

12119

No. _____

Supreme Court of Illinois

Jarvis, et al.

vs.

Frink, et al.

Be it remembered that heretofore, to wit, on the sixth day of July in the year of our Lord one thousand eight and forty four, there was filed in the office of the clerk of the Circuit Court in and for the county of Peoria in the State of Illinois, on the chancery side of said court a Bill of complaint, with a precipe and affidavit of non-residence thereto attached, in the words & figures following, to wit,

Bill = State of Illinois, } Circuit Court Peoria County
Peoria County. } October Term A. D. 1844.
To the Hon. John D. Eaton Judge of
the Ninth Judicial Circuit in Chancery sitting.

Complainant John Thirk Jr. that on the eighteenth day of September in the year of our Lord one thousand eight hundred and thirty seven, one Edward Dickinson, who is made a party defendant to this bill, being indebted to this complainant in the sum of \$1340 and 20 cents, made & executed to this complainant his certain promissory note in the words and figures following, to wit:

" \$1340. ²⁰/₁₀₀. Peoria Ills. Sept 18. 1837.
Two years after date I promise to pay John Thirk Jr. or
order Thirteen hundred and forty ²⁰/₁₀₀ dollars for
value received with interest thereon, at the rate of ten
per cent per annum for the first year and twelve per cent
for the second year."

Edward Dickinson.
the original of which note will be produced upon the trial of this
suit. And this complainant further states that at the
same time the said Edward Dickinson, together with Cath-
arine J. Dickinson, his wife, who is hereby made a party de-
fendant hereto to secure the payment of said promissory note

and interest made, executed and delivered to this complaint
their certain deed of mortgage under their hands and seals in
the words and figures, following, to wit: "This Indenture
made this eighteenth day of September eighteenthundred
and thirty seven, witnesseth, that Edward Dickinson
and Catherine D. Dickinson of the county of Peoria, State
of Illinois in consideration of thirteen hundred dollars to
them paid by John Frink Junr. of the county of Hamp-
shire, State of Massachusetts the receipt of which is hereby
acknowledged, do by these presents Grant, Bargain, Sell,
Convey, and Confirm to the said John Frink, Junr. his heirs
and assigns, a part of Lot No. One (1) in Block No. Three
(3) in the Town of Peoria, County of Peoria, State of Illinois,
commencing on Main street fifty two feet from the alley
which divides Lots No. One (1) and Ten (10) in said block,
running thence up Main Street towards Washington street twen-
ty (20) feet front on said Main Street, with seventy two (72)
feet rear: and also a part of Lot No. Ten (10) in Block No.
Ten (10) in said Town of Peoria aforesaid, commencing on
Jefferson street sixty (60) feet from the alley which divides
Lots No. One (1) and Ten (10) in said Block, running thence
along Jefferson street towards Fulton Street Fifty (50) feet
front on said Jefferson street with seventy two (72) feet rear.
To Have and To Hold the aforesaid premises together
with the appurtenances thereunto belonging to the said John
Frink Junr. his heirs and assigns forever: the said Ed-
ward Dickinson and Catherine D. Dickinson, his wife
hereby covenanting that they will Warrant and Defend
the title to the aforesaid premises to the said John Frink
Junr, his heirs and assigns forever against all persons
whomsoever. Provided however, that if the said Edward
Dickinson shall pay or cause or cause to be paid on or before
it becomes due a certain promissory note drawn this day
and payable

and payable to the said John Frink Van for the sum of
Thirteen hundred and forty and ²⁰/₁₀₀ Dollars two years
after date with interest at the rate of ten per cent per
annum for the first year and twelve per cent per annum
for the second year, then this deed to be null and void, other
wise to remain in full force and virtue. In Testimony
Whereof, the said Edward Dickinson and Catherine V.
Dickinson has hereunto set their hands and seals the day
and year above written.

Done in presence of } Edward Dickinson (seal)
Catherine V. Dickinson (seal)

Which said deed of mortgage was on the 19th day of September
A. D. 1837, duly acknowledged and on the 13th day of March
1838 duly recorded in the Records Office of Meria County,
and the original of which will be produced on the trial of
this suit.

And this Complainant further states that on the 12th day
of October A. D. 1839, the said Note & Mortgage being wholly
unpaid, the said Edward Dickinson & Catherine V. his
wife, conveyed to the said Complainant all their right
and title to the premises described in said mortgage by
deed under their hands and seals, a copy of which deed
is herewith filed and made part of this bill and the origi-
nal will be produced on the trial of this cause, and it was
then and there understood and agreed by the complainant
and the said defendants that the aforesaid mortgage should
stand undischarged and uncanceled as a charge upon
the said mortgaged property to the full amount of the note
thereby secured & interest in order more fully and effectually
to secure & protect said Complainant and ensure to him full
payment of the said Note and interest against all sub-
sequent judgment creditors, incumbrances or others of the
said defendants, and also to secure to said Complainant a
perfect title to said mortgaged property subject only to the

right of redemption thereof which might exist in any subsequent judgment ^{creditor,} condition or encumbrance of said mortgagors

And complainant further states that he is informed and believes that Daniel Law, Leonard Harris, D. H. Thompson, Hamson Samuel, William W. Thompson, Charles Ballance and Charles Kettelle, in the capacity of School Commissioner for the use of Township Nine North Six East are interested in all or some portion of said mortgaged premises as judgment creditors or otherwise subsequent to said mortgage.

And complainant alleges that said last named persons who are made defendants hereto ought either to redeem said mortgaged premises according to law or be foreclosed of their right to redeem the same, but they refuse so to do, all which actings, doings & refusals are contrary to equity and good conscience, and tend to the wrong & injury of this complainant, also forasmuch as he has no adequate relief in the premises but in a court of chancery where such matters are properly cognisable & relivable, therefore prays:

that the said defendants may be summoned to answer fully and particularly, all the allegations of this bill, but not under oath which is hereby expressly waived and that the said defendants Daniel Law, Leonard Harris, D. H. Thompson, Hamson Samuel, William W. Thompson, Charles Ballance and Charles Kettelle, School Commissioner as aforesaid may be decreed to pay what shall be found due upon said mortgage within a short time to be decreed by the court, and in default of such payment that said mortgaged property may be sold under the direction of the court by some person appointed by the court who shall have authority upon such sale to make, execute ^{and deliver} a deed or deeds thereof to the purchaser, and that upon

such sale the said last named defendants may be forever
barred and foreclosed of all right or equity of redemption
in said mortgaged premises or any part thereof forever.

And for such further or other relief as the case may
require or to the Court seem equitable and the complain-
ant will ever pray &c.

John Frink Jr.
by his Vtrs Purple & Metcalfe.

Precipe = The Clerk will please issue Writs in Chancery in the above
case against Edward Dickinson, Catherine S. Dickinson,
Daniel Law, Leonard Jarvis, D. H. Thompson, Jameson
Samuel, William W. Thompson, Charles Ballance and
Charles Kettelle, School Commissioner of Sevier County
for the use of Township 9 N. 6. E. returnable to the next
term of Court. July 5, 1844.

Purple & Metcalfe, Vtrs.
of John Frink Jr.

affidavit
non-residence
State of Illinois)
Sevier County) Circuit Court Sevier County
October Term A. D. 1844

John Frink Jr.

vs In Chancery - To foreclose mortgage.
Edward Dickinson, Catherine S. Dickinson
Daniel Law, Leonard Jarvis
D. H. Thompson, Jameson Samuel
William W. Thompson, Charles Ballance,
and Charles Kettelle, School Commissioner
for the use of T. 9. N. 6. E.

George D. Metcalfe, being duly
sworn deposes that he is credibly informed and verily believes
that Daniel Law, Leonard Jarvis, D. H. Thompson, & Jameson
Samuel defendants in the above entitled suit are non-

residents of the State of Illinois, and further says not,
Subscribed & sworn to before me } Geo. W. Metcalfe
this 6th day of July 1844.

William Mitchell, clerk. }
By R. Hamlin Dep. Clerk. }

And thereupon afterwards, to wit, June 7th A.D. 1847, there was filed in
said clerk's office the answer of the defendants D. H. Thompson and
Leonard Jarvis to said Bill, which is in the words & figures following,
to wit,

Answer = The Answer of D. H. Thompson and Leonard Jarvis,
to a bill in Chancery, filed in the Circuit Court
against themselves, Edward Dickinson and others, by John
Trink, these respondents saving and reserving all
manner of exception to said bill &c. for answer never-
theless thereto or so much thereof as these respondents are
advised is at all material for them to answer unto, an-
swering said, that respecting all that is said in said
bill regarding the indebtedness of said Dickinson to said
Trink and the ^{execution} ~~examination~~ of said note and mortgage
and the acknowledgment and recording of the same, they
know nothing, and call for proof. These respondents admit
that on the 12th day of October A. D. 1839, the said Edward
Dickinson and Catharine D. his wife, conveyed said town lots
to said Trink at the time in said bill alleged, but respondents
charge that said deed was a full and complete conveyance, in
fee simple, executed upon a final settlement between said
Trink and Dickinson of the sum secured by said mortgage
and that said mortgage is thereby fully discharged in law
and equity and that said mortgage ought then to have been
entered discharged upon the record thereof, and this respon-
dent denies that there was then any understanding with them
or any of said defendants, that said mortgage should stand
undischarged, as a charge upon the said mortgaged property, to the

full amount of the note thereby secured, and interest as is charged in said bill or for the purposes therein set forth, or for any ^{other} purpose, but that respondents were, by their agent and Attorney Charles Ballance, purchasers for a valuable consideration without notice.

These respondents know nothing, and therefore cannot state, about the interest of Daniel Lee, Harrison Samuel, William W. Thompson, and Charles Stettell, School commissioners &c.

It is true that these respondents have an interest in the subject of this suit, the interest of respondents consists in this and was obtained in this manner, said Edward Dickinson was indebted to respondents in the sum of One hundred and thirty dollars and eighty one cents, and in a suit that had been previously commenced in the circuit court of Peoria County, obtained judgment in said court against said Dickinson, on the third day of August A.D. 1839. for the said sum of money together with costs of suit. And afterwards to wit: on the twenty eight day of December A. D. 1840. a writ of fieri facias was issued upon the requisition of their said attorney, by the Clerk of this Honorable Court on said judgment, directed to the Sheriff of Peoria County to execute, which writ was, on said last mentioned day, put into the hands of Christopher Orr, then Sheriff of said county to execute. And afterwards, to wit: on the same day, said Sheriff levied said execution on the real estate in said bill described, as the property of said Edward Dickinson, and said Sheriff after having duly advertised the same according to law, offered it for sale at the door of the Court house, in the Town of Peoria and county of Peoria, on the seventeenth day of February A. D. 1841. and the said Ballance then and there being the agent and attorney of respondents, bid for each of said pieces of real estate more than any other person; and thereupon each piece of said

property (including the lot now in controversy) was struck off to him (said Ballance) And the said Cor as sheriff as aforesaid, then and there executed to said Ballance the usual certificate of purchase, for said lots and land. And afterwards, to wit: on the twentieth day of May A.D. 1842. said property not having been redeemed, in the mean time, said Cor as sheriff as aforesaid, executed to said Ballance a deed for said premises, which deed is herewith shown to your Honor and prayed to be made a part hereof.

Respondents further show unto your Honor, that although the deed for said property was taken in the name of said Ballance, that it was bought by their said agent and attorney, for their use and benefit and the deed was only taken to said Ballance to enable him the more conveniently to sell it again for their use, and that said Ballance paid no money therefore, but gave a credit to the amount of the purchase money on said judgment against said Dickinson and thereby discharged said judgment so far as that amount being deducted would do it.

Respondents further show unto your Honor, that they live in the state of Maryland and have never been in the State of Illinois, but that they employed said Ballance to ^{collect} said debt of said Dickinson for them and that having a judgment against said Dickinson and believing said lot to be liable to said judgement, he said Ballance as aforesaid, had it sold and bought it in as above described, and that said Dickinson is now hopelessly insolvent and the demand said Frink is attempting to set up against said lot is more than it is worth, so that if respondents said claim should be postponed to said claim of said Frink it would be an entire loss to respondents of their debt.

Respondents deny that either they or their said agent and Attorney knew of any equity in said Frink at the time of said purchase at Sheriff's sale. That all the evidence that said Ballance had with regard to said Frink's claim to said lot was what the records of Peoria County show, to wit: a mortgage from said Dickinson to said Frink to secure a certain sum of money with interest, which mortgage was executed before Respondents said judgement and also a deed in fee from said Dickinson to said Frink of the same premises both of which are hereby referred to for further particulars, and prayed to be taken as part of this answer. Respondents charge, that this deed was made in consideration, and in discharge of ^{said} sum of money so secured by said mortgage as aforesaid, and for no other or different consideration, and that the execution of said deed as aforesaid operated as a full discharge of said mortgage, and upon the question of law, whether it did so operate, this whole case depends.

Respondents deny any & all personal knowledge on the subject (either from information or from the records) of said Frink's claim, prior to the execution of said deed from said Orr to said Ballance.

Defendants having fully answered pray to be hence dismissed with their costs.

Let Ballance, for Costs.

To said Answer in said Clerk's office, there is underwritten the Replication of said complainant in the words & figures following, to wit.

Replication = In Chancery in the Circuit Court of Peoria County, Oct. Term 1847
The replication of John Frink to the answer of D. H. Thompson and Leonard Harris, two of the defendants—
The repliant saving and reserving to himself all and all manner of exception to the manifold insufficiencies of said

said answer for ~~an~~ replication thereto saith that he will aver his said bill to be true, certain & sufficient in the law to be answered unto, and that the said answer is uncertain untrue & insufficient to be replied to by this repliant, without this that any other matter or thing whatsoever in the said answer contained material in the law to be replied to, confessed & avoided, traversed or denied is true, all which matters & things this repliant is ready to aver and prove as the court shall direct, and prays as in & by his bill he has already prayed.

John Frink by his
by his Solicitor McCalfee.

The Mortgage and note referred to in said Bill and filed as evidence in said cause are in the words and figures following, to wit.

Mortgage = This Indenture made this eighteenth day of September Eighteen hundred and thirty seven, Witnesseth, that Edward Dickinson and Catharine V. Dickinson of the county of Peoria, State of Illinois in consideration of Thirteen hundred dollars to them paid by John Frink, Junr of the county of Hampshire State of Massachusetts, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm to the said John Frink, Junr his heirs and assigns, a part of Lot No. One (1) in Block No. Three (3) in the Town of Peoria, in the county of Peoria, State of Illinois) commencing on Main street fifty two feet from the alley which divides Lots No. One (1) and Ten (10) in said Block, running thence up Main street towards Washington street Twenty (20) feet front on said Main street, with seventy two (72) feet rear. And also a part of Lot No. Ten (10) in Block No. Ten (10) in said Town of Peoria aforesaid, commencing on Jefferson street sixty (60) feet from the alley which divides Lots No. One (1) and Ten (10) in said

Block, running thence along Jefferson street towards
Hulton Street Fifty (64) feet front on said Jefferson street
with seventy two feet rear. To Have and To Hold the afore-
described premises together with the appurtenances thereunto
belonging, to the said John Frank Punt, his heirs and as-
signs forever, the said Edward Dickinson and Catharine
P. Dickinson his wife, hereby covenanting that they will War-
rant and Defend the title to the aforesaid premises to the
said John Frank Punt, his heirs and assigns, forever,
against all persons whomsoever. Provided however, that
if the said Edward Dickinson, shall pay or cause to be paid
on or before it becomes due a certain promissory note drawn
this day and payable to the said John Frank Punt for the
sum of Thirteen hundred and forty + 00/100 dollars, two years
after date with interest at the rate of ten per cent per annum
for the first year, and twelve per cent per annum for the second
year, then this deed to be null and void, otherwise to remain
in full force and virtue. In Testimony Whereof, the said
Edward Dickinson and Catharine P. Dickinson has hereunto
set their hands and seals the day and year above written.

Done in presence of, }

Edward Dickinson (S)
Catharine P. Dickinson (S)

State of Illinois, }
Peoria County. }

Personally appeared before me William
Mitchell, clerk of the county commissioners
Court, within & for said county Edward Dickinson and
Catharine P. his wife, both personally known to me to be the
identical persons whose names appear to the within deed of
conveyance, and who severally acknowledged the same to be
his free act and deed for the uses and purposes therein
set forth. And the said Catharine P. being by me exam-
ined separte and apart from her said husband and the
contents of the within deed being by me made known to her
acknowledged that she executed the same without fear

or compulsion of her said husband, Given under my hand
and seal of said court at Peoria this 17th day of September,
A. D. 1837. William Mitchell
Clerk.

(25)
State of Illinois,
Peoria County.

Records Office Peoria March 13th 1838.
I, Charles Kettelle, Recorder of said county
do hereby certify the within deed ^{of mortgage} & certificate of proof is this
day duly recorded in said office in Book # of Mort-
gages, pages 133 & 134, Given under my hand & private seal,
(No official seal being yet provided) this 13th day of March
A. D. 1838. Charles Kettelle [Seal] R. C. C.

note = \$1340 ²⁰/₁₀₀.

Peoria Ills. Sept. 18. 1837.

Two years after date I promise to pay John
Trink for order Thirteen hundred and forty ²⁰/₁₀₀ dollars for value re-
ceived with interest thereon at the rate of ten per cent per an-
num for the first year and twelve per cent for the second year.
Edward Dickinson.

There was filed as evidence in said cause the deposition of Edward
Dickinson, Opened under General Order of Court October 16th 1848,
which is in the words and figures following, to wit:

Dickinson; } The Deposition of Edward Dickinson, taken before Thomas
Deposition } Bryant, Private Justice of the Peace of Peoria County, Illi-
nois, pursuant to the enclosed notice & by agreement of parties,
at my office in Peoria on the 27th day of May A. D. 1848, said
deposition to be read in evidence on behalf of the complainant
in a cause now pending in the Peoria Circuit Court of said
county, on the chancery side thereof, wherein John Trink, &c.

is complainant & Edward Dickinson, Catharine Dickinson, Daniel Low, Leonard Jarvis, C. H. Thompson, Jamison Samuel, William H. Thompson, Charles Ballance, Charles Kettelle, School Commissioners &c are defendants, the said Edward Dickinson being first duly sworn in answer to the following interrogatories, deposes & says,

Qst. 1 Did you or not on the 12th day of October 1839, execute to John Frink the said complainant a deed of part of Lot No. One in Block Three in the City of Georgia and being the same place previously mortgaged by you to said Frink and if you please state whether there was or not any arrangement or agreement between you and said Frink about said previous mortgage ~~which~~ remaining undischarged, please state fully such arrangement.

Ans. I do not recollect the time but about that time I executed such a deed for that and other property which was to be in satisfaction for the claim for which the mortgage was executed but it was agreed that the mortgage should remain undischarged in consequence of other Judgments ^{there} that were then against me ^{the note} to secure which the mortgage was given was placed in the hands of Kettelle to be kept by him for the benefit of Frink, myself and to be used by either party if necessary under said agreement between Frink & myself.

Int. Please state whether the above agreement referred to was ~~made~~ reduced to writing and whether the same is in your possession or control.

Ans. There was an agreement in writing by said Frink to reconvey to me if the property could be sold for ~~any~~ thing more than to satisfy his claim within five years. I think said agreement is not in my possession & do not know that it is within my control. I do not know where it is. It was executed at the same time the deed to Frink was.

Ans. Please state the contents of said agreement.

Ans. The contents as near as I can recollect, are stated in the answer to the last previous interrogatory.

Questions by Ballance for Harris & Thompson

1st Were you not at the time you executed said deed to said Frink and took from him said conditional contract to reconvey in failing circumstances.

Ans. I was then unable to pay my debts and have not been able as yet to pay them.

2nd You speak of judgements against you at the time, was not the judgement of Harris & Thompson,^{or} which said lot was sold one of said judgements, and was I not the attorney who obtained it.

Ans. They had a judgment on which said lot was sold, I do not recollect the date of said judgment, but if it was before said deed it was one of those to which I referred.

3rd Was not Charles Kettelle the person referred to by you in a former part of this deposition and was he not bound with you to said Harris & Thompson for the money to make which said lot was sold.

Ans. It is Charles Kettelle that I mean, he was bound with me for the payment of said judgment to Harris & Thompson.

4th Have you communicated freely and how often in your opinion with John Frink or any of his attorneys respecting the above facts since I bought in said lot to secure said debt.

Ans. Frink has talked to me, two or three times about it & Mr. Metcalfe once & Mr. McErman once, I have never refused to communicate any thing to them.

5th Did you not refuse to communicate the above facts to me the only time I ever endeavored to obtain them from you.

Ans: I recollect Mr Ballance asking me something in relation to the case we met casually in a walk. I answered that when properly called upon I would divulge all I that knew about it, several years had elapsed since the transaction & I was unwilling to make any statement without matured reflection.

6th When you say "properly called upon" do you allude to being called upon as a witness or to what do you allude.

Ans: I suppose I meant when called upon as a witness.

7th What relationship exists between you and said Kettelle, and have you always been on terms of intimacy & friendship.

Ans: Kettelle married my niece and we have always been friendly.

8th How long have you been acquainted with said Frink?

Ans: About eighteen years.

Edward Dickinson

State of Illinois, }
Peoria County. } J. Thomas Bryant, Probate Justice of
the Peace for said county, do hereby certify, that the above deposition was taken by me at the time and place mentioned in the caption thereof, that the said witness was first duly sworn, and that the said deposition was carefully read to the said witness and signed by him.
Dated this 27th day of May A. D. 1848.

Thomas Bryant, Probate Justice
of the Peace, T. C.

The following is a Report of the evidence produced on the hearing of this cause, as the same remains on file in said cause, duly signed by the Judge of said court, to wit:

Report of evidence } This certifies, that at this term this cause came on to be heard, the complainant read in evidence the mortgage & note described in the bill of complaint, with the certificate of acknowledgment & certificate of Recorder of Peoria County, thereon.

Bestor's evidence } The Plff then called George L. Bestor, as a witness, who testified, that the consideration of the mortgage & note, was the purchase money of the same lots of land in the mortgage. Dickinson (the deft) purchased the lots of one Damon & then Damon sold out his interest to Frink, & Dickinson gave this note & mortgage to Frink to secure the purchase money, witness said the trade was made in my office & in my presence - I mean the trade when Dickinson gave Frink the deed. There was an agreement made in writing & signed by the parties at the time the deed was given to Frink of the lots. The agreement & the deed from Dickinson to Frink were here read in evidence & were as follows.

This Agreement made and entered into this twelfth day of October eighteen hundred and thirty nine, witnesseth, that whereas Edward Dickinson and wife of the county of Peoria, and State of Illinois has this day made, executed and delivered to John Frink Jr of the county of Cook in said State, a deed for the following pieces of Land, to wit: part of Lot One (1) in Block Three (3) Twenty feet front on Main street, and part of Lot Ten (10) in Block Ten (10) sixty feet front on Jefferson street, and also part of Lot Ten in Block Ten (10) Twenty four feet front on Fulton street, all in the Town of Peoria, County of Peoria and State of Illinois, and also the West half and South half of the East half of the North West

quarter of section No. Sixteen (16) in Township No. Nine North
of Range No. Six East of the 4th Meridian lying in the county
of Teoria in the State of Illinois, and containing one hundred
and twenty acres, In consideration whereof, it is hereby mutually
agreed by and between the parties, that if said Dickinson shall
at any time during three years from this day make any agree-
ment with any person or persons, for the selling and disposal
of any part of the above described property, and said Trink
shall not make or execute a deed therefor he will allow to
said Dickinson the same amount which would or might have
been received therefor, upon the following conditions to wit: that if
the said property has all been sold on or before the expiration
of three years and said Trink has received the just and full
sum of sixteen hundred sixty eight ⁹²/₁₀₀ dollars, with interest thereon
at the rate of Nine percent per annum, then any amount over
and above said sum shall be given to said Dickinson, if the same
has been realised or allowed to said Dickinson if the same might
have been realised, and he the said Dickinson was prevented
from so doing by said ^{Trink}, not selling or disposing of said property,
and it is also agreed by and between the parties that no-
thing herein contained shall prevent said Trink from selling
and disposing of said property to any person or persons he may think
proper and allowing said Dickinson any overplus of the amt. received in
manner before specified. In Witness &c.

(1668⁹²/₁₀₀)
Done in presence of
Geo. C. Bestor

John Trink Jr.

" And it is hereby mutually agreed in addition to the with-
in agreement between said Dickinson and said Trink, that if said
Trink wishes to sell said land within described before the expiration
of three years, that he will have the same appraised by the President
and Two of the Trustees of the Town of Teoria, and allow to said
Dickinson on the amount within specified whatever they shall deem
said property to be worth at a fair cash value, and that the
property in the Town of Teoria all or any part thereof may be

leased by said Dickinson and any amounts which may or can be realised in that way shall go to the extinguishment of said amount before specified.

Witness }
Geo. C. Bector }

John Frink Jr.

This deed made this twelfth day of October Eighteen hundred and thirty nine Witnesseth, that Edward Dickinson and Catharine S. Dickinson his wife of the county of Teoria in the State of Illinois, for and in consideration of the sum of fifteen hundred to them in hand paid by John Frink, Jr. of the county of Cook, in the State of Illinois, the receipt whereof is hereby acknowledged do by these presents grant, bargain, sell, convey and confirm unto the said John Frink Jr., all those certain pieces or parcels of land, known and described as follows, to wit:

1st part of Lot No One (1) in Block No Three (3) commencing on Main street fifty two (52) feet from the alley which divides Lots No One (1) and Ten in said Block running thence up Main street towards Washington street Twenty (20) feet front on said Main street with seventy two (72) feet rear.

2nd part of Lot No Ten (10) in Block No Ten (10) commencing of Jefferson street (60) feet from the alley which divides Lots No One (1) & Ten (10) in said Block running thence along Jefferson street towards Fulton street sixty feet front on said Jefferson street with seventy two (72) feet rear.

3rd Part of Lot Ten (10) in Block No Ten (10) commencing on Fulton street Twenty Four feet from the corner of Jefferson street and running ^{thence} down said Fulton street twenty four (24) feet, front, with fifty one feet rear, all of which said lots are situated, lying and being in the Town of Teoria, County of Teoria in the State of Illinois.

4th All those certain pieces of land known as the West half and South half of the East half of the North West quarter of section No.

Sixteen (16) in Township No. Nine (9 North of Range No. Six East of the 4th meridian, lying and being in the county of Peoria and State of Illinois and containing one hundred and twenty acres. To Have and To Hold the above described land and premises together with the appurtenances thereunto belonging or in any wise appertaining to the said John Frink, Jr. his heirs and assigns forever, the said Edward and Catharine S. Dickinson hereby covenanting to and with the said John Frink Jr. that they will forever warrant & defend the title to the above described land to the said John Frink Jr. his heirs and assigns, against the claims of all persons whomsoever. In Testimony Whereof, the said Edward and Catharine S. Dickinson hath hereunto set their hands and seals the day and year above written.

Done in presence of } Edward Dickinson (seal)
William Mitchell, } Catharine S. Dickinson (seal)

State of Illinois, }
Peoria County. }

This day personally appeared before me, William Mitchell, Clerk of the Circuit Court, within and for said County, Edward Dickinson and Catharine S. his wife to me personally known to be the real persons whose names appear the within deed of conveyance, as having executed the same, and who severally acknowledged it to be their free act and deed for the uses and purposes therein set forth. And the said Catharine S. being by me examined separate and apart from her said husband, and the contents of said deed being by me made known to her, acknowledged that she had executed the same, freely and without fear or compulsion of or from her said husband. Given under my hand and seal of said court at Peoria, this 12th day of October A. D. 1839.

(seal)

William Mitchell, clerk.

The witness resumed & said the whole matter was compromised & settled by giving these lots & other lands to Frink, the mortgage & note & agreement were left with me. I was to act as the agent for both of the parties & sell the property & collect the money. I cannot say whether mortgage was cancelled on the record, nor whether it was considered as cancelled. If the mortgaged property was not sold in three years, it was all to be Frink's property. This was the conversation when the written agreement was made, & after the contract was closed I was authorized to sell the property & the \$1668.87 mentioned in the agreement I suppose was the amount then due on the mortgage. All this was done in my office, Dickinson thought he had made a shameful sacrifice & Frink then said, he would trust to my discretion in selling & disposing of the property; by the parties to this transaction, I mean Frink & Dickinson. The Note & mortgage were left with me so that I could make endorsements on the note, if any money was received.

Witness further stated, I was mistaken about the consideration of the note, the consideration was the sale of 20 feet on Main street, where Farrell's Drug Store now is, being one of the lots mentioned in the mortgage. In the first place Dickinson gave a note to Damon for this lot, that note was afterwards taken up & this note was given. & to secure the payment of this note, the mortgage in this suit was given; the mortgage & other papers remained in my possession till two or three years since when they were taken away by Mr. Frink or his Attorney to be used as evidence in this suit.

The deposition of said Dickinson was then offered in evidence by complainant, the deft. objected to its admission because the witness was a party deft. to the second but by the agreement of the parties, the deposition was read, but subject to ^{objections} ~~objections~~, that might be taken to it.

After the reading of which the witness Beator wished to explain his testimony, and said, I perceive that Dr Dickinson states that the papers were left with Mr Kelly. I think they were left with me as I before stated, I may possibly be mistaken, but I believe they remained with me till taken from me for the purpose of this suit.

By consent Mr Ballance one of the depts, was sworn & testified, He said; Thompson & Harris were non-residents of the state when their suit was brought & ever since have been, & I believe they have neither of them ever been in this state. I acted as their Attorney & looked at the records & neither they nor I knew anything about the agreement to Frink, but I knew from the record of the mortgage & the deed from Dickinson to Frink & I knew nothing more when I bought in the property.

(The judgment in favor of Thompson & Harris vs Dickinson was by agreement to be considered as part of the case & as read in evidence & Also two executions issued on the judge & the returns upon them showing the sale by the Sheriff & the Sheriffs deed to Ballance.

Mr Ballance further testified that he bought in the property for the Plffs in the execution, that he bought in his own name, merely so that it might be more convenient in making sale & conveyances of it afterwards.

By agreement of the parties, this report of the evidence &c. is to be considered part of the case

Wm Low Peters, Judge &c.

The following is a transcript of the Judgment and of the executions & returns thereon enclosing referred to in said Report of evidence, as the same remain of record & on file in my office, to wit,

Judgt of }
Thompson & }
Harris }
Dickinson }
At a special Term of the Circuit Court began and held at Leoria, within and for the county of Leoria and State of Illinois on the fourth Monday in the month of July in the year of our Lord one thousand eight hundred and

thirty nine, being the twenty second day of the month.
Presents the Honorable Thomas Ford, Judge of the ninth
Judicial District in the State of Illinois, Norman H. Pur-
ple Esquire, State Attorney, William Mitchell, Clerk,
and Thomas Bryant Sheriff.

Saturday August 3rd 1839

Leonard Jarvis

D. H. Thompson

vs

Assumpsit.

Edward Dickinson

This day came into court the said
plaintiffs Jarvis and Thompson by their attorney, and
filed their declaration against the said Edward Dickinson
and thereupon Charles Ballance one of the Attornies of this court
appeared in open court in behalf of the said Edward Dickinson
and by virtue of a warrant of attorney for that purpose exe-
cuted by the said Edward Dickinson and now produced
in open court and duly proved, waived the issuing and service
of process, and acknowledged that the said Edward Dickinson
did assume and promise in manner and form as the said
plaintiffs have in their said declaration alleged against
him, and confessed that the said Jarvis and Thompson have
sustained damages by reason thereof to one hundred and thir-
ty dollars and eighty one cents. Therefore it is considered by
the court that the said plaintiffs recover of the said defendant
the sum of one hundred and thirty dollars and eighty one
cents damages so confessed as aforesaid and also their costs
and charges by them about their suit in this behalf expended,
and that they have execution therefor.

1st execution = The People of the State of Illinois
To the Sheriff of Teoria County, Greeting:
Whereas by the consideration of our Circuit Court, held at Teoria,
in and for the county of Teoria, on the third day of August
in the year of our Lord one thousand eight hundred and
thirty nine Leonard Harris and D^o H. Thompson
recovered judgment against Edward Dickinson for the sum
of one hundred and thirty dollars and eighty one cents
damages, which the said Harris & Thompson had sustained
by reason of the non-performance of certain promises made to
them by the said Edward Dickinson, and also for the fur-
ther sum of five dollars and 81/4 cents, costs of suit, as ap-
pears of record:

We therefore command you, That of the goods and
chattels, lands or tenements, of the said Edward Dickinson
you cause to be made the aforesaid sums of money, together
with interest on said judgment at the rate of six per cen-
tum per annum from the time of recovering the same as
aforesaid until paid; and that you have the same ready,
as soon as may be, to render unto the said Harris & Thomp-
son according to law. Hereof fail not, and make return of
this writ, with your doings, ninety days after the date
hereof, Witness William Mitchell, Clerk of our said
Court, and the seal thereof, at Teoria, this
sixth day of January in the year of our
Lord one thousand eight hundred and forty.
William Mitchell, Clerk.

Returned by order of the Plaintiffs Attorney this 4th day of
April 1840.
Thomas Bryant, Sheriff T. C.
by Henry Kahn, Deput. Sheriff, T. C.

last execution
3

The People of the State of Illinois

To the Sheriff of Peoria County, Greeting:

Whereas by the consideration of our Circuit Court, held at Peoria, in and for the County of Peoria, on the third day of August in the year of our Lord one thousand eight hundred and thirty nine Leonard Harris and J. H. Thompson recovered judgment against Edward Dickinson for the sum of one hundred and thirty dollars & eighty one cents damages, which the said Harris & Thompson had sustained by reason of the non performance of certain promises made to them by the said Edward Dickinson, and also for the further sum of five dollars and 81/4 cents, costs of suit, as appears of record.

We Therefore Command You, as heretofore we have often times commanded you, that of the goods and chattels, lands or tenements of the said Edward Dickinson you cause to be made the aforesaid sums of money, together with interest on said judgment at the rate of six per centum per annum from the time of recovering the same as aforesaid until paid; and that you have the same ready, as soon as may be, to render unto the said Harris & Thompson according to law. Hereof fail not, and make return of this writ, with your doings, ninety days after the date hereof. Witness William Mitchell, clerk of our said Court, and the seal thereof, at Peoria, this 28th day of December in the year of our Lord one thousand eight hundred and forty.

(L.S.)

William Mitchell, Clerk.

Which last execution was afterwards returned in said clerk's office by the sheriff to whom it was issued, with his return thereon endorsed as follows, to wit:

Return = State of Illinois, }
Teoria County, sor. } I have levied the within execution on
the North West quarter of section sixteen
in Township N^o Nine (9) North of the
base line and range Six (6) East of the fourth principal me-
ridian. Also on piece of ground in the Town of Teoria,
bounded as follows, beginning at a stake on Main street
in the North East line of Lot N^o One (1) in Block No Three
(3) fifty two feet above the alley, and running thence up said
street twenty feet, thence across said lot at right angles with
said street to the back thereof, thence down between lots one
and two twenty feet, thence to the place of beginning. Also lot
ten in block Ten in said town, which tracts of land were
sold at public sale on the seventeenth day of February and
that Charles Ballance purchased the same for the sum of twenty
five dollars for the first mentioned tract. One hundred dollars
for the second mentioned tract and the sum of five dollars
for the last mentioned tract.

Christopher Orr, Sheriff T. C.
by William Orr, Deput. T. C. Co.

The deed from the Sheriff to Charles Ballance referred to in said Report
of Evidence as the same is on file in said cause is in the words & figures
following, to wit:

Deed } This Indenture made and entered into this twentieth day
Sheriff } of May A. D. 1842 Between Christopher Orr, Sheriff in &
Ballance } for the county of Teoria and State of Illinois, party of the
first part and Charles Ballance of the county of Teoria and
State aforesaid party of the second part, witnesseth, that whereas
on the third day of August A. D. 1839. at a Term of the Circuit
Court in & for the County of Teoria aforesaid, then in session,
Leonard Herold and J. H. Thompson recovered a judgment in
said court against Edward Dickinson for the sum of one
hundred & thirty dollars eighty one cents besides costs of suit
in a certain action then & there pending tried and determined

And whereas also, afterwards on the twenty eighth day of December A. D. 1840. the said Harris & Thompson caused a fieri facias or execution to be issued out of the office of the clerk of the said court, dated the day & year last aforesaid, signed by the said Clerk and sealed with the seal of said court and directed to the Sheriff of said county, Commanding him of the goods, & chattels, lands & tenements of said Dickinson to make the said sum of money together with the costs of said suit, which said execution was on the day & year aforesaid duly delivered to said Christopher Orr, Sheriff as aforesaid, and whereas also under and by virtue of said writ, said Sheriff did on the 28th day of December A. D. 1840 levy upon the tracts of land hereinafter described and having advertised the said tracts of land to be sold according to law, the said Sheriff did expose the same to sale as by law required on the 17th day of February 1841. and whereas upon such sale Charles Balance bid therefor for the tract first hereinafter described twenty five dollars, for the second tract one hundred dollars, and for the third tract the sum of five dollars, which being the highest and best bids offered for the several tracts of land said Charles Balance became the purchaser thereof & each of them as by the records of said and said writ of execution will more fully & at large appear, and the same not having been redeemed by any person or persons.

Now This Indenture witnesseth, that in consideration of the said several sums of money having been paid to said Sheriff, the receipt whereof is hereby acknowledged by said party of the first part, the said party of the first part Sheriff as aforesaid, ^{has} granted, bargained, sold and transferred and by these presents does grant, bargain, sell and convey unto said party of the second part, his heirs and assigns, all the following described lots, tracts or parcels of land, situate, lying and being in the county of Peoria and State of Illinois, known and described as the North West quarter of section

numbered Sixteen in Township N^o. Nine North of Range
No. Six East of the fourth principal meridian. Also that
part of Lot No One (1) in Block No. Three in the Town of
Peoria, commencing on Main street at a stake in the North
East line of said Lot fifty two feet from the alleys running
up said street twenty feet, thence across said lot at
right angles with said street, thence down between Lots
One & Two on the back of said Lot N^o. One twenty feet,
thence to the place of beginning. Also Lot N^o. Ten in Block
N^o. Ten in said Town of Peoria aforesaid. To Have & To
Hold the said tracts of land with the appurtenances &
privileges thereto belonging or in any wise appertaining unto
said party of the second part, his heirs and assigns forever.
And also all the right, title, claim, interest and benefit of
said Dickinson, of, in & to said several tracts of land as fully
& amply as said party of the first part and by virtue of
said records & the Laws of said State of Illinois, he is
authorized to do, unto said party of the second part, his
heirs and assigns to their own benefit & behoof forever.
In Witness Whereof, said party of the first part has here-
unto set his hand & seal, the day & year first above written.

Christopher Orr (Seal)
Sheriff of Peoria Co Ills.

State of Illinois, }
Peoria County, ss. } This day personally appeared before me William
Mitchell, clerk of the Circuit Court of Peoria County, Christopher Orr
late Sheriff of said county, who is personally known to me to be the identical
person who is described in and whose name appears subscribed to the
foregoing deed of conveyance as having executed the same, and acknowl-
edged the execution thereof, to be his free act and deed as late Sheriff of
said County, for the uses and purposes therein contained. In Testimony
Whereof, I have hereunto set my hand and affixed the seal of said court
at Peoria this first day of October in the year of our Lord one thousand
eight hundred and forty two. William Mitchell, clk,

(25)

State of Illinois }
County of Peoria }

Records Office.

J. Charles Kettelle,

Recorder in & for said County of Peoria, do certify the within deed
is duly recorded, in said office in Book M. pages 222 and
223 on this 7th day of January A. D. 1843.

Charles Kettelle R. P. Co.

Final } Proceedings in Chancery before the Circuit Court at a term
Dece } thereof begun and held at the Court house in Peoria, in
and for the County ^{of Peoria} and State of Illinois, on Monday
the Tenth day of May in the year of our Lord one
thousand eight hundred and fifty three. Present the
Honorable Anslow Peters Judge of the Sixteenth Ju-
dicial Circuit.

Monday June 6th A. D. 1853.

John Frink, Jr.

vs
Edward Dickinson, Catharine Dickinson
Daniel Laws, Leonard Farvid
D. H. Thompson, Charles Gallance,
Charles Kettelle, School Commissioner

On this day came on this
cause to be heard upon the Bill, Answers, Exhibits & proofs,
and the matter having been duly considered, after hearing
argument of counsel, and it appearing to the court that all
the allegations in said Bill are satisfactorily proven, and
that said Defendants Edward Dickinson & Catharine D.
Dickinson are justly indebted to the Compt: upon the said
mortgage security in the sum of 3840 ²³/₁₀₀ dollars, it is or-
dered and decreed by the court that the said defendants pay

to the said complainant the said ^{sum} of 3840 ⁹³/₁₀₀ dollars within
60 days from the date of this decree, together with interest
thereon at the rate of 6 per ct. per ^{annum} from and after
the date of this decree and in default of such payment at or
within such time that George S. Blakeley, Master in Chan-
cery in this Court be and he is hereby appointed a commissioner
to sell said mortgaged premises, to wit: a part of Lot one (1)
in Block No. (3) Three in the Town and County of Konia in
the State of Illinois, commencing on Main st. fifty two feet
(52) from the alley which divides lots one & ten (10) in said
Block, running thence up Main st. towards Washington
st. 20 feet front on said Main st. with 72 feet rear. also
a part of Lot No. (10) in Block No. (10) in said Town of Konia,
commencing on Jefferson street (60) feet from the alley which
divides Lots Nos. (1) and (10) in said Block (10) running thence
along Jefferson st. towards Fulton st (60) feet front on said
Jefferson st with 72 feet rear, at public auction to the
highest bidder for cash upon giving 20 days previous
notice of the time, place & terms of said sale by advertise-
ment in some newspaper printed & published in the said Town
of Konia, and upon such sale the said Commissioner is
hereby authorized and empowered ^{im}mediately to make, exe-
cute & deliver to the purchaser or purchasers at said sale,
a deed or deeds of conveyance of said premises. And it is
further ordered and decreed by the Court that upon such
sale the said defendants be forever barred and foreclosed of
and from all right in equity of redemption in the aforesaid
mortgaged premises, or any part thereof, and that the pur-
chaser or purchasers at said sale be authorized ^{im}mediately
upon the receipt of their or his deeds or deed of conveyance of
said premises as aforesaid to take possession of said premises,
and it is ordered by the Court that said Commissioner make re-
port of his doings under this decree at the Term of this Court next
after the sale aforesaid may take place. Whereupon said Leonard & Lewis

& D. H. Thompson prayed an appeal to the Supreme Court of this State, which is allowed them by agreement of parties on the filing of an appeal bond in the Clerk's Office in ten days signed by Charles Ballance, payable to the complainant in the penal sum of two hundred dollars & conditioned according to law. The appeal Bond was filed June 16th A.D. 1853 and is in the words & figures following, to wit,

"I know all Men by these that I, Charles Ballance am held and firmly bound unto John Frink in the penal sum of two hundred dollars for the payment whereof well and truly to be made, I bind myself, my heirs, executors and administrators, jointly, severally and firmly by these presents,

The Condition of this obligation is such that whereas at the May Term of the Circuit Court of Teona County A. D. 1853, a certain suit in Chancery, wherein said Frink was complainant and Edward Dickinson and others were defendants, came on to be heard and such proceedings were had therein that the prayer of said Bill was granted and a ^{decree} ~~deed~~ made in favor of said Complainant and against said defendants from which decree two of said defendants, to wit: Leonard Harris and D. H. Thompson have prayed an appeal to the Supreme Court which appeal was allowed by said Circuit Court upon said Ballance filing within the said Circuit Court's Clerk's Office within ten days a bond of two hundred dollars. Now therefore, if the said Leonard Harris and D. H. Thompson shall prosecute their said appeal with effect and without delay and pay whatever costs and damages that may be awarded to said Frink against said Harris & Thompson by reason of the taking of said appeal that the above obligation to be null and void, but otherwise to remain in full force and virtue.

Witness my hand and seal this 15th day of June
A. D. 1853. C. Ballance (seal)

State of Illinois
Preria County

I Jacob Gale clerk of the Circuit Court in and for said county do hereby certify, that the foregoing is a correct transcript from the Record of the proceedings in said Circuit Court on the chancery side thereof in a certain cause therein in which John Frink Jr. is complainant and Edward Dickinson, Catharine J. Dickinson, Daniel Law, Leonard Jarvis, J. H. Thompson, Jameson Samuel, William W. Thompson, Charles Ballance, and Charles Kettelle School Commissioner for the use of T. G. N. 6 C. are defendants, as the same of Record and on file in my office -

In witness whereof I hereto my hand and affix the seal of said court at my office in Preria this eighteenth day of June in the year of our Lord one thousand eight hundred and fifty three -

Jacob Gale, clerk.

Clerks fees: for transcript \$10.25 -
cert. & seal .25 -

\$10.50 Received payment of Charles Ballance June 19th 1853.

Jacob Gale,

And the said Jarvis & Thompson say that in the above record there is manifest error in this to wit
1st The amount for which said decree is taken is greater than any amount claimed or ~~proved~~ proved by said complainant

2nd Complainant was entitled to ^{no} money decree against said Catharine Dickinson for there is no pretence or proof that she ever owed anything

3 He was entitled to no decree against said Edward Dickinson for by the proof the execution of the deed

was a discharge of all he owed

4th Plaintiff complainant can have no relief here
~~because~~ by his own showing he had combined with
Dickinson ^{son} to defraud and delay defendants of their just
debt^s

5 Said mortgage was merged in the deed and
was thereby in law to all intents and purposes cancelled

6th Although said deed was upon its face an ab-
solute conveyance and all strangers have a right
to treat it as such yet according to complaints
own showing it was a mortgage so constituted by
the simultaneous agreement of the parties and was
for the same consideration and no other of the mort-
gage now attempted to be foreclosed and therefore
cancelled it

7th Said court erred in giving any decree in favor
of said complainant

C. Ballance for
Appellants

Saml. T. Thompson &

John P. Smith

And the said defendant in error comes and
says there are no such errors in the record
and proceedings, and rendition of judgment
in said cause as the said plaintiffs in
error have above alleged, nor any nor
either of them. Wherefore he prays that
by the consideration of the court here
the said judgment and decree of the
said Circuit Court may be in all things
affirmed

Julius Manning
Atty for deft in error

12-17-10

79
Leonard Jarvis del.
by
John Smith Jr.

Recd & cross

79

1858

Filed June 27. 1858.
L. Leland Clerk.

Refused

12119

~~Copy of this record
to be made by the
Clerk of the Court
in the
Office of the
Clerk of the Court~~

John Frink
vs
Larnis & Thompson } Appeal from Pleas

Edward Dickinson on the 18 Sept. 1837 executed a note to John Frink for \$1340 $\frac{20}{100}$ and at the same time D. and wife executed a mortgage to secure the same they bore interest at 10 per cent for the first year and at 12 per cent for the next year when both were due

October 12th 1839 Dickinson and wife made an absolute deed to Dickinson for the consideration expressed of \$1500 for the same property

The bill is to foreclose the above mortgage and Larnis & Thompson and other judgement creditors are made parties None but Larnis & Thompson entered their appearance nor is any notice taken of the others in the decree ~~and~~ no appearance is entered for them I suppose they should have been defaulted

On the 3rd of August 1839 Larnis & Thompson recovered a judgement against Dickinson to satisfy which judgement the mortgaged property was sold under execution and bought in for the benefit of Larnis and Thompson and was executed by the sheriff to the purchaser

Defendants contend that the mortgage merged in the deed and let in their judgement which was older than the deed

Complainant to avoid this consequence introduces the evidence of Dickinson & Bestor - Dickinson not a competent witness He gave a general warranty deed which he can only sustain by showing that a merger did not take place and his evidence being out of the case there is a perfect failure of proof The rule is that a merger did take place but Bestor so far from proving it did not take place seems to prove that it did He does not know whether the mortgage was cancelled or not but does know that the whole matter was compromised and the

land taken for the money with sundry provisions regarding the sale of it. That the parties considered it cancelled it is only necessary to refer to the fact that the rate of interest was changed from twelve per cent to nine. A very natural difference for a large sum and thirteen or fourteen years to run.

The testimony of Dickinson and Bester is nowise reconcilable nor is Bester's reconcilable with itself and both according to their own showing were in a situation to be liars and to lean to Frank's side. They were both existing to delay or defeat creditors. I was an old acquaintance of F. consulted with him and his attorneys but instead of making public what it was so important he should do ^{to wit} that a merger was not to take place he refused to communicate to plaintiff's attorney. He says the papers were left with Kettelle but it turns out that Kettelle was his friend and relative and was equally responsible with him to plaintiff. This was a dilemma but Bester gets out of it by swearing that the papers were left with him. I says the papers were "to be kept by him [Kettelle] for the benefit of Frank & myself and to be used by either party if necessary". If the mortgage and note were not cancelled what right had D. to the control of them. D. swears to five years but the written article drawn up by Bester says three years.

Bester says the "mortgage & note & agreement were left with me, I was to act as the agent of both of the parties and sell the property & collect the money". Again they "were left with me so that I could make endorsements on the note if any money was received". But the agreement granted by him showed that as between themselves neither had power to sell. The title absolute was in Frank and he only agrees that if Dickinson should be desirous of selling and he should prevent that D. should have a credit for the amount that might have been realized and he agrees for himself he will not sell without

submitting to an appraisement and allowing D. the amount of the appraisement however small the sum for which it might be sold. D. owed F. a large sum of money which was over due, his property liable to be sold for it. It was bearing interest at 12 per cent, he got three years indulgence - got the interest reduced one fourth, got an agreement that he may sell or have allotted whatever any one would say he would give - prevents a foreclosure, gets our obligation from F. that he would not sell without submitting the property to appraisement, and allowing whatever it should be appraised to be worth, and D. to have a right to lease any of the property in Peoria, and have all he could make in that way; and yet the witness says "Dickinson thought he had made a shameful sacrifice," "and Frank [who had surrendered nearly all power in the premises] then said [by of appeasing D.] he would trust to my discretion in selling and disposing of the property."

The decree is wrong at any ^{rate}, for beside the impropriety of making ~~any~~ disposition by default or otherwise as to some of the defendants, and making a decree for cash, against Mrs D. who never owed any thing, the decree is for too much. If the amount expressed in the mortgage and note was justly due, then at the time of the settlement and date of the deed, D. only owed \$1645.76, instead of 1668.87, and the former sum put upon interest at nine per cent from that time to the date of the decree, would make \$172.94 less than the sum decreed. But as a shrewd man as Mr. H. is known to be, would hardly trick himself as Prestor proves him to have done, in this case, without some pay, it is more reasonable to suppose the sum mentioned in the deed was the true balance between the parties. Then put that sum (\$1500) at interest at six per cent, and you have \$2742.50. But put the same at interest at nine per cent, ~~and~~ as called for

in the agreement and you have \$3363.75 instead
of \$3840.93

The bill is not sustained by the proof. According to
the ~~latter~~ former the arrangement was entered into to secure
the property against ~~prior~~ subsequent judgment creditors but according
to the Dickinson's evidence it was to secure it against prior
judgments

John Frink vs
 Dickinson
 Davis & Thompson & Co

Appeal from
 Equity Decree

"A court of equity will keep an incumbrance or consider it extinguished as will best subserve the purposes of justice and the actual and just intention of the party. It must at all events be an innocent purpose and injurious to no one." "The general rule is that the union of the estates will create a merger unless there be some benevolent purpose or some declared intent to prevent it." *Starr vs Ellis* 6 John Ch. Rep. 395

"We ought as a general rule to follow the principle that in the union of the equitable and legal estates in the same person, the former is merged and extinguished."

Gardner vs Astor 3 John Ch. Rep. 56

"If a person takes the legal estate by mortgage and then by his own act takes the equity of redemption and vests it in himself the estate is discharged from the incumbrance." *John Ch. Rep. 10* by *same case & concern* 246
James vs. Johnson 423. "I believe there is no instance to be found in which the charge has been kept on foot by the court, when third persons have been invited to deal with the party on the legal presumption of merger, and when a fraud would be committed if the merger was not admitted to operate according to the principles of law. *Same case* 424. The policy of the law especially in the recording counties of which the county of Onondaga is one is that the title shall appear of record but by this new scheme of secret assignments of the mortgage after the legal and equitable titles have been united and that union declared of record the policy of the law would be frustrated, and the purchaser would in vain endeavor to guard himself against this springing equity in some assignee. *Same case* 425

I am more and more inclined not to extend equitable refinements upon the plain common law doctrine of merger. They never have been and never ought to be carried so far as to affect a subsequent purchase, ~~as~~ or judgment or mortgage creditor without notice ~~same~~ case 432

"A mortgage is a charge upon the land and whatever would give the money will carry the estate in the land along with it ~~for~~^{to} every purpose. The estate in the land is the same thing as the money due upon it. The assignment of the debt or forgiving it will leave the land after it as a consequence; may it ~~would~~ do it though the debt were forgiven by parol only!" Martin vs Holin 2 Barrow's 346 top paying

In the case of Mills vs Comstock 5 Conn. Ch. rep. 214 where a mortgage was made and added from mortgagor to mortgagee and an assignment and deed from mortgagee the doctrine of merger established and under in the deed preferred to assignee of mortgage though the latter was prior in time

"Without very precise proof to the contrary the presumption is that that the parties intended that the charge should merge in the estate and was settled when the purchase was made. Brunet vs Devinson 5 Conn. Ch. 41

When two or more titles unite in one person they are merged and his subsequent conveyance of one proper all Logan vs Steele 7 Mon 108

"Whuman was properly rejected as a witness. The defendant held under him and whether bound to protect the defendant or not he was interested in the possession which could not be supported by his testimony. Jackson vs Slack house 1 Cow. 126

Jan 19-27

Jarvis & Thompson

vs

John Grink

Brief