No. 14778

Supreme Court of Illinois

Bailey

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vs.

Bernard

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 15

J. W. Middleton & Co., Stationers, 196 Lake St.

3rd Grand Division April Term 1862
Ens to Tazewell

State of Illinois
Supreme Court
B. Rotheram
J. P. Bailey
vs
Pro Barnard

BRIEF IN THE MATTER OF

JOHN BARNARD
vs.
ABRAHAM BROWN,
AMANDA BROWN,
SAMUEL P. BAILY,
BENJAMIN S. PRETTYMAN,

Tazewell Circuit Court of the February Term, 1860.

IN CHANCERY.

vs John Barnard

The bill sets out the term of the court February 1860, James Harriott Judge 21st judicial circuit, Hugh Fullerton Prosecut-
Page 1. ing Attorney, T. C. Reeves Sheriff. The State and county bill filled 8th day of November, 1859 and directed to James Harriott Judge 21st judicial circuit.

The bill shows that John Barnard, the plaintiff of Chester county, state of Pennsylvania, and that 14th day of October,
2 1853, one Abraham Brown being seized &c. in fee the following described land, to-wit: The north-east quarter of the south-west quarter of section 1, town 24, North of range 5 west of the third P. M. The north-west quarter of the south-west quarter and south half of the south-west quarter of section one. The north-east quarter of the north-west section 12; the north-west quarter of the north-west quarter of section 12, the south-east quarter of the south-east quarter of section 2, the said tracks all north range 5 west of the third P. M., and being indebted unto Samuel P. Baily in the sum of sixteen thousand and four hundred dollars by twenty-three promisary notes, all dated 14th of October, 1853; twenty of the notes for $300 each and payable to said Samuel P. Baily or order, one in 6 months, 12 months, 18 months, 24 months, 30 months, 36 months and 42 months, 4 years, 4½ years, 5 years, 5½ years, 6 years, 6½ years, 7 years,
2 7½ years, 8 years, 8½ years, 9 years, nine and a half years and ten years. Also one note for ten thousand dollars payable ten years after date: One for two hundred dollars due January 1st 1854, and one for two hundred dollars due May 1st, 1854, and that all of which notes that are unpaid and herewith filed as exhibits and is part of the bill, Abraham Brown and wife to secure the payment of said notes, executed a mortgage on the said premises excepting the land that a large Lake known as Baily's, also the right of way 30 feet wide, also the right of laying water pipe to convey water to Pekin, which said deed was duly recorded and made part of the bill and an exhibit.

The mortgage was subject of the condition on the payment, the respective notes as they became due, and interest thereon, and
4 upon further condition upon the failure of the payment of said notes, then the said Samuel P. Baily was authorized to foreclose upon each or any failure of payment, and that on the 2nd of October, 1855, said Baily assigned and delivered said notes and mortgage, all said notes that were to be due after the 4th of of October, 1855, to the complaint and that all other notes have been settled and paid, no other known having any interest in

said notes, and that eight of said notes are due amount to $2400 and that he requested Brown to pay the same, and that Brown has refused. Benjamin S. Prettyman pretends to have some interest in said premises which is subject to the mortgage of the complaint, prays that Abraham Brown, Amanda Brown, Samuel P. Baily and Benjamin S. Prettyman be made partners defendants, and be required to answer under oath, and that an account be taken of what is now due, and that the said Abraham Brown or his assigns may be decreed to pay what shall be found due in a short time, and upon default Abraham and Amanda Brown, his wife, and all persons claiming by or through them may be foreclosed of all equality of redemption, and that the lands be sold and proceeds applied to the payment of what is found to be due on said notes and mortgage, and prays *Subpenia* to be directed to the sheriff, Tazewell county, Ill., &c.

Signed, John Barnard.

Roberts & Ireland, sol's.

Here follows as exibits, one, two. three and four notes of three hundred dollars each, payable in 24, 36 and 42 months, and 9 notes of $300 each, payable in 4 and 4½ years, and the others payable 5, 5½, 6, 6½, 7½, 8, 8½, 9, nine and a half and 10 years, and an other for ten thousand dollars, payable in ten years, all of which notes are signed by Abraham Brown and were indorsed by Samuel P. Bailey.

Exibit B. Here sits out the mortgage in substance as charged in the bill and before stated and signed and sealed by Abraham Brown and Amanda Brown, and was acknowledged on the 14th of October, 1853, before Jno. M. Bush, county judge. On the back of the mortgage assigned to John Barnard on the 2nd of October, 1855, by Samuel P. Baily and sealed affidavit of the non-residence of Abraham and Amanda Brown, made on the 8th of November, 1859, by James Roberts sworn to by him at the same term of the court on the 2nd day of said term to-wit 1860 the following decree in substance was entered:

John Barnard
vs.
Abraham Brown and others. } To foreclose.

And now on motion of the complainants solicitors, it appearing that all the defendants have been duly notified of the pendency of these proceedings, the defendants have failed to answer by Monday morning—8th day of said month of February the 3rd of said term, proof of publication was filed in said cause. On the 7th day of the term, to-wit, the 13th of February, 1860 Samuel P. Baily, one of the defendants, filed his answer:

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
B. S. Prettyman. } In chancery,
Bill to foreclose Mortgage.

The seperate answer of Samuel P. Baily, one of the defendants in substance is as follows: Admits that Brown was seized in fee to the lands described in the complainants bill, and that Brown and wife executed the said mortgage to secure the several sums in said mortgage and notes specified and due and payable in the manner charged, and that he assigned the said notes and mortgage to complainant, denies that complainant has any interest in said notes or mortgage, shows that on or about the 2nd of October, 1855, this respondant became indebted unto the complainant in the sum of $6000, and that the defendant Baily executed his promissary to complainant for that sum payable on demand with interest, and shows at the term of executing said note, this respondant assigned the said note and mortgage to the complainant together with other notes as per schedule hereto attached to mark 'A' which is part of this respondants answer, and for the purpose of collecting and paying the said indebtedness in the said specified note, viz. the $6000 dollar note. The respondant says it was agreed between the complainant and this respondant upon the payment of the said $6000 which this respondant was then owing, complainant would surrender and deliver to the respondant all of said security placed in his hands for the purpose aforesaid.— This respondant says that the complainant received at divers times divers sums of money, as hereafter set forth, in payment of said indebtedness in cash, part of the securities placed in his hands, viz., a note signed by M. Tackaberry, a note dated 1st of April, 1854 due 21st of August, 1856, for the sum of three hundred and eighty-four dollars. Also another note of the same date, due August 21st, 1857, for the sum of $384,37, both of which were paid at maturity. This respondant further says, that the complainant transfered to one Reuben Barnard, and part of the said security, the two following described notes, viz., one note due August 21st, 1857, for the sum of $319,09, and the other due August 21st, 1858, for the sum of three hundred and seventy dollars and forty-six cents, which both notes were signed by Benj. Kellogg, Jr., and payable to this respondant, which notes so assigned are now in judgement in the county court of Tazewell county in favor of said Reuben Barnard. This respondant further answers, that on or about day of May, 1857, one Nathan P. Walton being indebted unto this respondant in the sum of three thousand and two hundred dollars, it was agreed between said Walton and this respondant that he(Walton) should pay the complainant that said sum of three thousandand three hundred dollars, this respondant would release said Walton of his indebtedness of that amount; this respondant answers and says that the said Walton did pay the said complainant in pursuant to his said agrec, with this despondant, on the first day of October, 1857, in part payment of said note ($6000).— This respondant further says, that the note so due the complainant was some time in the Spring or the Winter of 1856 or 1857

placed in the hands of one Reuben Barnard as the agent of the complainant to make collection of the same, and that at the instance and request of the said agent this respondant drew his draft in favor of the said Reuben Barnard on one James Miller, dated April 21st, 1857, payable sixty days after date thereof to the order of the said Reuben Barnard for the sum of one thousand dollars. Sum in said draft was paid to the said Reuben Barnard and was to be indorsed by him on the said note so held by him as aforesaid, and while he was in the possession of said note, and during the time he was authorized to receive the money on said note for said complainant. This respondant
20 answers and says that the said Reuben Barnard always pretended to this respondant that he was the owner, or had a large interest in said $6000, so held by the complainant, and he did not know anything to the contrary until the respondant learned from the complainant that he was the exclusive owner, and that he had paid the said Reuben Barnard during his possession of said note, he pretending that he had a right to receive the said money due the complainant. Answers and says he paid the said Reuben Barnard other sums of money, viz., on or about the 26th of March, 1858, by draft drawn by T. S. Dobbin's on Anglewitt & Beant, at St. Louis, Mo., payable in thirty days after date the sum of $120 which was paid on said note, copy receipt of this (bill) answer marked 'B'. This respondant further answers and says that on or about the 21st day of March, 1859, this respondant paid, by the hands of George H. Harlow to the said Reuben Barnard the further sum of $600 while it was in the possession of said R. Barnard as per receipt marked 'C,' and part of this bill. This respondant further answers and says, that on or about the 10th of August, 1850, while the said note was in the hands of the said Reuben Barnard he paid the com-
21 plainant the sum of $2500 as per receipt mark 'D' which is part of this answer. This respondant for further answer says, that by Deed bearing date 2nd day of May, 1856, the said Abraham Brown and wife did release unto this respondant all right and title and interest in the said premises whatsoever, which deed will be produced when required &c. as evidence in this cause and by
22 reason of the conveyance last aforesaid—this despondant became the entire owner of said land, and that the said Brown had no further interest in the said land, only the same stands a security for the indemnity of said Brown against his liability on said notes, so given which sums of money paid by this respondant far exceed the amount claimed by said complainant, and this respondant claims and is advised that the said payments are good offsets against the said demand of the said complainant, this respondant prays the benefit of whatever payment he may be entitled too, and may be set off against the said indebtedness. This respondant expressly alledges that the only consideration of the said assignment of said notes and mortgage was made was a collateral to secure the said note, given by

this respondant to complainant as aforesaid for the $6000 and no other, and at the final hearing of this cause your Honor will require an account to be stated between the respondant and complainant, of the several matters and things herein set forth, having answered all matters and things herein set forth, having answered all matters and things, he is advise if necessary and required of him to answer, prays that he may have judgement of his reasonable costs. Samuel P. Baily.

Sworn and subscribed before me this 13th day of February, 1860. M. C. Young, Clerk.

Exibit's 'A,' 'B,' 'C' and 'D.'

Exibit A, comprises a receipt for sixteen $300 notes, and one
23 note for $10,000; also two notes signed by B. Kellogg, Jr.,—one for $319,09, due August 21st, 1854, payable to respondant.—The other for $370,46, payable 21st of August, 1858. And two notes signed by M. Tackaberry, one due August 21st, 1856 and the other, August 21st, 1857; each $384,37, making all $16,258,-
24 31. Also an assignment of a mortgage (executed by Brown to Samuel P. Baily) to the complainant, which notes and mortgage I hold as collateral security for the payment of a note dated this day, drawn by Samuel P. Bailey in my favor for six thousand dollars and interest, payable on demand.

(Signed,) John Barnard.

25 Exibit B. A receipt signed by Reuben Barnard for T. S. Dobbin's draft for one hundred and twenty dollars, dated March 26, 1858.

26 Exibit C, a receipt by Reuben Barnard to Geo. H. Harlow, dated March 31st, 1859, for $600 dollars; to be endorsed on a note given by Samuel P. Baily to John Barnard and signed by Reuben Barnard.

Exibit D, a receipt dated Pekin, August 10th, 1859, signed by John Barnard, for the sum of $2500, to be credited on his note dated October 22nd, 1855, now in the hands of Reuben Barnard.

The plaintiff filed his application on the 20th of February, being one of the days of said term, to the seperate answer of Samuel P. Baily.

State of Illinois, } In the Circuit Court of the
Tazewell County. } February Term, 1860.

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
Benjamin S. Prettyman. } Bill to Foreclose.

27 Replication generally signed by the solicitor, Roberts.

The defendant Baily on the 19th of June, 1860, files a cross bill, to-wit:

John Barnard
vs.
Samuel P. Bailey and others. } In Chancery. Cross Bill.

The cross bill in substance sets out that on the 2nd day of October, 1855, your orator gave to one John Barnard, defendant his note for $6000, payable to the said John Barnard on demand with interest, and at the same time assigned to said Barnard as collateral security for the payment of said note of $6000, as per schedule hereto attached, marked 'A,' and part of this bill. and for the purpose of collecting and paying the said note for $6000 to said Barnard; and that upon the collection of said notes so
28 assigned, the said Barnard agreed with your orator that the said notes or so much as would be sufficient to pay said $6000, the residue of said collateral should be given to your orator, charges that John Barnard some time afterwards, to-wit, in 1856, assigned by delivering said $6000 to one Reuben Barnard (who claimed to own one half of said note) for collection, and that the note so placed in the hands of said Reuben Barnard your orator paid the said Reuben Barnard the sum of $1000 by a draft on one James Milner, payable in ninety days after April 21st, 1857, and duly accepted by said James Milner, which said draft was in part payment of the said $6000 and delivered to the said Reuben Barnard. Further shows that Reuben Barnard collected from M. Tackaberry of the collateral, to-wit, $500.
29 also shows that John Barnard assigned to said Reuben Barnard the following notes placed in said John Barnard's hands as collateral security by your orator, viz: One note signed by M. Tackaberry, due 1857 for $384.30, which said Reuben Barnard collected; also two other notes signed by B. Kellogg, Jr., one for three hundred and nineteen dollars and eight cents, due August 21st, 1857, and an other for three hundred and seventy dollars and thirty cents, due August 21st, 1858, which two last notes are now in judgement in the County court of Tazewell county, in favor of Reuben Barnard against the estate of B. Kellogg, Jr. deceased, which your orator claims as a payment on the said six thousand dollars, and further shows that he paid Reuben Barnard six hundred dollars, as per receipt marked 'C' and part of this bill, and that he paid said Reuben Barnard one hundred and twenty dollars, as per receipt maked 'E' and part of this bill. Further shows that one Nathan P. Walton was indebted unto your orator to the sum of three thousand dollars, and John Barnard was indebted unto N. P. Walton, so it was agreed by, and between, the said Walton and your Orator, that Walton should pay that sum to the said John Barnard in discharge of the debt
30 from Walton to your Orator. Further show in pursuant of said agreement, that the said John Barnard sold and transfered three thousand dollars of his interest in the said six thousand dollars to N. P. Walton. Further show that Walton agreed with your Orator so soon as he could get your Orator's note he would endorse the same on the said note, the said sum of three thousand dollars and interest thereon. Your Orator further shows after the said assignment, that the said N. P. Walton remained in

this county and was in partnership with your Orator in attempting to open a Coal bank, and for that purpose advanced to said Walton the sum of about 7 hundred dollars, as hereafter sets out, shows that Walton contracted in the name of the firm large debts in the name of the firm and refused to pay the same, and not endorsing said note with said six thousand dollars, returned to the State of Pennsylvania, all of which transfer or assignment was notified by said Reuben Barnard and N. P. Walton and John Barnard. Your Orator further shows that the said $6000 note was in the hands of the said Reuben Barnard, and who was then residing in the State of Minnesota, so the endorsement on the note could not be made at the time of
31 said assignment. Further shows that upon the faith of said payment to the said John Barnard by said N. P. Walton, he advanced the said Walton large sums in addition thereto, to-wit: Seven hundred dollars through one James Milner. Further shows that the times changing land for which said note was given greatly declining in value, the said N. P. Walton clandestinely left the State of Illinois and returned to the State of Pennsylvania, and combining with the said John Barnard surrendered up to the said John Barnard the said assignment of the said half of said note and returning the same to the said John Barnard, although the said John Barnard well knowing that the said sum of money had been paid and arranged by your Orator, charges that the same was fraudulent and covinous and intended to cheat and defraud your Orator. Your Orator charges the aforesaid facts are particularly known to the said John Barnard. Your Orator further shows that some time in the month of August, 1859, the said John Barnard, who is an uncle of your Orator, and resides in the State of Pennsylvania, pretending to be on friendly terms with your Orator, applied to your Orator, and requested him (your Orator) to show him the N. P. Walton claims and upon such application your Orator handed him two notes, one the $3,200 note before stated, as well as another note of seven thousand dollars, and upon receiving the said notes, he then
32 threw down certain deeds for lands, which was the consideration of said notes after the receiving of said notes, no contract ever having been made with the said Walton that they should be given up. Further shows that being desirous of maintaining an amical relation with his uncle and to avoid having any difficulty, he offered the said John Barnard five hundred dollars to return him said notes, which he refused to do, and charges that the same is fraudulent and that the said John Barnard ought to account to your Orator. Further shows the he paid the said John Barnard by giving him another security, in the sum of $2500, as per receipt marked 'D' and is part of this bill.—Charges that the said Reuben Barnard and N. P. Walton after receiving the several sums and the equitable payments aforesaid fraudulently retransfered the said $6000 note to the said

John Barnard and well knowing all the circumstances and payments made thereon. Further shows that the mortgage and notes executed by Brown and placed in the hands of John Barnard as collateral security, as aforesaid by an arrangement with your Orator, and said Brown was to be taken up by your Orator and that Brown by Deed bearing date 1858 having Quit-claimed to your Orator all his Equity of Redemption, the said John Barnard has filed a bill in this Court to foreclose the said mortgage against said Brown, B. S. Prettyman and your Orator, well knowing the original sum of which said mortgage was given, as collateral was paid and that the said collateral should be given up. Your Orator charges that he had paid the said $6000 note in manner aforesaid, and that the said John Barnard, Reuben Barnard and N. P. Walton, coniving and confederating to cheat and defraud your Orator, to avoid whatever credits your Orator is entitled to returned the said $6000 to the said John Barnard, and who has instituted a suit at Common law in the District Court of the United States on said note, and which is now pending in said District Court (meaning circuit court), and also filed his bill to foreclose the said mortgage so assigned him of Brown as aforesaid, all of which is unjust and oppressive.— Further shows that in said suit at law in said District court your Orator having filed a bill of discovery, setting out the above facts and defence, at which trial the legal rights between said John Barnard and your Orator will be fully determined on said notes, which suit is now pending and undetermined the promissary considered, your Orator prays that the said John Barnard, Reuben Barnard and N. P. Walton be made defendants and required, to here answer and full discovery make under their corporal oaths the matters and things herein charged as fully as though they were specifically interrogative, and that upon a final hearing of this cause your Honor will be pleased to order and decree the said collateral security be given up, and that an account be taken between your Orator and said John Barnard, that a common injuction granted against said John Barnard, injoining him from proceedings at law until the parties hereto have fully answered the matters and things herein charged, and that your Honor will make such other orders in the premises as is equitable and just. Samuel P. Baily.

Sworn to on the 5th day of May, 1860, before

M. C. Young, Clerk.

Here follows exibit 'A.' A receipt for sixteen $300 notes, and one note of ten thousand dollars, signed by Abraham Brown and endorsed to John Barnard by Samuel P. Baily, as before recited in the record; also the two Kellogg notes, one for $319,09 and the other for $370,46, and two notes signed by M. Tababerry for three hundred and eighty-four dollars and thirty-seven hundreths each, and payable to said Baily and endorsed by said Baily to John Barnard, stating they were received as collateral

security to pay the said six thousand dollars mentioned in the pleading.

Exibit 'B.'

$3200. Pekin, May 27. 1857.

On or before the first day of October, 1857, I promise to pay Samuel P. Baily, or order, thirty-two hundred dollars for value received, which may be discharged by paying the same to John Barnard. Nathan P. Walton.

Exibit 'C.' Reuben Barnard's receipt dated March 26th, 1858, drawn on Anglow & Brant, St. Louis, Mo., for one hundred and twenty dollars, when paid, to be endorsed on note. Signed,

Reuben Barnard.

Exibit 'E.' Reuben Barnard's receipt to Geo. H. Harlow for six hundred dollars, due April 5th, 1859, to be endorsed on the note given by Samuel P. Baily to John Barnard now held by me

Signed, Reuben Barnard.

Exibit 'D.' Dated Pekin, August 10th, 1859, John Barnard's receipt for twenty-five hundred dollars, to be credited on his
38 note given me for six thousand dollars, now in the hands of Reuben Barnard dated October 2nd, 1857. Signed. John Barnard.

On the 1st day of September, A. D., 1860, John Barnard filed in this cause.

State of Illinois, } In the Circuit Court,
Tazewell County. } September Term, 1860.

John Barnard
vs
Samuel P. Baily.
} In Chancery. To Foreclose Mortgage.

The answer of John Barnard to the Cross-bill of Samuel P. Baily, filed in the above cause. This defendant now, and at all times, saving and reserving to himself all manner of exceptions to the manifested errors in said Cross-bill contained for answer thereto, or so much thereof as he is advised is material for him to make answer. In answering says, it its true
39 that said complainat made and delivered to the respondant his promissary note for $6000, dated the 2nd day of October, 1855, payable on demand with interest. Note was not assigned
40 to Reuben Barnard, but it is true that it was delivered to said Reuben Barnard for collection, and that he was, during the time the same was in his hands, duly authorized by power of attorney, from respondant, to receive any payment made on it. Respondant further answering says, that it is wholly untrue that said Baily paid said Reuben Barnard a draft on James Milner payable ninety days after the 21st day of April, 1857. But the respondant states the truth to be, that on the 21st day of April, 1857, said Baily drew a draft on said Jas. Milner in favor of Reuben Barnard for the sum of $1000, payable sixty days after the date thereof, at the banking house of
41 G. H. Rupert & Co., and which was accepted by said James Milner, and which the said Reuben Barnard gave a receipt to be

credited on said note when the said should be paid. But respondant further states that said draft was never paid by the said Milner, but the same was presented to the said Milner, and he wholly refused to pay the same, of which non-payment the said Baily was duly notified. The respondant further states that he is informed by said Reuben Barnard that said Baily desired that said draft should be retained by said Reuben Barnard without suit or prosecution for collection, as said Milner was the son-in-law of said Baily and was then embarrassed in his circumstances and afterwards became wholly insolvent, and respondant now has the said draft in the hands of James Roberts, Esq., ever ready to be delivered up when said Baily shall pay the balance due upon said $6000 note. Respondant further answering, states that said statement in said bill that Reuben Barnard collected of M. Tackaberry, a part of said liabilities, to-w't, the sum of $500 and this respondant assigned to said Reuben Barnard the notes placed in respondant hands for collection on M. Tackaberry for the sum of $384,37, which note the said Reu-
42 ben Barnard collected of said Tackaberry in the manner stated therein is untrue, and the proposition is stated in that manner as respondant believes in order to charge respondant twice with the same thing. And this respondant further answering, states that the truth of the same transaction to be that when the first note given by said Tackaberry became due said Baily requested respondant to send the note to him (Baily) for collection, which respondant did. Said Baily returned $360 only, which paid the first years interest on the $6000 note, and which this respondant never denied that he said Baily should have credit for. And in March, 1858, Reuben Barnard collected of M. Tackaberry $384 and thirty-seven hundreths, being the second note on said Tackaberry paid by draft on St Louis, at sixty days. This respondant admits he received the two notes on B. Kellogg, Jr.: One for $319,08, due August 21st, 1857; and one due August 21st, 1858, for $370 and forty-six hundreths as collateral security, as the receipt annexed to said Bailey's Cross-Bill will show that said Kellogg died before said notes became due, and the same
43 were duly presented to the County court of Tazewell county and judgment obtained on the same against the estate of Kellogg; but the same has never been paid, and respondant denies that said Baily is entitled to any credit for the same as payment until they are paid. Respondant further answers and admits that said Baily paid said Reuben Barnard $120 by draft of T. S. Dobbins, on Anglow & ~~Brant~~, of St. Louis, as mentioned, and which respondant never denied, and also the sum of six hundred dollars by draft of G. H. Harlow, due April 5th. 1859, as stated in the receipt; neither of which sums have ever been denied by respondant, as said Bailey well knew. But respondant states that is wholly untrue, that neither himself or Reuben Barnard ever at any time received from said Baily a draft on Dobbins

for six hundred dollars, but received no other sum from said Dobbins than $120 above mentioned. Respondant further answering, says that he knows nothing of any indebtedness of N. P. Walton to said Baily, except as hereafter stated. But respondant further states it is wholly untrue and positively known to be untrue by said Baily that respondant was ever indebted to said N. P. Walton in the sum of $3,200. And this respondant further answering, says it is untrue in every respect that respondant sold and transfered to said Walton $3000 of his interest in said note for any other purpose than collection. But
44 respondant authorized said Walton to receive from said Baily one-half of said note for respondant, and ordered said Baily to pay the same to said Walton. But respondant is informed by said Walton, and so believes, that said Baily never paid said Walton one cent on said note. Respondant further answering states that so far as said Walton's indebtness to said Baily is concerned, all respondant knows about it is, that on the month of August, 1859, respondant visited Pekin for the purpose of trying to collect said $6000 note that he learned from said Walton that he (Walton) had bought one undivided half-interest from said Baily in what was known as the Wesley City Coal Mine, and was informed by said Walton that the deeds therefore were in the hands of James Roberts, but had not been
45 recorded, and said Walton requested respondant to get them from said Roberts (and he gave respondant an order for that purpose) and to give them up to said Baily if Baily would give up some notes on said Walton, which were given for said coal mine. And respondant further answering, states that he called on said Roberts and got said deeds, and that said Baily delivered up two notes he held on said Walton to respondant to be delivered to said Walton—one of said notes being for the sum of $3200, and one for $7000, which were the only notes ever received by respondant from said Baily, and it was expressly understood by respondant that said Baily was to have the land back and Walton was to have his notes, and Baily immediately upon receiving said deeds gave back the respondant a mortgage upon the very lands he had sold to Walton, and which constituted part of the money mentioned in the $2500 receipt annexed as an exibit to said Bailey's cross-bill. After respondant had received said notes, respondant had frequent conversation with Baily in reference to the payment of said $6000 note,
46 and Baily only asked time on the same and never made any pretence that said notes of Walton should be credited on said $6000 note, but expressed himself pleased at giving the lands back, as he had made leased leases of the same, as he informed this respondant, nor even claimed said Milner's draft or Kellogg's notes as payment on the same. Respondant further answering, states that he only acted as the agent of said Walton in getting said notes and never had any connection with said

Walton in any other manner in his transactions with said Baily And respondant further answering, says that he knows nothing of any agreement made by said Walton and the said Baily about endorsing any credits on his $6000 note of his own knowledge, and knows nothing of any agreement of partnership between Walton and said Baily in relation to said $6000, but is informed by said Walton that the whole statement by said Baily in reference to agreeing to endorse any sums of money on said
47 note is false. But respondant is informed by said Walton, and believes it to be true, that said Baily never paid one cent on said note to said Walton. Respondant knows nothing of said Baily advancing money to Walton and nothing of Walton contracting large debts in the name of the firm. But if said Baily did so, it is in their own private transactions, with which respondant had nothing to do whatever, and respondant knows nothing of any agreement made by said Walton with said Baily to pay respondant any money for said Baily. But respondant knows very well that said Walton never paid respondant one cent upon said $6000 note for said Baily or any one else. Respondant believes that said Walton was engaged with said Baily in trying to open a coal mine, and left the State of Illinois, and after a while he returned to the State of Pennsylvania; admits that Reuben Barnard had said notes with him in Minnesota, and
48 respondant wholly denies that he in any manner received said notes of said Walton in payment of said $6000 note, or in any manner received the same for the benefit of respondant, but, as before stated, respondant received said notes on said Walton, as the lands were all the consideration for the notes, and Baily having got back all the lands, there remained no further consideration for the notes; it was expressly understood by respondant and Bailey that the giving up of the notes and deeds was simply to resind the trade between Walton and Baily. Respondant believes that Baily after he had got said deeds in his possession wanted respondant to give up to him Walton's notes, but as he had given them up in consideration of the title-deeds respondant had no authority to return the same to said Baily, because respondant knew of no good motive said Baily could have in getting said notes, as respondant's understanding was that they were given up for the said land, and by Baily getting back the land the notes were discharged. Respondant further answering, denies any combination or confederation with said Walton or anybody else, to cheat or defraud said Baily: denies that there was any surrender by said Walton to respondant of said
49 $6000 note, as said Walton had never had the same. Respondant knows nothing about the decrease in the value of the lands sold Walton by change of times, and knows nothing about Walton clandestinely leaving the State of Illinois. Respondant denies that he knew that any sum of money had been paid and arranged with said Walton and Baily, and denies most positive-

ly that said arrangement was ever made, and denies any intention to cheat or defraud said Baily; denies any payment to said Walton by said Baily for respondant. Respondant admits that he is the uncle of said Baily and has always desired to be upon amicable relations with said Baily, and that he resides in the State of Pennsylvania. But respondant denies that he applied to said Baily and requested said Baily to show him the N. P. Walton claims, and that upon such application said Baily handed respondant the $3,200 note before stated, as well as another note for $7000 and that respondant then threw down certain deeds for lands which were the consideration of said notes, but states the truth to be, that Walton requested him to get the deeds from Roberts and deliver them to Bailey if Baily would deliver
50 up said notes, and Baily gave the respondant said notes and respondant gave up to him (Baily) the deeds for the lands, respondant having been authorized by Walton to do so. It was understood by respondant that the delivery of the deeds was a discharge of the notes, and with that understanding respondant delivered up said notes to said Walton after his return to Pennsylvania, and never received from Walton or any one else any any benefit from said notes in any manner whatever, and said $6,000 note was then, and has been ever since, in the hands of James Roberts for collection; admits that Baily wanted the return of Walton's notes after he had got said deeds, but respondant refused to return them, as above stated. Respondant further answering admits that Baily paid respondant $2500 by giving his note and mortgage (as by said receipt attached), as said bill of said Baily will show: $1000 on the dwelling house
51 of said Baily and $1500 on the land sold by said Baily to Walton; denies any retransfer of said note by Walton, and the said Reuben Barnard to the respondant for the reason that the same was never in any manner transfered to them, and denies all fraud and combination on the part of the respondant. Respondant knows nothing of any arrangement made between said Baily and Brown by which Baily was to take up said notes; knows nothing of any quit-claim deeds from said Brown to said Baily. Respondant admits that he has filed a bill to foreclose said mortgage as he lawfully might, and denies that said original sum of $6000 has ever been paid. The charge that said Baily has fully paid said $6000 note is wholly untrue, and respondant again denies any combination or confederation with said N. P. Walton and Reuben Barnard to cheat and defraud said Baily, and respondant has never disputed the credits above mentioned. Respondant admits the institution of a suit by him upon said note in the Circuit court of the United States, for the Southern district of Illinois; admits that Baily filed a bill of discovery in said suit, to which respondant has made answer of like effect
52 with this, and now having fully answered prays herein to be dismissed with his reasonable costs in this behalf sustained.

James Roberts, solicitor. John Barnard.

Sworn and subscribed 20th day of August, 1860, before Thos. L. Bell, Notary Public.

John Barnard
vs.
Samuel P. Baily. } September Term, 1860, of said Court.

53 Samuel P. Baily, one of the defendants, excepts to the answer of said John Barnard for the following reasons, to-wit:

1st. The bill charges that the plaintiff (Barnard) assigned the $6000 by delivering to Reuben Barnard who claimed to be the owner of half the notes. The answer is not responsive fully—as it does not admit or deny that Reuben Barnard had any interest in said $6000 note, the answer being evasive and uncertain.

2nd. The bill charges that the defendant John Barnard assigned to Reuben Barnard two notes of B. Kellogg for $370 and $318, and that Reuben obtained a judgement on said notes in the Court of Tazewell county. The answer does not admit or deny his authority for, (obtaining) or having, such judgment.—The bill also charges that Barnard was indebted to Walton.—The answer does not deny that he was owing Walton any less sum.

3rd. The bill charges that John Barnard sold and transfered $3000 of his interest in said $6000 note to N. P. Walton. The answer does not admit or deny the assignment to said Walton, but is evasive and insufficient.

54 4th. The bill charges that Milner paid for Baily to N. P. Walton $700 while Walton was in possession of the $3000 in said note. The answer does not disclose what length of time, or while the note was in the hands of Walton, nor when the assignment was redelivered to said John Barnard.

55 5th. The bill charges that to avoid having a difficulty with said Barnard, he offered him five hundred dollars to return the notes after he had got the possession of said notes. The answer has failed to answer this allegation.

The answer of said John Barnard is evasive and uncertain—insufficient and not responsive to the bill in this cause, and otherwise insufficient, and setting up new matter repugnant to the allegation of the cross-bill. Samuel P. Baily.

At the September Term of said court, 1860, on the 5th day of the term the following proceedings were had:

John Barnard
vs.
Abraham Brown and others } Foreclosure.

The exceptions to answer overuled.

On the 10th day of said Term the following proceedings were had:

56 State of Illinois, } In Circuit Court,
Tazewell County } September Term, 1860.

John Barnard
vs.
Abraham Brown and others } In Circuit Court, September Term, 1860.

Decree vacated. The June Term had—

John Barnard
vs.
Abraham Brown and others. } Foreclosure.

Ordered on motion of Samuel P. Baily the decree entered in this cause on 13th day of the month be vacated, and this cause is set down for hearing at this term.

The following proceedings were had on the 19th day of the month, and 13th day of the term:

State of Illinois, } In Circuit Court,
Tazewell County } September Term, 1860.

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
B. S. Prettyman. } In Chancery. To Foreclose Mortgage.

And now at this day came the complainants, John Barnard by his solicitors, Roberts & Ireland, and the defendant, Samuel P. Baily, having at the February Term, 1860, of this court filed his answer, and at the same Term the complainant having filed his repplication thereto, and at the June Term, 1860, of this court the said Baily having filed his Cross-bill herein, and said complainant having filed his to the same, and said defendants, Abraham Brown and Amanda Brown, having been brought into court by publication in the Tazewell *Register*, a weekly newspaper published in Pekin, Tazewell county, Illinois. The first publication thereof having been on the 9th day of November, A. D., 1859, and the last on the 8th day of December, 1859.— Said publication having been published for four successive weeks and said B. S. Prettyman having been duly served with process more than ten days before the 1st day of the February Term, 1860, and summons having been returned not found, as to Abraham Brown and Amanda Brown, and said Abraham Brown and Amanda Brown and said B. S. Prettyman, Abraham Brown and Amanda Brown having been three times solemnly called, came not, but made default; it is ordered and decreed by the Court that complainants bill and all things therein contained be taken for confessed as against the said B. S. Prettyman, Abraham Brown and Amanda Brown; and said cause having come on for hearing and complainant having produced said original note in said bill mentioned for the sum of $6000, dated October 2nd, 1855, due on demand and payable to said John Barnard, and signed by said Samuel P. Baily. And it further appearing to the Court after allowing the credits admitted by the Cross-bill and shown by the receipts and other evidence held

and provided by said Samuel P. Baily that there is yet due upon said $6000 note above mentioned and described, the sum of $3.-500 and twenty-six seven hundreths. And it further appearing by the introduction and proof of the original mortgage given by said Abraham Brown and Amanda Brown, his wife, to said Samuel P. Baily, and by the introduction of nine of the original notes given by said Brown to said Baily, to-wit: All of said notes dated the 14th day of October, 1853, one due thirty months after date, one forty-two months after date, one four years after date, one four and a half years after date, one five years after date, one five and a half years after date, one six years after date and one six and a half years after date, all for the sum of $300 each, and being all the notes due upon said mortgage, that there is due and unpaid upon said notes and mortgage given by said Brown and wife to said Baily the sum of $3000 ninety-one and fifty one hundreths. and at further appearing to the Court that all of the notes which said mortgage from said Brown and wife to said Baily, and also said mortgage's were duly assigned by
64 said Baily to the complainant as collateral security to secure the payment of said note of $6000, given by said Baily to said complainant. And it further appearing to the Court that said sum of $3,526 is still due on said $6000 note, it is therefore ordered, adjudged and decreed by the Court that the defendants in this cause, in twenty days from the adjournment of this Court pay the said complainant (John Barnard) the said sum of three thousand ninety-one dollars and fifty hundreths and costs of this suit, and in default thereof it is ordered, adjudged and decreed by the Court that said mortgaged premises being the north-east quarter of the south-west quarter-section one, the north-west quarter of the south-west quarter-section one, and the south-half of the south-west quarter-section one, the north-east quarter of the north-west quarter-section twelve, the north-west quarter north-west quarter-section twelve, the south-east quarter of the south-east of section two, all in township twenty-four, North Range five west of the 3rd P. M., except the land and water on which stands the large lake, known as Baily's lake Also the right of way to the same, of thirty feet; also the right of laying water-pipes to convey said water in said lake to Pekin,
65 to be sold at the front door of the Court house in Pekin, Tazewell county. Illinois, at public auction in seperate parcels to the highest bidder, for cash. And it is further ordered that the time, terms and place of said sale be previously published for the space of three successive weeks before said sale, in some public newspaper published in Pekin, Illinois, and out of the proceeds of said sale the costs of this suit and expense of sale be first paid, and the balance be paid to said John Barnard and credited on said $6000 note, and that Charles Turner, Esq. be appointed special commissioner to carry this decree into effect, and that he report his actings and doing to this Court, and that this

cause stand continued. Whereupon the defendant (Baily) prays an appeal which is granted by the Court with a bond to be filed in twenty days, in the sum of $200 with Thos. C. Reeves as security. The proceedings in the said cause were had at the February Term, 1861, and on the 25th day of said month and 18th
66 day of said Term:

John Barnard vs. Abraham Brown, Amanda Brown, Samuel P. Baily and B. S. Prettyman.	In the Tazewell Circuit Court. In Chancery, To Foreclose Mortgage.

To the Hon. James Harriott, Judge 21st Judicial Circuit of the State of Illinois, in chancery sitting:

Your petition represents that the original bill, in said cause
67 the plaintiff represented that the defendant (Samuel P. Baily) assigned said notes (named) and mortgage to said plantiff for value received, and the defendant Baily's answer avered that he originally owed said plaintiff the sum of $6000, and had deposited and left with said complainant the said notes described in said complainant's bill, and the mortgage therein described as collateral security to secure the said sum of $6000 named in said bill, and that on payment of the note for $6000 named in said bill, said collateral notes and mortgage mentioned should be surrendered and given up; and your petitioner further shows that the said answer also avers that large payments were made on said $6000 note, viz: $3500, and that other large collateral conditional payments were made thereon, viz, a draft for $1000 upon James Milner, which complainant, by his agent, accepted and neglected to collect or return, and also two notes signed by B. Kellogg, Jr., amounting to about $700, which said defendant (meaning plaintiff) endorsed and delivered to the agent of said plaintiff, Reuben Barnard, who was then the owner of part of said $6000, and was then authorized to receipt for and satisfy and settle the same, and that said notes of B. Kellogg were filed by said Reuben Barnard, and judgement is now obtained against said estate of said Kellogg in the name of Reuben Barnard for said notes, and that estate is good and able to pay the
68 same; and your petitioner shows that although the foregoing facts appear by the pleading and evidence, yet the decree in the cause rendered, requires the defendant to pay the sum of three thousand five hundred and twenty-six dollars and seven cents, and that on compliance, the property named in the decree, be sold, &c., while as to the draft upon said Milner and the judgment on the notes of B. Kellogg and other collaterals left with or paid to complainant, the decree is silent, and your petitioner is agrieved by the provisions of said decree, and especially in relation to the draft and judgement vs. Kellogg on said notes, which, with the other collaterals, on the payment of the money

should be given up to said defendant, your petitioner. Your petitioner therefore prays that the cause &c., may be reheard and that said decree may be entirely reversed, or so far corrected and modified as to require all of the collateral drafts, notes and other things not applied in payment to be delivered up to your petitioner, and as in duty bound your petitioner will ever pray.

Samuel P. Baily.

Signed by B. S. Prettyman.

69 J. M. Hanna, solicitor.

Further proceedings were had on the same day of the Term 1860:

John Barnard
vs.
Abraham Brown. } Foreclosure.

Motion to strike the petition for rehearing from file, which motion was overruled, and afterwards to-wit, on the 26th day of said month and the 19th day of said Term the following decree was entered in said cause:

70 John Barnard
vs.
Abraham Brown,
Samuel P. Baily and others. } February Term of the Tazewell Circuit Court, A.D.1861

Now on this day again came the defendants, Samuel P. Baily, B. S. Prettyman and J. M. Hanna, solicitor, and said complaint by James Roberts, his solicitor, and this cause coming on to be heard upon the petition of the defendant, Samuel P. Baily, for a rehearing of said cause, and the Court now being fully advised in the premises, and after hearing argument of council as well for the said defendants as for said complainant. It is considered by the Court, and the Court doth order and decree that the decree heretofore made in this cause, be and the same is hereby vacated and for naught esteem, and all orders heretofor made in this cause be now set at naught and that this cause be again heard by the Court upon its merits.

And now afterwards, to-wit, the same day a decree was rendered in said cause, in words, as follows:

71 State of Illinois, } In Circuit Court,
Tazewell County } February Term, 1861.

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
B. S. Prettyman. } In the Tazewell Circuit Court. In Chancery, To Foreclose Mortgage.

Petition has a rehearing.

Now at this day having came the said Samuel P. Baily by B. S. Prettyman, his solicitor, and the complainant by James Roberts, his solictor, and the said Baily having presented his petition for a rehearing in said canse, and said rehearing having been

granted it is ordered that the former decree entered in this cause be in all things confirmed, but that the same be modified so that the said Baily, upon the payment of the sum found due by said decree upon the said $6000 note and the costs, and have all the collateral securities given by the said Baily to the said John Barnard delivered up to said Baily on payment of the same, to-wit, a draft drawn on James Milner by said Baily, payable to Reuben Barnard in ninety days after April 21st, 1857, for the
72 sum of $1000; two other notes signed by B. Kellogg, one for $319 and eight hundreths, two due 21st of August, 1858, another for $370 and thirty-seven hundreths, due 21st of August, 1858; and also all notes given by Abraham Brown to said Baily not included in said decree heretofore entered, and those things in said decree stand and be in full force and virtue.

The following proceedings were had at the June Term of said court, at which time the defendant, Baily, files his petition for a rehearing in said cause, to-wit:

John Barnard
vs.
Samuel P. Baily and others. } Said county, State and court In Chancery.

73 The petition is directed to the Judge of said court, and sets out in substance as follows: The defendant, Baily, at the February Term, 1861, filed his petition for a rehearing in said cause and that the same was granted by the court, and an order to vacate the former decree, and that after the vacating of said decree, the defendant, Baily, and his solicitor, B. S. Prettyman, left immediately for Springfield, on the 25th of February, 1861, with understanding that the complainants solicitor, James Roberts,
74 he having notice thereof. He further states that he is informed and believes that but a short time, say two hours after the departure for Springfield, by the defendant and Prettyman his solicitor, James Roberts applied to the court at chambers and in the absence of the defendant, Baily, procured a rehearing in said cause and in the absence of Baily and his solicitor and without notice to Baily and his solicitor, procured a final decree in said cause. Petitioner states that so much of the decree as states that the decree states the appearance of Hanna and Prettyman in said cause, is untrue as he was informed by Hanna. The petitioner further states that the first notice was on trial of a cause in the Circuit Court of United States for the Southern district of Illinois on a suit entered by the plantiff vs. your petitioner on the $6000 note in pleadings mentioned; when the said decree was plead the complainant as an estopple against the claims of set off, as heretofore mentioned, which decree was a
75 surprise, and so defeated, the defence intended to be set up by the defendant, Baily, and was thereby deprived of his set-off in said cause: shows that the decree was had at the Chamber of the Judge, and in the absence of self and solicitor, and asserts that the same is inequitable and unjust. The petition further

shows that since filing his answer to the original cross-bill in said cause he has found having accidently mislaid the following receipt signed by Reuben Barnard, the agent of the plaintiff for the draft of $1000 drawn by the defendant Baily on James Milner, which receipt is as follows: "Received of Samuel P. Baily a draft drawn by him on James Milner, dated April 21st, 1857, payable sixty days after date to the order of Reuben Barnard, at the banking house of G. H. Rupert & Co., for the sum of $1000
76 when paid to be endorsed on a note by said S. P. Baily in favor of John Barnard, dated October 2nd, 1855, for the sum of $6000 after deducting exchange, which is to be paid by said Baily, which last described note is in my hands for collection.

Reuben Barnard.

Dated Pekin, April 21st, 1857."

Which receipt your petitioner had no recollection of until after, as stated heretofore, and that the original will be produced at a final hearing of this court. Your petitioner expressly says that at the time of making his answer and filing his cross-bill, and at the hearing of said cause he did not know of the existance of said receipt, but since that time he has recently discovered and found said receipt. He further states that at the date of said draft that the said James Milner was indebted unto your petitioner in a much larger sum, and in consideration of said in-
77 debtedness made, executed and delivered said draft to said Reuben Barnard, the said draft was duly accepted by said Milner and that at the maturity of said draft, your petitioner had no notice of the non-payment of the said draft. And further shows that at the maturity of said draft the said Milner was solvent, and if proper diligence by the plaintiff had been used, the amount due could have been collected, but reason of the failure of said plaintiff to collect the said money at the time it was due or in a reasonable time, the entire debt has been lost, the said Milner having become insolvent, whereof your petitioner hath sustained damage to that amount and interest, which he is advised is a just and equitable set-off against said claim of $6000. Further shows that in said decree the said Milner's draft is called collateral, which, in fact, was a conditional payments and so intended. Your petitioner further states that he is entitled to set
78 off the amount of Kellogg's notes of about $800, and by reason the rehearing aforesaid, and the estopple thereby has lost the benefit of said set-off of two of the notes placed as collateral, he having disposed of the said notes in such a disposition that no decree can reach the present holder, and as your petitioner has been advised by his council, is a complete conversion of the said notes. Your petitioner shows that at the hearing of said bill and cross-bill, he took the testimony of other witnesses who were produced and sworn, at the hearing of said cause, before the Judge, and that the same was reduced to writing by the Judge, and the testimony of J. Milner, who testified that John Barn-

nard, nor any other person, never made an application to him for the payment of said draft, also proved that at the maturity of said draft he had in his hands funds of a greater amount than
79 was sufficient to pay said draft, and that at the maturity of said draft he was able to pay the same if he had been required to do so, and that since that time he has become entirely insolvent — The said Milner further testified that N. P. Walton, in the pleadings, told him that he had paid John Barnard the sum of $3000 for and on account of said Baily, meaning your petition, on the $6000 and that he was authorized to receive that sum of S. P. Baily for said Milner, and that Baily paid N. P. Walton in money and goods, at the request of Baily, upwards of $700, to be applied to the payment for money paid for your petitioner to plaintiff; Milner testified that it was the signature of John Barnard, and that he knew and was acquainted with the hand-writing of said J. Barnard, &c.; to letter marked 'A' was attached
80 the genuine signature &c. of John Barnard. The said Milner further testified that John Barnard told him that he (Barnard) had given up to Walton all the securities he (Walton) had placed in the hands of him (J. Barnard). He further testified that J. Barnard had security from N. P. Walton for the payment of the money that Walton was to pay for S. P. Baily to him, and that after Walton and Baily fell out the security was given up by him to Walton. Your petitioner further proved by John Gridley, Clerk of the County court of Tazewell, that the two notes signed by B. Kellogg, in the pleadings mentioned, was in a judgment in favor of Reuben Barnard, and it also appearing by the notes filed that the notes were assigned in 'Blank.' Your petitioner further proved by B. S. Prettyman that Reuben Barnard placed said Kellogg's note in his hands for collection without disclosing that any other person had any interest therein, and that the estate of Kellogg was and is solvent, and that the notes were not in the County Probate-court until two years after let-
81 ters of administration was issued to the administrator thereof. Your petitioner further shows that testimony of said witnesses have been lost, and insists on a rehearing of the cause from the facts disclosed, viz:

1st. The final decree made after a rehearing being ordered by the Court being without notice, is fraudulent and void.

2nd. The evidence taken in the original cause being lost, the defendant ought to have been permitted to have his evidence retaken at the rehearing upon application to the court for that purpose.

3rd. Upon the new discovery of the receipt set forth in the petition on the ground of new discovered evidence.

4th. The decree asserts that Milner's draft was collateral in fact, is not true, but in fact the Milner draft was a conditional payment, and the decree allowing the plantiff to hold said draft is unjust.

is unjust. The premises considered your petitioner prays that your Honor will be pleased to have the decree made in said cause, set aside and vacated, and that your Honor will be pleased
82 to grant your petitioner a rehearing, and that he be allowed to amend his answer to his original bill and his cross-bill according to facts above disclosed, and so that all the equities may be fully adjudicated. Samuel P. Baily.

Samuel P. Baily, Council.

Subscribed and sworn to on the 14th day of June, 1861. G. H. Harlow, Clerk.

The plaintiff entered his motion to strike the petition from the file—the Court sustains the motion, thereupon the defendant accepts.

State of Illinois, } In Circuit Court,
Tazewell County } June Term, 1861.

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
B. S. Prettyman.

In Chancery.
Motion for Rehearing.

83 Be it remembered that the defendant Baily presented and filed a petition and affidavit of B. S. Prettyman, which said affidavit is the words and figures following, to-wit:

State of Illinois, } In the Circuit Court of
County of Tazewell. } Tazewell, June, 1861.

Benjamin S Prettyman being duly sworn, according to law, deposith and saith at the February Term of this court, A. D., 1860 he was employed by Samuel P. Baily to prosecute for him a petition for a rehearing in the case then before said court of John Barnard vs. said Samuel P. Baily, Abraham Brown and others. This appliant further states that he was present at the Term when the order for a rehearing was made, and the decree therefor entered by the court, and this appliant says that after the entry of the order for a rehearing of the said cause, he left the court-room for the City of Springfield, in conjunction with his client, Samuel P. Baily, and by previous understanding with Mr. Roberts, the attorney for the complainant in said cause he was to leave Pekin at the same time for Springfield—both
84 parties going to attend to a cause in the United States Court, in which was a matter in dispute between the plantiff Barnard vs. said Baily, then and there to be had by appointment on the next day, and this appliant says that said Roberts delayed starting from Pekin until after the appliant and Baily had left, and this appliant further says that when he left the court-room it was understood by him and believes it was understood by the court generally, that the court would not adjourn until the day following, when this appliant was to return, and says he did return on the day he had so appointed to return and the court had then

adjourned for the Term, and the affiant says he is advised that after the leaving of the court and starting for Springfield as aforesaid, that the said court at the instance of Roberts, attorney for plaintiff, procured in the absence of his client, said Baily and of himself and without the knowledge of the fact to either of them, or any expectation that a rehearing would be or could be had in the absence without due notice from the above statement of facts to rehear the cause ex parte before the court, and affiant says that he is advised that the court reheard the cause ex parte and caused a decree to be entered, which is highly prejudical to the interest of his client, which decree among other things insists that the same was rendered in the presence of this affiant, and while he was acting in the matter of rehearing as attorney of said Baily, and affiant says that the fact in the case this affiant was not present at the rehearing of said cause, and that he knew nothing of it at the time, and had no expectation that it would be reheard until said Baily could procure his proof and make such other motions and applications as the equity of the case would justify. And this affiant further states that he himself was surprised and believes that his client was also surprised and injuriously affected by said order of rehearing as aforesaid. B. S. Prettyman.

Subscribed and sworn to before me this 17th day of June, 1861. G. H. Harlow, Clerk. } pr. A. P. Griswold, Dep't. }

And upon filing said petition the said Baily entered a motion for to have the decree therein vacated, and a rehearing be had in the said cause, whereupon the said plaintiff Barnard entered a cross motion praying to have the petition offered by the said Baily struck from the files for the reason that it was filed at the Term at which the decree was rendered, whereupon the Court ordered the said petition for rehearing stricken from the file of the court, whereupon said Baily accepted and files herewith this bill of exceptions and prays that it may be made part of this record in this cause. James Harriott.

The following proceedings were had at the September Term, 1861, on the 7th day of the Term :

John Barnard
vs.
Abraham Brown and others. } In the Tazewell Circuit Court September Term, 1861.

Report of the execution of the decree rendered in this cause :

State of Illinois, } In the Tazewell County Circuit Court,
Tazewell County. } September Term, 1861.

Report of Commissioner.

The approval of the special masters sale by the Court.

Publication and certificate of clerk.

Copy letter of John Barnard, refered to as exibit 'A,' in page 80.

Bond filed September 25th, 1860.

Appeal Bond.

Clerk's certificate, to board and exibit.

270

Rutgers & Bailey

1[illegible] v 89

Jno Bronson

Recital

Filed May 1. 1812

S Seland

Clerk

STATE OF ILLINOIS,
SUPREME COURT,
ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County Tazewell Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Tazewell County, before the Judge thereof, between John Barnard

plaintiff, and Abraham Brown, Amanda Brown Samuel P. Bailey & Benjamin S. Prettyman

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Benjamin S. Prettyman & Samuel P. Bailey

as we are informed by their complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 11th day of June in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

S. Leland

Clerk of the Supreme Court.

by J. D. Rice Deputy

15 58 3389

Benjamin S. Prettyman

Etal

No. 270 vs.

John Barnard

WRIT OF ERROR.

This Writ of Error is made a supersedeas, and as such is to be obeyed by all concerned.

L. Leland

Clerk.

J. D. Rice Deputy

FILED ..... A. D. 186

Clerk.

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Tazewell ——— County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit ——— Court of Tazewell ——— County, before the Judge thereof, between John Barnard ———

plaintiff, and Abraham Brown, Amanda Brown Samuel P. Bailey & Benjamin S. Prettyman ———

defendant, it is said that manifest error hath intervened, to the injury of the said Benjamin S. Prettyman & Samuel P. Bailey ———

——— as we are informed by their ———

complainant ——— the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors of the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said John Barnard ———

that he ——— be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he ——— shall see fit; and further to do and receive what said Court shall order in this behalf: and have you then there the names of those by whom you shall give the said John Barnard ———

——— notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 11th day of June ——— in the year of our Lord One Thousand Eight Hundred and Sixty-two.

L. Leland

Clerk of the Supreme Court.
by J. B. Rice Dep't

15 23 58 2389

Benjamin S. Pettyman &
Samuel P. Bailey

No. 270 vs.

John Barnard

SCIRE FACIAS.

FILED Dec 2 A. D. 1862

L. Nelson Clerk.

The State of Maine. Penobscot ss. Supreme Judicial Court. In this County. June Term 1862. Attest. L. Nelson Clerk.

By Publication Dockets

STATE OF ILLINOIS, } ss.
Clerk's Office of the Supreme Court.

I Hereby Certify, That a Writ of Error hath issued from this Office for the Reversal of a Decree obtained by John Barnard

against Abraham Brown, Amanda Brown Samuel P. Bailey & Benjamin S. Prettyman

in the Circuit Court of Tazewell County, at the September Term, in the year of our Lord one thousand eight hundred and sixty two in a certain ~~action of~~ Chancery suit to foreclose a Mortgage which Writ of Error is made a Supersedeas, and is to operate as a suspension of the execution of the judgment, and as such is to be obeyed by all concerned.

Given under my hand, and the Seal of the said Supreme Court, at Ottawa, this 11th day of June in the year of our Lord one thousand eight hundred and Sixty two.

L. Leland

Clerk of the Supreme Court.
by J. B. Rice Dep't.

15 25 99

Benjamin S. Pettyman
& Jeremiah P. Bailey
No. 270 vs.
John Barnard

SUPERSEDEAS.

FILED Dec. 23 A. D. 186 2

L. Kilcare
Clerk.

This Certificate Has been Duly Issued By Reading to Keeper of Harbour Clerk of the Circuit Court of Sagadahoc County and Charles Sumner Commissioner in the Northern District Case Dane 20th 1862

Deputy Service $1.00
Copies
Return
$1.20

1.0
1.0

By Wm. Hawthorn Deputy

State of Illinois } ss
Supreme Court }

B. F. Puffman &
Samuel P. Bailey
vs
John Bennod

8th Grand Division
April Term A.D. 1862

Error to Tazewell

on Motion for suppersedeas

B. F. Puffman one of the above named Defendants being first duly sworn according to law upon oath and saith that he is well acquainted with Thomas G Reeves and Ansel D Sikes, Residents of the County Tazewell and State of Illinois and he owns Most. they are either of them worth the sum of five Thousand Dollars in Real Estate. beyond all Encumbrances thereon. and further affiant saith not —

B. F. Puffman

Subscribed & sworn to before me this May 1st 1862.

L. Leland Clk.

Bond

Affidavit of Attys

Filed May 1. 1862
S Sedam
Clerk

Benjamin D Coffman &
Samuel P Baily
to
John Barnard } Supreme Court of Illinois
3d Grand Division
April Term A.D. 1842
Error to Rogewell

State of Illinois }
Supreme Court } ss Benjamin D Coffman
one of the Plaintiffs in Error in the cause above
named being first duly sworn according to Law
deposeth and saith. that he verily believes that a Error
in the foregoing Cause has injustly & improperly existed
in the Court below against the Complainants. and he
avers that by virtue of that decree on the 8th day of July
one Charles Turner
1842. the commissioner, appointed in that decree
sold the premises therein named) unto John Barnard
the complainant below. & above named defendant in Error
and delivered a Certificate of Purchase therefor
which is still as affiant is informed & believes in his possession
and is his property. and affiant avers said John Barnard
is a non resident of the State of Illinois & has no property
in the State of Illinois to the knowledge of affiant. other
than his claim to the property now in Controversy. and
affiant avers that the above Complainants. confidently
expects that the attorney of said Barnard. would have
entered his appearance at the present term of this
Court and that the Cause would have been
heard & decided at the present term. But the deponent
although affiant requested the attorney to enter the same for Barnard.
says of Barnard is not entered, And the time for the
Redemption of said premises from said sale is fast

approaching, and he compelled to Redeem the Premises from said sale would unjustly involve this affiant and place the money so Paid as Redemption in the hands of said Defendant without adequate Power on the Part of affiant to obtain from him afterwards indemnification, and affiant fears that Defendant will assign said certificate of Purchase, & that said Commissioner when the time for redemption has elapsed, will make a Deed to the assignee Defendant for the Land that by some means Conveyance & assignment the same will get in to the hands of strangers to the proceedings & purchasers in good faith. by which Plaintiff would lose their title thereto & in any event at the termination of this suit. Wherefore Plaintiff Prays Petitioner this Court for an order to be entered herein Extending the Injunctions awarded in this Cause. to the said Commissioner aforesaid. Charles Turner. as well as to the said John Barnard, restraining and forbidding them and each of them from giving said Deeds & awards from assigning said Certificate of Purchase or making any Deeds of Conveyance in said Cause by Order thereof. until the Decision of this Court in the Premises. and that this Injunction Remain in suspended until that time & further Deponth not

R. H. Hoffman

Subscribed & Sworn to before
me this May 15. 1862
L. Leland Clk.

15

~~58 2389~~

Bd Rotton &
D. P. Baily

vs

~~220~~

Jno. Bowers.

State of Illinois
Supreme Court

3d Grand Division
April Term 1852
Ira to Lowell

B. S. Brittain &
Saml P Bailey
vs
Jno Bonnod

Motion for supersedeas

And this Day comes the Plaintiff in Error and moves the Court for a supersedeas in this Cause for the following among other reasons herein set forth to wit the Plaintiff in Error has filed his Brief & Errors & has filed his Brief

The Decree is now being Executed by the Special Master in Chancery named in the Decree. and he now Returns & Has sold & struck off the premises unto the Defendant (complainant below) John Bonnod for the amount of the Decree and is about to & Has caused to Him a Certificate of Purchase Entitling Him to a Deed for the same if not Redeemed by Plaintiff in 15 mos. from the sale. and said John Bonnod is a non Resident of the State of Illinois. and Complainants are unable to Have service upon Him in the ordinary way. and the Delay in procuring a Hearing in this Cause. Will be Special to the irreparable injury of Complainants. & the Property may be Conveyed to innocent purchasers by the Master a Complainant. if not restrained by the supersedeas of this Court & the Plaintiff & Brittain Especially be deprived

of his right & title in the premises in
Contest, without notice without trial
& without adequate remedy. and thereby Pltff. pray a supersedeas
and Def.s - Either Thomas C Perry or Israel Harris
as surety on the Bond)

S Huffman

Filed May 21. 1842
L Solomon
Clerk

Def. Attorney's Affidavit
Bond approved
Writ of Error
Supersedeas

Writ of Supersedeas

Perry
vs
Bowen

Error to Dist Ct

Know all Men by these Presents, That Benjamin S. Prettyman & Samuel P. Baily as principals, and Thomas C. Reeves & Ansel Haines as securitys, are held and firmly bound unto John Barnard in the penal sum of one thousand dollars good and lawful [illegible] of the United States, for the payment of which, well and truly to be made [illegible] Prettyman, Baily, Reeves & Haines [illegible] themselves, their heirs, executors and administrators, jointly, severally and firmly by these Presents.

Witness, the hands & seals of said Prettyman, Baily, Reeves & Haines this Tenth day of May A. D. 1862.

The Condition of the above Obligation is such, That, whereas the above named John Barnard did, at the September Term of the Circuit Court, held in and for the County of Tazewell in the State of Illinois, A. D. 1861 recover a judgment & decree against the above bounden Baily & Prettyman & others for the ~~sum of~~ Freehome of a Mortgage to reverse which said judgment & decree the said Prettyman & Baily have sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division said State, which Writ of Error is made a Supersedeas. Now if the said Prettyman & Baily shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said judgment, and all costs, costs, interest and damages which the said Supreme Court shall adjudge against them and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

B. Prettyman [SEAL.]
Samuel P. Baily [SEAL.]
Thomas C. Reeves [SEAL.]
Ansel Haines [SEAL.]

276

No. 230

SUPREME COURT,

THIRD GRAND DIVISION.

Pettyman & Bailey

vs.

John Barnard

SUPERSEDEAS BOND.

Filed May 14 1862

L. Leland Clerk.

State of Illinois } ss
Supreme Court }

B. F. Hoffman }
Chas. P. Bailey }
vs
John Barnard }

3d Grand Division
April Term A.D. 1862

Ezra B. Sapp

Benjamin F. Hoffman one of the foregoing Plaintiffs being first duly sworn according to law upon his oath doth depose and say that the said defendant John Barnard is a non Resident of this State and is not in the State of Illinois so that process cannot be served upon him in the ordinary form. and further affiant saith not but prays that publication of the Pendency of this suit may be made as speedily as law &

B. F. Hoffman

Subscribed & Sworn to
before me Apl. 22 1863.
L. Leland
Clk.

55 270

Phipps, Ann & Bailey

No. 270.

Bonnaud

Affidavit of Plff

Filed May 1st 1862.
L. Delaud
Clk.

STATE OF ILLINOIS, Ottawa 3rd

SUPREME COURT, SECOND GRAND DIVISION,

To the April Term, 1862.

Benjamin S. Prettyman, Samuel P. Baily, } Plaintiffs in Error.

vs.

John Barnard, defendant in Error.

Error from Tazewell.

The said plaintiffs in the above entitled cause assign the following errors:

1st. The Court erred in overruling the exceptions filed in said cause to the answer of the defendant J. Barnard's answer to the cross bill

2nd. The Court erred in rendering the decree against the plaintiffs in error, for the sum of thirty-five hundred and twenty-six dollars or any other sum.

3rd. The Court erred in not setting off the two Kellogg notes against the six thousand dollar note in the pleadings mentioned.

4th. The Court erred in not setting off the Milner draft of one thousand dollars in the pleadings mentioned against the said six thousand dollar note.

5th. The Court erred in after setting aside and vacating the decree in said cause, to set the cause down for trial without notice to the plaintiffs in error or their solicitors.

6th. The Court erred in not granting a rehearing upon the petition of the said Baily.

7th. The Court erred in entering a decree against B. S. Prettyman without his having been served with process.

8th. The Court erred in not compelling John Barnard to account for and deliver up the notes of Nathan P. Walton.

9th. The Court erred in taking up the cause after decree entered had been set aside and all former orders in the cause had been set aside, and all former orders made in the cause had been vacated, in again setting down the cause for hearing the same without a rule on the defendants to answer or the entering of an order defaulting the defendants who had not answered in the cause, or an order taking the bill as confessed, and hearing the same in absence of the defendants or their Council or testimony and without notice to them, and without their consent, and not hearing the cause in open Court, but at the judges chamber.

B S Prettyman
alty pltff in Error

BRIEF---Plaintiff's in Error.

The exceptions taken to the answer to the cross bill ought to been sustained, the defendant being entitled, have answered every material allegation in a bill of discovery. Wagram on discovery. Law Library old paging 66.

The Kellogg notes ought have been allowed as a set off, the transfer of said notes was a breach of trust, courts treat collateral security as trusts and requires good faith in their execution. Mores vs. Mangalloyed 1 John C. R. 129. Barnard having received the trust he cannot discharge himself without the assent of the *cestui qui* trust. See Shepherd vs. McEvers, 4th John C. R. page 136.

The admisions in Barnard's answer that Reuben Barnard had the draft drawn by Baily on Milner as his agent, by the receiving the draft, he acknowledges the acts of his agent. The only consideration for said draft was Reuben Barnard's agreement to collect and pay on said note; now Barnard ought have returned the draft to Baily, John Barnard receiving them adopted his agent. Subsequent assent given to what has been already done, has a retrospective effect, and is equivalent to a previous command. Broom's Legal Maxims 380, Law Library Vol. 50.

The assignment of———to Nathan P. Walton, the three thousand dollars, of the six thousand dollar note, without giving Baily the notice of the purpose of the assignment, was calculated to mislead Baily, and he J. Barnard is stopped by his action. See 1. Greenlief's Evidence, section 207, page 319 and notes. Baily to have the benefit of whatever payment he made to Walton before he had notice of the assignment of said notes to John Barnard.

Accident is one of the peculiar jurisdictions of courts of equity, the loss of the evidence in the cause, the court ought to have permitted Baily at the rehearing to have the evidence retaken, so as to have the same in said cause to be reviewed by the superior court if necessary.

The rendering the decree in chancery, and all other proceedings had therein. The defendant or his solicitor had a right to be present at every stage of proceedings. See Whitmore vs. Pulliam, 25 Ill. R., 287. Brockman vs. Aulger 12, John 277, 5 Gilman. Frey vs. the Bank of Illinois, 332.

The affidavit of B. S. Prettyman discloses that the defendants and the solicitors were present at the rehearing, and the court was to be continued open to allow such further action as might thereafter be had, by the express understanding between the parties, the plantiffs in error were not present at the rehearing of the cause and making at the final decree. Not being present and having no notice, there could not be any action had, so as to have the cause reheard. A rehearing will be allowed at a subsequent term if it is shown that an application could not be made at the term when the decree was had. See Pearl vs. Wilmuie 4, Gil. 395.

The entering of a decree against B. S. Prettyman was entirely erroneous. It is not enough that a decree to recite that the defendant has been duly served with summons or advertisment, it should appear also of Record. See Randall vs. Songer, 16, Ill. R. 27. Varian vs. Edmonson, 5 Gil., R. 270. Binham vs. Galaway, 13, Ill. R. 68.

No process was ever served upon B. S. Prettyman; he does not appear or answer in the cause, and to take a decree against him is a prejudice to his interest in the premises, and is clearly erroneous. See Bonham vs. Galloway, 13, Ill. R. 68.

All orders entered by the court prior to the original hearing of the cause, was vacated and set aside by the decree of the court, (see rec. page 70) and without any rule of the court for defendants to answer, or default taken against them, or order taken the bill for confessed against them ~~are~~ clearly erroneous.

The proper practice should be to enter an order on the defendants to answer the bill. See Miller & others vs. Daveson, 3 Gilman, R. 528. Refusal to appear and answer ~~of~~ all the coersive process of the court have been insufficiently used to compel an answer will only authorize the taking of the bill for confessed. See DeWolf vs. Long 2 Gilman, R. 182.

Where a matter is neither admitted or denyed it must be proved. See 2 Gill., R. 679, 5 Gill., R. 212.

No proof appears of Record to have been offerred at the trial when the decree was rendered, and the court will not presume that any proof was made. See Ward vs. Oliver, 12, Ill. R. 283 17, Ill R. 457. Wilson vs. Kenney, 14 Ill. R. 29, 15, Ill. R. 33. Cummers vs Cummers. The note should have been produced or accounted for. See Lucas vs. Harris, 20, Ill. R. 165.

Obligations which are exibits or collateral evidence of indebtedness to support a bill for foreclosure should be established by proof, this comes with the 14 sec. of the practise act—Stacy vs. Randall, 17, Ill. R. 467.

From all the circumstances of this case, and the manifest errors, the court ought to reverse the decree entered in the said cause.

B. S. PRETTYMAN.
Attorney for plaintiff in error.

15

Puffy man et al
vs
Barnard

Error to Dist
of Pluff

Filed May 1. 1862
L Leland
Clerk

BRIEF IN THE MATTER OF

JOHN BARNARD
vs.
ABRAHAM BROWN,
AMANDA BROWN,
SAMUEL P. BAILY,
BENJAMIN S. PRETTYMAN,

Tazewell Circuit Court of the February Term, 1860.

IN CHANCERY.

The bill sets out the term of the court February 1860, James Harriott Judge 21st judicial circuit, Hugh Fullerton Prosecuting Attorney, T. C. Reeves Sheriff. The State and county bill filled 8th day of November, 1859 and directed to James Harriott Judge 21st judicial circuit.

Page 1.

The bill shows that John Barnard, the plaintiff of Chester county, state of Pennsylvania, and that 14th day of October, 1853, one Abraham Brown being seized &c. in fee the following described land. to-wit: The north-east quarter of the south-west quarter of section 1, town 24, North of range 5 west of the third P. M. The north-west quarter of the south-west quarter and south half of the south-west quarter of section one. The north-east quarter of the north-west section 12; the north-west quarter of the north-west quarter of section 12, the south-east quarter of the south-east quarter of section 2, the said tracks all north range 5 west of the third P. M., and being indebted unto Samuel P. Baily in the sum of sixteen thousand and four hundred dollars by twenty-three promisary notes, all dated 14th of October, 1853; twenty of the notes for $300 each and payable to said Samuel P. Baily or order, one in 6 months, 12 months, 18 months, 24 months, 30 months, 36 months and 42 months, 4 years, 4½ years, 5 years, 5½ years, 6 years, 6½ years, 7 years, 7½ years, 8 years, 8½ years, 9 years, nine and a half years and ten years. Also one note for ten thousand dollars payable ten years after date: One for two hundred dollars due January 1st 1854, and one for two hundred dollars due May 1st, 1854, and that all of which notes that are unpaid and herewith filed as exhibits and is part of the bill, Abraham Brown and wife to secure the payment of said notes, executed a mortgage on the said premises excepting the land that a large Lake known as Baily's, also the right of way 30 feet wide, also the right of laying water pipe to convey water to Pekin, which said deed was duly recorded and made part of the bill and an exhibit.

2

2

The mortgage was subject of the condition on the payment, the respective notes as they became due, and interest thereon, and upon further condition upon the failure of the payment of said notes, then the said Samuel P. Baily was authorized to foreclose upon each or any failure of payment, and that on the 2nd of October, 1855, said Baily assigned and delivered said notes and mortgage. all said notes that were to be due after the 4th of of October, 1855, to the complaint and that all other notes have been settled and paid, no other known having any interest in

4

said notes, and that eight of said notes are due amount to $2400 and that he requested Brown to pay the same, and that Brown has refused. Benjamin S. Prettyman pretends to have some interest in said premises which is subject to the mortgage of the complaint, prays that Abraham Brown, Amanda Brown, Samuel P. Baily and Benjamin S. Prettyman be made partners defendants, and be required to answer under oath, and that an account be taken of what is now due, and that the said Abraham Brown or his assigns may be decreed to pay what shall be found due in a short time, and upon default Abraham and Amanda Brown, his wife, and all persons claiming by or through them may be foreclosed of all equality of redemption, and that the lands be sold and proceeds applied to the payment of what is found to be due on said notes and mortgage, and prays *Subpenia* to be directed to the sheriff, Tazewell county, Ill., &c.

Signed, John Barnard.

Roberts & Ireland, sol's.

Here follows as exibits, one, two, three and four notes of three hundred dollars each, payable in 24, 36 and 42 months, and 9 notes of $300 each, payable in 4 and 4½ years, and the others payable 5, 5½, 6, 6½, 7½, 8, 8½, 9, nine and a half and 10 years, and an other for ten thousand dollars, payable in ten years, all of which notes are signed by Abraham Brown and were indorsed by Samuel P. Bailey.

Exibit B. Here sits out the mortgage in substance as charged in the bill and before stated and signed and sealed by Abraham Brown and Amanda Brown, and was acknowledged on the 14th of October, 1853, before Jno. M. Bush, county judge. On the back of the mortgage assigned to John Barnard on the 2nd of October, 1855, by Samuel P. Baily and sealed affidavit of the non-residence of Abraham and Amanda Brown, made on the 8th of November, 1859, by James Roberts sworn to by him at the same term of the court on the 2nd day of said term to-wit 1860 the following decree in substance was entered:

John Barnard
vs.
Abraham Brown and others. } To foreclose.

And now on motion of the complainats solicitors, it appearing that all the defendants have been duly notified of the pendency of these proceedings, the defendants have failed to answer by Monday morning—8th day of said month of February the 3rd of said term, proof of publication was filed in said cause. On the 7th day of the term, to-wit, the 13th of February, 1860, Samuel P. Baily, one of the defendants, filed his answer:

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
B. S. Prettyman. } In chancery,
Bill to foreclose Mortgage.

The seperate answer of Samuel P. Baily, one of the defendants in substance is as follows: Admits that Brown was seized in fee to the lands described in the complainants bill, and that
17 Brown and wife executed the said mortgage to secure the several sums in said mortgage and notes specified and due and payable in the manner charged, and that he assigned the said notes and mortgage to complainant, denies that complainant has any interest in said notes or mortgage, shows that on or about the 2nd of October, 1855, this respondant became indebted unto the complainant in the sum of $6000, and that the defendant Baily executed his promissary to complainant for that sum payable on demand with interest, and shows at the term of executing said note, this respondant assigned the said note and mortgage to the complainant together with other notes as per schedule hereto attached to mark 'A' which is part of this respondants answer, and for the purpose of collecting and paying the said indebtedness in the said specified note, viz. the $6000 dollar note. The respondant says it was agreed between the complainant and this respondant upon the payment of the said $6000 which this respondant was then owing, complainant would surrender and deliver to the respondant all of
18 said security placed in his hands for the purpose aforesaid.— This respondant says that the complainant received at divers times divers sums of money, as hereafter set forth, in payment of said indebtedness in cash, part of the securities placed in his hands, viz., a note signed by M. Tackaberry, a note dated 1st of April, 1854 due 21st of August, 1856, for the sum of three hundred and eighty-four dollars. Also another note of the same date, due August 21st, 1857, for the sum of $384,37, both of which were paid at maturity. This respondant further says, that the complainant transfered to one Reuben Barnard, and part of the said security, the two following described notes, viz., one note due August 21st, 1857, for the sum of $319,09, and the other due August 21st, 1858, for the sum of three hundred and seventy dollars and forty-six cents, which both notes were signed by Benj. Kellogg, Jr., and payable to this respondant, which notes so assigned are now in judgement in the county court of Tazewell county in favor of said Reuben Barnard. This respondant further answers, that on or about day of May, 1857,
19 one Nathan P. Walton being indebted unto this respondant in the sum of three thousand and two hundred dollars, it was agreed between said Walton and this respondant that he (Walton) should pay the complainant that said sum of three thousand and three hundred dollars, this respondant would release said Walton of his indebtedness of that amount; this respondant answers and says that the said Walton did pay the said complainant in pursuant to his said agree, with this despondant, on the first day of October, 1857, in part payment of said note ($6000).— This respondant further says, that the note so due the complainant was some time in the Spring or the Winter of 1856 or 1857

placed in the hands of one Reuben Barnard as the agent of the complainant to make collection of the same, and that at the instance and request of the said agent this respondant drew his draft in favor of the said Reuben Barnard on one James Miller, dated April 21st, 1857, payable sixty days after date thereof to the order of the said Reuben Barnard for the sum of one thousand dollars. Sum in said draft was paid to the said Reuben Barnard and was to be indorsed by him on the said note so held by him as aforesaid, and while he was in the possession of said note, and during the time he was authorized to receive the money on said note for said complainant. This respondant
20 answers and says that the said Reuben Barnard always pretended to this respondant that he was the owner, or had a large interest in said $6000, so held by the complainant, and he did not know anything to the contrary until the respondant learned from the complainant that he was the exclusive owner, and that he had paid the said Reuben Barnard during his possession of said note, he pretending that he had a right to receive the said money due the complainant. Answers and says he paid the said Reuben Barnard other sums of money, viz., on or about the 26th of March, 1858, by draft drawn by T. S. Dobbin's on Anglewitt & Beant, at St. Louis, Mo., payable in thirty days after date the sum of $120 which was paid on said note, copy receipt of this (bill) answer marked 'B'. This respondant further answers and says that on or about the 21st day of March, 1859, this respondant paid, by the hands of George H. Harlow to the said Reuben Barnard the further sum of $600 while it was in the possession of said R. Barnard as per receipt marked 'C,' and part of this bill. This respondant further answers and says, that on or about the 10th of August, 1850, while the said note was in the hands of the said Reuben Barnard he paid the com-
21 plainant the sum of $2500 as per receipt mark 'D' which is part of this answer. This respondant for further answer says, that by Deed bearing date 2nd day of May, 1856, the said Abraham Brown and wife did release unto this respondant all right and title and interest in the said premises whatsoever, which deed will be produced when required &c. as evidence in this cause and by
22 reason of the conveyance last aforesaid—this despondant became the entire owner of said land, and that the said Brown had no further interest in the said land, only the same stands a security for the indemnity of said Brown against his liability on said notes, so given which sums of money paid by this respondant far exceed the amount claimed by said complainant, and this respondant claims and is advised that the said payments are good offsets against the said demand of the said complainant, this respondant prays the benefit of whatever payment he may be entitled too, and may be set off against the said indebtedness. This respondant expressly alledges that the only consideration of the said assignment of said notes and mortgage was made was a collateral to secure the said note, given by

this respondant to complainant as aforesaid for the $6000 and no other, and at the final hearing of this cause your Honor will require an account to be stated between the respondant and complainant, of the several matters and things herein set forth, having answered all matters and things herein set forth, having answered all matters and things, he is advise if necessary and required of him to answer, prays that he may have judgement of his reasonable costs.

Samuel P. Baily.

Sworn and subscribed before me this 13th day of February, 1860.

M. C. Young, Clerk.

Exibit's 'A,' 'B,' 'C' and 'D.'

Exibit A, comprises a receipt for sixteen $300 notes, and one
23 note for $10,000; also two notes signed by B. Kellogg, Jr.,—one for $319,09, due August 21st, 1854, payable to respondant.—The other for $370,46, payable 21st of August, 1858. And two notes signed by M. Tackaberry, one due August 21st, 1856 and the other, August 21st, 1857; each $384,37, making all $16,258,-
24 31. Also an assignment of a mortgage (executed by Brown to Samuel P. Baily) to the complainant, which notes and mortgage I hold as collateral security for the payment of a note dated this day, drawn by Samuel P. Bailey in my favor for six thousand dollars and interest, payable on demand.

(Signed,) John Barnard.

25 Exibit B. A receipt signed by Reuben Barnard for T. S. Dobbin's draft for one hundred and twenty dollars, dated March 26, 1858.

26 Exibit C, a receipt by Reuben Barnard to Geo. H. Harlow, dated March 31st, 1859, for $600 dollars; to be endorsed on a note given by Samuel P. Baily to John Barnard and signed by Reuben Barnard.

Exibit D, a receipt dated Pekin, August 10th, 1859, signed by John Barnard, for the sum of $2500, to be credited on his note dated October 22nd, 1855, now in the hands of Reuben Barnard.

The plaintiff filed his application on the 20th of February, being one of the days of said term, to the seperate answer of Samuel P. Baily.

State of Illinois, } In the Circuit Court of the
Tazewell County. } February Term, 1860.

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
Benjamin S. Prettyman. } Bill to Foreclose.

27 Replication generally signed by the solicitor, Roberts.

The defendant Baily on the 19th of June, 1860, files a cross bill, to-wit:

John Barnard
vs.
Samuel P. Bailey and others. } In Chancery. Cross Bill.

The cross bill in substance sets out that on the 2nd day of October, 1855, your orator gave to one John Barnard, defendant his note for $6000, payable to the said John Barnard on demand with interest, and at the same time assigned to said Barnard as collateral security for the payment of said note of $6000, as per schedule hereto attached, marked 'A,' and part of this bill, and for the purpose of collecting and paying the said note for $6000
28 to said Barnard; and that upon the collection of said notes so assigned, the said Barnard agreed with your orator that the said notes or so much as would be sufficient to pay said $6000, the residue of said collateral should be given to your orator, charges that John Barnard some time afterwards, to-wit, in 1856, assigned by delivering said $6000 to one Reuben Barnard (who claimed to own one half of said note) for collection, and that the note so placed in the hands of said Reuben Barnard your orator paid the said Reuben Barnard the sum of $1000 by a draft on one James Milner, payable in ninety days after April 21st, 1857, and duly accepted by said James Milner, which said draft was in part payment of the said $6000 and delivered to the said Reuben Barnard. Further shows that Reuben Barnard collected from M. Tackaberry of the collateral, to-wit, $500.
29 also shows that John Barnard assigned to said Reuben Barnard the following notes placed in said John Barnard's hands as collateral security by your orator, viz: One note signed by M. Tackaberry, due 1857 for $384.30, which said Reuben Barnard collected; also two other notes signed by B. Kellogg, Jr., one for three hundred and nineteen dollars and eight cents, due August 21st, 1857, and an other for three hundred and seventy dollars and thirty cents, due August 21st, 1858, which two last notes are now in judgement in the County court of Tazewell county, in favor of Reuben Barnard against the estate of B. Kellogg, Jr. deceased, which your orator claims as a payment on the said six thousand dollars, and further shows that he paid Reuben Barnard six hundred dollars, as per receipt marked 'C' and part of this bill, and that he paid said Reuben Barnard one hundred and twenty dollars, as per receipt maked 'E' and part of this bill. Further shows that one Nathan P. Walton was indebted unto your orator to the sum of three thousand dollars, and John Barnard was indebted unto N. P. Walton, so it was agreed by, and between, the said Walton and your orator, that Walton should pay that sum to the said John Barnard in discharge of the debt
30 from Walton to your Orator. Further show in pursuant of said agreement, that the said John Barnard sold and transfered three thousand dollars of his interest in the said six thousand dollars to N. P. Walton. Further show that Walton agreed with your Orator so soon as he could get your Orator's note he would endorse the same on the said note, the said sum of three thousand dollars and interest thereon. Your Orator further shows after the said assignment, that the said N. P. Walton remained in

this county and was in partnership with your Orator in attempting to open a Coal bank, and for that purpose advanced to said Walton the sum of about 7 hundred dollars, as hereafter sets out, shows that Walton contracted in the name of the firm large debts in the name of the firm and refused to pay the same, and not endorsing said note with said six thousand dollars, returned to the State of Pennsylvania, all of which transfer or assignment was notified by said Reuben Barnard and N. P. Walton and John Barnard. Your Orator further shows that the said $6000 note was in the hands of the said Reuben Barnard, and who was then residing in the State of Minnesota, so the endorsement on the note could not be made at the time of
31 said assignment. Further shows that upon the faith of said payment to the said John Barnard by said N. P. Walton, he advanced the said Walton large sums in addition thereto, to-wit: Seven hundred dollars through one James Milner. Further shows that the times changing land for which said note was given greatly declining in value, the said N. P. Walton clandestinely left the State of Illinois and returned to the State of Pennsylvania. and combining with the said John Barnard surrendered up to the said John Barnard the said assignment of the said half of said note and returning the same to the said John Barnard, although the said John Barnard well knowing that the said sum of money had been paid and arranged by your Orator, charges that the same was fraudulent and covinous and intended to cheat and defraud your Orator. Your Orator charges the aforesaid facts are particularly known to the said John Barnard. Your Orator further shows that some time in the month of August, 1859, the said John Barnard, who is an uncle of your Orator, and resides in the State of Pennsylvania, pretending to be on friendly terms with your Orator, applied to your Orator, and requested him (your Orator) to show him the N. P. Walton claims and upon such application your Orator handed him two notes, one the $3.200 note before stated, as well as another note of seven thousand dollars, and upon receiving the said notes, he then
32 threw down certain deeds for lands, which was the consideration of said notes after the receiving of said notes, no contract ever having been made with the said Walton that they should be given up. Further shows that being desirous of maintaining an amical relation with his uncle and to avoid having any difficulty, he offered the said John Barnard five hundred dollars to return him said notes, which he refused to do, and charges that the same is fraudulent and that the said John Barnard ought to account to your Orator. Further shows the he paid the said John Barnard by giving him another security, in the sum of $2500, as per receipt marked 'D' and is part of this bill.—Charges that the said Reuben Barnard and N. P. Walton after receiving the several sums and the equitable payments aforesaid fraudulently retransfered the said $6000 note to the said

John Barnard and well knowing all the circumstances and payments made thereon. Further shows that the mortgage and notes executed by Brown and placed in the hands of John Barnard as collateral security, as aforesaid by an arrangement with your Orator, and said Brown was to be taken up by your Orator and that Brown by Deed bearing date 1858 having Quit-claimed to your Orator all his Equity of Redemption, the said John Barnard has filed a bill in this Court to foreclose the said mortgage against said Brown, B. S. Prettyman and your Orator, well knowing the original sum of which said mortgage was given, as collateral was paid and that the said collateral should be given up. Your Orator charges that he had paid the said $6000 note in manner aforesaid, and that the said John Barnard, Reuben Barnard and N. P. Walton, coniving and confederating to cheat and defraud your Orator, to avoid whatever credits your Orator is entitled to returned the said $6000 to the said John Barnard, and who has instituted a suit at Common law in the District Court of the United States on said note, and which is now pending in said District Court (meaning circuit court), and also filed his bill to foreclose the said mortgage so assigned him of Brown as aforesaid, all of which is unjust and oppressive.— Further shows that in said suit at law in said District court your Orator having filed a bill of discovery, setting out the above facts and defence, at which trial the legal rights between said John Barnard and your Orator will be fully determined on said notes, which suit is now pending and undetermined the promissary considered, your Orator prays that the said John Barnard, Reuben Barnard and N P. Walton be made defendants and required, to here answer and full discovery make under their corporal oaths the matters and things herein charged as fully as though they were specifically interrogative, and that upon a final hearing of this cause your Honor will be pleased to order and decree the said collateral security be given up, and that an account be taken between your Orator and said John Barnard, that a common injuction granted against said John Barnard, injoining him from proceedings at law until the parties hereto have fully answered the matters and things herein charged, and that your Honor will make such other orders in the pren ises as is equitable and just. Samuel P. Baily.

Sworn to on the 5th day of May, 1860, before

M. C. Young, Clerk.

Here follows exibit 'A.' A receipt for sixteen $300 notes, and one note of ten thousand dollars, signed by Abraham Brown and endorsed to John Barnard by Samuel P. Baily, as before recited in the record; also the two Kellogg notes, one for $319.09 and the other for $370.46, and two notes signed by M. Tababerry for three hundred and eighty-four dollars and thirty-seven hundreths each, and payable to said Baily and endorsed by said Baily to John Barnard, stating they were received as collateral

security to pay the said six thousand dollars mentioned in the pleading.

Exibit 'B.'

$3200. Pekin, May 27. 1857.

On or before the first day of October, 1857, I promise to pay Samuel P. Baily, or order, thirty-two hundred dollars for value received, which may be discharged by paying the same to John Barnard. Nathan P. Walton.

Exibit 'C.' Reuben Barnard's receipt dated March 26th, 1858, drawn on Anglow & Brant, St. Louis, Mo., for one hundred and twenty dollars, when paid, to be endorsed on note. Signed,

Reuben Barnard.

Exibit 'E.' Reuben Barnard's receipt to Geo. H. Harlow for six hundred dollars, due April 5th, 1859, to be endorsed on the note given by Samuel P. Baily to John Barnard now held by me

Signed, Reuben Barnard.

Exibit 'D.' Dated Pekin, August 10th, 1859, John Barnard's receipt for twenty-five hundred dollars, to be credited on his
38 note given me for six thousand dollars, now in the hands of Reuben Barnard dated October 2nd, 1857. Signed. John Barnard.

On the 1st day of September, A. D., 1860, John Barnard filed in this cause.

State of Illinois, } In the Circuit Court,
Tazewell County. } September Term, 1860.

John Barnard
vs
Samuel P. Baily. } In Chancery. To Foreclose Mortgage.

The answer of John Barnard to the Cross-bill of Samuel P. Baily, filed in the above cause. This defendant now, and at all times, saving and reserving to himself all manner of exceptions to the manifested errors in said Cross-bill contained for answer thereto, or so much thereof as he is advised is material for him to make answer. In answering says, it its true
39 that said complainat made and delivered to the respondant his promissary note for $6000, dated the 2nd day of October, 1855, payable on demand with interest. Note was not assigned
40 to Reuben Barnard, but it is true that it was delivered to said Reuben Barnard for collection, and that he was, during the time the same was in his hands, duly authorized by power of attorney, from respondant, to receive any payment made on it. Respondant further answering says, that it is wholly untrue that said Baily paid said Reuben Barnard a draft on James Milner payable ninety days after the 21st day of April, 1857. But the respondant states the truth to be, that on the 21st day of April, 1857, said Baily drew a draft on said Jas. Milner in favor of Reuben Barnard for the sum of $1000, payable sixty days after the date thereof, at the banking house of G. H. Rupert & Co., and which was accepted by said James Mil-
41 ner, and which the said Reuben Barnard gave a receipt to be

credited on said note when the said should be paid. But respondant further states that said draft was never paid by the said Milner, but the same was presented to the said Milner, and he wholly refused to pay the same, of which non-payment the said Baily was duly notified. The respondant further states that he is informed by said Reuben Barnard that said Baily desired that said draft should be retained by said Reuben Barnard without suit or prosecution for collection, as said Milner was the son-in-law of said Baily and was then embarrassed in his circumstances and afterwards became wholly insolvent, and respondant now has the said draft in the hands of James Roberts, Esq., ever ready to be delivered up when said Baily shall pay the balance due upon said $6000 note. Respondant further answering, states that said statement in said bill that Reuben Barnard collected of M. Tackaberry, a part of said liabilities, to-wit, the sum of $500 and this respondant assigned to said Reuben Barnard the notes placed in respondant hands for collection on M. Tackaberry for the sum of $384,37, which note the said Reu-
43 ben Barnard collected of said Tackaberry in the manner stated therein is untrue, and the proposition is stated in that manner as respondant believes in order to charge respondant twice with the same thing. And this respondant further answering, states that the truth of the same transaction to be that when the first note given by said Tackaberry became due said Baily requested respondant to send the note to him (Baily) for collection, which respondant did. Said Baily returned $360 only, which paid the first years interest on the $6000 note, and which this respondant never denied that he said Baily should have credit for. And in March, 1858, Reuben Barnard collected of M. Tackaberry $384 and thirty-seven hundreths, being the second note on said Tackaberry paid by draft on St Louis, at sixty days. This respondant admits he received the two notes on B. Kellogg, Jr.: One for $319,08, due August 21st, 1857; and one due August 21st, 1858, for $370 and forty-six hundreths as collateral security, as the receipt annexed to said Bailey's Cross-Bill will show that said Kellogg died before said notes became due, and the same
43 were duly presented to the County court of Tazewell county and judgment obtained on the same against the estate of Kellogg; but the same has never been paid, and respondant denies that said Baily is entitled to any credit for the same as payment until they are paid. Respondant further answers and admits that said Baily paid said Reuben Barnard $120 by draft of T. S. Dobbins, on Anglow & Brant, of St. Louis, as mentioned, and which respondant never denied, and also the sum of six hundred dollars by draft of G. H. Harlow, due April 5th. 1859, as stated in the receipt; neither of which sums have ever been denied by respondant, as said Bailey well knew. But respondant states that is wholly untrue, that neither himself or Reuben Barnard ever at any time received from said Baily a draft on Dobbins

for six hundred dollars, but received no other sum from said Dobbins than $120 above mentioned. Respondant further answering, says that he knows nothing of any indebtedness of N. P. Walton to said Baily, except as hereafter stated. But respondant further states it is wholly untrue and positively known to be untrue by said Baily that respondant was ever indebted to said N. P. Walton in the sum of $3,200. And this respondant further answering, says it is untrue in every respect that respondant sold and transfered to said Walton $3000 of his interest in said note for any other purpose than collection. But
41 respondant authorized said Walton to receive from said Baily one-half of said note for respondant, and ordered said Baily to pay the same to said Walton. But respondant is informed by said Walton, and so believes, that said Baily never paid said Walton one cent on said note. Respondant further answering states that so far as said Walton's indebtness to said Baily is concerned, all respondant knows about it is, that on the month of August, 1859, respondant visited Pekin for the purpose of trying to collect said $6000 note that he learned from said Walton that he (Walton) had bought one undivided half-interest from said Baily in what was known as the Wesley City Coal Mine, and was informed by said Walton that the deeds therefore were in the hands of James Roberts, but had not been
45 recorded, and said Walton requested respondant to get them from said Roberts (and he gave respondant an order for that purpose) and to give them up to said Baily if Baily would give up some notes on said Walton, which were given for said coal mine. And respondant further answering, states that he called on said Roberts and got said deeds, and that said Baily delivered up two notes he held on said Walton to respondant to be delivered to said Walton—one of said notes being for the sum of $3200, and one for $7000, which were the only notes ever received by respondant from said Baily, and it was expressly understood by respondant that said Baily was to have the land back and Walton was to have his notes, and Baily immediately upon receiving said deeds gave back the respondant a mortgage upon the very lands he had sold to Walton, and which constituted part of the money mentioned in the $2500 receipt annexed as an exibit to said Bailey's cross-bill. After respondant had received said notes, respondant had frequent conversation with Baily in reference to the payment of said $6000 note,
46 and Baily only asked time on the same and never made any pretence that said notes of Walton should be credited on said $6000 note, but expressed himself pleased at giving the lands back, as he had made leased leases of the same, as he informed this respondant, nor even claimed said Milner's draft or Kellogg's notes as payment on the same. Respondant further answering, states that he only acted as the agent of said Walton in getting said notes and never had any connection with said

Walton in any other manner in his transactions with said Baily And respondant further answering, says that he knows nothing of any agreement made by said Walton and the said Baily about endorsing any credits on his $6000 note of his own knowledge, and knows nothing of any agreement of partnership between Walton and said Baily in relation to said $6000, but is informed by said Walton that the whole statement by said Baily in reference to agreeing to endorse any sums of money on said
47 note is false. But respondant is informed by said Walton, and believes it to be true, that said Baily never paid one cent on said note to said Walton. Respondant knows nothing of said Baily advancing money to Walton and nothing of Walton contracting large debts in the name of the firm. But if said Baily did so, it is in their own private transactions, with which respondant had nothing to do whatever, and respondant knows nothing of any agreement made by said Walton with said Baily to pay respondant any money for said Baily. But respondant knows very well that said Walton never paid respondant one cent upon said $6000 note for said Baily or any one else. Respondant believes that said Walton was engaged with said Baily in trying to open a coal mine, and left the State of Illinois, and after a while he returned to the State of Pennsylvania; admits that Reuben Barnard had said notes with him in Minnesota, and
48 respondant wholly denies that he in any manner received said notes of said Walton in payment of said $6000 note, or in any manner received the same for the benefit of respondant, but, as before stated, respondant received said notes on said Walton, as the lands were all the consideration for the notes, and Baily having got back all the lands, there remained no further consideration for the notes; it was expressly understood by respondant and Bailey that the giving up of the notes and deeds was simply to resind the trade between Walton and Baily. Respondant believes that Baily after he had got said deeds in his possession wanted respondant to give up to him Walton's notes, but as he had given them up in consideration of the title-deeds respondant had no authority to return the same to said Baily, because respondant knew of no good motive said Baily could have in getting said notes, as respondant's understanding was that they were given up for the said land, and by Baily getting back the land the notes were discharged. Respondant further answering, denies any combination or confederation with said Walton or anybody else, to cheat or defraud said Baily: denies that there was any surrender by said Walton to respondant of said $6000 note, as said Walton had never had the same. Respon-
49 dant knows nothing about the decrease in the value of the lands sold Walton by change of times, and knows nothing about Walton clandestinely leaving the State of Illinois. Respondant denies that he knew that any sum of money had been paid and arranged with said Walton and Baily, and denies most positive-

ly that said arrangement was ever made, and denies any intention to cheat or defraud said Baily; denies any payment to said Walton by said Baily for respondant. Respondant admits that he is the uncle of said Baily and has always desired to be upon amicable relations with said Baily, and that he resides in the State of Pennsylvania. But respondant denies that he applied to said Baily and requested said Baily to show him the N. P. Walton claims, and that upon such application said Baily handed respondant the $3,200 note before stated, as well as another note for $7000 and that respondant then threw down certain deeds for lands which were the consideration of said notes, but states the truth to be, that Walton requested him to get the deeds from Roberts and deliver them to Bailey if Baily would deliver
50 up said notes, and Baily gave the respondant said notes and respondant gave up to him (Baily) the deeds for the lands, respondant having been authorized by Walton to do so. It was understood by respondant that the delivery of the deeds was a discharge of the notes, and with that understanding respondant delivered up said notes to said Walton after his return to Pennsylvania, and never received from Walton or any one else any any benefit from said notes in any manner whatever, and said $6,000 note was then, and has been ever since, in the hands of James Roberts for collection; admits that Baily wanted the return of Walton's notes after he had got said deeds, but respondant refused to return them, as above stated. Respondant further answering admits that Baily paid respondant $2500 by giving his note and mortgage (as by said receipt attached), as said bill of said Baily will show: $1000 on the dwelling house
51 of said Baily and $1500 on the land sold by said Baily to Walton; denies any retransfer of said note by Walton, and the said Reuben Barnard to the respondant for the reason that the same was never in any manner transfered to them, and denies all fraud and combination on the part of the respondant. Respondant knows nothing of any arrangement made between said Baily and Brown by which Baily was to take up said notes; knows nothing of any quit-claim deeds from said Brown to said Baily. Respondant admits that he has filed a bill to foreclose said mortgage as he lawfully might, and denies that said original sum of $6000 has ever been paid. The charge that said Baily has fully paid said $6000 note is wholly untrue, and respondant again denies any combination or confederation with said N. P. Walton and Reuben Barnard to cheat and defraud said Baily, and respondant has never disputed the credits above mentioned. Respondant admits the institution of a suit by him upon said note in the Circuit court of the United States, for the Southern district of Illinois; admits that Baily filed a bill of discovery in said suit, to which respondant has made answer of like effect with this, and now having fully answered prays herein to be dis-
52 missed with his reasonable costs in this behalf sustained.

James Roberts, solicitor. John Barnard.

Sworn and subscribed 20th day of August, 1860, before Thos. L. Bell, Notary Public.

John Barnard
vs.
Samuel P. Baily. } September Term, 1860, of said Court.

52 Samuel P. Baily, one of the defendants, excepts to the answer of said John Barnard for the following reasons, to-wit:

1st. The bill charges that the plaintiff (Barnard) assigned the $6000 by delivering to Reuben Barnard who claimed to be the owner of half the notes. The answer is not responsive fully—as it does not admit or deny that Reuben Barnard had any interest in said $6000 note, the answer being evasive and uncertain.

2nd. The bill charges that the defendant John Barnard assigned to Reuben Barnard two notes of B. Kellogg for $370 and $318, and that Reuben obtained a judgement on said notes in the Court of Tazewell county. The answer does not admit or deny his authority for, (obtaining) or having, such judgment.—The bill also charges that Barnard was indebted to Walton.—The answer does not deny that he was owing Walton any less sum.

3rd. The bill charges that John Barnard sold and transfered $3000 of his interest in said $6000 note to N. P. Walton. The answer does not admit or deny the assignment to said Walton, but is evasive and insufficient.

54 4th. The bill charges that Milner paid for Baily to N. P. Walton $700 while Walton was in possession of the $3000 in said note. The answer does not disclose what length of time, or while the note was in the hands of Walton, nor when the assignment was redelivered to said John Barnard.

55 5th. The bill charges that to avoid having a difficulty with said Barnard, he offered him five hundred dollars to return the notes after he had got the possession of said notes. The answer has failed to answer this allegation.

The answer of said John Barnard is evasive and uncertain—insufficient and not responsive to the bill in this cause, and otherwise insufficient, and setting up new matter repugnant to the allegation of the cross-bill. Samuel P. Baily.

At the September Term of said court, 1860, on the 5th day of the term the following proceedings were had:

John Barnard
vs.
Abraham Brown and others } Foreclosure.

The exceptions to answer overuled.

On the 10th day of said Term the following proceedings were had:

56 State of Illinois, } In Circuit Court,
Tazewell County } September Term, 1860.

John Barnard
vs.
Abraham Brown and others } In Circuit Court, September Term, 1860.

Decree vacated. The June Term had—

John Barnard
vs.
Abraham Brown and others. } Foreclosure.

Ordered on motion of Samuel P. Baily the decree entered in this cause on 13th day of the month be vacated, and this cause is set down for hearing at this term.

The following proceedings were had on the 19th day of the month, and 13th day of the term:

State of Illinois, } In Circuit Court,
Tazewell County } September Term, 1860.

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
B. S. Prettyman. } In Chancery. To Foreclose Mortgage.

And now at this day came the complainants, John Barnard by his solicitors, Roberts & Ireland, and the defendant, Samuel P. Baily, having at the February Term, 1860, of this court filed his answer, and at the same Term the complainant having filed his repplication thereto, and at the June Term, 1860, of this court the said Baily having filed his Cross-bill herein, and said complainant having filed his to the same, and said defendants, Abraham Brown and Amanda Brown, having been brought into court by publication in the Tazewell *Register*, a weekly newspaper published in Pekin, Tazewell county. Illinois. The first publication thereof having been on the 9th day of November, A. D., 1859, and the last on the 8th day of December, 1859.— Said publication having been published for four successive weeks and said B. S. Prettyman having been duly served with process more than ten days before the 1st day of the February Term, 1860, and summons having been returned not found, as to Abraham Brown and Amanda Brown, and said Abraham Brown and Amanda Brown and said B. S. Prettyman, Abraham Brown and Amanda Brown having been three times solemnly called, came not, but made default; it is ordered and decreed by the Court that complainants bill and all things therein contained be taken for confessed as against the said B. S. Prettyman, Abraham Brown and Amanda Brown; and said cause having come on for hearing and complainant having produced said original note in said bill mentioned for the sum of $6000, dated October 2nd, 1855, due on demand and payable to said John Barnard, and signed by said Samuel P. Baily. And it further appearing to the Court after allowing the credits admitted by the Cross-bill and shown by the receipts and other evidence held

and provided by said Samuel P. Baily that there is yet due upon said $6000 note above mentioned and described, the sum of $3.-500 and twenty-six seven hundreths. And it further appearing by the introduction and proof of the original mortgage given by said Abraham Brown and Amanda Brown, his wife, to said Samuel P. Baily, and by the introduction of nine of the original notes given by said Brown to said Baily, to-wit: All of said notes dated the 14th day of October, 1853, one due thirty months after date, one forty-two months after date, one four years after date, one four and a half years after date, one five years after date, one five and a half years after date, one six years after date and one six and a half years after date, all for the sum of $300 each, and being all the notes due upon said mortgage, that there is due and unpaid upon said notes and mortgage given by said Brown and wife to said Baily the sum of $3000 ninety-one and fifty one hundreths, and at further appearing to the Court that all of the notes which said mortgage from said Brown and wife to said Baily, and also said mortgage's were duly assigned by
64 said Baily to the complainant as collateral security to secure the payment of said note of $6000, given by said Baily to said complainant. And it further appearing to the Court that said sum of $3,526 is still due on said $6000 note, it is therefore ordered, adjudged and decreed by the Court that the defendants in this cause, in twenty days from the adjournment of this Court pay the said complainant (John Barnard) the said sum of three thousand ninety-one dollars and fifty hundreths and costs of this suit, and in default thereof it is ordered, adjudged and decreed by the Court that said mortgaged premises being the north-east quarter of the south-west quarter-section one, the north-west quarter of the south-west quarter-section one, and the south-half of the south-west quarter-section one, the north-east quarter of the north-west quarter-section twelve, the north-west quarter north-west quarter-section twelve, the south-east quarter of the south-east of section two, all in township twenty-four, North Range five west of the 3rd P. M., except the land and water on which stands the large lake, known as Baily's lake Also the right of way to the same, of thirty feet; also the right of laying water-pipes to convey said water in said lake to Pekin,
65 to be sold at the front door of the Court house in Pekin, Tazewell county Illinois, at public auction in seperate parcels to the highest bidder, for cash. And it is further ordered that the time, terms and place of said sale be previously published for the space of three successive weeks before said sale, in some public newspaper published in Pekin, Illinois, and out of the proceeds of said sale the costs of this suit and expense of sale be first paid, and the balance be paid to said John Barnard and credited on said $6000 note, and that Charles Turner, Esq. be appointed special commissioner to carry this decree into effect, and that he report his actings and doing to this Court, and that this

cause stand continued. Whereupon the defendant (Baily) prays an appeal which is granted by the Court with a bond to be filed in twenty days, in the sum of $200 with Thos. C. Reeves as security. The proceedings in the said cause were had at the February Term, 1861, and on the 25th day of said month and 18th
66 day of said Term:

John Barnard vs. Abraham Brown, Amanda Brown, Samuel P. Baily and B. S. Prettyman.	In the Tazewell Circuit Court. In Chancery, To Foreclose Mortgage.

To the Hon. James Harriott, Judge 21st Judicial Circuit of the State of Illinois, in chancery sitting:

Your petition represents that the original bill, in said cause
67 the plaintiff represented that the defendant (Samuel P. Baily) assigned said notes (named) and mortgage to said plantiff for value received, and the defendant Baily's answer avered that he originally owed said plaintiff the sum of $6000, and had deposited and left with said complainant the said notes described in said complainant's bill, and the mortgage therein described as collateral security to secure the said sum of $6000 named in said bill, and that on payment of the note for $6000 named in said bill, said collateral notes and mortgage mentioned should be surrendered and given up; and your petitioner further shows that the said answer also avers that large payments were made on said $6000 note, viz: $3500, and that other large collateral conditional payments were made thereon, viz, a draft for $1000 upon James Milner, which complainant, by his agent, accepted and neglected to collect or return, and also two notes signed by B. Kellogg, Jr., amounting to about $700, which said defendant (meaning plaintiff) endorsed and delivered to the agent of said plaintiff, Reuben Barnard, who was then the owner of part of said $6000, and was then authorized to receipt for and satisfy and settle the same, and that said notes of B. Kellogg were filed by said Reuben Barnard, and judgement is now obtained against said estate of said Kellogg in the name of Reuben Barnard for said notes, and that estate is good and able to pay the
68 same; and your petitioner shows that although the foregoing facts appear by the pleading and evidence, yet the decree in the cause rendered, requires the defendant to pay the sum of three thousand five hundred and twenty-six dollars and seven cents, and that on compliance, the property named in the decree, be sold, &c., while as to the draft upon said Milner and the judgment on the notes of B. Kellogg and other collaterals left with or paid to complainant, the decree is silent, and your petitioner is agrieved by the provisions of said decree, and especially in relation to the draft and judgement vs. Kellogg on said notes, which, with the other collaterals, on the payment of the money

should be given up to said defendant, your petitioner. Your petitioner therefore prays that the cause &c., may be reheard and that said decree may be entirely reversed. or so far corrected and modified as to require all of the collateral drafts, notes and other things not applied in payment to be delivered up to your petitioner, and as in duty bound your petitioner will ever pray.

Samuel P. Baily.

Signed by B. S. Prettyman.

69 J. M. Hanna, solicitor.

Further proceedings were had on the same day of the Term. 1860:

John Barnard
vs.
Abraham Brown. } Foreclosure.

Motion to strike the petition for rehearing from file, which motion was overruled, and afterwards to-wit, on the 26th day of said month and the 19th day of said Term the following decree was entered in said cause:

70 John Barnard
vs.
Abraham Brown,
Samuel P. Baily and others. } February Term of the Tazewell Circuit Court, A.D.1861

Now on this day again came the defendants, Samuel P. Baily, B. S. Prettyman and J. M. Hanna, solicitor, and said complaint by James Roberts, his solicitor, and this cause coming on to be heard upon the petition of the defendant, Samuel P. Baily, for a rehearing of said cause, and the Court now being fully advised in the premises, and after hearing argument of council as well for the said defendants as for said complainant. It is considered by the Court, and the Court doth order and decree that the decree heretofore made in this cause, be and the same is hereby vacated and for naught esteem, and all orders heretofor made in this cause be now set at naught and that this cause be again heard by the Court upon its merits.

And now afterwards, to-wit, the same day a decree was rendered in said cause, in words, as follows:

71 State of Illinois, } In Circuit Court,
Tazewell County } February Term, 1861.

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
B. S. Prettyman. } In the Tazewell Circuit Court. In Chancery, To Foreclose Mortgage.

Petition has a rehearing.

Now at this day having came the said Samuel P. Baily by B. S. Prettyman, his solicitor, and the complainant by James Roberts, his solictor, and the said Baily having presented his petition for a rehearing in said canse, and said rehearing having been

granted it is ordered that the former decree entered in this cause be in all things confirmed, but that the same be modified so that the said Baily, upon the payment of the sum found due by said decree upon the said $6000 note and the costs, and have all the collateral securities given by the said Baily to the said John Barnard delivered up to said Baily on payment of the same, to-wit, a draft drawn on James Milner by said Baily, payable to Reuben Barnard in ninety days after April 21st, 1857, for the
72 sum of $1000; two other notes signed by B. Kellogg, one for $319 and eight hundreths, two due 21st of August, 1858, another for $370 and thirty-seven hundreths, due 21st of August, 1858; and also all notes given by Abraham Brown to said Baily not included in said decree heretofore entered, and those things in said decree stand and be in full force and virtue.

The following proceedings were had at the June Term of said court, at which time the defendant, Baily, files his petition for a rehearing in said cause, to-wit:

John Barnard
vs.
Samuel P. Baily and others. } Said county, State and court In Chancery.

73 The petition is directed to the Judge of said court, and sets out in substance as follows: The defendant, Baily, at the February Term, 1861, filed his petition for a rehearing in said cause and that the same was granted by the court, and an order to vacate the former decree, and that after the vacating of said decree, the defendant, Baily, and his solicitor, B. S. Prettyman, left immediately for Springfield, on the 25th of February, 1861, with understanding that the complainants solicitor, James Roberts, he having notice thereof. He further states that he is informed
74 and believes that but a short time, say two hours after the departure for Springfield, by the defendant and Prettyman his solicitor, James Roberts applied to the court at chambers and in the absence of the defendant, Baily, procured a rehearing in said cause and in the absence of Baily and his solicitor and without notice to Baily and his solicitor, procured a final decree in said cause. Petitioner states that so much of the decree as states that the decree states the appearance of Hanna and Prettyman in said cause, is untrue as he was informed by Hanna. The petitioner further states that the first notice was on trial of a cause in the Circuit Court of United States for the Southern district of Illinois on a suit entered by the plantiff vs. your petitioner on the $6000 note in pleadings mentioned; when the said decree was plead the complainant as an estopple against the claims of set off, as heretofore mentioned, which decree was a
75 surprise, and so defeated, the defence intended to be set up by the defendant, Baily, and was thereby deprived of his set-off in said cause: shows that the decree was had at the Chamber of the Judge, and in the absence of self and solicitor, and asserts that the same is inequitable and unjust. The petition further

shows that since filing his answer to the original cross-bill in said cause he has found having accidently mislaid the following receipt signed by Reuben Barnard, the agent of the plaintiff for the draft of $1000 drawn by the defendant Baily on James Milner, which receipt is as follows: "Received of Samuel P. Baily a draft drawn by him on James Milner, dated April 21st, 1857, payable sixty days after date to the order of Reuben Barnard, at the banking house of G. H. Rupert & Co., for the sum of $1000
76 when paid to be endorsed on a note by said S. P. Baily in favor of John Barnard, dated October 2nd, 1855, for the sum of $6000 after deducting exchange, which is to be paid by said Baily, which last described note is in my hands for collection.

Reuben Barnard.

Dated Pekin, April 21st, 1857."

Which receipt your petitioner had no recollection of until after, as stated heretofore, and that the original will be produced at a final hearing of this court. Your petitioner expressly says that at the time of making his answer and filing his cross-bill, and at the hearing of said cause he did not know of the existance of said receipt, but since that time he has recently discovered and found said receipt. He further states that at the date of said draft that the said James Milner was indebted unto your petitioner in a much larger sum, and in consideration of said in-
77 debtedness made, executed and delivered said draft to said Reuben Barnard, the said draft was duly accepted by said Milner and that at the maturity of said draft, your petitioner had no notice of the non-payment of the said draft. And further shows that at the maturity of said draft the said Milner was solvent, and if proper diligence by the plaintiff had been used, the amount due could have been collected, but reason of the failure of said plaintiff to collect the said money at the time it was due or in a reasonable time, the entire debt has been lost, the said Milner having become insolvent, whereof your petitioner hath sustained damage to that amount and interest, which he is advised is a just and equitable set-off against said claim of $6000. Further shows that in said decree the said Milner's draft is called collateral, which, in fact, was a conditional payments and so intended. Your petitioner further states that he is entitled to set
78 off the amount of Kellogg's notes of about $800, and by reason the rehearing aforesaid, and the estopple thereby has lost the benefit of said set-off of two of the notes placed as collateral, he having disposed of the said notes in such a disposition that no decree can reach the present holder, and as your petitioner has been advised by his council, is a complete conversion of the said notes. Your petitioner shows that at the hearing of said bill and cross-bill, he took the testimony of other witnesses who were produced and sworn, at the hearing of said cause, before the Judge, and that the same was reduced to writing by the Judge, and the testimony of J. Milner, who testified that John Barn-

nard, nor any other person, never made an application to him for the payment of said draft, also proved that at the maturity
79 of said draft he had in his hands funds of a greater amount than was sufficient to pay said draft, and that at the maturity of said draft he was able to pay the same if he had been required to do so, and that since that time he has become entirely insolvent — The said Milner further testified that N. P. Walton, in the pleadings, told him that he had paid John Barnard the sum of $3000 for and on account of said Baily, meaning your petition, on the $6000, and that he was authorized to receive that sum of S. P. Baily for said Milner, and that Baily paid N. P. Walton in money and goods, at the request of Baily, upwards of $700, to be applied to the payment for money paid for your petitioner to plaintiff; Milner testified that it was the signature of John Barnard, and that he knew and was acquainted with the hand-writing of said J. Barnard, &c.; to letter marked 'A' was attached
80 the genuine signature &c. of John Barnard. The said Milner further testified that John Barnard told him that he (Barnard) had given up to Walton all the securities he (Walton) had placed in the hands of him (J. Barnard). He further testified that J. Barnard had security from N. P. Walton for the payment of the money that Walton was to pay for S. P. Baily to him, and that after Walton and Baily fell out the security was given up by him to Walton. Your petitioner further proved by John Gridley, Clerk of the County court of Tazewell, that the two notes signed by B. Kellogg, in the pleadings mentioned, was in a judgment in favor of Reuben Barnard, and it also appearing by the notes filed that the notes were assigned in 'Blank.' Your petitioner further proved by B. S. Prettyman that Reuben Barnard placed said Kellogg's note in his hands for collection without disclosing that any other person had any interest therein, and that the estate of Kellogg was and is solvent, and that the notes were not in the County Probate-court until two years after let-
81 ters of administration was issued to the administrator thereof. Your petitioner further shows that testimony of said witnesses have been lost, and insists on a rehearing of the cause from the facts disclosed, viz:

1st. The final decree made after a rehearing being ordered by the Court being without notice, is fraudulent and void.

2nd. The evidence taken in the original cause being lost, the defendant ought to have been permitted to have his evidence retaken at the rehearing upon application to the court for that purpose.

3rd. Upon the new discovery of the receipt set forth in the petition on the ground of new discovered evidence.

4th. The decree asserts that Milner's draft was collateral in fact, is not true, but in fact the Milner draft was a conditional payment, and the decree allowing the plantiff to hold said draft is unjust.

is unjust. The premises considered your petitioner prays that your Honor will be pleased to have the decree made in said cause, set aside and vacated, and that your Honor will be pleased to grant your petitioner a rehearing. and that he be allowed to amend his answer to his original bill and his cross-bill according to facts above disclosed, and so that all the equities may be fully adjudicated. Samuel P. Baily.

Samuel P. Baily, Council.

Subscribed and sworn to on the 14th day of June, 1861. G. H. Harlow, Clerk.

The plaintiff entered his motion to strike the petition from the file—the Court sustains the motion, thereupon the defendant accepts.

State of Illinois, } In Circuit Court,
Tazewell County } June Term, 1861.

John Barnard
vs.
Abraham Brown,
Amanda Brown,
Samuel P. Baily and
B. S. Prettyman.

In Chancery,
Motion for Rehearing.

Be it remembered that the defendant Baily presented and filed a petition and affidavit of B. S. Prettyman, which said affidavit is the words and figures following, to-wit:

State of Illinois, } In the Circuit Court of
County of Tazewell. } Tazewell, June, 1861.

Benjamin S Prettyman being duly sworn, according to law, deposith and saith at the February Term of this court, A. D., 1860 he was employed by Samuel P. Baily to prosecute for him a petition for a rehearing in the case then before said court of John Barnard vs. said Samuel P. Baily, Abraham Brown and others. This appliant further states that he was present at the Term when the order for a rehearing was made, and the decree therefor entered by the court, and this appliant says that after the entry of the order for a rehearing of the said cause, he left the court-room for the City of Springfield, in conjunction with his client, Samuel P. Baily, and by previous understanding with Mr. Roberts, the attorney for the complainant in said cause he was to leave Pekin at the same time for Springfield—both parties going to attend to a cause in the United States Court, in which was a matter in dispute between the plantiff Barnard vs. said Baily, then and there to be had by appointment on the next day, and this appliant says that said Roberts delayed starting from Pekin until after the appliant and Baily had left, and this appliant further says that when he left the court-room it was understood by him and believes it was understood by the court generally, that the court would not adjourn until the day following, when this appliant was to return, and says he did return on the day he had so appointed to return and the court had then

adjourned for the Term, and the affiant says he is advised that after the leaving of the court and starting for Springfield as aforesaid, that the said court at the instance of Roberts, attorney for plaintiff, procured in the absence of his client, said Baily and of himself. and without the knowledge of the fact to either of them, or any expectation that a rehearing would be or could be had in the absence without due notice from the above statement of facts to rehear the cause ex parte before the court, and affiant says that he is advised that the court reheard the cause ex parte and caused a decree to be entered, which is highly prejudical to the interest of his client, which decree among other things insists that the same was rendered in the presence of this affiant, and while he was acting in the matter of rehearing as attorney of said Baily, and affiant says that the fact in the case this affiant was not present at the rehearing of said cause, and that he knew nothing of it at the time, and had no expectation that it would be reheard until said Baily could procure his proof and make such other motions and applications as the equity of the case would justify. And this affiant further states that he himself was surprised and believes that his client was also surprised and injuriously affected by said order of rehearing as aforesaid.

B. S. Prettyman.

Subscribed and sworn to before me this 17th day of June, 1861.

G. H. Harlow, Clerk.
pr. A. P. Griswold, Dep't.

And upon filing said petition the said Baily entered a motion for to have the decree therein vacated, and a rehearing be had in the said cause, whereupon the said plaintiff Barnard entered a cross motion praying to have the petition offered by the said Baily struck from the files for the reason that it was filed at the Term at which the decree was rendered, whereupon the Court ordered the said petition for rehearing stricken from the file of the court, whereupon said Baily accepted and files herewith this bill of exceptions and prays that it may be made part of this record in this cause.

James Harriott.

The following proceedings were had at the September Term, 1861, on the 7th day of the Term :

John Barnard
vs.
Abraham Brown and others. } In the Tazewell Circuit Court September Term, 1861.

Report of the execution of the decree rendered in this cause :

State of Illinois, } In the Tazewell County Circuit Court,
Tazewell County. } September Term, 1861.

Report of Commissioner.

The approval of the special masters sale by the Court.

Publication and certificate of clerk.

Copy letter of John Barnard, refered to as exibit 'A,' in page 80.

Bond filed September 25th, 1860.

Appeal Bond.

Clerk's certificate, to board and exibit.

270

Partition & Dower

89

Dismissed

Abstract

Filed May 1. 1862

S. Leland

Clerk

SUPREME COURT OF ILLINOIS,

Third Grand Division,

April Term, A. D. 1865.

SAMUEL P. BAILY, B. S. PRETTYMAN, *Plaintiffs in Error.*

vs.

JOHN BARNARD, *Defendant in Error.*

Error to Tazewell.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

This was a bill of foreclosure, filed by defendant in error, to the February term, 1860, of the Tazewell circuit court, vs. Abraham Brown, Amanda Brown, Samuel P. Baily, and Benjamin S. Prettyman.

Baily filed an answer at same term, and Barnard filed a replication thereto.

At the June term, 1860, Baily filed a cross bill in the cause, to which Barnard filed an answer at the September term, same year.

Baily, at same term, filed five exceptions to the answer to cross bill, which were overruled by the court, the overruling of which is the first error assigned by plaintiffs in this court, and the disposing of which disposes of the whole case, for, as Baily refused to file a replication to the answer to the cross bill, he elected to stand by his exceptions, and was of course precluded from introducing any evidence to contradict the answer, or support his cross bill.

We will, therefore, notice the first exception, which claims that the answer does not admit or deny that Reuben Barnard had any interest in the six thousand dollar note, when, in fact, it distinctly avers that said note was not assigned to Reuben Barnard, but was only delivered to him for collection

The Milner draft, as the receipt of Reuben Barnard, (attached to Baily's petition for re-hearing) shows, if paid, was to be credited on the six thousand dollar note, which was then in his (Reuben Barnard's) hands *for collection.*

The second exception, in relation to the Kellogg notes, is fully answered by Barnard, who says that the notes were received as collateral security, presented to the county court, and judgment obtained on them.

Of course, they were indorsed in blank by Baily, and judgment could be obtained in the name of any person holding them, but having never been paid, Baily is not entitled to any credit for them until they are.

In regard to Barnard's indebtedness to Walton, he, Barnard, expressly and positively denies any such indebtedness.

The other exceptions were properly overruled, as Barnard had fully answered every material allegation of the cross bill: they were only filed for the purpose of delay and hinderance.

The second error assigned does not state the facts as they exist. It alleges that the court rendered a decree vs. plaintiffs in error for $3,526, when in fact the decree was only for $3,091 50, which was the amount due on the Brown collaterals given to secure the six thousand dollar note. The court found $3,526 to be due on the $6,000 note; from which take $3,091 50, the amount of the decree on the Brown collaterals, and there is still due Barnard from Baily on the $6,000 note, the sum of $434 50.

The Kellogg notes and Milner draft, as the receipts show, were, *when paid*, to be credited on the $6,000 note; but never having been paid, the court very properly refused to set them off against it.

There was no error in refusing the motion for re-hearing, the case having been re-heard twice. Baily having stood by his exceptions, and refused to file a replication to Barnard's answer to the cross bill, it had to be taken as true; and the Brown notes and mortgage were sufficient evidence to found a decree on.

The seventh error assigned is right in the face of the record, which shows, on page 15, that on the 7th day of February, being the 2d day of the term, all the parties having been duly served with process, were ruled to answer by Monday morning.

There is no affidavit of Prettyman, that he had not been served with process, or reason shown why he should not be made a party to the decree. 'Tis true, *the writ had disappeared from the files*, and is not copied into the record; but it is not to be presumed that, when the court made a rule on all the defendants to answer, it did so without knowing that the writ had been duly served on all the parties.

If the record is to be contradicted by the mere statement of an interested party, it will be very difficult to prevent cases from being reversed in this court, *when the writ happens to disappear from the files of the court before the record is made up.*

The court will see that the first decree rendered was at the September term, 1860, which, on motion of Baily, was vacated, and the case set for hearing at that term.

Again, at the February term, 1861, on petition of Baily, by his solicitors, Prettyman and Hanna, the decree was again vacated, for the reason that it did not require Barnard to give up the Kellogg notes and Milner draft upon the payment of the amount found due on the $6,000 note, which the final decree ordered to be done.

If Baily and one of his solicitors saw fit to leave the court, and not attend to the final hearing, they have no one to blame but themselves, and there is no error in rendering a decree in their absence, especially when the final decree gave Baily all he asked in his petition for re-hearing.

The insinuation in the petition for re-hearing, that undue advantage was taken by James Roberts, Barnard's attorney, in the absence of Baily and his attorneys, it may not be improper to notice in this connection.

James Roberts is now dead, and can no longer defend himself, else he could readily show that the feeling that prompted that fling at him, was the same that caused the disappearance of the writ from the files.

Mr. Roberts, as a man and attorney, was above reproach, and he would have scorned to take an undue advantage, even of one who had shown himself to be as reckless as Baily had done throughout the whole of this case. As an attorney he attended promptly and faithfully to the interest of his clients, and it was patent to all that Baily, after getting the order for the re-hearing, left the court with a view to have the case go over to the next term.

That there was any understanding between Roberts and Baily, or Baily's attorney, that the case should not be taken up till Baily returned from Springfield, no one who knew James Roberts and S. P. Baily, will for one moment believe.

I have not noticed the authorities cited by plaintiffs in error in this case, for the reason that they are based on a misstatement of the facts as they appear by the record.

I would call the attention of the court to the wretched manner in which the abstract and brief of the plaintiffs are gotten up. I defy the court to arrive at a correct understanding of the case without an examination of the written record.

Taking all the circumstances of the case into consideration, I see no errors for which the decree ought to be reversed, and believe there are none.

C. A. ROBERTS,
For Defendant in Error.

15

Baily et al

vs

Barnard

Bill for Inj.

Filed May 1. 1865

L Leland Clk

SUPREME COURT OF ILLINOIS,

Third Grand Division,

April Term, A. D. 1865.

SAMUEL P. BAILY, B. S. PRETTYMAN, *Plaintiffs in Error.*

vs.

JOHN BARNARD, *Defendant in Error.*

Error to Tazewell.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

This was a bill of foreclosure, filed by defendant in error, to the February term, 1860, of the Tazewell circuit court, vs. Abraham Brown, Amanda Brown, Samuel P. Baily, and Benjamin S. Prettyman.

Baily filed an answer at same term, and Barnard filed a replication thereto.

At the June term, 1860, Baily filed a cross bill in the cause, to which Barnard filed an answer at the September term, same year.

Baily, at same term, filed five exceptions to the answer to cross bill, which were overruled by the court, the overruling of which is the first error assigned by plaintiffs in this court, and the disposing of which disposes of the whole case, for, as Baily refused to file a replication to the answer to the cross bill, he elected to stand by his exceptions, and was of course precluded from introducing any evidence to contradict the answer, or support his cross bill.

We will, therefore, notice the first exception, which claims that the answer does not admit or deny that Reuben Barnard had any interest in the six thousand dollar note, when, in fact, it distinctly avers that said note was not assigned to Reuben Barnard, but was only delivered to him for collection

The Milner draft, as the receipt of Reuben Barnard, (attached to Baily's petition for re-hearing) shows, if paid, was to be credited on the six thousand dollar note, which was then in his (Reuben Barnard's) hands *for collection.*

The second exception, in relation to the Kellogg notes, is fully answered by Barnard, who says that the notes were received as collateral security, presented to the county court, and judgment obtained on them.

Of course, they were indorsed in blank by Baily, and judgment could be obtained in the name of any person holding them, but having never been paid, Baily is not entitled to any credit for them until they are.

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If Baily and one of his solicitors saw fit to leave the court, and not attend to the final hearing, they have no one to blame but themselves, and there is no error in rendering a decree in their absence, especially when the final decree gave Baily all he asked in his petition for re-hearing.

The insinuation in the petition for re-hearing, that undue advantage was taken by James Roberts, Barnard's attorney, in the absence of Baily and his attorneys, it may not be improper to notice in this connection.

James Roberts is now dead, and can no longer defend himself, else he could readily show that the feeling that prompted that fling at him, was the same that caused the disappearance of the writ from the files.

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I have not noticed the authorities cited by plaintiffs in error in this case, for the reason that they are based on a misstatement of the facts as they appear by the record.

I would call the attention of the court to the wretched manner in which the abstract and brief of the plaintiffs are gotten up. I defy the court to arrive at a correct understanding of the case without an examination of the written record.

Taking all the circumstances of the case into consideration, I see no errors for which the decree ought to be reversed, and believe there are none.

C. A. ROBERTS,
For Defendant in Error.

Bailey et al
vs
Barnard

Bury Foreclosure

Filed May 1. 1865
L Leland Clk.

SUPREME COURT OF ILLINOIS,

Third Grand Division,

April Term, A. D. 1865.

SAMUEL P. BAILY, B. S. PRETTYMAN, *Plaintiffs in Error.*

vs.

JOHN BARNARD, *Defendant in Error.*

Error to Tazewell.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

This was a bill of foreclosure, filed by defendant in error, to the February term, 1860, of the Tazewell circuit court, vs. Abraham Brown, Amanda Brown, Samuel P. Baily, and Benjamin S. Prettyman.

Baily filed an answer at same term, and Barnard filed a replication thereto.

At the June term, 1860, Baily filed a cross bill in the cause, to which Barnard filed an answer at the September term, same year.

Baily, at same term, filed five exceptions to the answer to cross bill, which were overruled by the court, the overruling of which is the first error assigned by plaintiffs in this court, and the disposing of which disposes of the whole case, for, as Baily refused to file a replication to the answer to the cross bill, he elected to stand by his exceptions, and was of course precluded from introducing any evidence to contradict the answer, or support his cross bill.

We will, therefore, notice the first exception, which claims that the answer does not admit or deny that Reuben Barnard had any interest in the six thousand dollar note, when, in fact, it distinctly avers that said note was not assigned to Reuben Barnard, but was only delivered to him for collection

The Milner draft, as the receipt of Reuben Barnard, (attached to Baily's petition for re-hearing) shows, if paid, was to be credited on the six thousand dollar note, which was then in his (Reuben Barnard's) hands *for collection.*

The second exception, in relation to the Kellogg notes, is fully answered by Barnard, who says that the notes were received as collateral security, presented to the county court, and judgment obtained on them.

Of course, they were indorsed in blank by Baily, and judgment could be obtained in the name of any person holding them, but having never been paid, Baily is not entitled to any credit for them until they are.

In regard to Barnard's indebtedness to Walton, he, Barnard, expressly and positively denies any such indebtedness.

The other exceptions were properly overruled, as Barnard had fully answered every material allegation of the cross bill: they were only filed for the purpose of delay and hinderance.

The second error assigned does not state the facts as they exist. It alleges that the court rendered a decree vs. plaintiffs in error for $3,526, when in fact the decree was only for $3,091 50, which was the amount due on the Brown collaterals given to secure the six thousand dollar note. The court found $3,526 to be due on the $6,000 note; from which take $3,091 50, the amount of the decree on the Brown collaterals, and there is still due Barnard from Baily on the $6,000 note, the sum of $434 50.

The Kellogg notes and Milner draft, as the receipts show, were, *when paid*, to be credited on the $6,000 note; but never having been paid, the court very properly refused to set them off against it.

There was no error in refusing the motion for re-hearing, the case having been re-heard twice. Baily having stood by his exceptions, and refused to file a replication to Barnard's answer to the cross bill, it had to be taken as true; and the Brown notes and mortgage were sufficient evidence to found a decree on.

The seventh error assigned is right in the face of the record, which shows, on page 15, that on the 7th day of February, being the 2d day of the term, all the parties having been duly served with process, were ruled to answer by Monday morning.

There is no affidavit of Prettyman, that he had not been served with process, or reason shown why he should not be made a party to the decree. 'Tis true, *the writ had disappeared from the files*, and is not copied into the record; but it is not to be presumed that, when the court made a rule on all the defendants to answer, it did so without knowing that the writ had been duly served on all the parties.

If the record is to be contradicted by the mere statement of an interested party, it will be very difficult to prevent cases from being reversed in this court, *when the writ happens to disappear from the files of the court before the record is made up.*

The court will see that the first decree rendered was at the September term, 1860, which, on motion of Baily, was vacated, and the case set for hearing at that term.

Again, at the February term, 1861, on petition of Baily, by his solicitors, Prettyman and Hanna, the decree was again vacated, for the reason that it did not require Barnard to give up the Kellogg notes and Milner draft upon the payment of the amount found due on the $6,000 note, which the final decree ordered to be done.

If Baily and one of his solicitors saw fit to leave the court, and not attend to the final hearing, they have no one to blame but themselves, and there is no error in rendering a decree in their absence, especially when the final decree gave Baily all he asked in his petition for re-hearing.

The insinuation in the petition for re-hearing, that undue advantage was taken by James Roberts, Barnard's attorney, in the absence of Baily and his attorneys, it may not be improper to notice in this connection.

James Roberts is now dead, and can no longer defend himself, else he could readily show that the feeling that prompted that fling at him, was the same that caused the disappearance of the writ from the files.

Mr. Roberts, as a man and attorney, was above reproach, and he would have scorned to take an undue advantage, even of one who had shown himself to be as reckless as Baily had done throughout the whole of this case. As an attorney he attended promptly and faithfully to the interest of his clients, and it was patent to all that Baily, after getting the order for the re-hearing, left the court with a view to have the case go over to the next term.

That there was any understanding between Roberts and Baily, or Baily's attorney, that the case should not be taken up till Baily returned from Springfield, no one who knew James Roberts and S. P. Baily, will for one moment believe.

I have not noticed the authorities cited by plaintiffs in error in this case, for the reason that they are based on a misstatement of the facts as they appear by the record.

I would call the attention of the court to the wretched manner in which the abstract and brief of the plaintiffs are gotten up. I defy the court to arrive at a correct understanding of the case without an examination of the written record.

Taking all the circumstances of the case into consideration, I see no errors for which the decree ought to be reversed, and believe there are none.

C. A. ROBERTS,
For Defendant in Error.

15

Baily Et als
vs
Barnard

Brief for Dfts

Filed May 1. 1865
L Leland Clk

SUPREME COURT OF ILLINOIS,

Third Grand Division,

April Term, A. D. 1865.

SAMUEL P. BAILY, B. S. PRETTYMAN, *Plaintiffs in Error.*

vs.

JOHN BARNARD, *Defendant in Error.*

Error to Tazewell.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

This was a bill of foreclosure, filed by defendant in error, to the February term, 1860, of the Tazewell circuit court, vs. Abraham Brown, Amanda Brown, Samuel P. Baily, and Benjamin S. Prettyman.

Baily filed an answer at same term, and Barnard filed a replication thereto.

At the June term, 1860, Baily filed a cross bill in the cause, to which Barnard filed an answer at the September term, same year.

Baily, at same term, filed five exceptions to the answer to cross bill, which were overruled by the court, the overruling of which is the first error assigned by plaintiffs in this court, and the disposing of which disposes of the whole case, for, as Baily refused to file a replication to the answer to the cross bill, he elected to stand by his exceptions, and was of course precluded from introducing any evidence to contradict the answer, or support his cross bill.

We will, therefore, notice the first exception, which claims that the answer does not admit or deny that Reuben Barnard had any interest in the six thousand dollar note, when, in fact, it distinctly avers that said note was not assigned to Reuben Barnard, but was only delivered to him for collection

The Milner draft, as the receipt of Reuben Barnard, (attached to Baily's petition for re-hearing) shows, if paid, was to be credited on the six thousand dollar note, which was then in his (Reuben Barnard's) hands *for collection.*

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Of course, they were indorsed in blank by Baily, and judgment could be obtained in the name of any person holding them, but having never been paid, Baily is not entitled to any credit for them until they are.

In regard to Barnard's indebtedness to Walton, he, Barnard, expressly and positively denies any such indebtedness.

The other exceptions were properly overruled, as Barnard had fully answered every material allegation of the cross bill: they were only filed for the purpose of delay and hinderance.

The second error assigned does not state the facts as they exist. It alleges that the court rendered a decree vs. plaintiffs in error for $3,526, when in fact the decree was only for $3,091 50, which was the amount due on the Brown collaterals given to secure the six thousand dollar note. The court found $3,526 to be due on the $6,000 note; from which take $3,091 50, the amount of the decree on the Brown collaterals, and there is still due Barnard from Baily on the $6,000 note, the sum of $434 50.

The Kellogg notes and Milner draft, as the receipts show, were, *when paid*, to be credited on the $6,000 note; but never having been paid, the court very properly refused to set them off against it.

There was no error in refusing the motion for re-hearing, the case having been re-heard twice. Baily having stood by his exceptions, and refused to file a replication to Barnard's answer to the cross bill, it had to be taken as true; and the Brown notes and mortgage were sufficient evidence to found a decree on.

The seventh error assigned is right in the face of the record, which shows, on page 15, that on the 7th day of February, being the 2d day of the term, all the parties having been duly served with process, were ruled to answer by Monday morning.

There is no affidavit of Prettyman, that he had not been served with process, or reason shown why he should not be made a party to the decree. 'Tis true, *the writ had disappeared from the files*, and is not copied into the record; but it is not to be presumed that, when the court made a rule on all the defendants to answer, it did so without knowing that the writ had been duly served on all the parties.

If the record is to be contradicted by the mere statement of an interested party, it will be very difficult to prevent cases from being reversed in this court, *when the writ happens to disappear from the files of the court before the record is made up.*

The court will see that the first decree rendered was at the September term, 1860, which, on motion of Baily, was vacated, and the case set for hearing at that term.

Again, at the February term, 1861, on petition of Baily, by his solicitors, Prettyman and Hanna, the decree was again vacated, for the reason that it did not require Barnard to give up the Kellogg notes and Milner draft upon the payment of the amount found due on the $6,000 note, which the final decree ordered to be done.

If Baily and one of his solicitors saw fit to leave the court, and not attend to the final hearing, they have no one to blame but themselves, and there is no error in rendering a decree in their absence, especially when the final decree gave Baily all he asked in his petition for re-hearing.

The insinuation in the petition for re-hearing, that undue advantage was taken by James Roberts, Barnard's attorney, in the absence of Baily and his attorneys, it may not be improper to notice in this connection.

James Roberts is now dead, and can no longer defend himself, else he could readily show that the feeling that prompted that fling at him, was the same that caused the disappearance of the writ from the files.

Mr. Roberts, as a man and attorney, was above reproach, and he would have scorned to take an undue advantage, even of one who had shown himself to be as reckless as Baily had done throughout the whole of this case. As an attorney he attended promptly and faithfully to the interest of his clients, and it was patent to all that Baily, after getting the order for the re-hearing, left the court with a view to have the case go over to the next term.

That there was any understanding between Roberts and Baily, or Baily's attorney, that the case should not be taken up till Baily returned from Springfield, no one who knew James Roberts and S. P. Baily, will for one moment believe.

I have not noticed the authorities cited by plaintiffs in error in this case, for the reason that they are based on a misstatement of the facts as they appear by the record.

I would call the attention of the court to the wretched manner in which the abstract and brief of the plaintiffs are gotten up. I defy the court to arrive at a correct understanding of the case without an examination of the written record.

Taking all the circumstances of the case into consideration, I see no errors for which the decree ought to be reversed, and believe there are none.

C. A. ROBERTS,
For Defendant in Error.

Baily et ab
as
Barnard

Brief for Defts.

Filed May 1. 1865
L Leland Clk.

Pleas

To a Circuit Court begun and held at the Court House in the City of Pekin, in and for the County of Tazewell and State of Illinois on the first Monday of the month of February A.D. 1860. Present, Hon James Harriott Judge of the 21st Judicial Circuit of the State of Illinois, Hugh Fullerton States Attorney, Thomas B. Reves Sheriff and Merrill E. Gorny Clerk

Be it remembered that on the 8th day of November A.D. 1859 a Bill for Foreclosure was filed in the office of the Clerk of the Circuit Court for said County, on the Chancery side thereof, which said Bill was in the words and figures following, to wit:

State of Illinois } In Tazewell County
Tazewell County } Circuit Court February
Term A.D. 1860.

Before the Hon James Harriott Judge of the 21st Judicial Circuit of the State of Illinois and Chancery sitting.

Humbly complaining

4

...weth unto your Honor, Your orator John ...
...ard of the County of Chester in the ...
...e of Pennsylvania,

That on or about the 14th ...
...of October AD 1803 one Abraham Brown ...
...g seized, or pretending to be seized in fee ...
...ple of the following described tracts of ...
...und to wit: The South east quarter of the ...
South west quarter of Section one in Township Twenty four South of Range five west of the third principal meridian, the North west quarter of the South west quarter, and the South half of the South west quarter of Section one, the South east quarter of the North west of Section Twelve (12) the North west quarter of the North west quarter of Section Twelve, the South east quarter of the South east quarter of Section Two, all of said tracts of land being in Township Twenty four (24) South of Range Five west of the 3d principal meridian, and being indebted unto Samuel P. Baily in the sum of Sixteen thousand four hundred dollars, by twenty three promissory notes all dated on or about the 14th of October ...3, twenty of said notes being for the sum ...Three hundred dollars each payable to ...said Samuel P. Baily or order, one in ...months, twelve months, eighteen month...

ty four months, thirty months, thirty months, forty two months, Four years, x and a half years, Five years, Five and alf years, six years, six and a half years, ven years, seven and a half years, Eight years, eight and a half years, nine years, nine and a half years, and Ten years, also one note payable ten years after date for ten thousand dollars, one for Two hundred dollars, due January first 1854, and one for Two hundred dollars due May first 1854, copies of all of said notes unpaid are herewith filed as exhibits and prayed to be taken as part of this bill, your orator further shows unto your Honor that said Abraham Brown in order to better secure the payment of said notes, together with his wife Ann and Brown executed, acknowledged and delivered to said Samuel P. Baily a deed in fee simple absolute for the premises, with the following exception or reservation, that is was thereby excepted the land and water on which stand the large lake known as Baily's lake, also right of way to the same thirty feet the right of laying water pipes to convey water in said lake to Pekin, which deed was duly recorded in the recorders ice of Tazewell County Illinois, and opy of the same is herewith filed marked

and prayed to be taken as part of this bill
r orator further shows unto your Honor
said deed was and is subject to a condition
feasance thereunder written upon the
ment of said notes and the interest thereon
ey respectively become due, and it was
conditioned by said mortgage that
the said Brown should fail to pay said
notes as aforesaid, then said Samuel P. Baily
was authorized to foreclose said mortgage
upon such, each, either or any failure of
payment as aforesaid, Your orator further
shows unto your Honor that on or about
the 2d day of October 1855, said Baily
assigned and delivered said mortgage
and all of said notes that were to be due
after October 4th 1855, to your orator, Your
orator further shows that all of said notes
but those assigned to your orator have in
some way been settled and the same paid
and cancelled, and your orator is the
only person interested therein. Your
orator further shows that eight of said
notes amounting to the sum of Twenty
four hundred Dollars beside ~~are~~ are now
due and wholly unpaid, and that he
has repeatedly requested said Brown to
pay the same, which said Brown has
refused to do. Your orator also shows that

Benjamin L. Prettyman pretends to
have some right or interest in said
premises, which is subject to the mortgage
of your orator, To the end therefore that
the said Abraham Brown, Amanda
Brown, Samuel P. Baily, and Benjamin
L. Prettyman may be made parties
defendants to this bill and upon their
respective corporal oaths, full true and
perfect answer make to the same, that an
account may be taken of what is now due
upon said notes and mortgage, and that
said Abraham Brown or his assigns may be
decreed to pay what shall so be found due
within a short time to be by this court appointed
for the same, and that in default thereof that
Abraham Brown and Amanda Brown his
wife and all persons claiming by through
or under them, may be forever barred
and foreclosed of and from all equity
of redemption in said premises, and
that the same may be sold, and the proceeds
of applied to payment of what shall be
found to be due upon said notes and mortgage,
and for such other and further relief as the
nature of the case may require.

May it please your
Honor also grant unto your orator the Peoples
writ of Subpoena to be directed to the Sheriff

of Tazewell County Illinois commanding
him to summon said defendants to
personally be and appear before your
Honor at the Court House in Pekin Illinois
then and there to answer the premises and
abide the order and decree of this Court
to Durland
Solo

John Barnard
by James Roberts

Exhibit (A) copy of Notes

$200.00 Pekin 14th October 1853

Thirty months after date I promise to pay to
the order of Samuel P. Baily Three hundred
dollars value received

A. A Brown

on the back of which is this indorsement
"Samuel P. Baily"

$200.00 Pekin 14th October 1853

Thirty six months after date promise to
pay to the order of Sam P. Baily Three hundred
dollars value received

A. Brown

Indorsed "Sam P. Baily"

Forty two months after date I promise to
pay to the order of Sam P. Baily Three hundred

Dollars value received

A Brown

Indorsed "Saml P Baily"

$300.00 Pekin 14th October 1853

Four years after date I promise to pay to the order of Saml P. Baily Three hundred Dollars value received

A Brown

Indorsed "Saml P Baily"

$300 Pekin 14th October 1853

Four & half years after date I promise to pay to the order of Saml P. Baily Three hundred Dollars value received

A Brown

Indorsed "Saml P Baily"

$300.00 Pekin 14th October 1853

Five years after date I promise to pay to the order of Saml P Baily Three hundred Dollars value received

Indorsed "Saml P Baily" A Brown

$300.00 Pekin 14th October 1853

Five & half years after date I promise to pay to the order of Saml P Baily Three hundred Dollars, value received

Indorsed "Saml P Baily" A Brown

$300.00 Pekin 14th October 1853

Six years after date I promise to pay to the order of Saml P Baily Three hundred dollars, value received

A Brown

Indorsed "Saml P Baily"

$300 Pekin 14th October 1853

Six & half years after date I promise to pay to the order of Saml P Baily Three hundred dollars value received

A. Brown

Indorsed "Saml P. Baily"

$300.00 Pekin 14th October 1853

Seven years after date I promise to pay to the order of Saml P. Baily Three hundred dollars, value received

A Brown

Indorsed "Saml P. Baily"

$300.00 Pekin 14th October 1853

Seven & half years after date I promise to pay to the order of Saml P. Baily, Three hundred Dollars, value received

A Brown

dorsed "Saml P. Baily

9

$200.00 Pekin 14th October 1853.

Eight years after date I promise to pay to the order of Saml P. Baily Three hundred Dollars value received

A I Brown

Indorsed "Saml P. Baily"

$200.00 Pekin 14th October 1859

Eight & half years after date I promise to pay to the order of Saml P. Baily Three hundred Dollars, value received

A I Brown

Indorsed "Saml P. Baily"

$300.00 Pekin 14th October 1853

Nine years after date I promise to pay to the order of Saml P. Baily Three hundred Dollars, value received

A I Brown

Indorsed "Saml P. Baily"

$200.00 Pekin 14th October 1853

Nine & half years after date I promise to pay to the order of Saml P. Baily Three hundred Dollars value received

A. I Brown

Indorsed "Saml P. Baily"

10

$300.00 Pekin 14th October 1853

Ten years after date I promise to pay to the order of Saml P. Baily Three hundred Dollars value received

Indorsed "Saml P Baily" A. Brown

$10.000,00 Pekin 14th October 1853.

Ten years after date I promise to pay to the order of Saml P. Baily, Ten thousand Dollars value received

A. Brown

Indorsed "Saml P. Baily"

Exhibit (B.)

This Indenture made and entered into this Fourteenth day of October in the year of our Lord One thousand eight hundred and fifty three by and between Abraham Brown and Amanda Brown his wife parties of the first part and and Samuel P. Baily party of the second part all of the County of Tazewell and State of Illinois, Witnesseth, that for and in consideration of the sum Ten thousand Dollars in hand paid by Samuel P. Baily party of the second part the receipt whereof is hereby acknowledged, hath granted, bargained and sold and by these presents doth grant bargain and sell unto the said Samuel P. Baily his heirs and assigns, the following described real estate

lying being and situate in the County of Tazewell and State of Illinois known and designated as follows, to wit; the North east quarter of the South west quarter of Section one Township Twenty four, range five west of the third principal meridian, also the North west quarter of the South west quarter and the South half of the South west quarter of Section one in Township Twenty four North range five west of the third principal meridian, also the North east quarter of the North west quarter of Section number Twelve also the North west quarter of the North west quarter of Section number Twelve in Township number Twenty four, North of range five west of the third principal meridian and the south east quarter of the South east quarter of Section number Two in Township Twenty four North of Range five west of third principal meridian, It is hereby excepted in this deed, the land and water, on which stands the large lake known as Baily's Lake, also the right of way to the same of thirty feet, also the right of laying water pipes to convey said water in said Lake to Pekin, which right was and is hereby reserved by the deed of Samuel P. Baily to said Brown of same date herewith, To have and to hold described premises, with all the privileges and appurtenances thereunto belonging, unto the said Samuel P. Baily or his assigns. The said Abraham Brown covenants for himself his heirs

executors and assigns to and with the said Samuel P. Baily or his assigns, that he will forever warrant and defend the said premises unto the said Samuel, against all persons claiming through or under him, the said Abraham Brown Now this deed is upon this condition that if the said Abraham Brown his heirs executors and administrators shall punctually at the maturity of the hereafter described notes, to wit, twenty notes of of Three hundred Dollars each payable to the said Samuel P. Baily or his order at the times as follows, Six months, twelve months, eighteen months, Twenty four months, Thirty months, Thirty six months, forty two months, Four years, Four & half years, Five years, Five & half years, Six years, Six & half years, Seven years, Seven & half years, eight years, eight & half years, Nine years, Nine & half years, Ten years dated even date herewith also one note payable to said Samuel P. Baily or his order for Ten thousand Dollars of even date payable in ten years from date herewith also one note of even date herewith payable as aforesaid for Two hundred Dollars with interest on the first day of January 1854 and another for like sum of Two hundred Dollars payable as aforesaid on the first day of January 1854. with interest, Pay to the said Samuel P. Baily his heirs executors and administrators the said several notes, according to their tenor

and effect this Obligation to be void, Otherwise to remain in full force and effect and the said Brown or his assigns shall fail to pay the said Notes as aforesaid, the Samuel P Baily is authorized to foreclose this Mortgage upon Such such either or any failure of payment as aforesaid The interlineation was made before Signing in the first line on the third page Attest John M Bush

In Testimony Whereof the said parties do hereunto Subscribe their names and affix their Seals the day and year aforesaid

A Brown Seal
Amanda Brown Seal

State of Illinois
Tazewell County } I, John M Bush County Judge in and for the County and State aforesaid that Abraham Brown and Amanda Brown his wife personally known to me to be the real persons whose names are subscribed to the above deed of Mortgage appeared before me this 14th day of October 1853 in person and severally acknowledged that they had executed and delivered the above deed as their free act and deed voluntarily for the uses and purposes therein set forth, and the said Amanda Brown the wife of the said Abraham Brown having been by me Separate and apart from her said husband, the Contents of being made known to her acknowledged that She executed said deed freely

Voluntarily without fear or threats of her said husband

Given under my hand and Seal this 14th day of October 1855

John M Bush
County Judge (Seal)

On the back of which Mortgage is the following Assignment

For Valuable Consideration I hereby assign, transfer and Set over this Mortgage and the Notes therein recited to John Barard of Chester County Pa his Heirs and Assigns

Witness my hand and Seal Oct 2 1855
Witness present Saml R Baily (Seal)
William Darlington

State of Illinois }
Tazewell County } ss

James Roberts being duly Sworn Says that he is informed and believes that Abraham Boorn and Amanda Boorn are both non residents of the State of Illinois

Sworn & Subscribed
before me this 8th day
of November a D 1859
Merric C Young Clerk
Pr S W Stone Deputy Clk

James Roberts

15

And now afterwards to wit at a term of the Circuit Court begun and held at the Court House in Pekin in and for the County of Tazewell and State of Illinois on the first Monday of the month of February A D 1860 and on the 7th day of said month it being the 2nd day of said Term the following proceedings were had on the Chancery side of said Court to wit;

John Barnard
vs
Abraham Boon et al

In Foreclose

And now on ~~this~~ motion of Complainants Solicitor Roberts. It appearing that all of the defendents have been duly notified of the pendency of these proceedings, the defendents are ruled to answer by Monday Morning

And now afterwards, to wit on the 8th day of said Month of February it being the 5th day of said Term. Proof of publication was filed in said cause.

And now afterwards to wit; at said

Term of said Court and on the 15th day of said Month of February 1860 it being the 7th day of said Term, the answer of Samuel P Baily one of the defendants in said cause was filed in said cause, which said answer was in the words and figures following to wit;

John Banard
vs
Abraham Boorom
Amanda Boorom
Saml P Baily &
B. I Pettyman

In Chancery
Bill to Foreclose
Mortgage

The Separate answer of Samuel P Baily one of the defendents in the above entitled cause, the said Samuel P Baily the defendent all times reserving to and inserting all and every imperfection in the said complaint bill in the manner and form as charged against him. For answer says that it is true Abraham Boorom was seized in Fee Simple of and to the lands described in the complainants bill as charged therein and that the said Boorom and wife executed the said Mortgage to secure the Several Sums of Money in the said Mortgage and Note Specified which became due and payable in the manner charged the said bill of the said Complainant this respondent for answer says that it also true that this

A
97

respondent assigned the said mortgage and notes to the said Complainant but this respondent denies that the said complainant has any interest whatever in the said notes or mortgage, he says and shows to your Honor that on or about the second day of October One thousand eight hundred and fifty five this respondent became indebted unto the said Complainant in the sum of Six thousand dollars, for which he your respondent executed his promissory note to the complainant for that amount and payable on demand with interest & payable to the said complainant or order, your respondent further shows unto your Hon^r that at time of executing said note, this respondent assigned the said notes and mortgage to the said compl-ainant together other notes as per Schedule hereto attached mark A which part of this respondents answer & for the purpose of collecting and paying the said indebtedness in the said note specified viz, the Six thousand dollar note, And this respondent further answers and says that it was agreed between the complainant and this respondent upon the payment of the said Six thousand dollars, which respondent was then owing to the said Complainant that he complainant should would surrender and deliver of to this respondent all of the said security placed in the hands of the Complainant for the purpose

aforesaid, this respondent further says that the said complainant has received at diverstimes divers sums of money as hereinafter set forth in payment of said indebtedness viz: in cash the following sums out of or part of the security so placed in his hands viz. on a note signed by W Tachabery dated 1st day of April 1854, and due 21 August 1856 for the sum of three hundred and eighty four dollars, also another note of same date and due the 21 day August 1857 for the sum of Three hundred and eighty four dollars & thirty seven cents which several sums were paid at the maturity of the same, This respondent further answers and says the said Complainant transfered to one Reuben Bernard and part of the said security the two following described notes being part of the security placed as aforesaid viz, one note due the 21 August 1857. for the sum of three hundred nineteen dollars & nine cents and the other due the 21 August 1858 for the sum of Three hundred & seventy dollars & forty six cents which both notes were signed by Benj Kellogg Jr and payable to this respondent, which notes so assigned are now in a Judgment in County Court of Tazewell County in favor of said Reuben Barnard. this respondent further answers, that on or about day of May 1857 one Nathan P. Walton being indebted unto this respondent in the sum of Three thousand two hundred dollars, it was agreed between said

Walton and this respondant that if he the said Walton should pay the Complainant that said sum of three thousand two hundred Dollars as aforesaid this respondant would release said Walton of his indebtedness of that amount, this respondant answers and says the said Walton did pay the said complainant in pursuant his agreement with respondant the said sum of three thousand two hundred dollars on the first day of October 1857, to the said complainant in part payment of the said note of Six thousand dollars as aforesaid this respondant further answers & says that the said note so due the said complainant was sometime in the spring of the winter of 1856 or 1857 placed in the hands of one, the said Reuben Bernard as the authorized agent of the Complainant to make collections of the same and that at the instance and request of the said agent this respondant drew his draft, in the favor of the said Reuben Bernard on one James Milner dated 21 april 1857 & payable sixty days after date thereof to the order of the said Reuben Bernard for the sum of One thousand Dollars and which sum in said draft was paid to the said Reuben Barnard and was to be endorsed by him on said note so held as aforesaid, and while he was in the possession of the said note and during the time he was authorized to receive the money on said note for the said complainant this respondant

answer and says that the said Reuben Barnard always pretended to this respondant that he was the owner or had a large interest in the said Six thousand dollars so held by the complainant and he not know any thing to the contrary until this respondant had learned for the complainant that he was the exclusive owner he paid the said Reuben Barnard by his possession of the said note he appearing to have a right to receive the money due the said complainant

Answer and says he paid the said Reuben Barnard an other sum of money viz on or about the 26th day of March 1858 by a draft drawn by J. S Dobbin of that date on Angluett & Brant at St Louis Mo payable in thirty days after date thereof for the sum of One hundred & twenty Dollars, which paid to be endorsed on said note see copy receipt which is part of this bill marked B this respondant further answers and says that on or about the 31st day of March 1859 this respondant paid by the hands of One George W Barlow to the said Reuben Barnard the further sum of Six hundred Dollars, and while he was in the possession of said note as per Recpt marked C and part of this bill, this respondant further answers and says that on or about the 10th day of August 1859. while the note was in the hands of the said Reuben Barnard he paid the complainant the sum of Two thousand five

22

21

hundred Dollars as by copy receipt marked which is hereunto attached and made part of this answer. This respondant for further answer and cuya that by deed bearing date 2nd day May 1856. the said Abraham Brown & wife did release unto this respondant all right, title and interest in the said premises whatsoever. which deed will be produced when required &c as evidence in this cause and by reason of the conveyance last aforesaid of the said this respondent is the entire owner of said land and that said Brown has no further interest in the said land only the same stands as security for the indemnity of said Brown against his liability on said notes by him so given all of which sums of money paid by this respondant far exceed the amount claimed by the said complainant and this respondant claims & is advised the said payments are good offsets against the said demand of the said Complainant this respondant prays the benefit of whatever payment he may be entitled to may be set off against the said indebtedness. This respondant expressly alledges that the only consideration the said assignments of the said notes deed mortgage was was made, was as collateral to secure the said promissory note given by this respondant to the complainant as aforesaid for Six thousand Dollars & no other, and that at the final hearing

22

of this cause your Hon will require an account to be stated between this respondent and the complainant of the several matters and things herein set forth, having answered all matters and things he is advised is necessary and required of him to answer prays that he may have Judgment of his reasonable costs &c

Subscribed and Sworn to before me this 7th day 13th 1860. M C Young Clk

Saml P. Baily.

Exhibit "A" "B" "C" "D"

Received of Samuel P. Baily the following notes to wit:

One note dated Pekin 14th October 1855 signed by Abraham Brown payable 30 months after date to Samuel P. Baily or order for 300.00

One note as aforesaid payable		thirty six mos	300.00
" " " "	"	forty two mos	300.00
" " " "	"	4 years	300.00
" " " "	"	4½ "	300.00
" " " "	"	5 "	300.00
" " " "	"	5½ "	300.00
" " " "	"	6 "	300.00
" " " "		6½ "	300.00
" " " "		7 "	300.00
" " " "		7½ "	300.00

" " " "	8 "	300.00
" " " "	8½ "	300.00
" " " "	9 "	300.00
" " " "	9½ "	300.00
" " " "	10 "	300.00
" " " "	10	10.000.00
		$ 14.800.00

also a note dated April 18 1854 payable 21 day of August 1857 to Saml P Baily's order for three hundred & nineteen 09/100 dollars 319.09 signed by Benj Kellogg

One note payable on the 21 august 1858 to said Baily signed as aforesaid 370.46

Also a note dated 18th april 1854 payable 21 day august 1856 signed by M. Dachabury payable to the order of Saml P. Baily for Three hundred eighty four Dollars & thirty seven cents 384.37

Also an other note dated april 1854 payable on the 21 day of August 1857 to the order of Samuel P Baily signed by M Dachabury for three hundred & eighty four dollars & thirty seven cents 384.37

Amounting to 16.258.21

also an assignment of a mortgage executed by Abraham Brown to Samuel P Baily for certain land therein contained recorded in the Records of the County of Tazewell State of Illinois As 2834 on the 15th day of October 1853 in Book Page 95 96 97 will more fully appear which notes mortgage I hold as collateral security for the payment of a note dated this day drawn by said Samuel P Baily in my favor for Six thousand dollars and interest payable on demand

signed John Barnard

Exhibit "B"

Received of Samuel P. Baily T. S. Dobbins draft dated 26 March 1858 drawn Angleworth & Brant St Louis Mo. for the sum of One hundred & twenty dollars when paid to be endorsed on a note for which the above notes was given as collateral

Copy Reuben Barnard

Exhibit "C"

St Louis March 21. 1859

Received of G. H. Taylor a draft due April 5. 1859 on States Savings association for $600. which amount is to be endorsed

one a note given by S. P. Baily to John Bernard, now held by me
Copy Reuben Bernards

Exhibit "d"

$2500. Pekin Augt 10. 1859

Received of Samuel P Baily the sum of twenty five hundred dollars to be credited on his note given to me for the sum of Six thousand Dollars dated Octo 2nd 1855, now in the hands of Reuben Barnards
Copy John Barnards

And now afterwards, to wit; on the 20th day of February 1860. it being one of the days of said February Term of said Court the complainant filed his Replication to the separate answer of Samuel P. Baily one of the defendants in said cause, which said replication is in the words and figures following to wit;

State of Illinois } In Circuit Court
Tazewell County } Feb Term 1860

No 26

John Barnard

vs

Abraham Brown
Amanda Brown
Samuel P. Baily &
Benjamin S. Pettyman

} Bill to foreclose

The replication of John Barnard the above named complainant to the separate answer of the above named defendant Samuel P. Baily

This repliant saith and shows to the Court here, that he will maintain and prove his said bill to be true and sufficient and will when and where the Court shall direct, prove and establish all the matters and things in his said bill to be true and sufficient for the said complainant to have the relief therein prayed, and establish to the Court that the said answer of the said defendant is untrue and insufficient, when and where this Court shall direct

James Roberts
Sol for complt

And now afterwards, to wit: on the 19th day of June AD 1860, a cross bill was filed in said cause which said cross bill is in the words and figures following

27

to wit;

John Barnard
vs
Samuel P. Baily & others
} In Chancery

A. Cross Bill of Samuel P. Baily one of the defendants in said cause.

To the Hon James Mariott Judge of the Tazewell Circuit Court in Chancery sitting

Your orator Samuel P. Baily humbly complaining shows unto your Hon. that on the Second day of October 1855 your orator executed unto one John Barnard the herein after named defendant his promissory note of that date payable to the said John Barnard on demand with interest and at the same time delivered to him the said Barnard by assignment thereon the following promissory notes as collateral security for the payment of the said note of six thousand dollars, that is to say, notes as per Schedule hereto attached mark "A" which is part of this bill; and for the purpose of collecting and paying the said promissory note for the six thousand dollars thus owning to the said John Barnard your orator further shows unto your Honor, that upon the collecting said

notes so assigned the said John Barnard agreed with your orator that the said notes or so much thereof as would be sufficient to pay the said Six thousand dollars, the residue of the said collateral security should be given up to your orator, your orator further shew unto your Hon that the said John Barnard some time afterwards, to wit, in the year 1856, assigned by delivery the said Six thousand dollar note one Reuben Barnard, (who claimed to own one half of the note) for collection & further shew unto your Hon that while and during the time the said note so placed in the hands of said Reuben Barnard he, your orator paid the said Reuben Barnard the sum of One thousand Dollars by a draft on one James Milner payable in ninety days after the 21 day April 1857, and duly accepted by the said James Milner which said draft was in part payment of the said Six thousand Dollars and delivered to the said Reuben Barnard. Your orator further shew unto your ~~Hon~~ that the said Reuben Barnard collected of M Dackaberry a part of the said collateral security a large sum, to wit: the sum of Five hundred Dollars. Your orator further shew unto your Hon that the said John Barnard assigned to the said Reuben Barnard the following notes placed in (his) John Barnard's hands as collateral security by your orator viz. one note signed by M Dackaberry

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29

due 1857 for the sum of Three hundred & eighty four dollars and thirty seven cents, which note the said Reuben Barnard collected of said Tachabery, also two notes signed by Benj Kellogg Jr one for the sum of three hundred nineteen dollars & eight cents due 21 August 1857 and an other for three hundred seventy dollars & thirty cents due 21 August 1858, which two last notes is now in Judgment in the County Court of the County of Tazewell in favor of said Reuben Barnard against the estate of Benjamin Kellogg Jr. which your orator claims as a payment on said Six thousand dollar note. Your orator further show that he paid the said Reuben Barnard the sum of Six hundred Dollars as per rect exhibit "C" & part of this bill, also paid said Reuben Barnard the further sum of One hundred & twenty dollars as per rect Exhibit "E" & part this bill, Your orator further show unto your Hon me Nathan P. Walton was indebted unto your orator among other sums the sum of three thousand two hundred Dollars and John Barnard was indebted unto Nathan P Walton, it was agreed by & between the said Walton & your orator, that he Walton should pay that sum to the said John Barnard in discharge of the debt due from Walton to your orator, Your orator further show unto your Hon in pursuant to said agreement the said John Barnard sold and transferred three

thousand dollars of his interest in the
said Six thousand to the said Nathan P. Waeton
Your orator further shew that after the said transfer
the said Nathan P. Waeton agreed with your
orator so soon as he could get your orators note
aforesaid he would endorse on the said note the
said sum of three thousand dollars & interest
thereon. Your orator further shew, after the said
assignment, the said Nathan P. remained
about this County and was in partnership with
your orator in attempting open a Coal Bank
and that during that time & for the purpose advanced
the said Nathan the sum of about Seven hundred
Dollars, as hereafter set out. Your orator further
shew that the said Nathan P. Waeton contracted
large debts in the name of the firm and refused
to pay the same, and not indorsing said note
with said three thousand two hundred dollars returned
to the State of Pennsylvania, all of which
transfer or assignment your orator was notified
by the said Reuben Barnard and Nathan P
Waeton & John Barnard. your orator further shew
unto your Hon that the said Six thousand Dollar
note was then in the hands of said Reuben Barnard
& who was then residing in the State of Minnesota,
the indorsement on the note could not be made
at the time of said assignment. Your orator further
shew unto your Hon that upon the faith of said
payment to the said John Barnard, by said

Nathan P Walton he paid and advanced the said Walton, a large sum in addition thereto, to wit Seven hundred Dollars through one James Milner. Your orator further show unto your Hon that the times changing the property for which said note was given greatly declining in value the said Nathan P. Walton clandestinely left the State of Illinois and returned to the said State of Pennsylvania and combining with the said John Barnard surrendered up to the said John Barnard the said assignment of the said half of said note, and returning the same to the said John Barnard, although the said John Barnard well knowing that the said sum of money had been paid and arranged by your orator. Your orator charges that the same was fraudulently & covenously and intended to cheat and defraud your Orator. Your Orator charges the aforesaid facts in perfect unity known to said J. Bernard. Your Orator further Show unto your Hons that Sometime in the Month of August 1859 the said John Bernard who is an Uncle of your Orator & resides in the State of Pensylvania pretending to be on friendly terms with your Orator applied to your orator and requested him (your orator) to show him the Nathan P Walton claims & upon such application your Orator handed him two notes, the three Thousand two Hundred Dollar note before stated

as well as an other note ~~before stated to have~~
of Seven thousand Dollars and upon
receiving the said Notes he threw down
certain deeds for lands which was the
consideration of said Notes, after receiving
said Notes no Contract ever having made
with the said Walton that they should be given
up. Your Orator further shews that the he
being desirous of maintaining an amical
relation with his uncle and to avoid having
any difficulty he offered the said John Benard
five hundred Dollars to return him the said Notes
which he refused to do. Your Orator charges that
the Defendant is fraudulent and that the said
John Benard ought to account to your
Orator for said Notes. Your Orator further
shew unto your Honr that he join the said
John Benard by giving ~~his~~ other Note and
security the sum of twenty five hundred Dollars
as per receipt hereto attached marked "D" & is
part of the bill. Your Orator charges that the
said Reuben Benard and Nathan P Walton
after receiving the several sums of & and
the equitable payment aforesaid, returned and
fraudulently retransferred the said Six
Thousand Dollar ~~Premises~~ my Note to
the said John Benard and the said John
Benard well knowing all the circumstances
and payments made thereon, Your Orator further

34 33

Show that the Mortgage and Note executed by Brown and placed in the hands of said J. Benard as collateral as aforesaid by an arrangement with your Orator & said Brown was to be taken up by your Orator and that Brown by Deed bearing date 1858 having quit claimed to your Orator all his equity of Redemption, the said John Benard has filed a Bill in this Court to foreclose the said Mortgage against said Brown, B B Kettyman & your Orator well Knowing that the Original Sums for which this said Mortgage was given as Collateral was paid, and that the said Collateral should be given up — Your Orator Charges that he has fully paid the said Six thousand Dollar note in the manner aforesaid and that the said John Benard & Reuben Benard and Nathan P Walton, conniving & confederating to cheat & defraud your Orator, and in Order to avoid whatever Credit your Orator is entitled to, returned the said Six thousand Dollars Note to the said John Benard, and who has instituted a Suit at Common Law in the District Court of the United States on said Note and which is now pending in said District Court, and has also filed his Bill here to foreclose the Mortgage so assigned him of Browns as foresaid, all of which is unjust and oppressive, Your Orator further shows that in said Suit at Law in the said District Court &

34 36

Your Orator having filed a Bill of discovery Setting Out the above facts and defence at which time all the legal rights between the said John Benard vs your Orator will be fully determined on said Note - Which Suit is now pending and undetermined; the premises considered Your Orator prays that the said John Benard, Reuben Benard and Nathan P Walton be made defendents and that a Summons issue against defendents and that they the said defendents be required to true answer and full discovery make under their corporeal Oaths the matters and things herein charged, as fully and perfectly as though they were specifically interrogated and that upon a final hearing of this Cause Your Hon will be pleased to order and decree upon the final hearing of this Cause the said Collateral Security be given up, and that an account be taken between said John Benard and Your Orator and between Your Orator, and that a Common injunction granted against said John Benard enjoining him from proceeding at law until the parties shall have fully answered the matters and things herein charged and that your Hon will make such other orders in the premises as is equitable & just

Sam'l Baily

~~A~~ 35

State of Illinois
Tazewell County } Samuel R Baily being duly Sworn on Oath States that the matters and things Set forth in the foregoing Bill so far as States by him and to his personal Knowledge is true, and as to thing by him States from information he believes to be true

Subscribed and Sworn Sam R Baily
before me this 5th Day of
June 1860 M L Glenny Clk

"Exhibit A"

Received of Samuel R Baily the following Notes to wit

One Note dated Pekin 14 October 1858 Signed by Abraham Boom Payable 30 Months after date to Samuel R Baily or order for $300,00

One Note as aforesaid payable in 36 Months $300,00
" " " " " " 42 " $300,00
" " " " " " 4 years $300,00
" " " " " " 4½ " $300,00
" " " " " " 5 " $300,00
" " " " " " 5½ " $300,00
" " " " " " 6 " $300,00
" " " " " " 6½ " $300,00
" " " " " " 7 " $300,00
" " " " " " 7½ " $300,00
" " " " " " 8 " $300,00
" " " " " " 8½ " $300,00

34 One Note as aforesaid and Payable in 9 years $ 30,00
" " " " " " " 9½ " 30000
" " " " " " " 10 " 30000
" " " " " " " 10 " 10,000,00
$ 148.00,00

Also a Note dated April 18 1854
Payable 21 of August 1857 to Sam
R Baily or order for three Hundred
Nineteen Dollars 09/100 — Signed
by O B Kellogg Jr $ 319.09

A Note Payable on 21 day 1857
to Sam R Baily Signed as aforesaid $ 370,46

Also a Note dated 18th Apl 1854
Payable 21 August 1856 Signed by
M Dickberry Payable to the order
of Sam R Baily for 384.57

Also another Note dated 18 Apl 1854
Payable on 21 of August 1857 to the order
of Sam R Baily Signed by
M Dickberry 384,57

Also an assignment of a Mortgage
executed by Abraham Brown to Sam R Baily
for certain land therein mentioned recorded
in the Records of the County of Tazewell State
of Illinois No 2834 on the 15th day
of Oct 1853 in Mortgage Book Page 95. 96. 97
which more fully appear which Mortgage & Notes
I hold as Collateral security for the payment
of a Note dated this day drawn by Samuel R Baily
in my favor by Said Samuel R Baily

~~28~~ 37

for Six thousand Dollars and interest payable on demand. John C Bernard

"Copy"

$3200 Exhibit "B" Perkins May 27/1857

On or before the first day of October 1857 I promise to pay Samuel C Baily or order thirty two hundred Dollars for value received which may be discharged by paying the same to John Bernard

"Copy" Nathan C Walton

Exhibit C

Received of Samuel C Baily. J S Dobbins draft dated 26 march 1858 drawn on Anglow Mh & Brant St Louis Mo. for the Sum of One hundred & Twenty Dollars which is to be endorsed on Note for which the above Note was given as Collateral

"Reuben Bernard"

Exhibit E

St Louis March 31 1859

Received of G H Carlow a draft dated April 5th 1859 on States Saving Association for $100. Amount to be endorsed on a Note given by Samuel C Baily to John Bernard now held by me

"Reuben Bernard"

38

Exhibit "D"

Pekin August 10th 1859

$2000. Received of Samuel P Baily the Sum of Twenty five hundred Dollars to be credited on his note given one for the Sum of Six thousand Dollars, dated October 2nd 1858 now in the hands of Reuben Bernard

"John Bernard"

And now afterwards, to wit: on the 1st day of September a.d. 1860, the answer of John Bernard was filed in said cause which said answer was in the words and figures following, to wit:

State of Illinois } In the Circuit Court
Tazewell County } September Term a.d. 1860

John Bairnard }
vs } In Chancery to foreclose
Samuel P Baily et al } Mortgage

The answer of John Bernard to the cross bill of Samuel P Baily filed in the above cause. This defendant now and at all times saving and reserving to himself all manner of exceptions to the manifold errors in said cross bill contained for answer thereunto or to so much thereof as he is advised is material for him to make answer unto answering says

It is true that said Complainant executed and delivered to this respondent his promissory note for Six thousand Dollars dated the 2nd day of October A.D 1867 Payable on demand with interest

Respondent further answering says it is wholly untrue that said Baily delivered to this respondent the Notes described in Schedule "A" attached to said Bill for the purpose of Collection and paying the said promissory note of Six thousand Dollars owing to this respondent otherwise than as hereafter stated, and it is wholly untrue that respondent made any agreement with said Baily in reference to delivering up the residue of said Notes given as collateral Security when sufficient thereof was collected to pay said Six thousand Dollar Note.

But respondent states the truth to be that said Notes and Mortgage were received by respondent to be held as Collateral Security for the payment of said Six thousand Dollar Note as will appear by reference to the copy of the receipt given by respondent for the said note and Mortgage to said Baily annexed to said Complainants Bill, and respondent made no other or further agreement

with Said Baily in reference to the Same but admits that Baily is entitled to whatever may remain of the Same after the payment of Said Six thousand Dollars ~~Note~~ and interest. Respondent further answering Says it is wholly untrue that this respondent at any time assigned Said Note to Reuben Benard. But it is true that it was delivered to Said Reuben Benard for collection and that he was during the time the Same was in his hands duly authorized by power of Attorney from Respondent to receive any payment made on it

Respondent further answering Says that it is wholly untrue that Said Baily paid Said Reuben Benard a draft on James Milner payable ninety days after the 21st day of April 1857 but respondent States the truth to be that on the 21st day of April 1857 Said Baily drew a draft on Said James Milner in favor of Said Reuben Benard for the Sum of One thousand Dollars payable Sixty days after the date thereof at the Banking House of Gayle Rupert & Co and which was accepted by Said James Milner and which the Said Reuben Benard gave a receipt to be created on

said note when the same should be paid. But respondent further states that said draft was never paid by the said Milner but the same was presented to the said Milner and he wholly refused to pay the same of which nonpayment the said Baily was duly notified. Respondent further states that he is informed by said Reuben Benard that said Baily desires that said draft should be retained by said Reuben Benard without suit or prosecution for collection as said Milner was the son in law of said Baily and was then embarassed in his circumstances, and afterwards became wholly insolvent, and respondent now has the said draft in the hands of James Roberts Esq ready to be delivered up when said Baily shall pay the balance due upon said Six thousand Dollar Note

Respondent further answering states that said Statement in said Bill that said Reuben Benard collected of Mr Jackaday a part of said liabilities (to wit) the sum of five hundred Dollars and that this respondent assigned to said Reuben Banard the note placed in respondents hands for collection on Mr Jackaday for the sum of three hundred and Eighty four Dollars and thirty Seven cents; which note the said

Reuben Barnard Collection of said Jack Rubery
in the manner therein Stated is untrue and
the proposition is stated in that manner
as respondent Relieves in order to Charge
respondent twice with the same thing
And this respondent further Answering
States the truth of the said transaction
to be that, when the first note given
by said Jack Rubery became due said
Baily requested respondent to send the Note
to him (Baily) for Collection Which respondent
did said Baily returned Three hundred
and Sixty Dollars only Which paid
the first years interest on the Six thousand
Dollar Note and Which respondent
never denied that he (said Baily)
should have credit for. And in March
1858 Reuben Barnard Collected of Mr Jack Rubery
the Sum of three hundred and Eighty
four $^{37}/_{100}$ Dollars being the Second Note
on said Jack Rubery paid by Draft on St
Louis at Sixty days - The respondent
admits he received the two Notes on B
Kellogg Jr One for $3190 Due Aug 21 1857
and One due Aug 21 1858 for $3704 6/100
as Collateral Security to the receipt annexed
to said Baily's Complaint and Shows, That said
Kellogg died before said Notes became due and

the Same were duly Presented to the County Court of Tazewell County and Judgements obtained on the Same against the estate of Said Kellogg But the Same have never been paid. Our respondent denies that Said Baily is entitled to any credit for the Same as payment until they are paid

Respondent further answering admits that Said Baily paid Said Reuben Barnard One hundred & Twenty Dollars by Draft of J S Dobbins on Angleroth & Barth of St Louis as Mentioned and which respondent never denied and also the Sum of Six Hundred Dollars by Draft of G H Harlow dated April 5th 1809 as Stated in the receipt neither of which Sums has ever been denied by Respondent as Said Baily Well Knew, But respondent States that is wholly untrue that either himself or Reuben Barnard ever at any time received from Said Baily a Draft on J S Dobbins of Mexico, but received no other Sum from Said Dobbins than Said One hundred & Twenty Dollars above mentioned, Respondent further answering Says that he Knows nothing of any indebtedness of Nathan R Walton to Said Baily except as hereinafter Stated, But respondent further States it is wholly true and positively Known to be untrue

Said Baily that respondent was en-
titled to said Nathan P Walton in the Sum
of Thru thousand two hundred Dollars,
and respondent further answering says
it is untrue in any respect that
respondent Sold and transfered to said
Walton thru thousand Dollars of his interest
in said Note for any other purpose than
Collection. But respondent authorized
said Walton to receive from said Baily
One half of said note for respondent and
ordered said Baily to pay the same to said
Walton. But respondent is informed by
said Walton and so declares that said
Baily never paid said Walton One cent on
said Note, Respondent further answer-
-ing States that so far as said Waltons indebt-
-edness to said Baily is concerned all resp-
-ondent knows about it is that on the Months
of August 1899 respondent visited Pa Kin
Illinois for the purpose of trying to collect
said Six thousand Dollar Note, That he
learned from the said Walton that he
(Walton) had bought One undivided Interest
from said Baily in what was known
as the Wesley City Coal Mine and was
informed by said Walton that the Deeds
thereof were in the hands of James
Roberts and had not been recorded

and Said Walton requested respondent to get them from Said Roberts (and he gave respondent) an order for that purpose and to give them up to Said Baily if Baily would give up Some notes on Walton which were given for Said Coal Mines, and respondent further answering States that he called on Said Roberts and got Said Deeds and Said Baily delivered up two Notes he held on Said Walton to respondent to be delivered to Said Walton One of Said notes being for the Sum of Thirty two hundred Dollars and one for Seven Thousand Dollars and which were the only Notes ever received by respondent from Said Baily, and it was especially understood by respondent that Said Baily was to have the land back and Walton was to have his Notes,

And Baily immediately upon receiving Said Deeds back gave respondent a Mortgage upon the very lands he had Sold to Walton and which Constituted part of the Money mentioned in the twenty five hundred Dollar receipt annexed as an exhibit to Said Baily Cross bill. And after respondent had received Said Notes respondent had frequent Conversations with Baily in Reference to the payment of

Said Six thousand Dollar Note, and Baily only asked time on the same and never made any pretense that said Notes of Walton should be credited on said Six thousand Dollar Note but respondent himself planned at getting the Lands back as he had made leases of it same as he informed respondent. Nor even claimed said Milners draft or Kellogg's Notes as payments on the same. Respondent further answering states that he only acted as the agent of said Walton in getting said Notes and never had any connection with said Walton in any other manner in his transactions with said Baily and respondent further answering says that he Knows nothing of any agreements made by the said Walton, and the said Baily about indorseing any Credits on said Six thousand Dollar note of his own Knowledge and Knows nothing of any agreement of Partnership between said Walton and said Baily in relation to said Six thousand Dollars but is informed by the said Walton that the Whole Statement by said Baily in reference to agreeing to endorse any Sums of Money on said Note is false.

48

But respondent is informed by said Walton, and believes to be true that said Baily never paid One cent on said note to said Walton. Respondent knows nothing of said Baily advancing money to Walton and nothing of said Walton contracting large debts in the name of the firm. But if said Baily did do so it is in their own private transactions with which respondent had nothing to do whatever. And respondent knows nothing of any agreement made by said Walton with said Baily to pay respondent any money for said Baily. But respondent knows very well that said Walton never paid respondent one cent upon said Six thousand Dollar note for said Baily or any one else. Respondent believes that said Walton was engaged with said Baily in trying to open a coal mine and that he left the State of Illinois and after a while he returned to the State of Pennsylvania, Admits that Reuben Leonard had said notes with him in Minnesota, And respondent wholly denies that he in any manner received said notes of said Waltons as payment on said Six Thousand Dollar note or in any manner received the same for

4th Def

for the benefit of respondent but as before stated respondent received said notes from said Walton for the purpose of delivering them up to Walton as the deeds were all the consideration for the notes and Baily having got back all the lands ~~therein mentioned~~ there remained no further consideration for the Notes, and it was reciprocally understood by respondent and Baily that the giving up of the notes and deeds was simply to rescind the trade between Walton & Baily

Respondent believes that Baily after he got said Deeds in his possession wanted respondent to give up to him Waltons notes but as he had given them up in consideration of the delivering up of the Title Deeds respondent had no authority to return the same to said Baily because respondent knew of no honest motive said Baily could have in getting said notes as respondents understanding was that they were given up for the Land, and by Baily getting back the Land the notes were discharged

Respondent further answering denies any ~~conspiration~~ combination or confederation with the said Walton or any body else to cheat or defraud said Baily denies that there was any surrender by said Walton to respondent of said

Six thousand Dollar note as said Walton never had the same.

Respondent Knows nothing about the decrease in the Value of the Lands sold to Walton by Thomp of time and Knows nothing about Walton Clandestinely leaving the State of Illinois

Respondent denies that he Knew that any sum of money had been paid and arrangen with said Walton and Baily and denies most positively that such arrangements was ever made. And denies any intention to cheat or defraud said Baily. denies any Payment to said Walton by said Baily for respondent

Respondent admits that he is an Uncle of said Baily and has always desired to be upon ~~friendly~~ amicable ~~terms~~ relations with said Baily and that he resides in the State of Pennsylvania. But respondent denies that he applied to said Baily and requested said Baily to Show him the Walton & Walton Claims and that upon such application said Baily handed respondent the three thousand & Two hundred note before stated as well as another Note of Seven Thousand Dollars and that ~~he~~ respondent then three deeds Certain Deeds for Lands which were the consideration of said Notes but States

the truth to be that Walton requested him to get the Deeds from Rubuts and deliver them to Baily if Baily would deliver up said Notes and Baily gave to respondent said Notes and respondent gave up to him (Baily) the Deeds for the Lands. Respondent having been authorized by Walton so to do, and it was then understood by respondent that the delivery of the Deeds was a discharge of the Notes, and with that understanding, respondent delivered up said Notes to said Walton after his return to Pennsylvania and never received from Walton or any one else any benefit from said Notes in any manner whatsoever and said Six thousand Dollar note was then and has been ever since in the hands of said Rubuts for collection. Admits that Baily wanted respondent to return Waltons Notes after he had got said Deeds but respondent refused to return them as above stated. Respondent further answering admits that Baily paid respondent twenty five hundred Dollars by giving Notes and Mortgage as by said receipt attached to said bill of said Baily more fully shows. One thousand Dollars on the Dwelling House of said Baily and fifteen hundred

Dollars on the land sold by said Baily to said Walton, ~~and said B~~ Denies any re-transfer of said note by said Walton and said Reuben Barnard to Respondent for the reason that the same was never in any manner transfered to them and denies all fraud and Combination on the part of Respondent. Respondent knows nothing of any arrangements made between said Baily and Brown by which Baily was to take up said note knows nothing of any Quit Claim Deed from said Brown to said Baily, — Respondent admits that he has filed a Bill to foreclose said Mortgage as he lawfully might, and denies that said original Sum of Six Thousand Dollars has ever been paid

The charge that said Baily has fully paid said Six thousand Dollar Note is wholly untrue and respondent again denies any Combination or Confederation with said Nathan R Walton & Reuben Barnard to cheat and defraud said Baily, and respondent has never disputed the Credits above mentioned. Respondent admits the institution of a Suit by him upon said note in the Circuit Court of the United States for the Southern District of Illinois

Admits that Baily filed a Bill of

Decerning in Said Suit to which respondent has made answer of like effect with this.

And now having fully answered prays Him to be dismissed with his reasonable costs in this behalf Sustained

Amos Rubicks & John Barnard
Complts Solicitor

State of Pennsylvania }
Chester County } ss

John Barnard being first duly affirmed according to Law Says that the matters and things set forth in the foregoing Bill so far as Stated upon his own Knowledge are true and so far as Stated upon information and belief he believes to be true

John Barnard

Affirmed and Subscribed by the Said John Barnard before me a Notary Public in and for Said County this 20th day of August 1860

Witness my hand and Notarial Seal the day and year aforesaid

Seal

Thomas L Bell Jr
Notary Public

53

And now afterwards, to wit; on the 17th day of September A.D. 1860. Sam'l P. Baily one of the Defendants in said cause filed his exceptions, to the answer of John Barnard to the Cross Bill of said Defendent Baily filed herein, which said Bill of exceptions is in the words and figures following, to wit;

John Barnard
vs
Samuel P. Baily et al

In the September Court of the Term 1860 of the County of Tazewell State of Illinois
Cross Bill

And now comes S. P. Baily one of the defendants and excepts to the answer of the said John Barnard the plaintiff in this entitled cause for the following reasons to wit;-

1 The bill charges that the plaintiff John Barnard assigned the Six thousand Dollars by delivering to Reuben Barnard who claimed to be the owner of half of said note the answer is not responsive fully The answer does not admit or deny that Reuben Barnard had any interest in the six ($6000.) note the answer being evasive and uncertain

2 The bill charges that the defendant John Barnard assigned to Reuben Barnard two notes of B Kellogg for 370 & 318 8/100 and that

54 Reuben obtained a Judgment on said note in the County Court of Tazewell the answer does not admit or deny this authority for the (obtaining) or having such Judgment so had

The bill charges that Walton was indebted to said Barnard (the answer does not deny that he was owing Walton any less sum)

3 The bill charges that John Barnard sold & transferred three thousand dollars of his interest in said Six thousand Dollar note to Nathan P Walton

3 The answer does not admit or deny the assignment to said Walton but evasive and insufficient

4 Bill charges that Milner paid for Baily to N P Walton Seven Hundred Dollars while Walton was in the possession and was owner of the 3000 $ in said note

The answer does not disclose what length of time, or while the note was in the hands of Walton nor when the assignment was redelivered to said John Barnard

5 The Bill charges that to avoid having

difficulty with the said Barnard he offered him 500 $ to return the notes after he had got the possession of said notes

5 The answer has failed to answer this allegation in any manner

The answer of the said John Barnard is evasive and uncertain insufficient and not responsive to the bill in this cause and otherwise insufficient and setting up new matter repugnant to the allegations of the bill

Saml R Baily

And now afterwards, to wit; at a Term of the Circuit Court begun and held at the Court House in Pekin within and for the County of Tazewell and State of Illinois on the first Monday of the month of September A D 1865, and on the 7th day of said month, it being the 5th day of said Term the following proceedings were had, to wit:

John Barnard
vs
Abraham Brown et al } Foreclosure

56

And now on this day this cause coming on to be heard upon the exceptions of Samuel P Baily one of the defendants, to the answer of John Barnard to said defendants Baily's Cross Bill filed in said cause, and the Court having heard argument of counsel thereon, and being fully advised in the premises is of opinion that said exceptions be overruled.

And now afterwards, to wit; at said Term of said Court and on the 13th day of said month of September 1860 it being the 10th day of said Term the following ~~proceedings were had, to wit~~ decree was entered in said cause in the words and figures following, to wit;

State of Illinois } In Circuit Court
Jasper County } September Term 1860

John Barnard
"
Samuel P. Baily
Amanda Brown
Abraham Brown
B. S. Prettyman } In Bill to foreclose Mortgage

And now at this day

57
8

came the complainant by Roberts Vandand his Solicitors and the defendant Samuel P Baily having at the February Term 1860 of this Court filed his answer, and at the same term said plaintiff having filed his replication thereto and at the June Term 1860, the said defendant Baily having filed his Cross Bill herein and the said Barnard having duly answered the same, and said defendants Abraham Boom and Amanda Boom having been brought into Court by publication in the Tazewell Register a weekly newspaper published in Pekin Tazewell County Illinois the 1st publication having been on the 10th of November 1859 and the last on the 8th day of December 1859 said publication having been for four successive weeks and said Benjamin S Prettyman having been duly served with process and said Abraham Boom Amanda Boom and Benjamin S. Prettyman having been three times solemnly called came not but made default and said cause having come on for hearing and said plaintiff having produced said original note in said Bill mentioned for the sum of Six thousand dollars dated the 2nd of October 1855 due on demand, and it

further appearing to the Court after allowing
the credits admitted by the answer to the cross
bill and shown by the receipts held by said
Samuel P Baily that there is yet due upon said
note the sum of Three thousand five hundred
forty four 47/100 dollars, and it further appearing
by the introduction and proof of the original
mortgage given by said Abraham Brown
and Amanda Brown his wife to said
Samuel P Baily and by the introduction of
nine of the original notes given by said
Brown to said Baily to wit; all of said notes
dated the 14th of October 1853. one due thirty
months after date, one thirty six months after
date, one forty two months after date, one four
years after date, one four & half years after date,
one five years after date, one five and a half years
after date, one six years after date, and one
six & a half years after date all for the sum
of three hundred Dollars each, that there
is due and unpaid upon said notes and mortgage
given by said Brown to said Baily the sum of
Three thousand & ninety one dollars and fifty
cents, and that same is unpaid, and it further
appearing to the Court that said notes and
mortgage were duly assigned by said Baily
to said Complainant as collateral security
for the payment of said Six thousand Dollars
note, and it further appearing to the Court

that the said sum of Three thousand five hundred and forty four 47/100 Dollars is still unpaid on said Six thousand Dollar note; it is therefore ordered adjudged and decreed by the Court that the defendants in this cause within twenty days from the adjournment of this Court pay the said Complainant the said sum of Three thousand ninety one 50/100 Dollars, being the amount due upon said note and mortgage of said Brown to said Baily together with all costs of this suit, and when said sum is so paid that said complainant credit the same upon said Six thousand dollar note and defanet of said defendant paying said sum of Three thousand ninety one 50/100 Dollars at the expiration of twenty days, it is ordered and decreed that said mortgaged premises being the North east quarter of the South west quarter of Section one (1) in Township Twenty four (24) range five (5) West of the 3rd P.M. also the North west quarter of the South West quarter and the South half of the South West quarter of Section One (1) in Township Twenty four (24) North of range five (5) West of the 3rd P.M. also the North east of the North west quarter of Section Twelve (12) also North west quarter of the North west quarter of Section Twelve (12) in Township Twenty four (24) North of Range Five (5) West of 3rd P.M. and the South east quarter

of the South east quarter of Section Two (2) in Township Twenty four (24) North of Range five (5) West of 3rd P.M. excepting from said, the land and water on which stands the large lake known as Baily's Lake, also the right of way to the same of thirty feet, also the right of laying water pipes to convey said water in said Lake to Pekin, be sold at the front door of the Court House in Pekin Illinois, the time terms and place of said sale to be first advertised for three successive weeks in some public newspaper published in said Tazewell County to the highest bidder for cash, and out of the proceeds of said sale pay the costs of this suit and the expense of sale and pay the balance to said John Barnard to be by him credited on said Six thousand dollars note, And that Charles Turner be appointed Special Commissioner to carry out this decree and that he report his acts & things to this Court, And this cause stand continued

And now afterwards, to wit; on the 17th day of said month it being the 11th day of said Term the following proceedings were had. to wit:

John Barnard
"
Abraham Brown et uxor et al } Foreclosure

And now again on this day came the parties, and on motion of the defendant Samuel P. Baily the decree entered in this cause on the 13th day of this month, is ordered to be vacated, and this cause, is set down for hearing at this Term

And now afterwards, to wit on the 19th day of said month it being the 13th day of said Term a decree was entered in said cause, in the words and figures following, to wit:

State of Illinois } In Circuit Court
Tazewell County } September Term 1860.

John Barnard
vs
Abraham Brown
Amanda Brown
Samuel P. Baily &
Benjamin S. Puttyman
} In Chancery to foreclose Mortgage

And now at this day came the complainant John Barnard by his Solicitors Roberts & Leland &c. and the defendant Samuel P. Baily having at the February Term 1860 of this Court filed his answer, and at the same Term the complainant having filed his replication thereto, and at the June Term 1860

of this Court the said Baily having filed his
cross bill herein, and the said complainant
having filed his answer to the same, and said
defendants Abraham Brown, and Amanda
Brown having been brought into Court by publi
-cation in the Tazewell Register a weekly newspaper
published in Pekin Tazewell County Illinois, the
first publication thereof having been on the 9th
day of November A.D. 1859. and the last on the 8th
day of December 1859. said publication having
been for four successive weeks, and said Benjamin
S. Puttyman having been duly served with process
more than ten days before the 1st day of the February
Term 1860. and summons having been returned not
found as to Abraham Brown and Amanda Brown
and said Benjamin S. Puttyman, Abraham
Brown and Amanda Brown having all been three
times solemnly called came not but made
default, it is ordered and decreed by the Court
that Complainants bill and all things therein
contained be taken for confessed as against the
said Benjamin S. Puttyman, Abraham Brown
and Amanda Brown, and said cause having
come on for hearing and complainant having
produced said original note in said Bill
mentioned for the sum of Six thousand
Dollars dated the 2d of October 1855, due on
demand and payable to said John Barnard
and signed by said Samuel P. Baily, and it

further appearing to the Court after allowing the credits admitted by the Crossbill and shown by the receipts and other evidence held and produced by the Said Samuel P. Baily, that there is yet due upon said Six Thousand dollar note above mentioned and discribed, the sum of Three thousand five hundred and Twenty six 97/100 dollars, And it further appearing by the introduction and proof of the original mortgage given by said Abraham Brown and Amanda Brown his wife to said Samuel P. Baily, and by the introduction of nine of the original notes given by said Brown to said Baily, to wit: all of said notes dated the 14th day of October 1853, one due thirty months after date, one thirty six months after date, one forty two months after date, one four years after date, one four & a half years after date, one five years after date, one five and a half years after date, one six years after date and one Six and a half years date, all for the sum of Three hundred Dollars each (and being all the notes due upon said mortgage) that there is due and unpaid upon said notes and mortgage given by said Brown and wife to said Baily the sum of Three thousand ninety one 50/100 dollars, and it further appearing to the Court that all of the notes which said Mortgage from said Brown and wife to said Baily and also said Mortgage were duly assigned by said Baily to the

64 complainant as collateral security to secure the payment of said note of Six thousand dollars given by said Baily to said complainant, and it further appearing to the Court that said sum of Three thousand five hundred and twenty six $\frac{97}{100}$ Dollars is still unpaid on said Six thousand dollar note, It is therefore ordered, adjudged and decreed by the Court that the Defendants in this cause in Twenty days from the adjournment of this Court pay the said Complainant John Barnard the said sum of Three thousand Ninety one $\frac{50}{100}$ dollars and costs of this suit and in default thereof, it is ordered, adjudged and decreed by the Court, that said mortgaged premises being the South east quarter of the South west quarter of Section One(1) the South west quarter of the South west quarter of Section one(1) and the South half of the South west quarter of Section one(1) the South east quarter of the South west quarter of Section Twelve(12), the South west quarter of the South west quarter of Section Twelve, The South east quarter of the South east quarter of Section Two(2) all in Township Twenty four(24) South Range Five(5) West of the 3d principal meridian, except the land and water on which stands the large Lake known as Baileys Lake, also the right of way to the same of thirty feet, also the right of laying water

pipes to convey said water in said Lake to Pekin, be sold at the front door of the Court house in Pekin Tazewell County Illinois at public auction in separate parcels to the highest bidder for cash, and it is further ordered that the time terms and place of said sale, be previously published for the space of three successive weeks, before said sale, in some public newspaper published in Pekin Illinois, and out of the proceeds of said sale the costs of this suit and the expense of sale be first paid, and the balance be paid to said John S Barnard to be by him credited on said Six thousand dollar note and that Charles Turner Esq be appointed Special Commissioner to carry this decree into effect and that he report his actings and doings to this Court and that this cause stands continued

Whereupon the defendant Baily prays an appeal which is granted by the Court with bond to be filed in twenty days in the sum of Two hundred dollars with Thomas C. Burns as Security

And now afterwards to wit: at a Term of the Circuit Court begun and held at the Court House in Pekin within and for the County of Tazewell and State of Illinois on the first Monday of the month of February A.D. 1861. and on the 25th day of said month it being the 18th day of said Term a petition for rehearing was filed in said cause which said petition was in the words and figures following to wit:

John Barnard
vs
Samuel P. Baily
Abraham Brown
Amanda Brown &
Benjamin S. Pettyman

In the Tazewell Circuit Court

In Chancery to foreclose

To the Honorable James Harriott Judge of the 21st Judicial Circuit of the State of Illinois in Chancery sitting

Your petitioner the Defendant in the above cause respectfully sheweth unto your Honor, that in the original Bill in said cause the Plaintiff represented that the defendant Samuel P. Baily assigned said notes named & mortgage to said Plaintiff for valuence & the Defts Bailys answer averred that he originally owed said Plaintiff the

67

sum of Six thousand dollars and had deposited and left with said complainant the said notes described in said Complainants Bill and the mortgage therein described as collateral security to secure the said sum of $6000.00 dollars named in said Bill and that on payment of the note for $6000. dollars said collateral notes & mortgage mentioned in said complainants Bill should be surrendered & be given up, and your petitioners further show that said answer also avers that large payments were made on said note of $6000. viz $3500.00 and that other large conditional payments were made thereon viz. a draft for $1000. dollars upon James Milner, which complainant by his agent accepted & neglected to collect or return & also two notes signed by B Kellogg Jr amounting to about $700. dollars. which said defendant endorsed and delivered to the agent of said Plaintiff Reuben Barnard who was then the owner of part of said $6000. and was authorized to receipt for & satisfy & settle the same, and that said notes of B Kellogg Jr were filed by the said Reuben Barnard and Judgment is now obtained against said estate of Kellogg in the name of said Reuben Barnard for said notes & that estate is good & able to pay the same and your petitioner show that although the foregoing

fact appear by the pleadings & evidence
that the decree in the cause rendered requires
the defendants to pay the sum of $3526.97 Dollars
and that on non compliance that the property
named in the decree be sold &c while as to the
draft upon Milner & the Judgment on the
note of B Kellogg all other collatterals left with
or paid to complainants the decree is silent &
your petitioner is agrieved by the provisions
of said decree & especially in relation to the
draft & Judgment as Kellogg on said notes
which with the other collatterals on payment
of the money should be given up to said
Defendants your Petitioner. your petitioner
therefore prays that the cause &c may be reheard
& that said decree may be entirely revised or
so far corrected and modified as to require all
of the collaterals drafts notes & other things not
applied in payment to be delivered up to your
Petitioner & as in duty bound your Petitioner will
ever pray

Samuel P. Baily

The undersigned counsel for
Defts respectfully submits and
certifies that in their opinion a
rehearing of this cause would
promote Justice and they concur
that the cause is proper to be
reheard

B. S. Pettyman
J. M. Hammond
Sworn subscribed to this
21 February 1861 before me
Geo H Harlow Clk

And now afterwards, to wit; on the same day the following proceedings were had, to wit;

John Barnard
vs
Abraham Brown et ux et al } Foreclosure

Now on this day come the parties by their Attorneys, and this cause having come on to be heard upon the motion for rehearing filed herein, the complainant entered his motion to strike the petition for rehearing from the files which motion the court overruled.

And now afterwards, to wit on the 26th day of said month it being the 9th day of said June a decree was entered in said cause in the words and figures following to wit;

John Barnard
vs
Abraham Brown
Samuel P. Baily
and others

Of the February Term
of the Tazewell Circuit
Court A.D. 1861.

And now on this day again
came the defendants Samuel P. Baily & others by
B. S. Pettyman & J. M. Lauck their Solicitors &
the said complainant by Jas Roberts his solicitor
and this cause coming on to be heard upon the
petition of the said defendant Samuel P. Baily
for a rehearing of said cause, and the Court now
being fully advised in the premises, and after hearing
the argument of counsel as well for the said defendants
as for said complainant. It is considered by the
Court, and the Court doth order and decree that
the decree heretofore entered in this cause
be and the same is hereby vacated and for
naught esteemed and all orders heretofore
made in this cause be now set at naught
and that this cause be again heard by this
Court upon its merits

And now afterwards, to wit: on the same
day, a decree was entered in said cause
in the words and figures following, to wit:

State of Illinois } In Circuit Court
Tazewell County } ss. February Term 1861.

John Barnard

vs.

Abraham Brown.
Amanda Brown
Samuel P. Baily
Benjamin S. Prettyman

In Chancery to
Foreclose Mortgage

Now at this day having come the said Samuel P. Baily by Prettyman his solicitor, and the complainant by Roberts his solicitor, and the said Baily having presented his petition for a rehearing in said cause, and said rehearing having been granted it is ordered that the former decree entered in this cause be in all things confirmed, but that the same be modified so that the said Baily upon the payment of the sum found due by said decree upon said six thousand Dollar note and the costs, have all the collateral securities given by the said Baily to the said John Barnard delivered up to said Baily on payment of the same, to wit: one draft drawn on James Milnor by said Baily payable to Reuben Barnard, payable in ninety days after the 21st day of April 1859 for the sum of One thousand dollars, also two notes signed by Benjamin Kellogg, one for the sum of Three

Hundred nineteen 08/100 Dollars due August 21st 1857, and one for the sum of Three Hundred and seventy 37/100 dollars due 21st of August 1858 and also all notes given by Abraham Brown to said Baily not included in the said decree heretofore entered, and that in all things said decree stand and be in full force and virtue.

Now afterwards, to wit; at a Term of the Circuit Court, begun and held at the Court House in Pekin within and for the County of Tazewell and State of Illinois on the first Monday of the month of June A.D. 1861, and on the 18th day of said month it being the 13th day of said Term, the following proceedings were had, to wit;=

John Barnard
vs
Abraham Brown et als
} Foreclosure

Now comes the defendant Samuel P. Baily and files his petition for a rehearing of this cause, in the words and figures following, to wit;

"John Barnard
"
"Samuel P. Baily, Abraham Brown
" Amanda Brown, Benjamin S. Tallyman
} In the Tazewell Circuit Court 1861
} In Chancery. Bill to foreclose Mortgage

Petition for a Rehearing

To the Hon James Harriott Judge of the 21st Judicial Circuit of the State of Illinois in Chancery Sitting.

Your petitioner Samuel P. Daily one of the defendants in the above entitled cause respectfully sheweth unto your Honor, that the February term of the said Court 1861, your petitioner filed his petition directed to your Hon praying to have the original decree in this cause vacated, and that your petitioner should have a rehearing in said cause. Your petitioner further shew unto your Hon that in pursuance to the prayer of said petition, upon the argument of his & the plaintiffs counsel, the Court made an order vacating said decree, and ordered a rehearing to be had in the said cause. Your petitioner further sheweth unto your Hon. that on your Honor signing the order vacating the said decree, your petitioner immediately thereafter together with Benjamin S. Pettygrew the Solicitor of your petitioner left the Court for Springfield, that is to say on the 25th day of February 1861, in pursuance to & with an understanding between & with your petitioner and James Roberts Esq & he having notice thereof (the plaintiffs Solicitor) your petitioner further states that he was informed and believes that but a

short time, say two hours after the departure for Springfield as aforesaid, of your petitioner & Benj S. Pattyman one your petitioners Solicitors left for Springfield as aforesaid the said James Roberts Esq applied to your Honor at your Chambers and in absence of the defendant (Baily) & procured your Hon to a rehearing then to be had, and in the absence of your petitioner or his Solicitors and without notice, to either your petitioner or his Solicitors procured a decree (final) in the said cause entered up (to the decree said canal is referred) Your petitioner further states that so much of the decree that recites the appearance of Joseph Hannd & Benj S. Pattyman in said cause is positively untrue, and that Mr Hannd so informed your petitioner. Your petitioner further states the first notice of said decree was on a trial of a cause in the Circuit Court U. States for the Southern District of Illinois. in a suit instituted by the Plaintiff against your petitioner on the Six thousand dollar note in the pleadings in this cause mentioned when & where the said decree was plead by the Plaintiff John Barnard as an estoppel against the claim of set off hereinafter mentioned which decree the appearance & presentation and

the rehearing thereon so granted was a surprise, and so effected the defence intended to be set up by your petitioner, your petitioner was thereby deprived of the benefit of said set off in the said suit, the cause as aforesaid. Your petitioner expressly charges that the order so made and the rehearing and decree thereon was had in the Chambers of your Hon in the absence of self and solicitors, and without any notice whatsoever, and the same was unjust and inequitable.

Your petitioner further shews unto your Hon that since filing his answer to the original Bill, and since filing the cross Bill in the said cause, that he has found (having accidentally mislaid) the following receipt signed by one Reuben Barnard the agent of the Plaintiff, for the draft of one thousand drawn by this your petitioner on James Milner, which receipt is as follows: "Received of Samuel P. Baily a draft drawn by him on James Milner dated 21 day of April 1859 and payable six by days after date to the order of Reuben Barnard at the banking house of G.H. Reynell & Co Pekin Ills for the sum of One thousand dollars, when paid to endorsed on a note drawn by said S. P. Baily in favor of John Barnard

"776

" dated 2nd October 1855 for the sum of Six
" thous and Dollars after deducting exchange
" which exchange is to be paid by said Baily
" which last described note is in my hands for
" collection

" Pekin 21. April 1857 Reuben Barnard

" Which receipt your petitioner had no
" recollection until after, as stated hereafter
" (which original will be produced) at the
" final hearing of this cause. Your petitioner
" expressly says that at the time of making
" his answer & filing his cross bill, and at the
" hearing of said cause. he did not know of
" the existence of the said above recited receipt
" but that since that time he has really
" discovered & found the said receipt. Your
" petitioner further showeth unto your Honor
" that at the date of the drawing the said draft
" the said James Milner was indebted unto
" your petitioner in a much larger sum of
" money, and in consideration of the said
" indebtedness, your petitioner made executed
" and delivered unto the Reuben Barnard said
" draft, and that the said draft was duly
" presented to and accepted by the said James
" Milner, your petitioner further show unto
" your Honor that at the maturity of said draft
" your petitioner had no notice of the non
" payment of the said draft. Your petitioner

97
58

" further shew unto your Honr that at the
" maturity of said draft and for a long
" time thereafter James Milner was solvent
" and if proper diligence by the plaintiff
" had been used, the amount of money due
" thereon might have been collected, but by
" reason of the failure of the said plaintiff to
" collect the said money at the time it was
" due, or in some reasonable time, the
" entire debt has been lost, by the said James
" Milner having become insolvent, so that
" said draft could not be collected from
" said Milner, by reason whereof your
" petitioner has sustained a loss and
" damage to the amount of said draft
" and interest thereon, amounting to the sum
" to wit, twelve hundred & seventy five dollars
" which sum your petitioner as your petitioner
" is advised is a just & equitable set off to
" that amount against the said six thousand
" dollar note. Your petitioner further shew
" unto your Honr that in the said decree
" the said Milner draft is described as
" collateral when in fact it was conditional
" payment and so intended, Your petitioner
" further sheweth that he is entitled to a set
" off to the amount of the two Kellogg notes
" amounting to the sum principal &
" interest upwards of Eight hundred dollars

" & that by reason of the decree of rehearing as
" aforesaid, and the estoppel thereby, your
" petitioner lost the benefit of the set off the
" two notes placed as collateral, in hand of the
" plaintiff. He having disposed of the same
" notes & making such disposition thereof as
" no decree can reach a specific performance
" against the present holders of said note,
" so has been advised by his counsel and
" a complete conversion of the said notes
" Your petitioner further show unto your
" Hon. that at the original hearing of the
" bill & cross bill he took the testimony of
" James Milner and other witnesses hereafter
" named viva voce being produced & sworn
" at the hearing of said cause on the part
" of your petitioner before the Hon James
" Harriott your Hon Judge of said Court
" and the same was reduced to writing
" by Honor, and your petitioner further
" showeth, that your petitioner proved by
" you the said James Milner that Joseph
" Barnard nor Reuben Barnard, nor any
" person for either of them, nor any person
" for them whatever, ever made any demand
" of him for the payment of said draft
" also proved by said Milner that at the
" time the draft became due he had in
" his hands funds to greater amount than

879

was sufficient to pay the said draft belonging to your petitioner, the said Milner further testified that at the maturity of said draft he was able to pay the said sum of money in said draft if he had been required so to do, and that since that time the Milner has become entirely insolvent, the said Milner further testified that Nathan P. Walton (the person mentioned in the pleadings) told him that he had paid John Barnard the sum of three thousand Dollars for and on account of Saml P. Baily meaning your petitioner on the six thousand dollars note as aforesaid and was authorized to receive that sum of Saml P. Baily your petitioner, the said Milner further testified that your petitioner has paid N. P. Walton in money & goods at the request of your petitioner upwards of seven hundred dollars which was understood by him to be applied to the payment for money paid for your petitioner to the Plaintiff by the said Walton, the said Milner further testified, the signature of John T Barnard was his signature and he was acquainted with handwriting of said John T Barnard that he had seen John T Barnard write and that he believed

signature to the letter marked "A" hereto
attached was the genuine & proper signature
of John Barnard, the said Milner further
testified that John Barnard told him that he
Barnard had given up to Walton all the securities
he Walton had placed in the hands of him John
Barnard, he further testified that John Barnard
told him that he had had security from
Nathan P. Walton for the payment of the money
that N.P. Walton was to pay for S.P. Baily
to the Plaintiff, but after Nathan and S.P.
Baily had "fell out" the security was given
up by him to Walton. Your Petitioner further
proved by the testimony of John Geidby Clerk
of the County Court of Tazewell County Court
that the two notes signed by B. Kellogg
in the pleadings mentioned, was in a
Judgment in favor of Reuben Barnard
and it also appearing by the records of said
Court in the notes on file that the said
notes were signed in Blank, and your
Petitioner further proved by Benjamin S.
Pettyman that Reuben Barnard placed the
said Kellogg notes in his hands for collection
without disclosing that any other person
than Reuben Barnard had any interest therein
and that the estate of Benjamin Kelloggs estate
was & is solvent - and also that the notes were
not filed in the Probate Court of Tazewell County

81

82

" until after two years after the date of letters
" of administration was issued to the adminis=
" trator of said Kellogg estate, Your petitioner
" further show the testimony of said witnesses
" have been lost and cannot be found, Your
" petitioner for the following reasons insists on
" the rehearing of the cause. From the facts
" disclosed this heretofore, ~~set forth~~ set forth, viz;

1st " The final decree made after a rehearing
" being ordered by the Court, being had without
" notice is fraudulent and void,

2d " The evidence taken in the original cause
" being lost, the defendant ought have been
" permitted to have his evidence retaken at
" the rehearing upon an application the Court
" for that purpose

3, " Upon the new discovery of the receipt set
" forth in the petition on the ground it being
" new discovered evidence

5, " The decree recites that the Milner draft was
" collateral, in fact it is not true, but in fact the
" Milner draft was a conditional payment, and
" the decree allowing the plaintiffs holding said
" draft is unjust,

" The premises considered, your petitioner pray

that your Honor will be pleased the decree made in said cause be set aside & vacated that your Honor will be pleased to grant your petitioner a rehearing - and that he may be allowed to amend his answer to the original Bill & his cross Bill according to the facts above disclosed, and so all the equities may be fully adjudicated

Saml P. Baily Counsel

Saml P. Baily

Subscribed and Sworn to before me this 14th day of June A.D. 1861.

Geo H. Harlow Clk

Whereupon the Complainant enters his motion to strike said petition from the files.

And now afterwards, to wit; on the same day a Bill of Exceptions was filed in said cause in the words and figures following, to wit:—

State of Illinois } Tazewell Circuit Court
Tazewell County } of the June Term 1861.

John Barnard
"
Samuel P. Baily
Abraham Brown & others } In Chancery
Motion for a Rehearing

83

Be it remembered that the defendant Baily presented and filed a petition, (for rehearing) and affidavit of Benjamin S. Prettyman. which said affidavit is in the words and figures following. to wit:—

State of Illinois } In the Circuit Court of
County of Tazewell } Tazewell June Term 1861,

Benjamin S. Prettyman being duly sworn according to law deposeth and saith that at the February term of this Court A.D. 1861. he was employed by Samuel P. Baily to prosecute for him a petition for a rehearing in the case then before the said Court, of John Barnard vs said Samuel P. Baily, Abraham Brown & others this affiant further states that he was present at the term when the order for a rehearing was made and the decree therefor entered by the Court, and this affiant says, that after the entry of the order for a rehearing of the said cause he left the Court room for the City of Springfield in conjunction with his client Samuel P. Baily and by previous understanding with Mr Roberts the attorney for the complainant in said cause he was to leave Pekin at the same time for Springfield, both parties going to attend to said cause in the United States Court, in which said matter in dispute to be tween the plaintiff Barnard against said Baily, then & there to be had by

appointment on the next day, and this affiant says, that said Roberts delayed starting from Pekin until after this affiant + Baily had left and this affiant says that when he left the Court room, it was understood by him, and he believes it was also understood by the Court and generally, that the Court would not adjourn until the — day following, when this affiant was to return, and affiant says that he did return on the day he had so appointed to return + the Court had then adjourned for the term, and affiant says. he is advised, that after leaving the Court + starting for Springfield as aforesaid that the said Court at the instance of Roberts attorney for plaintiff, proceeded in the absence of his client said Baily + of himself and without notice of either of them and without the knowledge of the fact to either of them or any expectation that a rehearing would be, or could be had in their absence without due notice from the above statement of facts, to whear the ~~facts~~ cause ex parte before the Court, and affiant says that he is advised that the Court reheard the cause ex parte and caused a decree to be entered which is highly prejudicial to the interest of his client, which decree among other things recites that the same was rendered in the presence of this affiant + while he was acting in the matter of the rehearing as atty of said Baily, and

868

affiant says that the fact in the case are that this affiant was not present at the rehearing of said cause & that he knew nothing of it at the time and had no expectation that the cause would be reheard until said Baily could procure his proof and make such other motions and applications as the equity of the case would justify - and this affiant further states himself was surprised & believes his client was also surprised & injuriously affected by said order of rehearing as aforesaid

B. B. Prettyman

Subscribed & Sworn to
Before me this 17th day
of June 1861.
Geo H. Harlow Clerk
per A. P. Grimwade deputy

And upon filing said petition the said Baily entered a motion for to have the decree therein vacated and a rehearing be had in the said cause. Whereupon the said Plaintiff Barnard entered a cross motion praying to have the petition offered by the said Baily stricken from the files for the reason that it was not filed at the Term at which the Decree was rendered. Whereupon the Court ordered the said petition for a rehearing stricken from the file of the Court. Whereupon the said Baily excepted and files herewith this bill of exceptions and prays may be made

part of the record in this cause

James Harriott

Now afterwards, to wit: at a Term of the Circuit Court begun and held at the Court House in the City of Pekin within and for the County of Tazewell and State of Illinois on the first Monday of the month of September A.D. 1861, and on the 9th day of said month, it being the 7th day of the Term, the following proceedings were had, to wit:=

John Barnard
"
Abraham Brown et als

Foreclosure.

Now comes Charles Turner the Special Commissioner appointed to execute the decree in this cause, and presents his report of the execution of said decree, which is approved by the Court and ordered to be filed and made final, and said Report is in the words and figures, as follows, viz:

" State of Illinois } In the Tazewell County Circuit
" Tazewell County } Court September Term A.D. 1861,

" To the Honorable James Harriott
" Judge of the 21st Judicial Circuit of the State of
" Illinois. In Chancery sitting.
"

The undersigned

" Charles Turner who was appointed Special Commissioner
" to carry out the decree rendered by this Hon Court at the
" September Term A.D. 1860. thereof wherein John Barnard
" was complainant and Abraham Brown. Amanda
" Brown. Samuel P. Baily and Benjamin L. Pretty man
" were defendants. to foreclose mortgage. would
" respectfully report, that default having been made by
" said defendants. in the payment required by said
" decree. I did in pursuance of the power by said decree
" upon me conferred. advertise the premises in said
" decree mentioned. being the North east quarter of the
" South west quarter of Section one (1) the North west
" quarter of the South west quarter of Section One (1)
" The South half of the South west quarter of Section
" One (1): The North east quarter of the North west quarter
" of Section twelve (12): The North west quarter of the
" North west quarter of Section twelve (12): The South east
" quarter of the South east quarter of Section two (2):
" all in Township twenty four (24) North of Range five
" (5) West of the third (3rd) principal meridian. except the
" land and water on which stands the large lake known
" as Baily's Lake. also the right of way to the same of
" thirty feet; also the right of laying water pipes to
" convey said water in said lake to Pekin. all in
" Tazewell County Illinois. to be sold on the 8th day of
" July A.D. 1861. at the front door of the Court House in
" Pekin Illinois. which advertisement was published in
" the Tazewell Register a weekly newspaper published
" in Pekin Illinois. for four successive weeks prior to

" said sale, the first publication having been made
" on the 28th day of May A.D. 1861. and the last on the
" 25th of June 1861. proof of which is herewith filed
" marked "A" and prayed to be taken as part of this
" report, The undersigned would further report that
" he did on the said 8th day of July 1861. between the
" hours of nine o'clock in the forenoon and the setting
" of the sun of the same day, at the front door of the
" Court House in Pekin Illinois expose said premises to
" public sale, to the highest bidder for cash in hand
" (each tract being sold separately): And at said time
" and place John Barnard the complainant having
" bid for the South West quarter of the South West quarter
" of Section one (1) in Township twenty four (24) North
" of Range five (5) West of the 3d principal meridian
" the sum of one hundred and fifty dollars: and for
" the North east quarter of the South west quarter of
" Section One (1) in Township twenty four (24) North of Range
" five (5) West of the third principal meridian the sum
" of twenty dollars: and for the North west quarter of
" the South West quarter of Section one (1) in Township
" twenty four (24) North of Range five (5) West of the third
" principal meridian the sum of Three hundred
" dollars: and for the South east quarter of the South
" West quarter of Section one (1) in Township twenty
" four (24) North of Range five (5) West of the third principal
" meridian the sum of Twelve hundred and twelve $\frac{69}{100}$
" dollars: and for the North east quarter of the North
" West quarter of Section twelve (12) in Township twenty

" four (24) North of Range five West of the 3d principal
" meridian the sum of one thousand dollars; and for
" the South West quarter of the North west quarter of Section
" twelve (12) in Township twenty four (24) North of Range
" five (5) West of the 3rd principal meridian the sum of
" One hundred dollars; and for the South east quarter
" of the South east quarter of Section two (2) in Township
" Twenty four (24) North of Range five (5) West of the third
" principal meridian the sum of three hundred dollars,
" and said John Barnard being the highest bidder
" for said tracts, said bids being the highest bids made
" for said tracts. the said above described tracts of
" land were stuck off and sold to said John Barnard
" at those prices. The undersigned prays to be allowed
" the sum of dollars for his fees herein, and the
" sum of Seven & 50/100 dollars. amount paid the printer
" for said advertisement, all of which is respectfully
" submitted

Chas. Turner
Special Commissioner

"A"

" In Circuit Court of Tazewell County Illinois

" John Barnard } In Chancery
" vs } To foreclose Mortgage
" Abraham Brown Amanda Brown }
" Samuel P. Baily & Benjamin F. Puttyman }

" Notice is hereby given
" that Default having been made by the defendants in complying
" with a decree rendered by the Circuit Court of Tazewell

County Illinois, at the September term 1860 of said Court
in a certain cause wherein John Barnard was complainant
and Abraham Brown, Amanda Brown, Samuel P. Baily and
Benjamin S. Prettyman were defendants, on a bill to foreclose
mortgage. I will in pursuance of the power upon me
conferred by said decree on the Eighth day of July
1861. between the hour of nine o'clock in the forenoon
and the setting of the sun of the same day, at the
front door of the Court house in Pekin Illinois,
proceed to sell all or so much of said premises as
will be sufficient to satisfy the amount of said decree
being $3.091.50. and interest and costs, to wit; The
north east quarter of the South west quarter of Section One,
the north west quarter of the South west quarter of Section One,
the South half of the South West quarter of Section One,
the North east quarter of the North West quarter of Section twelve,
the North west quarter of the North West quarter of Section twelve,
the South east quarter of the South east quarter of Section two,
all in Township twenty Four (24) North of Range Five
(5) West of the third principal meridian, except the land
and water on which stands the large lake known as
Baily's lake; also the right of way to the same of thirty
feet; also the right of laying water pipes to convey said
water in said lake to Pekin. Said sale to be for cash
in hand, the purchaser or purchasers to receive a
certificate of purchase entitling him or them to a
deed if not redeemed according to law

Robert S. Ireland Solicitor
Pekin May 28. 1861.

Charles Turner
Special Commissioner

Office of the Tazewell Register
Pekin Ill July 6th 1861

I hereby certify that the annexed notice was published four weeks successively in the Tazewell Register a public newspaper published weekly in the City of Pekin Tazewell County State of Illinois and that the first publication of said notice was made in said paper on the 28th day of May 1861, and the last on the 25th day of June 1861

J. McDonald Publisher

State of Illinois }
Tazewell County }

I George H Harlow Clerk of the Circuit Court within and for said County, do hereby certify that the foregoing 90½ pages contain a full true and complete transcript of the record of proceedings had and the papers used in said cause as fully as the same appears of Record in my office

Witness my hand and the Seal of said Court hereto affixed at Pekin this 18th day of March a.d. 1862

Geo H Harlow Clerk

92

Copy of Letter from John Bernard to Samuel P Baily refered to in Baily's petition for rehearing as Exibit "A"

Doe Run 6th Mo 27th 1859

Samuel P Baily

Dear Cousin. I received a letter from thee by the last mail Stating Thee had been informed I had a reapigonment of my interest in a Note I held against thee, (that is so I have), Thee expresses a Suprise that I should have done so its I had been advised of the Situation of the Matter. I rather than have any trouble about it with me. Thee think I had better go on there as soon as possibly. So some arrangement could be had on the faith of the transfer I make to Nathan, All this is well enough and if thee is ready to have it rightly adjusted I dont Know but I may come on after I get our Hay Crop But by, it would be out of the question to think of coming Sooner. But I want thee to be ready to do Something when I do come, I would like very much that we could get our Business Settled amicably and in that Kind and accomodating Spirit Thee received it of us, we performed our part in good faith fully expecting it to be

" carried out, We put ourselves to much disad-
" vantage for accomodation to thee, I dont
" know what more I can say on the subject
" at present ———

" We are all well as usual & also our
" friends as far as I know, Hoping you
" are so too. With much respect for our
" good intentions that all shall end
" right I close

Respectfully
John Bernard

Copy of Appeal Bond filed September 25th 1860 in the case of Baily etals vs John Benard in the Fayette County Circuit Court

" Know all men by these presents that
" we Samuel P Baily and Thomas C Reeves
" are held and firmly bound unto John
" Bernard in the sum of Two Hundred
" Dollars for the payment of which well
" & truly to be made we bind ourselves
" our heirs, executors & administrators
" jointly severally & firmly by these presents
" Sealed with our Seals this 22nd day
" of September 1860

" Whereas in a certain cause wherein

94

" John Bernard is Plaintiff and Samuel
" R Baily and others are defendants in the
" Chancery Side of the Tazewell Circuit
" Court of the September term 1860 and Whereas
" the said Samuel R Baily one of the said
" defendants in said Cause has prayed an
" Appeal from a decree made in said Cause
" to the Supreme Court of the State of Illinois
" Now the Condition of the above Obli-
" gation is such that if the said Samuel
" R Baily shall prosecute his said Appeal
" with effect and pay whatever judgements
" interest & costs that may be adjudged
" against him together with all damages
" by reason of the wrongfully taken said
" Appeal. then this Obligation to be null
" and void, otherwise to remain in full force
" & effect

" Witness our hands & Seal this 22nd
" day of September 1860

" Samuel R Baily [Seal]
" Thomas C Reeves [Seal]

" Taken & approved
" September 25th 1860
" Merrick Young Clerk
" per A C Goforth deputy

State of Illinois }
Tazewell County } ss

I George H Harlow Clerk of the Circuit Court in and for said County do certify that the foregoing three pages contain a full true and perfect copy of Letter Marked Exibit A (Refered to on pages 79 & 80 of the foregoing Transcript of the Case and the same is part of the record in said Cause of John Burnard vs S P Bailey et al), and also a full true and correct copy of Appeal Bond filed in said Cause



Witness my hand and Official Seal affixed at Pekin this 7th day of April A.D. 1862

Geo H Harlow
Clerk

The intimation made before Sygnin

Attest Geo H Harlow Clerk

State of Illinois,

Ottawa
Supreme Court 3rd Grand Division
to the April Term 1862

Benjamin S Puttyman
Samuel P. Daily } Plaintiffs in Error

vs

John Barnard, defendant in Error
Error from Tazewell

And now come the said Plaintiffs in the above entitled Cause and assign for the following Errors

1 The Court erred in overruling the exceptions filed in said Cause to the answer of the defendant John Barnard's answer to the Cross bill.

2. The Court erred in rendering the Decree against the plaintiffs in Error for the sum of Thirty five hundred and twenty six Dollars or any other sum.

3rd The Court erred in not setting off the two Kellogg notes against the Pl[illegible]

9th Thousand Dollar Note in the Pleadings mentioned

4th The Court Erred in Not setting off the Notes draft of One Thousand Dollars in the pleadings mentioned, against the said 8th Thousand Dollar Note

5th The Court Erred in after setting aside & vacating the decree in said Cause to set the Cause down for trial without Notice to the plaintiffs in Error or their Solicitors

6th The Court Erred in Not granting a rehearing upon the Petition of said Baily

7th The Court Erred in entering a Decree against Benjamin S Pattyman without his having been Served with Process.

8th Court Erred in Not Compelling John Barnard to account for and

deliver up the notes of Nathan D
Morton

The Court erred in taking up the
Cause after decree entered had been
set aside and all former orders in the
Cause had been ~~set aside~~ made and all
former orders in the Cause had been
vacated, in again setting down the
Cause for hearing and hearing the same
without a rule on the defendants to an-
swer or the entering of an order defau-
lting the defendants who had not an-
swered in the Cause, and hearing the
Same on the instance of the Complainant
in the absence of the defendants or their
Counsels or testimony and without
hearing them and without their con-
sent and not hearing the Cause in open Court &
in the Judges Chambers

B S Pettyjohn
atty for Plaintiffs

Error

And now comes the said John Barnard,
defendant in Error herein, and says that

the said Record & proceedings there is no Error for which the same should be reversed =

H. A. Roberts
for dept in Error
by J. K. Cooper

270
Supr Ct U.S.
Dec. Term
Bennett
vs
Jno Bennett
Error
Wilcox

Filed Apl 24 1862
S. Sumner
Clerk