrett.

Said complainant therefore prays that said Augustus O. Garrett, Mary G. Garrett, Moses Pettengill, and Amos P. Bartlett, may be made defendants to this bill, and compelled to answer the matters and things herein before stated and set forth as fully and amply as if particularly interrogated thereto, but not on oath, their and each of their oaths being hereby waived, and that an account may be taken of the sum or sums of money due upon said mortgage, and that a decree may be made and entered by this court that unless the said defendant shall pay and satisfy such sum or sums as shall upon such accounting be found due and in arrear to complainant upon said mortgage within some short time to be fixed and named by the court, that the equity of redemption and all the estate, right title and interest of said defendants, and each of them be and stand forever barred and foreclosed, or for such other or further decree as to your honor shall seem meet and proper, and as in duty bound will ever pray, &c.

Also complainants pray for the usual writ of summons against said defendants according to the Statute.

PURPLE & MERRIMAN, Solicitors for Comp'ts.

COPY OF MORTGAGE. "A."

Know all men by these presents, that we, Augustus O. Garrett and Mary G. Garrett, of Peoria County, and State of Illinois, in consideration of the sum of one thousand dollars, to me in hand paid by William S. Moss, of Peoria County and State of Illinois, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said William S. Moss, his heirs and assigns, a certain piece or parcel of land, with the privileges and appurtenances thereof, situate, lying and being in the County of Peoria, and State of Illinois, known and described as follows, to wit: the south-east quarter of section No. five, township eight north, of range eight east of the fourth principal meridian, (excepting twenty-five acres at the north-west corner of quarter sold to William Russell;) to have and to hold the aforegranted premises to the said William S. Moss, his heirs and assigns, to his and their only use and behoof, forever. And the said Augustus O. Garrett and Mary G. Garrett, for ourselves, our heirs, executors and administrators, do covenant with the said William S. Moss, his heirs and assigns, that we are lawfully seized in fee of the aforegranted premises, that they are free of all incumbrances, that we have good right to sell and convey the same to the said William S. Moss, as aforesaid; and that we will, and our heirs, executors and administrators, shall warrant and defend the same to the said William S. Moss, his heirs and assigns forever, against the lawful claims and demands of all persons whomsoever.

Provided, nevertheless, that if the said Augustus O. Garrett, his heirs, executors or administrators pay to the said William S. Moss, his heirs, executors, administrators or assigns, the sum of one thousand dollars, with twelve per cent. interest per annum, payable quarterly, from the date hereof, then this deed, as also one certain note of hand, bearing even date with these presents, given by said Augustus O. Garrett, to the said William S. Moss,

to pay the sum of money at the time aforesaid, shall both be null and void; otherwise they shall remain in full force and virtue.

In witness whereof, we have hereunto set our hands and seals, this fourteenth day of September, A. D., 1840.

AUGUSTUS O. GARRETT, [SEAL.]

MARY G. GARRETT, [SEAL.]

Signed, sealed and delivered in presence of us,

EDWARD DICKINSON.

STATE OF ILLINOIS, } ss.
Peoria County.

I, EDWARD DICKINSON, Probate Justice of the Peace, within and for the aforesaid County, doth certify that Augustus O. Garrett, and Mary G. Garrett, who are personally known to me to be the real persons who signed the foregoing conveyance, and who acknowledged the same to be their free act and deed, for purposes therein expressed. Given under my hand and seal this 3rd day of November, A. D., 1840.

EDWARD DICKINSON, [SEAL.]

P. J. P.

STATE OF ILLINOIS, } ss.
Peoria County.

Recorder's Office.

I, CHARLES KETTELLE, Recorder of said County of Peoria, do certify the within mortgage and acknowledgement is duly recorded in said office, in Book "I," pages 496 and 497. Given under my hand and private seal, (no official seal being yet provided) this 7th day of November, A. D., 1840.

CHARLES KETTELLE, [SEAL.]

R. P. Co.

Monday, June 5, 1843.

WILLIAM S. MOSS,

vs.

AGUSTUS O. GARRETT, MARY G. GARRETT,
MOSES PETTENGILL, AMOS P. BARTLETT
CHARLES A. BUCK, CHARLES W. McCLELLAN,
CHARLES KETTELLE, LEONARD HOLLAND
ORIN HAMLIN, THOMAS DONOHO.

To Foreclose Mortgage.

And now to-wit: June 5th A. D. 1843, the defendants Augustus O. Garrett, Mary G. Garrett, Moses Pettengill, Amos P. Bartlett, Chas A. Buck, Charles W. McClallen Charles Kettelle, Leonard Holland, and Orin Hamlin, having been duly served with process in this cause, more than ten days previous to the commencement of this present term of this court. And the said Moses Pettengill, and Amos P. Bartlett, having filed their answer herein not in any manner denying the complainants right to recover or any of the facts stated in said complainants bill, and the said defendants, Augustus O. Garrett, Mary G. Garrett, Charles A. Buck, Charles W. McClallen, Charles Kettelle, Leonard Holland, Orin Hamlin, and Thomas Donoho, (the appearance of the said Thomas Donoho having first been entered by his At-

torney, George T. Metcalf, Esq.,) having been ruled to plead, answer or demur to said bill, on or before 9 o'clock of this day, and having made default in the premises, it is ordered that as to the said last named defendants so in default as aforesaid, the said complainants bill be taken for confessed, and the said complainant and the said defendants, Moses Pettengill and Amos P. Bartlett, agreeing to submit said cause to the court upon the bill and answer filed in said cause, and the said court having examined the same and the proofs, exhibits and allegations of the parties, and it appearing to the court upon an account being taken that there is due to the complainant upon the mortgage deed in the said complainant's bill described and set forth of principal and interest, the sum of one thousand three hundred and twenty-six dollars and sixty-six cents. It is therefore ordered, adjudged, and decreed that the said Augustus O. Garrett, and Mary G. Garrett parties to the said mortgage deed, pay to the said complainant the said sum of one thousand three hundred and twenty-six dollars and sixty-six cents, the amount of money due upon the said mortgage deed within ten days from the date of this decree, and that in default thereof the said mortgaged premises or so much thereof as may be necessary to pay the said sum of money so due this complainant as aforesaid be sold to the highest and best bidder for cash, after having advertised the same by putting up notices in three of the most public places in Peoria county, or by inserting such an advertisement for three successive weeks in the Peoria Democratic Press, a newspaper printed and published in the town of Peoria, Peoria county, Illinois.

That Halsey O. Merriman, be and he is hereby appointed Commissioner to make such sale aforesaid, and that after making such sale as aforesaid, he the said Commissioner shall immediately make, execute and deliver to the purchaser or purchasers of the said premises, or part thereof so sold as aforesaid, a deed of the said premises, or so much thereof as shall be necessary to make the money due on the said mortgage deed aforesaid, and of all the interest, right and title of the said Augustus O. and Mary G. Garrett, in and to the premises aforesaid, and it is further ordered, adjudged, and decreed that after such sale so made as aforesaid, the said defendants, and each of them be thereafter forever barred and foreclosed of, and from all equity of redemption in and to the premises so sold as aforesaid, and that the said defendants Augustus O. Garrett, and Mary G. Garrett, pay the costs of this suit, and that execution issue therefor.

[Advertisement.]

WILLIAM S. MOSS,	}	In the Peoria Co Circuit Court
<small>vs.</small>		
AUGUSTUS O. GARRETT, MARY G. GARRETT,		IN CHANCERY.
MOSES PETTENGILL, AMOS P. BARTLETT,		
CHARLES A BUCK, CHARLES W. McCLALLEN,		To foreclose Mortgage
CHARLES KETTELLE, LEONARD HOLLAND,		
ORIN HAMLIN & THOMAS DONOHO.		

Decree for the sum of \$1326 66, entered June 5, 1843, during May Term, 1843, by virtue of the decree of said Court, dated June 5, 1843, made in the above entitled cause, at the May Term of said Court, commenced and holden at the court-house in said County on the 29th day of May, 1843, I, as Commissioner, by said Court appointed for that purpose shall proceed to sell at public auction, to the highest and best bidder, for cash, at the door of the court house, in the Town of Peoria, in said County of Peoria, at the hour of Ten A. M., of the tenth day of July next, the south-east quarter of section No. five, (5) in

Township No. eight (8) north, of range No. eight east of the fourth principal-meridian, (excepting twenty-five acres in the north-east corner of said quarter, owned by William Russell) or so much thereof as will be sufficient to satisfy said decree in full, and upon such sale, an absolute deed will be given to the purchaser or purchasers thereof.

Dated at Peoria, this 17th day of June, A. D., 1843.

June 21st, 1843.

HALSEY O. MERRIMAN, Commissioner.

NOTE.—Refer to Sloan's deposition.

REPORT OF SALE.

WILLIAM S. MOSS,	}	In the Circuit Court of Peoria County. IN CHANCERY.
vs.		
AUGUSTUS O. GARRETT, MARY G. GARRETT,		
MOSES PETTENGILL, AMOS P. BARTLETT,		
CHARLES A. BUCK, CHARLES W. McCLELLAN, CHARLES KETTELLE, LEONARD HOLLAND, ORIN HAMLIN & THOMAS DONOHO.		

Under and by virtue of the decree rendered in the above entitled cause, default having been made by the said defendants in the payment of the money in said decree mentioned, I advertised the south-east quarter of section No. five, in township No. eight north, of the base line in range No. eight east of the 4th principal meridian, for three weeks successively, in the '*Peoria Democratic Press*,' a newspaper printed and published in Peoria, Peoria County, Ills., in pursuance of said decree, to be sold between the hours of 10 o'clock A. M., and 4 o'clock P. M., on the 10th day of July, A. D. 1843, at the court house door in the Town and County of Peoria aforesaid, and at the time and place aforesaid, I offered said tract of land at public auction, or so much thereof as would be sufficient to pay and satisfy the amount due on the complainant's mortgage: and William S. Moss, the complainant, then and there bid the sum of one thousand three hundred and twenty-seven dollars and forty-three cents, for all that part of the said tract of land lying south of the centre of the road dividing the same, running from Peoria to Farmington, which was the whole sum due to said complainant on his mortgage, by virtue of said decree. He, the said Moss being the highest and best bidder, and that the highest and best price bidden for the same, and thereupon the said part of said last mentioned tract of land was struck off and sold to the said William S. Moss, and on the 21st day of September, A. D., 1843, I made, executed and delivered to the said William S. Moss, a deed of the said last mentioned premises, particularly describing the same by metes and bounds.

H. O. MERRIMAN, Commissioner.

Peoria, September 23rd, 1843.

CONFIRMATION OF SALE,

Saturday, October 28th, 1843.

WILLIAM S. MOSS,	}	To Foreclose Mortgage.
vs.		
AUGUSTUS O. GARRETT, MARY G. GARRETT,		
CHARLES A. BUCK, CHARLES W. McCLELLAN,		
CHARLES KETTELLE, LEONARD HOLLAND ORIN HAMLIN, THOMAS DONOHO.		

This day came the complainant, by his solicitors, and the defendant, Garrett, by Peters, his solicitor, and withdraws the appearance of said Garrett. Whereupon it is considered by the court that the commissioner's report be accepted and filed, and all the matters and things therein contained do stand ratified and confirmed.

Deed,—H. O. Merriman, Commissioner, to Wm. S. Moss.

THIS INDENTURE, made this twenty-first day of September, in the year of our Lord one thousand eight hundred and forty-three, between Halsey O. Merriman, a Commissioner for that purpose appointed by the Circuit Court of Peoria County, of the first part, and William S. Moss, of Peoria County and State of Illinois, of the second part, witnesseth: That whereas at a Circuit Court sitting in Chancery, held for the county of Peoria in the State of Illinois, at the court-house, in the Town of Peoria, on the 5th day of June, A. D. 1843, it was among other things ordered, adjudged and decreed in a certain cause then depending in the said court between the said William S. Moss, complainant, and Augustus O. Garrett, Mary G. Garrett, Moses Pettengill, Amos P. Bartlett, Charles A. Buck, Charles W. McClallen, Charles Kettelle, Leonard Holland, Orin Hamlin and Thomas Donoho, defendants, that the whole of the mortgaged premises mentioned and set forth in the pleadings in this cause, to-wit: the south-east quarter of Section Five, in Township Eight north of the base line in Range eight east of the fourth principal meridian, (except twenty-five acres which had been sold and deeded to William Russell, by the aforesaid Augustus O. Garrett, and Mary G. Garrett, his wife,) or so much thereof as may be necessary to pay the said complainant the sum of money due him on his mortgage deed, (filed and made part of the record in said cause) be sold at public auction to the highest and best bidder, for cash, after having given notice of the said sale by inserting an advertisement of the time and place of said sale, for three weeks successively, in the Peoria Democratic Press, a newspaper printed and published in the town and county of Peoria, and State of Illinois, and that Halsey O. Merriman, party of the first part hereto, be appointed a commissioner to make such sale, and to make, execute and deliver to the purchaser or purchasers, a deed of the premises so sold as aforesaid.

And whereas, the said Halsey O. Merriman, commissioner as aforesaid, in pursuance of the order and decree of the said Court, did on the tenth day of July, A. D. 1843, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of said day, sell at public auction at the door of the court-house in the town of Peoria aforesaid, a certain part or parcel of the aforesaid mortgaged premises, as hereinafter particularly described, having first given three weeks previous notice of the time and place of said sale, with a brief description of the said mortgaged premises, in pursuance of the order aforesaid, at which sale all that tract or parcel of land lying south of the centre of the Peoria and Farmington road, which belonged to the said Augustus O. Garrett, and Mary G. Garrett, and being a part of the said south-east quarter of Section No. Five, in Township Eight North of the Base line of Range eight east of the fourth principal meridian, described as follows: Beginning at a stone set for a corner to Sections 4, 5, 8 and 9, from which a locust tree, 12 inches in diameter, bears south 45 degrees west, three chains and sixty links, thence west on a true line forty chains to a stone set for a quarter Section corner between Sections 5 and 8; thence north twenty-one chains and thirty-seven links, to a stone set for a corner in the centre of the

Peoria and Farmington road; thence east along the centre of said road thirty-nine chains and eighty-seven links to a stone set for a corner on the line between Sections 4 and 5; thence south on the Section line between said Sections four and five, twenty chains and thirty links to the place of beginning, containing eighty-three and seventeen hundredths acres of land, more or less, was struck off and sold to the said William S. Moss, party of the second part to these presents, for the sum of one thousand three hundred and twenty-seven dollars and forty-three cents, being the sum of money due to the said William S. Moss, on the said mortgage deed before mentioned, and he the said William S. Moss being the highest and best bidder, and that the highest and best price bidden for the same

Now therefore this indenture witnesseth, that the said Halsey O. Merriman, commissioner as aforesaid, in order to carry into effect the sale so made as aforesaid, in pursuance of the decree aforesaid in consideration of the premises, and of the said sum of one thousand three hundred and twenty-seven dollars and forty-three cents, paid by the said William S. Moss to the said commissioner, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, released and confirmed, and by these presents doth grant, bargain and sell, alien, release and confirm unto the said William S. Moss, his heirs and assigns, the premises and tract of land last before described, with all the privileges and appurtenances thereto belonging or in any wise appertaining.

To have and to hold the same premises, with the privileges and appurtenances thereof, and all the interest, right, title and claim of the said Augustus O. Garrett and Mary G. Garrett, in and to the said premises in law or equity howsoever, at the date of the said mortgage deed, to the said William S. Moss, his heirs and assigns forever.

In witness whereof I have hereto set my hand and seal, this day and year first above written.

HALSEY O. MERRIMAN, [L. S.]
Commissioner.

STATE OF ILLINOIS, } ss.
PEORIA COUNTY

Personally appeared before me the undersigned, Probate Justice of the Peace, in and for the County of Peoria, Halsey O. Merriman, commissioner above named, to me known to be the person who made and executed the said deed, and acknowledged that he had executed the same for the uses and purposes therein mentioned.

Witness my hand and seal at Peoria, this 22d day of September, A. D. 1843.

WILLIAM H. FESSENDEN, P. J. P. [L. S.]

I, Charles Kettelle, Recorder in and for the County of Peoria, and State of Illinois, do certify the foregoing deed is duly recorded in said County, in the Recorder's office of said County, in Book N, pages 556, 557, and 558, on this 25th day of September, A. D. 1843.

CHARLES KETTELLE, Recorder P. C.

DEED—MOSS TO RUSSELL.

THIS INDENTURE, made this sixth day of June, in the year of our Lord one thousand eight hundred and forty-eight, between William S. Moss, and Mary H. Moss, of Peoria, Illinois of the first part, and William Russell, of Peoria, State of Illinois, of the second part witnesseth, That the said party of the first part, for and in consideration of the sum of one hundred dollars, paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these Presents bargain, sell, transfer, and quit-claim, unto the said party of the second part, his heirs, and assigns, all their right, title, interest and claim, both legal and equitable, of, in and to a certain tract or parcel of Land, situated in Peoria county State of Illinois, being all that part of the south-east quarter of section five, (5) in township eight north, range eight east of the fourth principal meridian, which lies north of the Peoria and Farmington road, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining; to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part his heirs and assigns, forever. And the said party of the first part do hereby covenant and agree to and with the said party of the second part and his heirs, that they will forever warrant and defend the title to the premises above conveyed to be free from the claim of themselves and their heirs, and from the claim of all and every person claiming by, through, or under us or our heirs, but against the claim of none others.

In testimony whereof, the said parties of the first part have hereunto set their hand and seal the day and year first above written.

WM. S. MOSS, [L. s.]

MARY H. MOSS, [L. s.]

STATE OF ILLINOIS, } ss.
PEORIA COUNTY.

I, William Mitchell, Clerk of the County Commissioners' Court for said county, do certify that on this day personally appeared before me William S. Moss and Mary H. Moss, whose names appear subscribed to the foregoing deed of conveyance as having executed the same, and who are personally known to me to be the real persons who and in whose names the acknowledgment of which is proposed to be made, and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed. And Mary H. Moss, wife of the said William S. Moss, having been by me made acquainted with the contents of the said deed, and by me examined separate and apart from her husband, whether she had executed the same and relinquished her dower to the lands and tenements therein mentioned, acknowledged that she had done so, voluntarily and freely, and without compulsion of her husband, and does not wish to retract. Given under my hand and seal of said court at Peoria, this 6th day of June, eighteen hundred and forty-eight.

WILLIAM MITCHELL, Clerk.

STATE OF ILLINOIS,

COUNTY OF PEORIA.

Recorder's Office.

I, Charles Kettelle, Recorder, in and for the County aforesaid, do hereby certify the within deed is duly recorded in said office in Book T. pages 506, and 507, on this sixth day of May A. D. 1848.

CHARLES KETTELLE, R. P. C.

D E E D .

WILLIAM S. MOSS, TO PEORIA WATER COMPANY.

THIS INDENTURE made this 22d day of September, in the year of our Lord one thousand eight hundred and forty-three, between William S. Moss, of the County of Peoria, and State of Illinois, of the one part, and the Peoria Water Company of the other part, witnesseth: That the said William S. Moss, party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released and confirmed, and by these presents doth grant, bargain, sell, alien, release and confirm unto the said party of the second part, their heirs, assigns and successors, the free, uninterrupted and exclusive use, and exclusive possession, enjoyment and occupancy of certain springs of water, commonly called 'Garrett's Springs,' situated near the south-east corner of the south-east quarter of section number five, in township eight north, of the base line of range number eight east of the fourth principal meridian in Peoria County. To have and to hold the same, and the use, occupancy, possession and enjoyment thereof, forever, to the said 'Peoria Water Company,' for the uses and purposes mentioned and contemplated by the terms and provisions of a certain Act of the Legislature of the State of Illinois, entitled, "An Act to incorporate the Peoria Water Company." Approved February 20th, 1843.

And the said William S. Moss, party of the first part, for himself, his heirs and assigns, hereby covenants and agrees with the said "Peoria Water Company," party of the second part, that for the purposes of carrying out the objects of this grant, that the said party of the second part, their servants and agents, shall have full power and authority to enter upon said land, without any let or hindrance from the said party of the first part, for the purpose of erecting, excavating, constructing or repairing any reservoirs, ditches or other things by said Company deemed necessary for the erection or construction of their said Water Works, as contemplated by the provisions of the law before referred to. And the said party of the first part, for himself, and his heirs and assigns, further covenants with the said party of the second part, their heirs, assigns and successors, that neither he nor his heirs will or shall at any time alien, sell or convey the said premises in any such manner as shall tend to prejudice or embarrass the said party of the second part, their heirs, or assigns, in the free and uninterrupted and exclusive use and enjoyment of the said water, as contemplated by the terms of this grant.

In testimony whereof, the said William S. Moss has hereto set his hand and seal at Peoria this day and year first above written.

WM. S. MOSS, [SEAL.]

STATE OF ILLINOIS, } ss.
Peoria County.

I, DENNIS BLAKELEY, a Justice of the Peace, in and for the County of Peoria, do certify, that on this 23d day of September, A. D., 1843, personally appeared before me William S. Moss, to me personally known to be the person who made and executed the foregoing deed of conveyance; and acknowledged that he executed the same for the uses and purposes therein mentioned.

Witness my hand and seal, at Peoria, this 23rd day of September, A. D., 1843.

DENNIS BLAKELEY, [SEAL.]

J. P.

STATE OF ILLINOIS, } ss. Recorder's Office.
County of Peoria.

I, CHARLES KETTELLE, Recorder of said County, do certify the foregoing deed and certificate is duly recorded in said office, in Book N, pages 558, & 559, this 26th day of September, A. D., 1843.

CHARLES KETTELLE, R. P. C.

JUDGMENT.

THE PEOPLE OF THE STATE OF ILLINOIS,
FOR THE USE OF THE COUNTY OF PEORIA,
vs
THOMAS BRYANT, CHARLES BALLANCE,
JOHN C. CALDWELL, AUGUSTUS O.
GARRETT, LUTHER SEARS.

Saturday, October 26th 1839.

This day came the parties by their Attorneys and issue being joined on the plaintiffs demurrer to the defendants' second, third, fourth and fifth pleas and the court being now fully advised in the premises sustained the demurrer as to the said second, third, and fifth pleas and also as to the said fourth plea for the reason that it appears from the records of this court that the said fourth plea is false. The said defendants then asked and obtained leave to withdraw their said second, third, fourth and fifth pleas, and thereupon filed a notice of special matter to be given in evidence under their plea of non est factum. To the sufficiency of said notice the plaintiff excepted, and the court sustained the said exceptions and the said defendants thereupon withdrew their said notice and the defendants, Ballance, and Garrett asked and obtained leave to file an additional plea, and issue being now joined on the said defendants' pleas, it is agreed by the parties that both matters of law and fact may be tried by the court and the court being now sufficiently advised in the premises, finds that the said writing obligatory in the plaintiff's declaration mentioned is the deed of the said defendants as the said plaintiffs hath alleged, and the said County Commissioners did not agree that the said Bryant should not settle at the said June Term of said County Commissioners' court, as the said defendants, Ballance and Garrett have in their said last plea alledged. It is therefore considered by the court that the said plaintiff recover of the defendants the sum of ten thousand dollars for ther debt, and the court assesses the plaintiffs' damages sus-

tained by reason of the breaches of the condition of the said writing obligatory by them as signed in theirsaid declaration to the sum of four hundred and seventy dollars and thirty cents, and one half of a cent. It is therefore considered by the court that the said plaintiff recover of the said defendants the said sum of four hundred and seventy dollars and thirty cents and one half of a cent, their damages in form aforesaid assessed, and also their costs about their suit in this behalf expended, and that they have execution therefor, it is further ordered by the court that whenever execution shall be issued on this judgment the clerk shall endorse thereon the amount of the damages assessed by the court as aforesaid, with the costs of suit and the Sheriff shall only collect the amount so endorsed.

EXECUTION,

THE PEOPLE OF THE STATE OF ILLINOIS,

TO THE SHERIFF OF PEORIA COUNTY, GREETING :

Whereas by the consideration of our Circuit Court, held at Peoria, in and for the County of Peoria, on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and thirty-nine, the people of the State of Illinois, for the use of the county of Peoria, recovered judgment against Thomas Bryant, Charles Ballance, John C. Caldwell, Augustus O. Garrett, and Luther Sears, for the sum of ten thousand dollars debt, and also for the further sum of ten dollars and 56 $\frac{1}{4}$ cents, costs of suit as appears of record. We therefore command you, that of the goods and chattels, land or tenements of the said Bryant, Ballance, Caldwell, Garrett and Sears, you cause to be made the aforesaid sums of money, together with interest on said judgment at the rate of six per centum per annum, from the time of recovering the same as aforesaid, until paid, and that you have the same ready, as soon as may be, to render unto the said people for the use of said county according to law. Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof.

[Seal.]

Witness, William Mitchell, Clerk of our said Court, and the seal thereof, at Peoria, this eighth day of June, in the year of our Lord one thousand eight hundred and forty.

WILLIAM MITCHELL, Clerk.

[Endorsements on above Execution.]

"Damages assessed by the Court,	- - - - -	\$470 30 $\frac{1}{4}$
Pl'ffs costs,	- - - - -	10 56 $\frac{1}{4}$

[RETURN.]

"The within execution is returned by order of the plaintiffs.

CHRISTOPHER ORR, Sheriff Peoria.

by Wm. Orr, Deputy Sheriff Peoria Co."

NOVEMBER 4th, 1840.

ALIAS EXECUTION.

THE PEOPLE OF THE STATE OF ILLINOIS,

TO THE SHERIFF OF PEORIA COUNTY, GREETING :

Whereas by the consideration of our Circuit Court held at Peoria, in and for the county

of Peoria, on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and thirty-nine, the people of the State of Illinois for the use of the county of Peoria, recovered judgment against Thomas Bryant, Charles Ballance, John C. Caldwell, Augustus O. Garrett and Luther Sears, for the sum of ten thousand dollars, and also for the further sum of ten dollars and 56½ cents, costs of suit, as appears of record. We therefore command you, as heretofore we have commanded you, that of the goods and chattels, lands or tenements of the said Bryant, Ballance, Caldwell, Garrett and Sears, you cause to be made the aforesaid sums of money, together with interest on said judgment, at the rate of six per centum per annum, from the time of recovering the same as aforesaid, until paid, and that you have the same ready, as soon as may be, to render unto the said people for the use of said county, according to law. Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof.

[Seal.]

Witness, William Mitchell, Clerk of our said Court, and the seal thereof, at Peoria, this fifth day of November, in the year of our Lord one thousand eight hundred and forty.

WILLIAM MITCHELL, Clk.

Damages assessed by the Court,	-	-	-	-	-	-	\$470 30½
Pl'ffs costs,	-	-	-	-	-	-	10 56½
Costs of alias	-	-	-	-	-	-	1 25

[RETURN.]

By order of the County Commissioners Court of Peoria County, on the 10th day of September, 1840, a credit was allowed on this execution for the sum of one hundred and ten dollars and eleven cents, and also on the 10th day of December, 1840, a further credit of seventy-five dollars was ordered.

CHRISTOPHER ORR, Sheriff of Peoria Co.

Levied the within execution December 21st, 1840, on the following described tracts of land, to-wit: the south-west quarter of Section 23, in Township 8 north Range 7 east; north-west qr of Sec. 12, in Township 11, north 7 east; and the south-east qr Sec. 5, in T. 8 north 8 east, all of the fourth principal meridian, which was exposed by me at public sale at the court house door in the Town of Peoria, on the 12th day of January, 1841; the same having been advertised according to law, and was not sold for want of bidders. This execution is returned by order of the plaintiffs.

CHRISTOPHER ORR, Sheriff Peoria Co.

By WM. ORR, Dep'y Sheriff Peoria Co.

VENDITIONI.

STATE OF ILLINOIS, }
Peoria County. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS.

TO THE SHERIFF OF SAID COUNTY, GREETING :

Whereas we lately commanded you that you should cause to be made of the goods and chattels, lands tenements, and real estate, in your county, of Thomas Bryant, Charles Bal-

lance, John C. Caldwell, Augustus O. Garrett and Luther Sears, the sum of ten thousand dollars, which, in our Circuit Court, within and for the said county of Peoria, before our Judge of said Circuit Court, at Peoria, on the twenty-sixth day of October, in the year of our Lord one thousand eight hundred and thirty-nine, were awarded to the people of the State of Illinois, for the use of Peoria County, for their debt, and the further sum of ten dollars and fifty-six and one-fourth cents, which was adjudged to them for their costs and charges in that behalf expended, whereof the said Ballance, Caldwell, Garrett and Sears, were convicted, as appears to us of record; and that you should have that money ready, and interest thereon, at the rate of six per cent. per annum, from the time of recovering the same, until paid, and make return of that writ, and of the manner in which you should execute the same, ninety days after date.

And you having made return on that writ, that you had levied upon, by virtue thereof, the following described tracts of land, to-wit: the south-west quarter of Section 23, in Township 8 north Range 7 east; north-west quarter Section 12, in Township 11, north 7 east; and the south-east quarter Section 5, in Township 9 north 8, all east of the fourth principal meridian, which remained unsold for want of bidders, and therefore you could not have that money ready as you were thereby commanded; Therefore, we being desirous that the said people for the use of said county, should be satisfied of their debt and costs, aforesaid, command you that you sell, or cause to be sold, the said property so by you levied upon as aforesaid, for the best price you can get for the same. And have the money arising from such sale, ready to satisfy the said damages and costs.

And also, that you cause the residue of the said damages and costs, if any should yet remain, to be made of other goods and chattels, lands, tenements and real estate in your county, of the said Ballance, Caldwell, Garrett and Sears. And have you those sums of money ready, and interest thereon, at the rate of six per cent. per annum from the time of recovering the same until paid, and make return of this writ, and of the manner in which you executed the same, ninety days after date.

Witness, William Mitchell, Clerk of our said Circuit Court, and the seal thereof, at Peoria, this 21st day of February, in the year of our Lord one thousand eight hundred and forty-two.

[Seal.]

WILLIAM MITCHELL, Clerk.

Damages assessed by the Court,	- - - - -	\$470 30½
Sept. 10th, 1840, allowed by County Com. Court,	- - - - -	\$110 11
Dec. 10th, 1840, allowed by said Court,	- - - - -	75 00 — 185 11
		<hr/>
		285 19½
Pl'ffs costs,	- - - - -	10 56½
Costs of alias,	- - - - -	1 25
Costs of Ven. Ex.,	- - - - -	2 62½

[RETURN.]

As I am herein commanded, I did on the 16th day of April, A. D. 1842, advertise the within described property for sale, to be sold on the day of at the Court

House in Peoria, which were offered according to said at public sale, and not sold for want of bidders.

CHRISTOPHER ORR, Sheriff Peoria Co.

by WM. ORR, Deputy Sheriff Peoria Co."

ALIAS VENDI,

STATE OF ILLINOIS, } ss.
Peoria County.

THE PEOPLE OF THE STATE OF ILLINOIS.

TO THE SHERIFF OF SAID COUNTY, GREETING :

Whereas we lately commanded you that you should cause to be made of the goods and chattels, lands, tenements and real estate, in your county, of Thomas Bryant, Charles Ballance, John C. Caldwell, Augustus O. Garrett and Luther Sears, the sum of ten thousand dollars, which, in our Circuit Court, within and for the said County of Peoria, before our Judge of said Circuit Court, at Peoria, on the 26th day of October, in the year of our Lord one thousand eight hundred and thirty-nine, were awarded to the people of the State of Illinois, for the use of the County of Peoria for their debt, and the further sum of ten dollars and fifty-six and one-fourth cents, which was adjudged to them for their costs and charges in that behalf expended, whereof the said Bryant, Ballance, Caldwell, Garrett and Sears, were convicted, as appeared to us of record, and that you should have that money ready, and interest thereon, at the rate of six per cent per annum, from the time of recovering the same, until paid, and make return of that writ, and of the manner in which you should execute the same, ninety days after date.

And you having made return on that writ, that you had levied upon by virtue thereof, the following described tract of land, to-wit: the south-west qr of Section 23, in Township 8 north Range 7 east; north-west qr Section 12, in Township 11 north 7 east; and the south-east qr Section 5, in Township 8 north 8 east, all of the fourth principal meridian, which remained unsold for want of bidders, and therefore you could not have that money ready, as you were thereby commanded.

Therefore, we being desirous that the said people, for the use of the said county, should be satisfied of their debt and costs aforesaid, command you as we have heretofore commanded you, that you sell, or cause to be sold, the said property so by you levied on aforesaid, for the best price you can get for the same. And have the money arising from such sale, ready to satisfy, as well the said debt and costs, as also the further sum of five dollars and fifty cents costs, accompanying the alias execution, and first vend. exp. and this writ, which is likewise adjudged to the said people for the use of said county, for costs and charges in that behalf expended, as appears to us of record. And also, that you cause the residue of the said damages and costs, if any shall yet remain, to be made of other goods and chattels, lands, tenements and real estate in your county, of the said Thomas Bryant, Charles Ballance, John C. Caldwell, Augustus O. Garrett and Luther Sears, and have you those sums of money ready, and interest thereon at the rate of six per centum per annum, from the time of recovering the same, until paid, and make return of this writ, and of the manner in which

you execute the same, ninety days after date.

[Seal.]

Witness, Jacob Gale, Clerk of our said Circuit Court,
at Peoria, this fourth day of September, in the year of
our Lord one thousand eight hundred and forty-five.

JACOB GALE, Clerk.

The Sheriff will collect on the within only the damages assessed by the Court, and the costs, viz :

Damages,	-	-	-	-	-	-	-	-	\$470 30 $\frac{1}{2}$
Costs of suit,	-	-	-	-	-	-	-	-	10 56 $\frac{1}{2}$
Costs of alias ex'n	-	-	-	-	-	-	-	-	1 25
Costs of vend. exp. and fi fa,	-	-	-	-	-	-	-	-	2 62 $\frac{1}{2}$
Costs of this writ,	-	-	-	-	-	-	-	-	1 62 $\frac{1}{2}$

[RETURN.]

STATE OF ILLINOIS, }
Peoria County. } ss.

By virtue of the within execution, I did on the twentieth day of December, 1845, in pursuance of the attached advertisement, offer the within tracts of land for sale, severally, to the highest bidder, at the door of the court-house, in Peoria, but no bid was made for either of said tracts, whereupon I then and there offered all three of said tracts together, and Charles Ballance bid two hundred and twenty-five dollars therefor, which was the highest bid offered therefor; wherefore I struck off said tracts of land to said Ballance, and executed to him a certificate of purchase for the same.

Dated this 20th of December, 1845.

SMITH FRYE, Sheriff.

SHERIFF SALE.

By virtue of a writ of fieri facias, to me directed from the Circuit Court of Peoria County, in favor of the people of the State of Illinois, for the use of Peoria County, against Charles Ballance, Thomas Bryant, John C. Caldwell, Augustus O. Garrett and Luther Sears, I have levied on the following described real estate, to-wit: the south-west quarter of Section twenty-three, in Township eight north, Range 7 east; also the north-west quarter of Sec. twelve, in Township eleven, north seven east; and the south-east quarter of Section five, in Township eight, north eight east, all of the fourth principal meridian, in the County of Peoria, Illinois, which I shall expose to public sale, on the 20th day of December, 1845, at the door of the court-house, in the city of Peoria, to the highest and best bidder, for ready money.—Sale to be between the hours of 9 o'clock, A. M., and 4 o'clock P. M.

SMITH FRYE, Sheriff Peoria Co.

Dated November 22d, 1845.

By C. C. Wood, Dep'y Sheriff.

DEED—SHERIFF OF PEORIA COUNTY TO WM. S. MOSS.

Whereas, The People of the State of Illinois, for the use of the county of Peoria, at the October term, A. D. 1839, of the circuit court for the county of Peoria and State of Illinois, recovered a judgment against Thomas Bryant, Charles Ballance, John C. Caldwell, Augustus O. Garrett, and Luther Sears, for the sum of ten thousand dollars debt, the amount of the

penalty of the bond sued on; and damages for breaches of the conditions of said bond were thereupon awarded for four hundred and seventy 30½-100 dollars and costs of suit, upon which judgment an execution was issued dated on the fourth day of September A. D. 1845, directed to Smith Frye, then Sheriff of Peoria county, to execute, and by virtue of said execution the said Sheriff levied upon the lands hereinafter described, and the same was struck off and sold to Charles Ballance, he being the highest and best bidder therefor and the time and place of the sale thereof having been duly advertised according to law. And whereas, the said Charles Ballance has assigned the said Sheriffs' certificate of purchase to him for the south-east quarter of section No. five, in Township No. eight, North of Range eight east of the fourth principal meridian, to William S. Moss.

Now therefore, Know all by this Deed, that I, William Compher, Sheriff of said county of Peoria, and successor in office to the said Smith Frye, in consideration of the premises have granted, bargained and sold, and do hereby convey to the said William S. Moss, assignee of said Charles Ballance, his heirs or assigns, the following described tract of land, to-wit: the south-east quarter of section No. five, in Township No. eight North, of Range No. eight east of the fourth principal meridian. To have and to hold the said described premises, with all the appurtenances thereto belonging, to the said William S. Moss, his heirs and assigns forever. Witness my hand and seal this the sixth day of June, in the year of our Lord one thousand eight hundred and forty-eight.

WILLIAM COMPHER, Sheriff Peoria county, Ill.

STATE OF ILLINOIS, }
PEORIA COUNTY. } ss.

This day personally appeared before me, Jacob Gale, Clerk of the Circuit Court within and for said county, Wm. Compher, personally known to me to be the real person whose name appears subscribed to the above deed of conveyance as having executed the same as Sheriff of said county, and acknowledged the execution thereof to be his free act and deed for the uses and purposes and in the capacity therein set forth.

In testimony whereof, I have hereunto set my hand and the seal of said court, at Peoria, this sixth day of June A. D. 1848.

[SEAL.]

JACOB GALE, Clerk.

STATE OF ILLINOIS, }
County of Peoria. } ss. Recorder's Office.

I, CHARLES KETTELLE, Recorder in and for said County, do certify the within deed is duly recorded in said office, in Book T, pages 505, and 506, on this 6th day of June, A. D. 1848.

CHARLES KETTELLE, R. P. C.

RECORD—O. HAMLIN, vs. A. O. GARRETT, et al.

Be it remembered that heretofore, to-wit : on the fifth day of October in the year of our Lord one thousand eight hundred and forty-three, there was filed in the office of the clerk of the circuit court, in and for the county of Peoria, in the State of Illinois, a declaration and copy of instrument declared on which are in the word and figures following to-wit :

DECLARATION.

STATE OF ILLINOIS,
COUNTY OF PEORIA.

} ss.

In the Circuit Court, October Term, A. D. 1843.

Orin Hamlin, plaintiff in this suit, complains of Augustus O. Garrett, defendant, in a plea of covenant broken. For that the said defendant on the twelfth day of June, in the year of our Lord 1841, at Peoria, in the county of Peoria aforesaid, by his deed of that date duly executed, acknowledged, recorded, and in court to be proved, for the sum of twelve hundred and fifty dollars, granted, bargained, and sold to one Leonard Holland, of said Peoria county, a certain tract or parcel of land situated in Peoria county, aforesaid, described as follows, to-wit : being part of the north half of the south-east quarter of section No. five, in township eight north of range eight east, of the fourth principal meridian, commencing at the north-east corner of twenty-five acres of land on said north half of said section deeded by same defendant and Mary G. Garrett, his wife, to William Russell, thence running east to the eastern boundary line of said quarter section, thence north along said line to the centre of the public highway, leading from Peoria to Farmington, through said quarter section, thence west along the centre of the public highway to the south-east corner of said Russell's land, thence north along said Russell's line to the place of beginning. To hold to him the said Leonard Holland, his heirs, and assigns, forever, therein covenanting with the said Leonard Holland, his heirs and assigns, that he the said defendant and one Mary G. Garrett his wife, who joined with him said deed, were well seized of the said tract or parcel of land, as of a good and indefeasible estate in fee simple, and had good right to sell and convey the same in manner and form as aforesaid, and that the said land was free from incumbrances, and that he the said defendant, and said Mary G. Garrett, would forever warrant and defend the same in the quiet and peaceable possession of the said Leonard Holland, his heirs and assigns, against the claim of all persons whomsoever.

And that afterwards on the thirteenth day of December, A. D. 1842, he the said Leonard Holland, being in possession thereof by his deed of that date, duly executed, acknowledged, and in court to be produced for the sum of twelve hundred and fifty dollars, granted bargained and sold said tract of land to the plaintiff, to hold to him, his heirs, and assigns forever, and the plaintiff says that he thereafterwards on the same day became possessed of the said tract of land and ought to hold and enjoy the same as a lawful estate in fee simple, according to the aforesaid covenants of the defendants, but the said defendant, has not kept his covenants aforesaid, but hath broken the same, for that the said defendant and Mary G. Garrett, his wife, were not well seized of the said tract or parcel of land, as of a good and indefeasible estate in fee simple and had not good right to sell and convey the same to the said Leonard Holland, to hold to him, his heirs and assigns forever as aforesaid, and said tract of land was not free from incumbrance, and that the said defendant and Mary G. Garrett aforesaid, has not warranted and defended the same in the quiet and peaceable possession of the said Leonard Holland, his heirs and assigns against the claims of all persons whomsoever, nor in the quiet and peaceable possession of this plaintiff, assignee of said Holland, but that

Moses Pettengill and Amos P. Bartlett, who are the rightful owners of said land in fee, on or about the first day of September, A. D. 1843, entered into and took possession of the same and now legally hold the same in fee.

And so the said defendant has not kept his covenants aforesaid but has broken them. Also for that the said defendant on or about the twelfth day of June A. D. 1841, at Peoria aforesaid, by his deed of that date duly executed, acknowledged, and recorded and in court to be produced, for the sum of twelve hundred and fifty dollars, granted bargained and sold to me, Leonard Holland, of said Peoria county, a certain other tract or parcel of land, situated in Peoria county aforesaid, and described as follows to-wit, being part of the North half of the South East quarter of section No. five, in township eight, north of range eight east of the fourth principal meridian, commencing at the North East corner of twenty-five acres of land on said north half of said section, deeded by said defendant, and Mary G. Garrett, his wife, to William Russell, thence running east to the eastern boundary line of said quarter section, thence north along said line to the centre of the public highway leading from Peoria to Farmington, through the said quarter section, then west along the centre of said public highway to the south-east corner of said Russell's line, to the place of beginning to hold with the appurtenances to him the said Leonard Holland, his heirs and assigns forever. Therein the said defendant did covenant among other things with the said Holland, his heirs and assigns, that the said tract of land with the appurtenances, was then free from all incumbrance. And that afterwards, on or about the thirteenth day of December A. D. 1842, he the said Leonard Holland, by his deed of that date, duly executed, acknowledged, and in court to be produced for the sum of twelve hundred and fifty dollars bargained and sold said tract of land to the plaintiff, to hold to him his heirs, and assigns forever, whereof the plaintiff says that he ought to hold and enjoy the said tract of land free from all incumbrance according to the aforesaid covenant of the defendant.

Now the plaintiff in fact says, that at the time of making and executing the said deed to said Holland, the said tract of land was not free from all incumbrance, but said defendant before that time, viz: on or about the fourteenth day of September, A. D. 1840, by his deed of that date duly executed, acknowledged and recorded, mortgaged the said tract of land to one William S. Moss, for securing the payment of \$1000, with 12 per cent. interest per annum, payable quarterly from the date of said mortgage to the said Moss in twelve months from said date, which sum with the interest thereof is still unpaid, and said tract of land chargeable with the payment thereof and also said defendant before that time, viz: on or about the eighth day of February A. D. 1841, by his deed of that date duly executed, acknowledged, and recorded mortgaged said tract of land to Moses Pettengill and Amos P. Bartlett, for securing the payment of \$510 with ten per cent. interest per annum, to the said Moses Pettengill and Amos P. Bartlett, which last mentioned sum with the interest thereof is still unpaid and said tract of land chargeable with the payment thereof And so the said defendant his covenant last aforesaid has not kept but broken the same.

Also for that the said defendant on or about the twelfth day of June A. D. 1841, at Peoria aforesaid by his deed of that date, duly executed, acknowledged and recorded, and in court to be produced, for the sum of twelve hundred and fifty dollars, bargained and sold to one Leonard Holland, of said Peoria county, a certain other tract or parcel of land, situated in Peoria county aforesaid, described as follows to-wit: being part of the north half of the

south-east quarter of section No. five, in Township eight, of range eight east of the fourth principal meridian, commencing at the North East corner of twenty-five acres of land on said North half of said section deeded by said defendant and Mary G. Garrett, his wife, to William Russell, thence running east to the eastern boundary line of said quarter section, thence North along said line to the centre of the public highway, leading from Peoria to Farmington, through said quarter section, thence west along the centre of said public highway to the south-east corner of said Russell's land, thence North along said Russell's line to the place of beginning, to hold to him the said Leonard Holland, his heirs and assigns forever, therein covenanting with the said Holland, his heirs and assigns, that he the said defendant was well seized of the said tract of land as of a good and indefeasible estate in fee simple, and had good right to sell and convey the same in manner and form as aforesaid, and that the said tract of land was free from incumbrance, and that the said defendant would forever warrant and defend the same in the quiet and peaceable possession of the said Leonard Holland, his heirs and assigns, against the claims of all persons whomsoever. And that afterwards on or about the thirtieth day of December A. D. 1842, he the said Leonard Holland, by his deed of that date duly executed, acknowledged, and in court to be produced for the sum of twelve hundred and fifty dollars, granted and sold said tract of land to the plaintiff, to hold to him, his heirs and assigns forever. And the plaintiff says that afterwards, on the same day became possessed of said tract of land and he ought to hold said tract of land, and enjoy the same as a lawful estate in fee simple according to the aforesaid covenants of the said defendant, but the plaintiff in fact says, that the defendant has not kept his said covenant, for the said defendant was not well seized of the said tract of land, as of a good and indefeasible estate in fee simple, and had not good right to sell and convey the same to said Holland, to hold to him his heirs and assigns forever, as aforesaid, and said tract of land was not free from incumbrance, and said defendant has not nor has said Holland warranted and defended the same in the quiet and peaceable possession of the said plaintiff against the claims of all persons whomsoever, but that Moses Pettengill and Amos P. Bartlett, on or about the first day of September 1843, lawfully entered into and took possession, and now lawfully hold the same in fee, and so the said defendant has not kept his covenant aforesaid, but has broken them to the damage of the said plaintiff of two thousand dollars, and therefore he brings this suit, &c.

ONSLOW PETERS, Attorney for Plaintiff.

Copy of deed declared on in suit—Orin Hamlin vs. Augustus O. Garrett :

THIS INDENTURE made this twelfth day of June in the year of our Lord one thousand eight hundred and forty-one, between Augustus O. Garrett and Mary G. Garrett, his wife, of Peoria, in the County of Peoria, and State of Illinois, of the first part, and Leonard Holland, Peoria, Peoria County and State aforesaid, of the second part, witnesseth: that the said party of the first for and in consideration of the sum of twelve hundred and fifty dollars paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain and sell, remise, release, convey and confirm unto the said party of the second part, his heirs and assigns, a certain tract or parcel of land situated in Peoria County aforesaid, described as follows, to-wit: Being part of the north half of the

south-east quarter of Sec. No. five, (5) in Township eight, (8) north of Range eight (8) east of the fourth principal meridian, commencing at the north-east corner of twenty-five acres of land on said north half of said Section lately deeded by the said parties of the first part, to William Russell, thence running east to the eastern boundary line of said qr Section, thence south along said line to the centre of the public highway leading from Peoria to Farmington, through said quarter Section; thence west along the centre of said public highway, to the south-east corner of said Russell's land, thence north along said Russell's line to the place of beginning, supposed to be about fifty acres, more or less; together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining.

To have and to hold the said premises as above described with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said party of the first part, for themselves and their heirs, executors and administrators, do hereby covenant to and with the said party of the second part, his heirs and assigns, that they are well seized of the premises above conveyed, as of a good and indefeasible estate in fee simple, and have good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrance, and that the above bargained premises, in the peaceable and quiet possession of the said party of the second part, his heirs or assigns, against the claim of all persons whomsoever, will forever warrant and defend. In testimony whereof the said parties of the first part, have hereunto set their hands and seals, the day and year first above written.

AUGUSTUS O. GARRETT, [SEAL]

MARY G. GARRETT [SEAL.]

Signed, sealed and delivered in the presence of Dennis Blakely.

Whereupon, on the same fifth day of October, 1843, the Clerk of said Court issued to the Sheriff of Peoria County, a summons in said cause under the seal of said Court, which with the return thereon endorsed, is in the words and figures following, to-wit:

SUMMONS.

THE PEOPLE OF THE STATE OF ILLINOIS.

TO THE SHERIFF OF SAID COUNTY PEORIA, GREETING:

We command you to summon Augustus O. Garrett, if he may be found in your county, to appear before our Circuit Court, on the first day of the term thereof, to be held at Peoria, within and for said county of Peoria, on the third Monday of October, inst., then and there in our said court to answer unto Orin Hamlin, of a plea of covenant broken, damages two thousand, as he saith, and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid.

[Seal.]

Witness, William Mitchell, Clerk of our said Court, and the seal thereof, at Peoria, this fifth day of October, in the year of our Lord one thousand eight hundred and forty-three.

WILLIAM MITCHELL, Clerk.

By R. HAMLIN, Dep'y Clerk.

[Endorsed.]

[RETURN.]

STATE OF ILLINOIS, }
 Peoria County. } ss.

I have served the within on the within Augustus O. Garrett, by reading the same to him this 6th day of October, A. D. 1843.
 SMITH FRYE, Sheriff.

And afterwards on the 29th day of May, A. D. 1845, the defendant filed his pleas in said cause, which are in the words and figures following, to-wit:

PLEAS.

ORIN HAMLIN, }
 vs. } Peoria Circuit Court. May Term, 1845.
 AUGUSTUS O. GARRETT. }

1. And the said defendant, by H. Purple and Merriman, his attorneys, comes and defends the wrong and injury, when, &c., and says the said deed in said declaration mentioned, is not his deed, and of this he puts himself upon the country.

PURPLE & MERRIMAN, Def'ts Atty's.

And the plaintiff, likewise by his attorney.

ONSLow PETERS.

2. And for the further plea in this behalf, said defendant says actio non. because he says that he has kept his said covenants in all things fulfilled and performed the same, and of this he puts himself upon the country, &c.

PURPLE & MERRIMAN, for def't.

3. And for further plea in this behalf as to the said second count of said declaration, said defendant says actio non, because he says that although the said Moses did that time, when, &c., hold a mortgage on said land, in said declaration mentioned, as in said second count stated, yet said mortgage has since been fully paid and satisfied, and the lien thereby created on said land, wholly discharged, and the same is not an incumbrance on said land in said deed described; and this said defendant is ready to verify, wherefore he prays judgment, &c.

PURPLE & MERRIMAN, Def'ts Att'y.

4. And for further plea as to the said second count, said defendant says actio non, because he says that the said mortgage to said Moss therein described, was before the commencement of this suit fully paid and satisfied by the said defendant, and the lien created by the execution thereof on said land, fully discharged; and as to the said mortgage of Moses Pettengill and Amos P. Bartlett, in said count mentioned, said defendant says that the said land at the time of the execution thereof was the sole and individual property of one Mary G. Garrett, and not of said defendant, and said Mary G. Garrett never legally executed said mortgage to said Pettengill & Bartlett so as to create a lien on said land by virtue thereof, and this said defendants are ready to verify, wherefore he prays judgment, &c.

PURPLE & MERRIMAN, for def't.

5. And for further plea in this behalf, said defendant says as to \$300 00, and of the claim demanded in said declaration actio non, because he says that the consideration of said deed, is not truly stated in said deed, and the real consideration was less than the amount therein

stated, by a large sum, to-wit : the sum of three hundred dollars ; and this said defendant is ready to verify, whereupon as to the sum of three hundred dollars he prays judgment, &c.

PURPLE & MERRIMAN, for def't.

And afterward the plaintiff filed his demurrer to said 2nd, 3rd, 4th and 5th pleas, to-wit : on the 29th day of May, A. D. 1845, which is in the words and figures following, to-wit :

ORIN HAMLIN,
vs.
AUGUSTUS O. GARRETT, }

And the said Hamlin, as to the pleas of the def't, by him secondly, thirdly, fourthly and fifthly above pleaded, and each of them respectively above pleaded, says that he ought not to be precluded from having and maintaining his actions aforesaid, by reason of any thing in either of said pleas alleged, and the pl'ff by the law of the land is not required to reply to the said pleas, or either of them, and this he is ready to verify ; wherefore he prays judgment, &c. And for cause of demurrer, said pl'ff assigns the following, to-wit :

1. That said second plea does not allege or show in what manner or how the def't has kept his covenants, and because the said plea concludes to the country, when it should conclude with a verification.

2. Said second plea does not answer the whole of the second count of declaration.

3. Said third plea does not show when said Moss' mortgage was paid and satisfied, and the lien discharged.

4. That each of the said pleas are informal, double and otherwise insufficient.

By his Attorney, ONSLOW PETERS.

JUDGMENT.

Friday, May 30th, 1845

ORIN HAMLIN,
vs.
AUGUSTUS O. GARRETT. } Covenant.

This day came the plaintiff, by Peters, his attorney, and the defendant, by Purple and Merriman, his attorneys, and this cause came on to be heard upon the demurrer of the said plaintiff, to the second, third, fourth and fifth pleas of the defendant, and after argument of counsel, the court being fully advised in the premises, are of opinion that the said pleas, and the matters and things therein contained are not sufficient in law to bar the said plaintiff from his said action ; and issue being joined upon the first plea of the said defendant, it is agreed by the parties, that both matters of law, and fact arising in the cause may all be tried by the Court ; and the Court, after hearing the evidence of the parties respectively, and being fully advised herein, do find the issue joined for the plaintiff, and assess the damages of the said plaintiff, by reason of the breaches of covenant in the said plaintiff's declaration assigned, to fifteen hundred forty-seven dollars and twenty cents. Therefore, it is considered that the said plaintiff have and recover of the said defendant, the said sum of fifteen hundred and forty-seven dollars and twenty cents, his damages aforesaid, in form

aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, and that execution issue therefor.

On the twenty-fifth day of November, A. D. 1853, an assignment of said judgment was filed in said Clerk's office, which is in the words and figures following, to wit:

ORIN HAMLIN, Plaintiff,	}	In the Circuit Court of Peoria County, Ills.
vs.		
AUGUSTUS O. GARRETT, Defendant.	}	In Covenant.

Damages,	-	-	-	-	-	-	-	\$1547	20
Costs,	-	-	-	-	-	-	-	6	62½

Judgment rendered May 30th, 1845.

For value received, I, Orin Hamlin, the plaintiff in the above suit, do hereby assign, transfer, and set over to John Hamlin, all my right, title and interest in the above judgment, and do hereby fully authorize and empower the said John Hamlin to take such steps in the collection of the same, or in compromising with said Garrett, as he may think proper, without any interference on my part. It is understood that the same shall be at the costs and charges of the said John Hamlin, thereby ratifying and holding for firm and effectual all he shall do in the premises, by virtue of this transfer.

Witness my hand and seal this 3rd day of February, A. D. 1849.

ORIN HAMLIN, [SEAL]

And afterwards, on the 25th day of November, A. D. 1853, said Judgment was entered satisfied on the Judgment Docket of said Court, by a receipt placed opposite the entry of said Judgment, on said Docket, in the words and figures following, to wit:

"Received full satisfaction of this Judgment, and I hereby discharge the same.

ORIN HAMLIN,

November 25th, 1853.

By JOHN HAMLIN, Assignee."

STATE OF ILLINOIS, }
Peoria County. } ss.

I, JACOB GALE, Clerk of the Circuit Court, do hereby certify that the foregoing is a correct transcript from the Records of the pleadings and proceedings in a certain cause in said Court, of Orin Hamlin, against Augustus O. Garrett, as the same remains of record, and on file in my office.

[Seal.]

In witness whereof, I hereto set my hand, and affix the seal of said Court, at my office in the City of Peoria, this sixth day of October, A. D. 1855.

JACOB GALE, Clerk.

Fees for Transcript,	\$4	60	}	\$4	85
Cost and Seal,	-	0			

ORDER OF COUNTY COURT.

Be it remembered that heretofore, to-wit : at the September term of the County Commissioners' Court, held in and for the county of Peoria, and State of Illinois, on the 7th day of September A. D. 1840, the said court on the 10th day of September, A. D. 1840, the said court on the 10th day said month, made and caused to be entered on the records of said court, the orders in the words and figures, following, to-wit :

Ordered that Thomas Bryant, late Sheriff of Peoria county, be allowed a credit of one hundred and ten dollars and eleven cents, upon the judgment against him in favor of the county of Peoria, in the Circuit Court of said county.

And afterwards, to-wit : At a term of said court begun and held at the court house in said county on the seventh day of December, A. D. 1840, on the 11th day of said month last named, made and entered of record, the following other order to-wit :

Ordered that the Sheriff credit the sum of sixty dollars for ex-officio services under the road law &c., and the further sum of fifteen dollars for ex-officio services as Sheriff from 1st Dec. 1839, to June 1st 1840, upon the execution in his hands in favor of Peoria county *vs.* Thomas Bryant et al, the said amount being due said Bryant for services rendered as aforesaid.

And afterwards to-wit : at a term of said court begun and held at the Court House in Peoria county, in said State on Monday the 5th day of June 1843, the said court on the 24th day of said month made the following other order of record on the records of said court, to-wit :

This day Thomas Bryant paid into court the sum of sixty dollars which is to be applied upon the judgment in favor of the county, *vs.* said Bryant on his office Bond as Sheriff.

And afterwards, to-wit : at a Term of said Court begun and held in and for said county, and State, at the Court House, in said county on Tuesday the 25th day of July A. D. 1843, said court on the 26th day of said month made the following other order of record to-wit :

Ordered that Thomas Bryant, late Sheriff be credited with twenty-five dollars and forty-five cents upon the judgment against him and his securities in favor of the county rendered in the Circuit Court of said county.

And afterwards, to-wit : on the 6th day of March 1846, William M. Dodge, Treasurer of said county, made and filed in the office of the Clerk of said Court among the Treasurers' receipts, and which was entered of record, the receipt in the words and figures, following, to-wit :

The people of the State of Illinois, for the use of Peoria county, *vs.* Tomas Bryant, Charles Ballance, Augustus O. Garrett, Luther Sears.

Judgment in favor of the plaintiffs at the October Term of the Circuit Court of Peoria county, A. D. 1839.

Received of Smith Frye, for the county of Peoria, on the above judgment two hundred and ninety-three 08-100 dollars by notes signed by him and C. Ballance to County Commissioners of said county, March 6th, 1846.

(Signed)

WM. M. DODGE, County Treasurer. [L. s.]

FINAL DECREE.

And afterwards, to-wit : at a Circuit Court begun and held in and for the county aforesaid, in said State on the 4th Monday of the month of April in the year of our Lord 1856, and on the seventh day of said term, being in the 5th day of the month of May in the year aforesaid, the following decree was had in said court, to-wit :

AUGUSTUS O. GARRETT, AUGUSTUS, G. GARRETT, & MARY S. GARRETT,	}	In Chancery.
<i>vs.</i> WILLIAM S. MOSS, AMOS P. BARTLETT, MOSES PETTENGILL, & WILLIAM RUSSELL.		

This cause having been submitted to the court at the October Term A. D. 1855, upon the Bills, answers, replication, evidence, and exhibits, and depositions on file, (except the deposition of William S. Moss which is suppressed, and not considered in this cause,) and the same cause having been argued by counsel and duly considered, and the court being sufficiently advised in the premises, doth order, adjudge and decree that the said complainants' bill be dismissed and that the complainants pay the costs of this proceeding and that execution issue therefor.

May 5th, 1856.

CLERK'S CERTIFICATE.

STATE OF ILLINOIS,	}	ss.
Tazewell County.		

AUGUSTUS O. GARRETT, MARY G. GARRETT,	}	BILL IN CHANCERY.
<i>vs.</i> WILLIAM S. MOSS, AMOS P. BARTLETT, MOSES PETTINGILL, WILLIAM RUSSELL.		

I, Merrill C. Young, Clerk of the Circuit Court, within and for said County, do hereby certify that on the original bill in the above entitled cause, the endorsements are in the words and figures, as follows to-wit :

BILL IN CHANCERY.

AUGUSTUS O. GARRETT, MARY G. GARRETT,	}	BILL IN CHANCERY.
<i>vs.</i> WILLIAM S. MOSS, AMOS P. BARTLETT, MOSES PETTENGILL, & WILLIAM RUSSELL.		

April 1854.

JOHN A. JONES, Clerk,
By G. P. Fow, Deputy.

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Garett et al
vs

Moss et al

Abstract

Filed May 10. 1858

L. Leland
Clerk

51 36

Augustus O. Garret et al

vs

William S. Mass et al

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1858