

No. 14723

Supreme Court of Illinois

Moers

vs.

Dixon.

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STATE OF ILLINOIS,
Appl. T. 1864
SUPREME COURT,

THIRD GRAND DIVISION.

(Reported)

No. 206

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1864

For the Hon Judge Walker

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In the Supreme Court of Illinois,
THIRD GRAND DIVISION.

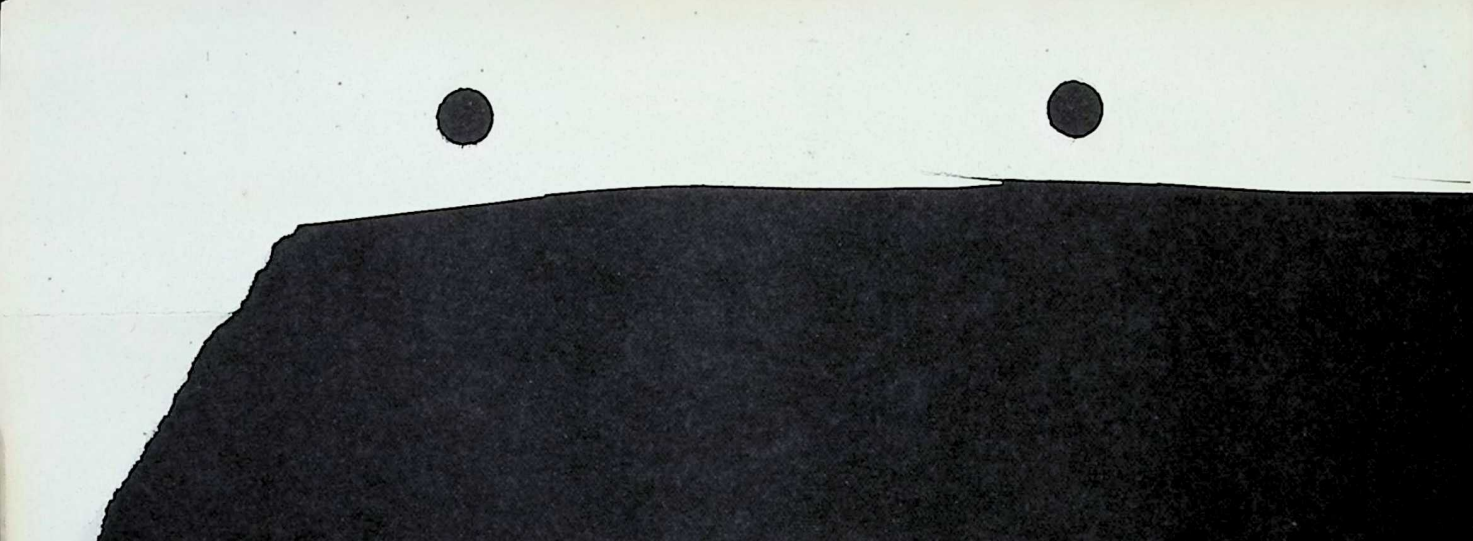
APRIL TERM, A. D. 1864.

JAMES M. MOOERS and CHARLOTTE M. MOOERS,
Plaintiffs in Error,
vs.
CHARLOTTE C. DIXON AND THERON CUMINS,
Defendants in Error.

STATEMENT OF THE CASE AND BRIEF.

At the November term of the Lee county Circuit Court, for the year 1861, defendant in error, Charlotte C. Dixon, obtained a decree, *pro confesso*, against the plaintiffs in error, impleaded with the defendant in error, Theron Cumins, foreclosing two mortgages executed by plaintiffs in error; one of which mortgages bears date November 29th A. D. 1855, and the others, June 9th, A. D. 1858; all the mortgaged premises, except a portion theretofore released, were decreed to be sold, if the money found due was not paid in 30 days from date of decree. Said premises were subsequently sold, by special master appointed by the court. At the expiration of fifteen months from sale, said special master executed deed of premises sold, to the complainant in the foreclosure suit, and one of the defendants in error in this suit, Charlotte C. Dixon, she being the purchaser at such sale. At the November term of the Lee county Circuit Court, for the year 1863, said Charlotte C. Dixon procured said court to order that a writ of possession issue to put her in possession of all the premises so sold, plaintiffs in error having refused to give possession. Whereupon the plaintiffs in error filed their bill, in said court, to enjoin the suing out of the clerk's office of such writ of possession, and to set aside such sale and deed, and the orders made by said court, in said ^{suit} subsequent to said decree, and have such premises sold subject to ~~this~~ homestead exemption in said premises. The first named mortgage was made to secure a note for \$2500 given for money loaned subsequent to the 4th day of July, A. D. 1851, and the indebted-

ness was not incurred for the purchase or improvement of the mortgaged premises; and the second mortgage, bearing date June 9th, A. D. 1858, and subsequent to the homestead act of 1857, was given as additional security to said debt, and neither mortgage contained any release or waiver whatever, of ^{the} ~~this~~ homestead right of exemption, either in the body of the mortgage or the acknowledgment of same. The bill of complaint, filed to foreclose said mortgages, did not set up or claim that the plaintiffs in error, or either of them had, in and by said mortgages or otherwise, released or waived their homestead right in said premises, nor ask or pray, that this homestead right therein should be foreclosed and sold, or that said mortgages should, in any manner, be declared a lien upon the same. It is alleged in the bill, and admitted in answer of defendant in error, Dixon, and in stipulation filed on the hearing, that at the times of the execution of the mortgages, plaintiff in error, James M. Mooers, was the owner of mortgaged premises, and was a householder, having a family, consisting of his wife, said Charlotte M. Mooers and children; and that there was then, and is now, situated upon a part of said premises, a dwelling house and out buildings, which dwelling house and out buildings, at the time of the execution of said mortgages, and loan of the said money, said James W. Mooers with his said family did, and from thence hitherto up to the present time, occupied as a residence and homestead, and that the lot of ground on which said dwelling house and other buildings are situated, is a part of, and was included in, the premises embraced in the decree of foreclosure and sale, and in the sale made by said special master; and that the said plaintiffs in error have not waived or released their homestead right therein, otherwise than by the execution of said mortgages, and by the effect of said decree of foreclosure, and the proceedings thereunder; that the whole of the mortgaged premises—except those described in schedule "C" attached to bill—were by decree of foreclosure ordered to be sold, without ordering them to be sold subject to the homestead exemption of plaintiffs in error therein, and that the sale was made by said special master without summoning a jury to appraise and set off so much of same—including the dwelling house—as in their opinion would be worth \$1,000, &c., &c., pursuant to the statute in such case made and provided; that the premises sold, at the time of the sale, were worth \$4,000.00; that the mortgages were executed as alleged in bill, and that mortgage debt was for money loaned subsequent to 4th day of July, A. D. 1851, and was not incurred for the purchase or improvement of mortgaged premises.





IV.

of foreclosure. orders all and singular the premises in such mortgage

For The Hon Judge P. H. Walker

Jameson & Morse, Printers, Chicago.

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

JAMES M. MOOERS & CHARLOTTE M. MOOERS, PLFF'S IN ERROR,

vs.

CHARLOTTE C. DIXON & THERON CUMINS, DEF'TS IN ERROR.

POINTS AND AUTHORITIES OF PLAINTIFFS IN ERROR.

I.

The statute exempting homesteads from sale, &c., provides that, in addition to the property theretofore exempt from sale under execution, "There shall be exempt from levy and forced sale, under any process or order from any court of law or equity in this State, for debts contracted from and after the fourth day of July, A. D. 1851, the lot of ground and the buildings thereon occupied as a residence, and owned by the debtor, being a householder, and having a family, to the value of one thousand dollars. And no *release* or *waiver* of such exemption shall be valid unless the same shall be in *writing, subscribed by such householder*, and acknowledged in the same manner as conveyances of real estate are by law required to be acknowledged. And the act of 1857, amending the homestead act of 1851, makes the signature and acknowledgment of the wife of the householder, if he have one, to such release or waiver in writing requisite, as a condition to the alienation of the homestead."

Scates T. & B.'s Stat., 576, Sec. 1 and p. 577.

And although the court, in a suit to foreclose a mortgage, in the mortgaged premises of which there is a homestead interest under the statute unreleased or waived by the mortgagor as provided by the statute, and not claimed in the bill filed to foreclose such mortgage, and not found or declared in the decree foreclosing the same, (Such decree being a decree *pro confesso*) to have been so released in its said decree

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

JAMES M. MOOERS AND CHARLOTTE M. MOOERS, <i>Plaintiffs in Error,</i>	}
VS.	
CHARLOTTE C. DIXON AND THERON CUMINS, <i>Defendants in Error.</i>	

BRIEF FOR DEFENDANTS IN ERROR.

The Plaintiffs in Error filed an original bill in the Court below to injoin the execution of a writ of possession directed to be issued in pursuance of a former decree made between the same parties in a suit to foreclose certain mortgages wherein said Charlotte C. Dixon was complainant, and the Plaintiffs in Error, impleaded with Theron Cumins, were defendants; and to vacate such former decree upon the ground that the same directed the whole of the mortgaged lands to be sold, without reserving to the plaintiffs in error their alleged homestead interest therein.

The mortgage upon the property claimed as a homestead was executed in November 1855, and therefore this cause is wholly unaffected by the act of 1857.

I.

Nothing is alleged in the bill showing that the Circuit Court of Lee County, in which the decree for the sale of the mortgaged lands was made, did not have jurisdiction of the parties and the subject matter of that suit. On the contrary, such jurisdiction was affirmatively shown.

It cannot be seriously claimed that the Circuit Court did not have jurisdiction of the subject matter of the foreclosure suit; that is, the *land* in question, together with every interest therein whatsoever, of the parties thereto. The bill to foreclose these mortgages alleged that Mooers and his wife mortgaged the whole of the property in question to Mrs. Dixon, to secure the note held by her, "together with all and singular the tenements and hereditaments, privileges and appurtenances thereunto belonging, with the rents, issues and profits thereof; *and also all the estate, right, title, interest and claim whatsoever, in law as well as in equity,*" which the said Mooers and wife had in and to the said premises, in the manner expressed in the mortgages, which are made a part of the bill.

This language is clearly sufficient, *as a question of pleading*, to bring the whole of the land in question, and every interest the defendants in the foreclosure suit had therein, before the court for its action; and if enough was shown to require the court to *act* upon the subject matter of the suit, then the court had jurisdiction, or, in other words, "was properly set to work."

Young vs. Lorain, 11 Ill. 635.

No ground is left for the assumption made in the brief for the plaintiffs in error, that their "homestead interest in the mortgaged premises was not before the court, or adjudicated by it."

This being the case, (the court having jurisdiction of the parties and the subject matter, however erroneous the decree of foreclosure may be, it can only be avoided by a direct proceeding for that purpose, by writ of error or bill of review; and it cannot be attacked for error when brought in question by an original bill in another and independent proceeding, except for fraud in obtaining the decree.

Weiner vs. Heintz, 17 Ill. 260.
Murray vs. Murray, 6 John. Ch. R. 60.
Gelston vs. Hoyt, 1 John. Ch. R. 543.
Elliot vs. Pell, 1 Paige Ch. R. 263.

"Upon this question of jurisdiction," the court say in the case of Curtis vs. Brown, 29 Ill., "It is of no importance whether the reasons assigned for the action sought were sufficient to justify the decree or not, but the question is, *was it possible for a state of facts to exist* which would justify the court" in making the decree; and if so, the decree was held to be obligatory upon the *wife* as well as the husband.

The courts of this state have uniformly acted upon this principle. In the case of Young vs. Lorain, 11 Ill. 637, the rule is laid down as follows: "When the court has jurisdiction of the cause and parties, and the court is authorized to hear, it follows as a necessary consequence, that it

In the Supreme Court of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

JAMES M. MOOERS and CHARLOTTE M. MOOERS, <i>Plaintiffs in Error,</i>	}	Error to Circuit Court of Lee County.
<i>vs.</i> CHARLOTTE C. DIXON and THERON CUMINS, <i>Defendants in Error.</i>		

ABSTRACT OF RECORD.

Record p.

1 *Placita.*

2 Bill of complaint filed by plaintiff in error, in said Circuit Court of Lee county, December 26th, 1863, against the defendants in error, alleges,

That, on or about the thirteenth day of November, A. D. 1861, Charlotte C. Dixon, one of defendants in error, filed in said Court, on the chancery side thereof, her bill of complaint against plaintiffs in error, and Theron Cumins, one of the defendants in error, to foreclose two mortgages executed by plaintiffs in error, one of which bears date November 29th, A. D. 1855, and copy of which, together with lands therein described, is attached to said bill, and marked Exhibit "A," and made a part of said bill.

3 That the other mortgage bears date June 9th, 1858, a copy of which, together with a description of the lands therein described, is attached to said bill, and marked Exhibit "B," and made a part of said bill.

3 That said mortgages were executed and delivered by plaintiffs in error, to said Charlotte C. Dixon, to secure payment of a promissory note given by plaintiff in error, James M. Mooers, November 29th,

1855, for twenty-five hundred dollars, payable to said Charlotte C. Dixon, five years after the date thereof, with interest thereon at the rate of ten per-cent. per annum, payable annually, for money loaned of said Charlotte C. Dixon, by plaintiff in error, James M. Mooers, at the time of the execution of said note and first above mentioned mortgage, and long subsequent to the fourth day of July, A. D. 1851, and that said debt or liability was not incurred for the purchase or improvement of the premises in said mortgage described and set forth.

That on the 29th day of November, A. D. 1855, at the time of the execution of the first above mentioned mortgage, and for more than two years prior thereto, the plaintiff in error, James M. Mooers, was the owner of the lands in the first above mentioned mortgage described, and was a house holder, having a family, consisting of his wife, said Charlotte M. Mooers and children, and occupied said premises as his homestead, on which said premises was situated a dwelling house, wood-shed, smoke-house, and other out-houses, which said dwelling house and other buildings situated on said premises, the plaintiff in error, James M. Mooers, together with his said family, on the said 29th day of November, A. D. 1855, and for more than two years prior thereto, and from thence hitherto up to the time of the filing of said bill, and then occupied as a residence, and that said mortgage so executed and bearing date November 29th, A. D. 1855, contained no release or waiver of the right of the plaintiffs in error, to a homestead in said mortgaged premises, and that said plaintiff in error, James M. Mooers, had never released or waived such right in writing subscribed by him.

That on or about the 7th day of June, A. D. 1855, the plaintiff in error, James M. Mooers, became the owner of the lands and premises described in the second above described mortgage, bearing date June 9th, A. D. 1858, and that said premises were attached to and formed a part of the premises described in the first above described mortgage, executed and bearing date November 29th, A. D. 1855, and in connection with the premises embraced in said mortgage so executed, and bearing date November 29th, A. D. 1855, were on the said 8th day of June, A. D. 1858, and for more than three years prior thereto, and from thence hitherto up to the time of the filing of said bill of complaint of the plaintiffs in error, and then were occupied by the plaintiff in error, James M. Mooers and his said family as a homestead, he with his said family occupying the said dwelling house and out buildings thereon situated, as a residence; and that said mortgage so executed and delivered on the 9th day of June, A. D. 1858, contained no release or waiver whatever

of the plaintiffs in error right to their said homestead in said premises, nor had the plaintiffs in error, or either of them, ever released or waived such right in writing, signed and acknowledged by them.

6 That the plaintiffs in error, did not appear and answer said bill of complaint of the said Charlotte C. Dixon, inasmuch as said bill of complaint did not set up or claim that plaintiffs in error, or either of them, had in, and by said mortgages, thereby sought to be foreclosed or otherwise released, or waived their right to the exemption from levy and forced sale, under any process or order from any court of law or equity in this State of their right to their homestead interest in said premises, pursuant to the statute in such case made and provided, and also, inasmuch as the said bill of complaint of the said Charlotte C. Dixon, did not ask or pray that the said homestead right of the plaintiffs in error, in the said mortgaged premises should be foreclosed, or that said mortgages should, in any way or manner be declared a lien upon the same, and that the plaintiffs in error not appearing and answering said bill of said Charlotte C. Dixon, the plaintiffs in error were accordingly defaulted, and the said bill of complaint taken as confessed as against them, as well as the defendant in error, Theron Cumins, at the November Term of said Circuit Court of Lee county, for the year 1861.

7 That said Charlotte C. Dixon at the November Term of said Circuit Court of Lee county, for the year 1861, without the knowledge or consent of the plaintiffs in error, or either of them, by her solicitors, caused and procured a decree or order to be made by the said court, ordering and decreeing that all and singular the premises described and set forth in said mortgages, and mentioned in said bill of complaint of said Charlotte C. Dixon, except the premises described in schedule attached to the bill of the plaintiffs in error, and marked exhibit "C.," and made a part of their said bill, or so much of said premises as might be sufficient to raise the amount due to said Charlotte C. Dixon, for the principal, interest and costs in said cause, be sold at public auction by and under the direction of a special master, one Henry B. Folke, unless the defendants in said foreclosure suit, or some of them, within thirty days from the entry of said decree, paid to said Charlotte C. Dixon, or her solicitors, the amount of principal and interest by said decree found due, together with the costs of said suit, a copy of which said decree is attached to the bill of complaint of the plaintiffs in error, and made a part of the same.

8

That in and by said decree, no provision whatever was made, that such sale should be made subject to the right of the plaintiffs in error, to their homestead exemption in said premises, and that although at the time

of the procuring of said decree, and long before the filing of said bill of said Charlotte C. Dixon, it was well known to her and her solicitors, that said plaintiff in error, James M. Mooers, occupied said premises as his homestead as aforesaid, and still claimed and insisted on his right to retain his homestead interest in said premises to the extent allowed by the statutes of this State, yet neither said Charlotte C. Dixon, nor her solicitors, while procuring said decree made any discovery to said court, of the right or claim of the plaintiffs in error, to their homestead interest in said premises, which act of concealing or not discovering to said court at the time of procuring such decree, the fact that the plaintiffs in error had a right to have, and claimed to have exempted from sale under such decree, his homestead interest in said premises, pursuant to the statute in such case made and provided, was as against the plaintiffs in error, and ought to be treated in equity as a fraud.

That on the fifteenth day of February, A. D., 1862, said defendant in error, Charlotte C. Dixon, or her solicitors, or one of them, caused all and singular said premises in said mortgages described, except the lands described in said schedule "C," and which had been released from said first described mortgage by said Charlotte C. Dixon, long prior to the filing of her said bill, and that in consideration thereof the plaintiffs in error executed and delivered said second above described mortgage as additional security for the payment of said notes, to be sold by said special master, Henry B. Foote, and that at such sale the said Charlotte C. Dixon, complainant in said foreclosure suit, became the purchaser thereof for the sum of \$3,653.24-100, the amount of principal, interest and costs found due, and costs of sale, and received a master's certificate therefor; that in such sale was included the lot of ground, and the said dwelling house and out-buildings situate thereon, and occupied by the plaintiff in error, James M. Mooers, and his said family, as a residence as aforesaid.

That at the time of said sale, the said premises were actually worth more than one thousand dollars, and in the belief of the plaintiffs in error, said premises at the time of such sale were actually worth \$6.500, over and above the said sum of one thousand dollars, and that prior to said sale no jury was summoned by said special master to appraise said premises, and if in their said jury's opinion, said property could be divided without injury to the interest of the parties to said cause, to set off so much of said premises, including the said dwelling house, as in their opinion should be worth one thousand dollars, nor was any such appraisal made, or pretended to be made, and that no portion of said premises was set off as a homestead to the plaintiffs in error, or either of them, pursuant to the statute in such case made and provided.

- 11 That at the February term of said court for the year 1862, without the knowledge or consent of the plaintiffs in error, or either of them, said Charlotte C. Dixon caused an order to be made by said court confirming the report of said special master of such sales.

That on or about June 29th, 1863, without the knowledge or consent of the plaintiffs in error, or either of them, no redemption having been made from such sale, a master's deed of all and singular said premises so sold, was executed and delivered to said Charlotte C. Dixon; that at the June term of said court for the year 1863, without the knowledge or consent of the plaintiffs in error, said Charlotte C. Dixon caused an order to be made by said court approving the execution of such deed.

- 12 That in November, A. D. 1863, said Charlotte C. Dixon demanded of the plaintiffs in error immediate possession of all said premises so sold, and afterwards, at the November Term of said Court for the year 1863, without the knowledge or consent of the plaintiffs in error, or either of them, caused an order to be made by said Court that a writ of possession or assistance be issued to the Sheriff of Lee county, to put the said Charlotte C. Dixon in possession of all of said mortgaged lands so sold.

- 13 That Defendant in error, Theron Cumins, was a nominal party to said foreclosure suit, having no interest in said suit otherwise than as a judgment creditor of the plaintiff in error, James M. Mooers, and acted in concert with said Charlotte C. Dixon in procuring said decree and sale and subsequent orders of said court.

- 14 That said Charlotte C. Dixon, combining and confederating with said Theron Cumins and divers other persons unknown, threatens to sue out said writ of possession or assistance, to dispossess and eject the plaintiffs in error from their homestead in said premises, under and by virtue of said decree, sale and subsequent orders of said Circuit Court, claiming that
15 inasmuch as the plaintiffs in error did not appear and answer, and claim that in and by said mortgages they had not released or waived their said homestead interest in said premises, pursuant to the statute in such case made and provided, and that their said interest in said premises should not be decreed to be sold, and the same should not be sold, under and by virtue of any decree rendered in said cause, except pursuant to the statute in such case made and provided, the complainants in error are now estopped from claiming and demanding their said homestead interest in said premises, and that she is now the legal and equitable owner of the

same, and has lawful right to eject from and dispossess plaintiffs in error of the same.

- 15 That the bill of complaint of Charlotte C. Dixon, in said foreclosure
suit, contained no allegation, and did not set up or claim that plaintiffs
in error, or either of them, had in and by said mortgages, or either of
them, in any manner released or waived their said homestead interest in
16 said mortgaged premises, or ask or pray that plaintiffs in error said in-
terest in the same, as such, should be in and by any decree of said Circuit
Court, foreclosed and sold, and that plaintiffs in error, by their not ap-
pearing and answering said bill of complaint, confessed nothing more
than was contained in said bill of complaint, and that the procuring said
decree of sale of said premises to be made without having said decree
direct that such sale should be made subject to the right of the plaintiffs
in error to a homestead exemption in said premises, when they had said
homestead interest in said premises, and had not released but still re-
sided thereon, as aforesaid, and claimed such homestead interest therein,
17 was, as against the plaintiffs in error, in equity, a fraud; that the sale of
said premises was illegal and void.

- Prays that Charlotte C. Dixon and Theron Cumins may be made
defendants, and answer said bill without oath: that the sale of the said
premises so made on the said fifteenth day of February, A. D. 1862, and
18 said order confirming said sale, and the master's report of the same, and
the said deed so executed and delivered by said master, as aforesaid, and
the said order of said Circuit Court approving and confirming the execu-
tion of said deed, and also the said order of said Circuit Court directing
and ordering a writ of possession or assistance to be issued to the Sheriff
of said Lee county, to execute the order in said decree for possession, and
to put the said Charlotte C. Dixon in possession of all of said mortgaged
lands so sold under said decree, may be set aside, canceled, and for
nothing held: that the decree of said Court ordering and directing all
and singular said premises to be sold, as aforesaid, may be set aside and
reversed, and the said premises may be by the said Court ordered and
decreed to be sold, subject to said right and claim of the plaintiffs in
error to a homestead exemption in said premises, pursuant to the statute
in such case made and provided: that in the meantime said Charlotte C.
Dixon may be restrained from ~~serving~~^{leaving} out of the office of the Clerk of
said Court said writ of possession or assistance, and from in any way
19 enforcing the execution of the same, and from instituting a proceeding
in any new or other action at law to dispossess and eject plaintiffs in
error, or either of them, from said premises, or any part thereof, until

the further order of said Court, and for general relief: that a writ of injunction may issue, as prayed for, and for summons.

20 Jurat of said bill in usual form.

21 to 32 Exhibit "A," referred to in said bill as a copy of the first above described mortgage and premises therein described, which mortgage contains no release or waiver of homestead interest.

Exhibit "B," referred to in said bill as a copy of the second above described mortgage and premises therein described, which mortgage contains no release or waiver of homestead interest.

33 to 43 Exhibit "C," referred to in said bill as containing lands released from said first above described mortgage, prior to the execution of said second above described mortgage, and as excepted from said sale.

Exhibit "D," referred to in said bill as the decree of sale and foreclosure.

44 Exhibit "E," referred to in said bill as order approving the sale made by special Master.

45 Exhibit "F," referred to in said bill as order approving execution of deed by special Master.

46, 47 Exhibit "G," referred to in said bill as order directing a writ of possession or assistance to issue to the Sheriff of Lee county, to put Charlotte C. Dixon in possession of said premises.

48 Summons issued on the filing of bill of plaintiffs in error to Sheriff of Lee county.

49 Return by Sheriff of Lee county of service of defendant, Theron Cumins.

50 Answer of Charlotte C. Dixon; admits the filing of her bill of complaint in Lee county Circuit Court on the 13th day of November, A. D. 1861, to foreclose the two mortgages set out as exhibits to the bill of complaint of the plaintiffs in error against the plaintiffs in error and said Theron Cumins, as alleged in bill of complaint of the plaintiffs in error: that said mortgages were executed by plaintiffs in error to said Charlotte C. Dixon, to secure the payment of the said promissory note in the bill

of the plaintiffs in error specified: that the consideration of said note was the sum therein stated and loaned by Charlotte C. Dixon to James M. Mooers, and that it was not given for the purchase money or improvement of said premises.

51 Avers that her said bill of complaint so filed in said Court, as aforesaid, was in the usual form, and contained the usual allegations of bills in Chancery to foreclose mortgages: that it claimed and avered that the complainants in that suit, by virtue of said mortgages, mortgaged the whole of said land and premises to her, in fee, to secure the payment of said note and interest thereon, together with all and singular the tene-ments, hereditaments, privileges and appurtenances thereunto belonging, with the rents, issues and profits thereof; and also all the estate, right, title, interest and claim whatsoever, in law as well as in equity, which the said complainants (plaintiffs in error) had in and to the said premises, in the manner so expressed in the said mortgages.

52 That said bill so filed by her contained the usual prayer for a sale of the whole of the mortgaged premises to pay the mortgage debt, and for foreclosure of the equity of redemption of the defendants therein, and a prayer for general relief; that upon the filing of said bill a summons was duly issued and duly served on the said plaintiffs in error, more than ten days before the first day of the November term of said court, for the year 1861.

Admits that said mortgages were acknowledged and recorded as alleged in bill

Admits that complainants with their family occupied some portion of said premises as a homestead, as stated in the bill, but denies that they have ever occupied the whole of said premises as a homestead, and denies that the same lie together in one contiguous tract; admits that complainants did not appear and answer her said bill, and that her said bill was taken as confessed; that a decree of foreclosure, including an order for possession, was rendered thereon, and that Exhibit "D," attached to bill of the plaintiffs in error, is a correct copy of same. Denies knowledge at time of taking such decree, that plaintiffs in error claimed and insisted on a right to a homestead in said premises.

53 Admits that said mortgaged premises, except lands described in Schedule "C," were sold under said decree by said Special Master, at the time and in the manner alleged in the bill, and that she became the purchaser for \$3,653.34-100, and received a certificate of sale therefor, as

alleged in bill, and that the said sale included (with other lands) the lot of ground and house and outbuildings thereon, occupied as a residence by the plaintiffs in error; that said cause being continued on the docket of said court, she procured an order of said court approving such sale, in open court.

54 Admits execution by said Special Master of a deed to the premises so sold to her, on the 29th day of June A. D. 1863, and the procuring subsequent order of said court approving same, but claims said cause still remained on said court's docket, and was procured in open court.

55 Admits she demanded possession of the premises sold on the sixth of November, A. D. 1863, but produced a certified copy of said decree, certified copy of the said order, approving such sale, and the said Master's deed for said premises sold as prescribed by said decree, in the order for possession, and left a copy of such decree and order for possession, and order approving such sale with plaintiffs in error; but that they refused to surrender possession of said premises; and that at the November term of said court, for the year 1863, said cause being still continued on the docket of said court; she procured said order of said court directing a writ of possession to issue, to put her in possession of said premises, as alleged in the bill.

Denies, on information and belief, that said lands so sold under said decree, were worth \$6,500, over and above said alleged homestead interest of \$1,000.00, but admits that the whole of said premises are worth \$4,000.00.

58 Denies all unlawful combination and fraud charged in bill.

62, 63 Exceptions of the plaintiffs in error to parts of answer of Charlotte C. Dixon, from number 1 to number 5, inclusive, for impertinence.

65 The decree sets forth that complainant's exceptions, from one to five inclusive, to defendant Charlotte C. Dixon's answer, be sustained, and exceptions six and seven be overruled. That said cause was set for hearing by the agreement of the respective parties made in open court, upon the complainant's bill and exhibits, the answer of defendant, Charlotte C. Dixon, and the demurrer of defendant Cumins, and upon the stipulation signed by the solicitor for the complainants as well as the solicitor for the defendant Dixon, to be used as evidence in said cause, which
66 said stipulation is in the words and figures, following, that is to say :

STATE OF ILLINOIS,	}	<i>Lee County Circuit Court, February Term,</i> <i>A. D. 1864.</i>
COUNTY OF LEE.		
JAMES M. MOOERS AND	}	
CHARLOTTE M. MOOERS,		
VS.		
CHARLOTTE C. DIXON AND		
THERON CUMINS.		

On the hearing of the above entitled cause for the purposes of the hearing and trial of said cause, it is admitted by the said defendant, Charlotte C. Dixon, that the promissory note given by said complainant, James M. Mooers, and secured by the mortgages referred to in said complainant's bill of complaint, was given for money loaned to said James M. Mooers by this defendant, subsequent to the 4th day of July, A. D. 1851, and the said indebtedness or liability therein expressed, was not incurred for the purchase or improvement of said premises in said deeds of mortgage described and set forth.

67 That at the time of the execution of said mortgages, said complainant, James M. Mooers, was the owner of the lands in said deeds of mortgage described, and was a householder, having a family consisting of his wife, said Charlotte M. Mooers, and children, and that there was then and is now situated upon a part of the said premises, a dwelling house, wood-shed, smoke-house, and other out-houses, and which said dwelling house and other buildings at the time of the execution of said mortgages and the loan of said money as aforesaid, the said complainant, James M. Mooers, together with his said family did, and from thence hitherto, up to the present time, has occupied as a residence and homestead, and that the lot of ground on which said dwelling-house and other buildings are situated, is a part of and was included in the premises embraced in the decree of foreclosure and sale, and in the sale made by said special mas-

68 ter referred to in said complainant's bill of complaint, and that the said James M. Mooers and Charlotte M. Mooers have not waived or released their homestead right therein, otherwise than by the execution and delivery of said mortgages, and by the effect of the decree for the foreclosure of said mortgages, and the proceedings thereunder, in manner and form as set forth in said bill and answer thereto, by this defendant, filed in this cause. That the whole of said mortgaged premises, except those premises described in schedule "C," attached to said bill by said decree of foreclosure, were ordered to be sold without ordering them to be sold subject to any homestead exemption of said James M. Mooers and Charlotte M. Mooers therein, as set forth in exhibit "D," attached to complainant's bill, and that the sale of said premises was made by the said Henry B. Foake, special master, at the time and in the manner and form set forth in said complainant's bill of complaint, and in pursuance of said decree.

And the complainants, by their solicitor, for the purposes of this hearing and trial admit that the defendant, Charles C. Dixon, demanded of the said complainants the possession of said premises at the time and in the manner stated in her answer, and caused to be produced to said complainants a certified copy of said decree for foreclosure, including the order for possession; also, a certified copy of the order of said court approving such sale; and produced to said complainants the said special master's deed, and left with said complainants copies of such decree and order as stated in the defendant's answer, and that the complainants refused to deliver up the possession of said premises accordingly, as stated in said answer.

JAS. K. EDSSELL,

Sol. for Def't, Dixon.

GEO. P. GOODWIN,

Complainant's Solicitor.

Dixon, Feb. 23d, 1864.

69 And also upon the summons return of the sheriff, in the foreclosure suit referred to in the pleadings, whereby the defendants in said foreclosure suit, and complainants in this suit, were duly served with process in said foreclosure suit, more than ten days before the first day of the November term, A. D. 1861, of said Lee county Circuit Court, and upon the bill of complaint and exhibit attached thereto in the foreclosure suit referred to in the pleadings read in evidence on the part of said defendant Dixon, which bill of complaint is in the words and figures following to wit:

70 STATE OF ILLINOIS, } ss. *In the Lee County Circuit Court of the*
LEE COUNTY. *November Term, A. D. 1861.*

To the Hon. W. W. Heaton, Judge of said Court, in Chancery sitting:

Your oratrix, Charlotte C. Dixon, of the town of Grand Detour, county of Ogle, complaining, shows unto this court, that on the twenty-ninth day of November, A. D. 1855, James M. Mooers, of the town of Dixon, in the county of Lee, for value received, made, executed and delivered unto your oratrix his certain promissory note, in writing, bearing date on the day and year aforesaid, and thereby promised to pay to the order of your oratrix, five years after the date thereof, the sum of twenty-five hundred dollars, with interest annually at the rate of ten per cent. per annum, the consideration of said note being for money loaned said Mooers by your oratrix, to wit: the sum of twenty-five hundred dollars. And the said James M. Mooers and Charlotte M. Mooers, his wife, to secure the payment of the principal and interest mentioned in said promissory note, did, at the same time, execute under their hands and seals, and deliver to your oratrix a mortgage bearing even date with said note, and conditioned for the payment of said sum of twenty-five hundred dollars, with the interest thereon, according to the conditions of the said note, by which the said mortgagors mortgaged unto your oratrix in fee certain lands and real estate, a description of which is contained in a copy of said mortgage deed hereto annexed, marked exhibit "A," to which your oratrix would refer for greater certainty herein, and prays the same may be taken and regarded as a part of this her bill of complaint; and which said mortgage was duly acknowledged, and was afterwards recorded as a mortgage in the Recorder's office of said Lee county, on the sixth day of December, A. D. 1855, in Book "P," pages 38, 39, 40 and 41, the same having been duly filed for record in the Recorder's office, on the day and year last aforesaid.

And your oratrix further shows unto your Honor, that afterwards, to-wit, on the ninth day of June, A. D. 1858, the said James M. Mooers and Charlotte M. Mooers, his wife, in order to further secure the payment of the said promissory note, and as additional security thereto, under their hands and seals executed and delivered to your oratrix a certain other mortgage, bearing date the day and year last aforesaid, in like manner conditioned for the payment of the said sum of twenty five hundred dollars, with interest at ten per cent. per annum, payable annually, according to the tenor and effect of said promissory note, by which the said mortgagor mortgaged unto your oratrix, in fee, certain other lands and real estate, a description of which is contained in a copy of said mortgage deed hereto annexed, and marked exhibit "B," to which your oratrix would refer your Honor for greater certainty herein, and

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prays the same may be taken and regarded as a part of this, her bill of complaint; and which said mortgage was duly acknowledged, and was afterward recorded as a mortgage in the Recorder's office, in said Lee county, on the ninth day of June, A. D. 1858, in book "H" of Mortgages, pages 632-3-4, the same having been filed for record in the Recorder's office on the day and year last aforesaid, as by the said mortgage and the certificates of acknowledgment, and of the recording aforesaid indorsed thereon, and ready to be produced as this Court shall direct, will more fully appear. And your oratrix further shows that the undivided half of the said premises specified in said exhibit "B" is, and was, and was intended to be other than the undivided half of the same premises specified in said exhibit "A," and that the two descriptions, when taken together, were intended to comprise the whole of the said premises. And your oratrix believes and states that the sum of twenty-five hundred dollars, with interest as aforesaid, from the 29th day of November, A. D. 1857, remains due and unpaid to your oratrix.

And your oratrix believes and states that Theron Cumins has, or claims some interest in the said mortgaged premises, or some part thereof, as purchaser, mortgagee, judgment creditor, or otherwise, which interest, if any, has accrued subsequent to the lien of the mortgages of your oratrix, and are subject thereto.

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Your oratrix therefore asks the aid of this Court in the premises, and that the above named James M. Mooers, Charlotte M. Mooers and Theron Cumins, the defendants in this suit, may be summoned to appear before this honorable Court, on the Chancery side thereof, and answer this, the bill of your oratrix, according to the rules and practice of the said Court, without oath, their answers on oath being hereby waived, and that the usual decree may be made for the sale of the mortgaged premises aforesaid, and for the payment of the amount due to your oratrix for principal and interest upon the said promissory note, and his costs of this suit; and that the said defendants, and all persons claiming under them, subsequent to the commencement of this suit, and all other persons, although not parties to this suit, who have any liens by judgment or decree upon the mortgaged premises, subsequent to the said mortgage of your oratrix, or any liens or claims thereon by or under any such subsequent judgment or decree, either as purchasers, incumbrancers, or otherwise, may be barred and foreclosed of all equity of redemption in the said premises, unless redeemed in the manner and within the time prescribed by law, and that your oratrix may have such

further or such other relief as the nature of the case may require and shall seem agreeable to equity and good conscience, &c.

JAMES K. EDSALL,

of Counsel.

EDSALL & LACEY,

Solicitors for Complainant.

74 That said exhibits "A" and "B," attached to said bill, so read in evidence, and referred to therein, are the same as, and true copies of, the respective exhibits "A" and "B," attached and referred to in the bill of complaint in this cause.

That the decree in said foreclosure suit, and the proceedings therein, constitute a bar to the relief prayed for by plaintiffs in error.

That the equities are found for the defendant, Charlotte C. Dixon.

That the bill of the plaintiffs in error be dismissed.

That the plaintiff in error, James M. Mooers, pay the costs of suit.

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Certificate of the Clerk.

ASSIGNMENT OF ERRORS.

FIRST. The court erred in not granting the injunction, and rendering a decree for the relief prayed for.

SECOND. The court erred in decreeing the decree in said foreclosure suit, and the proceedings therein constitute a bar to the relief prayed for by the complainants below in their said bill.

THIRD. The court erred in decreeing the equities to be found in favor of said defendant Charlotte C. Dixon.

FOURTH. The court erred in dismissing the complainant's bill.

FIFTH. The court erred in rendering a decree against the complainant below, James M. Mooers, for the costs of said suit.

GEORGE P. GOODWIN,

Att'y for Plaintiff's in Error.

20612

James M. Mours.

vs
Charlotte C. Dixon

Abstract

Filed April 20: 1864

L. Leland

Clerk

1
State of Illinois
Leas County

Pleas in the Leas County Circuit Court, in the twenty second judicial Circuit of the State of Illinois, in a certain matter lately pending in said Court, wherein James M. Moores and Charlott M. Moores were complainants and Charlotte C. Dixon and Theron Cummins were defendants, in a Bill for Injunction.

Be it remembered, that on the 26th day of December A.D. 1863. the said Complainants, by George P. Goodwin, their Solicitor, filed in the office of the Clerk of said Court, their certain Bill of Complaint, which said Bill is in the words and figures following. that is to say;

State of Illinois } See County Circuit Court
County of Lee ss. } of the February Term A.D. 1864

To the Honorable William W. Heaton
Judge of the 22nd Judicial Circuit in & for the
State of Illinois & of said Circuit Court; in chancery
sitting:

Humely complaining show unto your
Honor your orator James M. Mosers & your
oratrix, Charlotte M. Mosers of the County of Lee
and State of Illinois that on or about the thir-
teenth day of November A.D. 1865, one Charlotte C.
Dixon then of the County of Ogle in the State of Illinois,
filed in the said Circuit Court on the chancery
side thereof her certain bill of Complaint against
your orator & oratrix & one Theron Cummins who
were made parties defendants to said bill of Com-
plaint to foreclose two certain deeds of Mortgage ex-
ecuted by your orator & oratrix to the said Char-
lotte C. Dixon by the usual decree of sale of the
premises therein set forth one of which said deeds
of Mortgage bear date the 29th day of November
A.D. 1855 & was acknowledged by your orator & oratrix
before one Solon Cummins a Justice of the Peace
in & for said County of Ogle on the first day of
December A.D. 1855; and Mortgaged certain lands in
said deed of Mortgage particularly described & set
forth, a copy of which said deed of Mortgage
together with said lands therein described & set
forth is hereto attached & marked exhibit "A" and

prayed to be taken and made a part of this your Orator's & oratrix bill of complaint - and the other of which said deeds of Mortgage bore date the ninth day of June A.D. 1858 and was on said ninth day of June A.D. 1858 acknowledged before David Melty as a Justice of the Peace in & for said County of Lee and mortgaged certain lands in said deed of Mortgage particularly described & set forth, a copy of which said deed of Mortgage together with said lands thereon described & set forth is herewith attached & marked ~~schedule~~ exhibit "B" and prayed to be taken & made a part of this your orator's & oratrix bill of complaint.

Your orator & oratrix further show unto your Honor that the said deeds of Mortgage were by your orator & oratrix so executed & delivered to the said Charlotte C. Dixon to secure the payment of a certain promissory note, executed and delivered to the said Charlotte C. Dixon and bearing date the said 29th day of November A.D. 1855 for the sum of Twenty five hundred Dollars and payable to the order of the said Charlotte C. Dixon, five years after the date thereof with interest thereon at the rate of ten per cent per annum payable annually which said note was given by your orator for money borrowed & loaned of the said Charlotte C. Dixon by your orator at the time of the execution & delivery of said note & first above mentioned deed of

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Mortgage as aforesaid and long subsequent to
 the fourth day of July A.D. 1851 and said debt-
 or liability was not incurred for the purchase or
 improvement of said premises in said deeds of
 Mortgage described & set forth. Your orator &
 aratrix further show unto Your Honor that on
 the said 29th day of November A.D. 1855, when
 the said first-above mentioned deed of Mortgage
 was executed as aforesaid and for more than two
 years prior thereto Your orator was the owner
 of said lands in said first-above mentioned deed
 of Mortgage described and was a house holder hav-
 ing a family consisting of ~~his~~ wife the said Char-
 lotte M. Mooers and four children and occupied
 the said premises as his homestead on which
 said premises was situated a dwelling house,
 wood shed, smoke house and other out houses
 which said dwelling house and other buildings
 situated on said premises as aforesaid Your
 orator together with his said family on the said
 29th day of November A.D. 1855 and for more
 than two years prior thereto and from thence
 hitherto up to the present time have occupied
 and now do occupy as a residence, and that said
 deed of Mortgage so executed bearing date the 29th
 day of November A.D. 1855, as aforesaid con-
 tained no release or waiver whatever of your
 orator's right to a Homestead in said premises
 nor has your orator ever released or waived

5 Such right in writing subscribed by your
orator. And your orator and oratrix further
show unto your Honor, that on or about the
7th day of June A.D. 1855 your orator became the
owner of the said lands and premises described
& set forth in the said deed of Mortgage so ex-
ecuted & delivered as aforesaid on the 9th day of
June A.D. 1855 and the same were attached to and
formed a part of the premises described and set
forth in the said deed of Mortgage executed &
bearing date the said 29th day of November A.D.
1855 and in connection with the premises embraced
in the said last-mentioned deed of Mortgage
were on the said 8th day of June A.D. 1858 and for
more than three years prior thereto and from thence
hitherto up to the present time were and now are
occupied by your orator and his said family
occupy as a homestead your orator with his said
family occupying the said dwelling house & out-
buildings thereon situated as a residence as
aforesaid and the said deed of Mortgage so ex-
ecuted and delivered on the 9th day of June
A.D. 1858, as aforesaid contained no release or
waiver whatever of orator & oratrix right to
their said homestead in said premises, nor
have your orator & oratrix or either of them ever
released or waived such right in writing signed
and acknowledged by your orator and oratrix
(Your orator & oratrix further show unto

your Honor that they did not appear and answer^{ed} said bill of complaint of the said Charlotte C. Dixon so filed in the said circuit court as aforesaid in as much as the said bill of complaint did not set up or claim that your orator & oratrix or either of them had in & by the said deeds of Mortgage thereby sought to be foreclosed or otherwise released or waived their right to the exemption from levy and forced sale under any process or order from any court of Law or equity in this State of their right to their homestead interest in said premises, pursuant to the statute in such case made and provided and also inasmuch as the said bill of complaint of the said Charlotte C. Dixon did not ask or pray that your orator and oratrix said homestead right in the said premises should be foreclosed as aforesaid or that the said deeds of Mortgage should in any way or manner be declared a lien upon the same, and your orator and oratrix not appearing and answering said bill they were accordingly defaulted and the said bill of complaint of the said Charlotte C. Dixon taken as confessed as against your orator & oratrix as well as the said tenants, at the ^{said} November Term of said court for the year 1861.

Your orator & oratrix further shew unto your Honor that afterwards to wit at said November

7 Term of said Circuit-Court, for the Year 1867
the said Charlotte C. Dixon, without the knowl-
edge or consent of your orator & oratrix or
either of them, the said cause having been
referred to Henry B. Houke as a special Master
to take proof of the matters in said bill of
complaint contained and the said special
Master having reported to said Court the
amount due on said note and deed of Mort-
gage, came into said Court by her said
solicitors Messrs Edsall & Loey, and caused &
procured a decree or order to be made by the
said Court ordering and decreeing that all and
singular the premises described & set forth in
said deeds of Mortgage & mentioned in said
bill of complaint except the premises des-
cribed in Schedule hereto attached and
marked exhibit "C" and prayed to be made
and taken as a part of this your orator's or-
atrix bill of complaint or so much thereof as
might be sufficient to raise the amount
due to the said Charlotte C. Dixon for the
principal interest and costs in said case
be sold at public auction by & under the
direction of the said Henry B. Houke, Special
Master as aforesaid who was by said decree
or order directed to make such sale, unless
the defendants in said cause or some of them
within thirty days from the entering of said decree

8 paid to the said Charlotte C. Dixon or her solicitors the amount of principal and interest so found due together with the costs in that behalf sustained a copy of which said decree is hereto attached & marked exhibit "D" and prayed to be taken & made a part of this your orator & oratrix bill of complaint.

Your orator & oratrix further show unto your honor that in & by said decree no provision whatever was made that such sale should be made subject ^{the right of} to your orator & oratrix to their homestead exemption in said premises & although as your orator & oratrix aver that at the time of the procuring of said decree and long before the filing of said bill it was well known to the said Complainant - Charlotte C. Dixon and her said Solicitors that your orator occupied said premises as his homestead as aforesaid, and that he still claimed, and insisted on his right to retain his homestead interest in said premises to the extent allowed by the Statutes of this State yet the said Charlotte C. Dixon nor her said Solicitors, while procuring said decree made any discovery to said Court of your orators right or claim to his said homestead interest in said premises which act of the said complainant Charlotte C. Dixon and her said Solicitors in concealing or not discovering to said Court

9 at the time of procuring such decree the fact
that your orator had a right to have and claim
to have exempted from sale under such
decree his homestead interests in said premises
pursuant to the statute in such case made and
provided, was, ^{as} against your orator &atrix,
and ought to be treated in equity as a fraud.
Your orator and atrix further show unto
your Honor, the said Charlotte C. Dixon as one of
~~them~~ her said Solicitors or one of them on the fifteenth
day of February A.D. 1862 caused all and singular
the said premises in said deeds of Mortgage des-
cribed & set forth except the lands described in
^{said} Schedule "C" described as aforesaid, and which
had been released from said first above described
deed of Mortgage by said Charlotte C. Dixon long prior
to the filing of her said bill of complaint as afore-
said, and in consideration thereof your orator &atrix
executed and delivered to said Charlotte C. Dixon
said Second above described deed of Mortgage
as additional security for the payment of said
note) to ^{be} sold sold by the said Henry B. Honke, Spe-
cial Master as aforesaid at the door of the Court-house
in Dixon in said County of Lee and that at such
sale the said Charlotte C. Dixon the complainant in
said cause by her said Solicitor James K. Edsall
became the purchaser thereof for the sum of \$3553.²⁴/₁₀₀
the amount of principal ~~and~~ interest & costs so
found due & costs of said sale and received a

10 Masters certificate therefor and in such sale was included the lot of ground and the said dwelling house and out buildings situate thereon and occupied by your arator and his said family as a residence as aforesaid.

Your arator and aratrix aver that at the time of said sale the said premises were actually worth more than one thousand Dollars and as your arator & aratrix are informed & believe the said premises at the time of such sale were actually worth the sum of \$6500⁰⁰ more & above the said sum of one thousand Dollars and that prior to said sale no jury was summoned by said special Master to appraise said premises, and if in their said jurys opinions the said property could be divided without injury to the interest of the parties to said cause, to set off so much of said premises including the said dwelling house as in their opinion should be worth one thousand Dollars nor was any such appraisement made or pretended to be made, nor was any portion of said premises set-off as a homestead to these complainants or either of them, pursuant to the statutes in such case made and provided.

Your arator & aratrix further shew unto your Honor that afterwards to wit at the February Term of said circuit court for the year 1862 the said Charlotte C Dixon by her Solicitors

11

Messrs Edsall & Lacy without the knowledge or consent of your orator &atrix or either of them caused an order to be made by said court approving & confirming the report of said Special Master of the said sale as aforesaid a copy of which said order is hereto attached & marked exhibit - "E" and prayed to be ^{taken} made a part of this your orator &atrix bill of complaint.

Your orator ^{&atrix} further shew unto your Honor that afterwards on or about the 29th day of June A.D. 1863 without the knowledge or consent of your orator &atrix or either of them, fifteen months having elapsed since the time of such sale and no redemption having been made from such sale the said Charlotte C. Dixon by her said Solicitor James K. Edsall caused the said Henry B. Foulke such Special Master to execute and deliver to her a Masters deed of all & singular the said premises ~~wherein~~ & by virtue of such sale she the said Charlotte C. Dixon being at such time still the holder of such certificate of such sale, and afterwards at the June Term of said Circuit Court for the year 1863 without the knowledge or consent of your orator &atrix or either of them the said Charlotte C. Dixon by her said Solicitor James K. Edsall caused an order to be made by said Court approving & confirming the execution of such deed, a copy of which said order is hereto attached and marked exhibit -

12 "I" and prayed he ^{testify} made a part of this your arator
& aratrix bill of complaint-

Your arator & aratrix further show unto
Your Honor that some time in the month
of November A.D. 1863 the said Charlotte Le
Dixon caused a notice to be served upon your
arator & aratrix that she demanded immediate
possession of all said premises so sold or pre-
tended to be sold by said Special Master as
aforesaid to be delivered to her said Charlotte Le
Dixon, without regard to your arator & aratrix right
and claim to their homestead exemption as aforesaid
in said premises, and afterwards to wit at the
November Term of said Circuit Court for the year
1863 without the knowledge or consent of your ara-
tor & aratrix or either of them by her said Solicitor
James K Edsall caused an order to be made by said
court that a writ of possession or assistance
be issued directed to the Sheriff of the said
County of Lee commanding him to execute
the order in said decree for possession & put
the said complainant - Charlotte Le. Dixon in
possession of all said mortgaged Land so
sold under said decree as aforesaid. But
your arator & aratrix here protest and aver
that at the time of the service of said notice
of the demand of the said Charlotte Le. Dixon
for the possession of the said premises sold as
aforesaid or at any other time, that neither

13 a certified copy of the decree theretofore entered
in said court for the sale &c of said premises
nor any certified copy of the said order of
said ^{circuit} court approving the said special Masters
Reports of sale, under said decree was or has
been served or presented to Your orator & oratrix
or either of them as in said order set forth and
as in & by said decree ^{required} ~~prescribed~~, and Your orator
& oratrix aver that the procuring such order
for said suit without first serving such certified
order approving or confirming the report of such
sale was a fraud as against Your orator &
oratrix, a copy of which said order for said suit
is herewith attached and marked exhibit "C" and
prayed to be taken & made a part of this Your orator
& oratrix bill of complaint.

Your orator & oratrix further show unto
Your Honor, that the said Theron Cummins is
a brother of the said Charlotte Le Difer and was a
mere nominal party to her said bill of Complaint
having no interest in said suit otherwise than
as a Judgment Creditor of Your orator and in
fact acted in concert with the said Charlotte Le Difer
and her said Solicitors, in procuring said de-
cree & sale and subsequent orders of said Court;
and Your orator & oratrix had well hoped that
the said Charlotte Le Difer would ^{not} have sought
to enforce said decree of sale as aforesaid
and would have left Your orator & oratrix

14 in the peaceable possession of the ~~land~~ and enjoyment of the said homestead interest in said premises and would have caused the same to have appraised, and set-off to your arator & aratrix, and in case a division of said premises could not have been made without injury to the parties caused due compensation for the same to be made to your arator pursuant to the statutes in such case made and provided as in equity & good conscience she ought to have done.

But now said is (May it please Your Honor the said Charlotte le Dixon, combining & confederating with the said Theron Cumins, and with diverse other persons ^{as yet} to your arator & aratrix unknown but whose names when discovered your arator & aratrix pray may inserted herein as defendants and they made parties hereto, with proper and apt words to charge them, how to injure & oppress your arator & aratrix in the premises now threatening to sue out said writ of possession or assistance to dispossess, and eject your arator & aratrix from their homestead in said premises as aforesaid, under and by virtue of said decree, sale & subsequent orders of said circuit court, claiming that in as much as you or your arator and aratrix did not, on the return day of the summons issued on the filing of said bill of complaint of said Charlotte C

15th Dignon, as aforesaid, appear in said Court & by answer or plea or otherwise protest & claim that in & by said deeds of Mortgage so sought to be foreclosed they had not nor had either of them in & by said deeds of Mortgage released or waived their said homestead interest in said premises pursuant to the said Statutes in such case made and provided and that their said interest in said premises should not be decreed to be sold and the same should not be sold under & by virtue of any decree rendered in said cause. except pursuant to the Statute in such case made and provided, Your orator and oratrix are now estopped from claiming and demanding their said homestead interest in said premises and that the said Charlotte C Dignon is the legal and equitable owner of the same and has lawful right to eject from and dispossess Your orator & oratrix of the same

Whereas Your orator & oratrix expressly charge the truth & fact to be that the said Bill of complaint of the said Charlotte C Dignon did not contain any allegation or set-up or claim that that Your orator & oratrix or either of them had in & by said deeds of Mortgage or either of them in any manner released or waived their said homestead ^{interest} ~~in~~ in said mortgaged premises or ask or pray that your said orator & oratrix's said interest in the same as such should

16 be in & by any decree of said Circuit Court
be foreclosed and sold and that by their not ap-
pearing and answering said bill of Complaint your
orator &atrix confessed nothing more than was
contained in said bill of Complaint, and that the
said Charlotte le Dripen's said act in procuring said
decree of sale of said premises as aforesaid to be made
by said court, without showing said decree direct-
that such sale should be made subject to your
orators &atrix right to a homestead exemption
in said premises in as much as the said Charlotte
le Dripen & her said solicitors well knew at
the time of the inception of said debt & the
execution & delivery of said deeds of Mortgage
& long prior thereto & from thence hitherto
& up to and at the time of procuring said decree
as aforesaid your orator with his said family re-
sided on said premises & occupied the same
as his homestead as aforesaid & still claimed
and insisted on their said right to retain their
homestead interest in the same as aforesaid
& that they had not released their said
right, as aforesaid and at the time of procur-
ing such decree made no disclosure to said
Circuit Court either by herself or her said soli-
citors that your orator &atrix and their said
family so resided on said premises & occupied
the same as a homestead ^{that} your orator still had
such homestead interest & claimed the same

17 in said premises was as against your orator
& oratrix and in equity ought to be treated as
a fraud, and the sale of the said premises was
illegal & void all of which actings, doings and prac-
tices of the said Charlotte Le Dixon and her said
confederates are contrary to equity & good con-
science and tend to the manifest wrongs,
injury & oppression of your orator & oratrix.

On tender consideration (whereof and for
as much as your orator and oratrix are remediless
in the premises at and by the strict rules of the
common law and are only releasable in a court
of equity, where matters of this nature are pro-
perly cognizable and releasable.

To the end therefore that the said Charlotte
Le Dixon Theron Cumins and their confeder-
ates may respectively, full, true, direct and
perfect answers make without oath, your orator
& oratrix hereby expressly warning their answers
(under oath) to all and singular the matters &
things herein charged & that as fully & particu-
larly in every respect as if the same were
hereagain repeated & they thereunto particularly
interrogated.

And that the said premises, sale of the said
premises so made on the ^{said} fifteenth day of Febru-
ary A.D. 1862 by the said Henry B. Foulke, as
Special Master as aforesaid and the said order
confirming the said sale & the said Master

18 report of the same and the said deed so executed & delivered by the said Henry B. Houke as such special Master as aforesaid, and the said order of the said Circuit- approving & confirming the execution of said deed as aforesaid, and also the said order of said Circuit Court- directing and ordering a writ- of possession or assistance to be issued directed to the Sheriff of the said County of Lee commanding him to execute the order in said decree for possession, and to put the said complainant Charlotte C. Wipen in possession of all of said mortgaged lands so sold under said decree as aforesaid. May be set-aside cancelled and for nothing held.

And also that the said decree of said Circuit Court, ordering & directing all and singular said premises to be sold as aforesaid May be set-aside & reversed, and the said premises be by said Court ordered and decreed to be sold subject to your orators & oratrix said right & claim to a homestead exemption in said premises pursuant to the Statute in such case made & provided, and that in the mean time that the said Charlotte C. Wipen her consellers, Attorneys, Solicitors officers or agents May be restrained by an injunction issuing out of this Court ~~from~~ from issuing out of the office of the Clerk of said Court, said writ- of possession or assistance and from in any way enforcing the same.

19 cution of the same also from instituting or
proceeding in any ~~any~~ new or other action at
law to dispossess & eject your orator & aratrix or
either of them from the said premises or any
part thereof until the further order of this Court
and that your orator & aratrix may have such
other ~~relief~~ for such further relief as the nature of
their ~~case~~ ^{case} ~~may~~ shall require and as shall be
agreeable to equity.

May it please your Honor to grant
unto your orator & aratrix the Peoples writ of
Injunction issuing out of and under the Seal
of this Court directed to the said Charlotte C
Dixon her Councillors, Attorneys Solicitors and
agents commanding them and each of them ab-
solutely to desist and refrain from proceeding
further to sue out said writ of possession or
assistance, and also from in any way or manner
enforcing the execution of the same and also
from instituting or proceeding in any new or other
action at law to dispossess & eject your orator &
aratrix or either of them from the said premises
or any part thereof until the further order of this
Court. May it also please your Honor to
grant unto your orator & aratrix the Peoples writ
of Summons issuing out of and under the seal
of this Honorable Court directed to the Sheriff
of the County in which said Defendants Charlotte
C Dixon Theron Cummins reside requiring

20

them to appear & answer this your arators &
aratrix bill of complaint on the return day
of said summons, and to stand & abide
and perform such order and decree thereon as your
Honor shall seem agreeable to equity and good
conscience, and your arator and aratrix will
ever pray &c

George P. Goodwin

Sol^o of Counsell for
complainant

James M. Mowers

Charlotte M. Mowers

State of Illinois

County of Lee

ss. James M. Mowers

being duly sworn doth depose & say that he
has heard read, the foregoing bill subscribed
by him as one of the complainants therein and
and that he knows the contents thereof, and that the
same is true of his own knowledge, except as
to the matters which are therein stated to be on
their information or belief, and as to those matters
he believes it to be true.

James M. Mowers

Subscribed and sworn to before

me this 20th day of December ad.

1853

Benjamin F. Showclerk

Joseph Ball &c.

U.S. Per Stamp

5 cents

This Indenture made this Twentieth
 day of November in the year of our Lord
 one Thousand eight hundred and Fifty Five
 Between James M Moers and Charlotte M
 Moers his wife of the County of Lee and State
 of Illinois of the first part, and Charlotte D Dixon
 of the County of Ogle and State aforesaid of the se-
 cond part; Whereas the said James M Moers
 party of the first part is justly indebted to the
 said party of the second part in the sum of
 Twenty five hundred Dollars secured to be paid
 by a certain promissory note of even date
 herewith, payable in five years after date with
 interest annually at the rate of ten per cent per
 annum, Now therefore this indenture witness-
 eth, that the said party of the first for the
 better securing the payment of the money aforesaid, with in-
 terest thereon according to the tenor & effect, and true intent
 and meaning of the said promissory note above mentioned
 and also in consideration of the further sum of one Dollar to
 them in hand paid by the said party of the second part, ^{at} the
 delivery of these presents, the receipt whereof is hereby
 acknowledged, has granted, bargained, sold, promised, aliened
 conveyed and by these presents does grant, bargain, sell, promise
 alien & convey unto the said party of the second part, and to her
 heirs and assigns forever, all the following described ~~premises~~
 premises situate lying and being in the County of Lee
 and State of Illinois and known and described as

22 follows to wit: The West Half of the North West Quarter
of Section No Twenty Five (25) and the East part of
the East Half of the North East Quarter of Section
No Twenty Six (26) bounded as follows, com-
mencing at the North West corner of said Sec-
tion, ^{thence} ~~thence~~ east to a stone
thirty inches long by 5 inches set in the
ground, thence South forty chains to a stone
 22×10.5 inches set in the ground, thence
West twenty four chains to a stone 13×11.5 inches
set in the ground, thence North forty chains
to a stone 32×11.5 inches set in the ground,
thence east four chains to the place of beginning,
containing ninety six acres More or less also
the following described lot; commencing here
chains North of the South West corner of the
West half of the South East Quarter of Section
No Twenty Three (23) thence North twelve
chains to a place Stone $17 \times 10, 4\frac{1}{2}$ ^{inches} set in the
ground, thence East twenty chains to a stone $24 \times$
 $7, 5$ set in the ground, thence South twelve chains
to a stone $24 \times 12, 5$ inches set in the ground,
thence North twelve chains to a stone $24 \times 12, 5$ in-
ches set in the ground; thence West twenty chains
to the place of beginning containing twenty four
acres More or less, excepting the North half
of the last mentioned tract previously sold.
Also the following described lot commencing on
the section line between Sections numbered

23 Twenty five (25) and twenty six (26) at the North West corner of the South West Quarter of said Section No twenty five (25) at which point is set in the ground a good and sufficient stone, thence east on the Quarter Section line, twelve chains and fifty hundredths (12.50) to a stone eighteen (18) inches long nine inches wide & thick set in the ground, thence South five chains & fifty hundredths (5.50) to a stone eighteen by seven and three inches (18.7.3) set in the ground, thence West sixteen chains, and fifty hundredths (16.50) to a stone twenty two inches by six and six (22.6.6) set in the ground, thence North five chains and fifty hundredths (5.50) to the North line of the South East Quarter of said Section No Twenty Six (26) thence East along said line four (4) chains to the place of beginning containing nine acres and seven hundredths (9.07) the variation of the compass being seven (7°) degrees East; Also a part of the West half of the South East Quarter of Section No twenty three (23) bounded as follows, commencing twenty one (21) chains North of the Quarter Section corner on a line dividing Section No twenty three (23) and twenty six (26) at a stone set in the ground from which a black oak 10 inches in diameter bears S. 83° W 59 links, thence North three chains and fifty links (3.50) to a post from which a black ^{oak} 8 1/2 inches bears S. 59° East 29 links, thence East twenty (20)

24 chains to a post - thence South three chains and
fifty links (3.50) to a Stone set in the ground,
from which a white oak 22 inches in diameter bears
S 53° W 70 links, thence West - twenty (20) chains
to the place of beginning, containing seven acres
more or less, also the North West - Quarter of the
South East - Quarter of Section No Twenty five (25)
containing forty acres more or less variation of
compass on lines running E & W 70° or 4° or 15° ;
also one undivided half of the following ^{described} lands viz:
commencing at a Stone 22 - 10 - $5\frac{1}{2}$ inches set
in the ground at the North East - corner of the West
half of the South West - Quarter of Section No Twenty
five (25) thence South forty (40) chains to a Stone
26.98 inches set in the ground (at corner of lot)
thence West - twenty chains (20) to a Stone 21.8 $\frac{1}{2}$ inches
set in the ground (at section corner,
thence West - sixteen chains & thirty five links
(19.95) to a Stone 21.9. $5\frac{1}{2}$ inches set in the ground,
thence North twenty (20) chains, to a Stone 19.8.5
inches set in the ground, thence East - eight chains
and twenty eight links (8.28) to a post in the ~~branch~~
branch thence North sixteen chains and seventy
eight links (19.78) to a Stone 18.8.6 inches set in
the ground thence East - seven chains and forty
seven links (7.47) to a Stone 13.11.5 inches set
in the ground, thence South five & a half chains
(5.50) to a Stone 22.6.6 inches set in the ground
thence East - fifteen & a half chains (16.50) to a

25 Stone 18, 7. 3 inches set in the ground, thence
~~East~~ North five & a half chains (5.50) to a stone
set in the ground, thence east-north & a half
chains (7.50) to the place of beginning, contain-
ing one hundred & thirty three, and fifty seven
hundredths acres (133⁵⁷/₁₀₀) More or less, also the
following commencing at the south West-corner
of the West half of the South East-Quarter
of Section No Twenty Three (23) thence North
Nine⁹/₁₆ chains to a stone (thence east-Twenty
(20) chains to a stone, (thence South nine⁹/₁₆
chains to a stone, (thence West-Twenty (20)
chains to a stone the place of beginning—
containing eighteen acres More or less, excepting
three acres in the ^{South West corner of the} last-described lot, variation
of compass on lines running east and West
7° 10' and North and South 0° East, all in
Township No Twenty Two (22) North Range
No Nine⁹/₁₆ East of the fourth principal Meri-
dian. To Have and To Hold the same
together with all and singular the contents,
hereditaments, priviledges and appurtenances thereto
belonging or in any wise appertaining, with
the rents issues and profits thereof, and also
all the estate right title interest and claim
whosoever in law as well as in equity, which
the party of the first-part has in and to
the premises hereby conveyed unto the said

party of the second her heirs and assigns, and to their only ^{proper} use benefit and behoof forever. Provided always and these presents are upon this express condition that if the said James M Moers party of the first part his heirs executors or administrators, shall well and truly pay or cause to be paid to the said party of the second ^{part} her executors, administrators or assigns, the aforesaid sum of money with such interest thereon at the time and in the manner specified in the above mentioned promissory note; according to the tenor and effect true intent & meaning thereof, that then, and in that case these presents and every thing herein expressed shall be absolutely null and void.

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written

Signed Sealed and delivered } James M Moers {Seal}
in presence of Solon Cummins } Charlotte M Moers {Seal}

State of Illinois }

Ogle County S.I. } I Solon Cummins a Justice of the Peace in and for said County in the State aforesaid do hereby certify that James M Moers and Charlotte M Moers his wife, who are personally known to me to be the real persons whose names are subscribed to the annexed Mortgage, appeared before me this day in person, and acknowledged that they executed and delivered the said

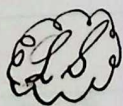
27

Mortgage as their free and voluntary act for the uses and purposes therein set forth, And the said Charlotte M. Mooers wife of the said James M. Mooers, having been by me examined separately and apart, and out of the hearing of her said husband, and the contents and meaning of the said Mortgage, having been by me made known and fully explained to her she acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she did not wish to retract the same, Given under my hand and seal this first day of December in the year of our lord, one thousand eight hundred and fifty five.

Solon Burnins J.P. S.S.

State of Illinois

Ogle County ss } J. Joseph Sears Clerk of the
County Court of said County hereby certify that
Solon Burnins Esq. whose name appears subscribed to the foregoing Certificate of acknowledgment was on the said 1st day of December A.D. 1855 an acting Justice of the Peace in & for said County duly commissioned and qualified as appears of Record in my office, and that full faith and credit are due to his official acts. —
Witness my hand and the seal of said Court at my office in Oregon this 4th day of December A.D. 1855, Joseph Sears, Clerk



And which due of Mortgage

State of Illinois }
 See County } ^{Atty} Filed for Record Dec 8th 1853
 and Recorded in Book P. of Deeds pages 38, 39, 40, 41
 J. S. Bondman, Recorder.

Exhibit - "B"

(This Indenture made this ninth day of ~~June~~ in the year of our Lord one thousand Eight-hundred and fifty-eight, between James M. Mooers & Charlotte M. Mooers his wife of the County of Lee State of Illinois party of the first part; and Charlotte Le Dixon ^{party} of the second part. Whereas the said party of the first part is justly indebted to the said party of the second part, in the sum of twenty five hundred Dollars secured to be paid by his certain promissory note bearing date Nov 29th 1853 for twenty five hundred Dollars (\$2500⁰⁰/₁₀₀) with interest at the rate of ten (10) per cent - Interest payable annually. Now therefore this Indenture Witnesses: - That the said party of the first part for the better securing the payment of the Money aforesaid, with interest thereon according to the tenor and effect of ^{the} said promissory note alone mentioned, and also in consideration of the further sum of one Dollar to him in hand paid by the said party of the second part at the delivery of these presents, the receipt-

thereof is hereby acknowledged, have granted
 bargained, sold and conveyed, and by these
 presents do grant, bargain sell and convey unto
 the said party of the second part-his heirs and
 assigns forever, all the undivided half of the follow-
 ing described tract of land, to wit: Commencing
 at a stone $22 \times 10 \times 5\frac{1}{2}$ inches set in the ground
 at the North East corner of the West-half of the
 South West-Quarter of section Twenty five (25)
 in Township No Twenty Two (22) North of
 Range No Nine (9) ~~East~~ of the fourth prin-
 cipal Meridian, thence South forty (40) chains
 to a stone $26 \times 9 \times 8$ inches set in the ground
 at corner of ~~lot~~ thence West-Twenty ⁽²⁰⁾ chains
 to a stone $21 \times 8\frac{1}{2} \times 6$ inches set in a mound
 for section corner, thence West-thirteen chains &
 thirty five links to a stone $21 \times 9 \times 5\frac{1}{2}$ inches
 set in the ground, thence North Twenty (20)
 chains to a stone $19 \times 8 \times 5$ inches set in the
 ground, thence East-Eight (8) chains & Twenty
 eight (28) links to a post set in the branch,
 thence North thirteen chains (13) and Seventy Eight
 (78) links to a stone $18 \times 6 \times 6$ inches set in
 the ground, thence East-seven chains & forty seven
 links to a stone $13 \times 11 \times 5$ inches set in the
 ground thence South five & a half chains to a stone
 $22 \times 6 \times 6$ inches set in the ground; thence East-
 $10\frac{1}{2}$ chains to a stone $18 \times 7 \times 3$ inches set in the
 ground, thence North five & a half chains to a

30 Stone, set in the ground thence east seven rods
a half chains to the place of beginning, con-
taining one hundred and thirty three $\frac{57}{100}$ acres
be the same more or less. To Have and to
Hold the same together with all and singular,
the Conments, Inheritments, privileges and
appurtenances, therunto belonging or in anywise
appertaining, and also all the estate interest and
claim whatsoever in law as well as in equity, which
the said party of the first part, have in and to the
premises hereby conveyed, unto the said party
of the second part her heirs and assigns and to
their only proper use, benefit and behoof. —
Provided always, and these presents, are upon this
express condition, that if the said party of the
first part, or their heirs, executors or administrators
shall well and truly pay or cause to be paid to
the said party of the second part her heirs executors
administrators or assigns, the aforesaid sum of money,
with such interest thereon at the time and in
the manner specified, in the above mentioned
permissive Note, according to the true intent and
meaning thereof, that then and in that case
these presents, and everything herein expressed,
shall be absolutely null and void. The witness
whereof the said party of the first part herunto
set their hands and seals the day and year first
above written

I hereby certify that
the foregoing is a true
copy of the original

James M. Mosers (Seal)
Charlotte M. Mosers (Seal)

31 Township No Twenty Two (22) North of Range No
Nine (9) E of the fourth principal Meridian, was done
previous to the execution of this Instrument
James M Moers

State of Illinois }

See County S. } I David Mully a Justice of
the peace in and for said County in the state
aforesaid do hereby certify that James M Moers
& Charlotte M. his wife personally known to me
as the same persons, whose names are subscribed
to the foregoing instrument of writing, appeared
before me this day in person and acknowledged
that they signed sealed and delivered the said
instrument of writing as their free and volun-
tary act for the uses and purposes therein
set forth. And the said Charlotte M Moers
wife of the said James M Moers, having been
by me examined, separate and apart and
out of the hearing of her said husband
and the contents and meaning of the said in-
strument of writing having been by me
made known and fully explained to her
acknowledged that she had freely and voluntarily
executed the same and relinquished her dower to the lands
and tenements therein mentioned, without compulsion
of her said husband and that she does not wish to
retract the same. Given under my hand and seal
this ninth day of June A.D. 1858,

David Mully J.P. (Seal)

State of Illinois }
 County of Lee } This Instrument was filed for
 Record this Ninth day of June, at the hour of
 6 1/2 O'clock P.M. 185, and duly Recorded in Book
 H of Maps page 632-3-4 ~~Geo~~ E Haswell Recd
 per John E Ball Deputy

Exhibit-"C"

A part of the West-1/2 of the South East-1/4
 of Section No Twenty Three (23) in Township
 No twenty two (22) North of Range No Nine
 (9) East of the fourth principal Meridian bounded
 as follows commencing twenty one chains North
 of the Quarter section corner on the line dividing
 Section No Twenty Three & Twenty Six at a
 Stone set in the ground from which a black
 oak 10 inches in diameter bears S (83°) Eighty
 three degrees W 59 links thence North three chains
 and fifty links to a post from which a black
 oak 7 inches bears S. 59° E 27 links thence East
 Twenty chains to a post thence South three
 chains and fifty links to a Stone set in the ground
 from which a white oak twenty two inches bears
 S. 53° W 70 links thence West Twenty chains to
 the place of beginning containing seven acres more
 or less. Also the North West-Quarter of the South
 East Quarter of Section Twenty five in Township
 Twenty Two (22) North of Range Nine (9)

East of the Fourth Principal Meridian as as
above containing forty acres more or less, va-
riation of compass on lines running E & W
70° 0' 4" & N & S 8°.

Exhibit - "D"

State of Illinois }
See County SS. } In the See County Circuit Court
Of the November Term A.D. 1861

Charlotte C. Dixon }
as }
James M. Moers } Decree of Foreclosure
Charlotte M. Moers }

Theron Currins and now on the Second
day of December A.D. 1861 comes the said Com-
plainant by Edsall and Saeg her solicitors -
And it appearing to the court from the summons
issued in this cause and the return endorsed
thereon on file herein that due personal service of
said summons was made by the sheriff of said
See County upon the said defendants James M.
Moers and Charlotte M. Moers by reading the
same in their presence and hearing and by
delivering to each of them a true copy thereof
on the 13th day of November A.D. 1861 the same
being more than ten days prior to the first-
day of the present term of this Court. And it
also appearing that the said defendant Theron

34 Cummins
Do wit: on the 2nd day of December A.D. 1861 in
in proper person entered and filed his appear-
ance in writing in this cause bearing date Nov-
ember 30th A.D. 1861 whereby the said Defendant
Cummins makes Service of Process upon himself
and consents and stipulates that the same pro-
ceedings may be had in this cause as if he had
been personally served with process ten days before
the present term of this court as will more
fully appear by the said appearance in writing
and stipulation on file herein. And thereupon the
said Defendants James M. Moores Charlotte M.
Moores and Theron Cummins were each three times
solemnly called but came not nor did any
one come for them but on the contrary each
and every of them made default herein. —
It is ordered by the Court that their default be
entered in the premises. And that the said
Complainant's bill of complaint & the matters & things
therein stated and charged be taken as confessed
And on Motion of the said Complainant's said
Solicitors. It is further ordered that Henry
B. Honke be and is hereby appointed a Special
Master in this cause. And that the same be and
is hereby referred to him as such Special Master
in this cause. And that the same be and is
hereby referred to him as such Special Master
to take and report Proofs of the matters & things
in said Complainant's bill contained And to com-

33 rule the amount due on the promissory note and Mortgages in said complaints said Bill of complaint specified.

And now on this 3^d day of December A.D. 1881 the said Henry B. Hooker as such special Master having taken proof of the allegations in said bill of complaint contained and computed the amount due on said promissory note & mortgages. It is Ordered that the said Special report of said Special Master be & hereby is in all things approved and confirmed. And that this cause it set for hearing.

And now on this third day of December A.D. 1881 this cause coming on to be heard upon the said bill of complaint, so taken as confessed as aforesaid and upon the said Master's report so approved as aforesaid. And it appearing from the said report that there was due the said complainant on the said promissory note & on the said Mortgages in the said bill disclosed on the day of the date of the said report for the principal and interest unpaid on said note the sum of three thousand five hundred and three dollars and forty seven cents — \$3503.⁴⁷/₁₀₀ And it also appearing from the admission of said complainant by her solicitors made in open Court that the following portion of said mortgaged premises had heretofore been released and discharged from the opera-

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from & line of said Mortgage to wit: A part
 of the West $\frac{1}{2}$ of the South East Quarter of
 Section No Twenty Three (23) in Township
 No Twenty Two (22) North of Range No
 Nine (9) East of the fourth principal Meri-
 dian bounded as follows commencing twenty
 one chains North of the quarter Section Corner
 on the line dividing Section No Twenty three
 & twenty six at a stone set in the ground
 from which a Black oak 10 inches in diameter
 bears S (83°) Eighty three degrees W 59 links thence
 North three chains and fifty links to a post
 from which a black oak ~~finches~~ bears S 59°
 E 29 links, thence East twenty ~~nine~~ links chains
 to a post, thence south three chains & fifty links
 to a stone set in the ground from which a
 white oak twenty two inches bears S 53° W 76
 links thence West twenty chains to the place
 of beginning containing seven acres more or
 less. Also the North West Quarter of the South
 East Quarter of Section twenty five in Town-
 ship Twenty Two (22) North of Range Nine (9)
 East of the fourth principal Meridian as above
 containing forty acres more or less variation
 of compass on lines running E & W $70^{\circ} 07'$
 & N & S 6° . And now on Motion of
 Edsall & Lucy Council for the complainant it
 is ordered adjudged & decreed and this Court
 by virtue of the authority therein vested doth

37 Order, adjudge and decree, that all and singular the said Mortgaged premises mentioned in the Bill of complaint in this cause (and which premises are not released from the lien of said Mortgages as aforesaid the same being heretofore described) or so much thereof as may be sufficient to raise the amount due to the complainant for the principal, interest & costs in this case and which may be sold separately without material injury to the parties interested be sold at public auction by and under the direction of Henry B. Donke Special Master as aforesaid who is ^{legally} fully authorized and empowered to make such sale unless the said defendants or some of them within thirty days from the entering of this decree pay to the said complainant or to her solicitors the said amount of principal and interest so found due together with her costs in this behalf sustained that the said sale be made in the County where the said Mortgaged premises or the greater part thereof are situated: that the said Henry B. Donke Special Master as aforesaid give public notice of the time and place of such sale according to the course & practice of this Court; And that the complainant or any of the parties in the cause may become the purchaser that the said Special Master execute a certificate of purchase to the purchaser or purchasers of the Mortgaged premises

38 on the said Sale stating therein the fact
of such sale & that unless the said premises
were redeemed within fifteen months from the
date thereof in the manner required by law
the purchaser at such sale would be entitled
to a deed of the premises so sold. And
that the said special Master out of the proceeds
of said sale retain his fees disbursements & com-
missions on said sale, and to pay to the com-
plainant or her successors out of said proceeds
his costs in this suit to be taxed and also
the amount so reported due as aforesaid to-
gether with legal interest thereon from the
date of said report To wit: The 3^d day of
December A.D. 1861 or so much thereof as the
purchase money of the mortgaged premises
will pay of the same. And that the special
Master aforesaid take receipts for the amount
so paid and file the same with his report
And that he bring the surplus moneys arising
from said sale if any there be into court with-
out delay to abide the further order of this
court. And it is further Ordered, adjudged
and decreed that the Defendants and all persons
claiming or to claim from or under them and
all persons having a lien subsequent to such
Mortgage by judgment or decree upon the land
contained in said Mortgage not released as
aforesaid and his or their heirs and personal

39 representatives. And all persons having any claim or claim by or under such subsequent judgment or decree and their heirs and personal representatives and all persons claiming under them be forever barred and foreclosed of and from all equity of Redemption & claim of in & to said Mortgaged premises so sold and every part & parcel thereof unless the said Mortgaged premises shall be redeemed within the period of fifteen Months next after the date of the sale thereof in accordance with the statute in such case made and provided. And in case the same are not so redeemed within said period of fifteen Months the purchaser or purchasers thereof shall then be entitled to a deed of the Mortgaged premises so sold as aforesaid. And the said special Master is hereby ~~authorized~~ and directed to make execute and deliver to the said purchaser or his or her assigns such deed accordingly after the expiration of said period of fifteen Months from the date of such sale. And it is further ordered that in case the said premises are not so redeemed the purchaser or purchasers of said Mortgaged premises at such sale or the party to whom such deed shall be so executed shall be let into possession thereof. And that any of the

parties in this cause who may be in possession thereof of said premises or any part thereof & any person ^{who} since the commencement of this suit has come into possession under them or either of them deliver possession thereof to such purchaser or purchasers on the party to whom such deed shall be so executed on the production of the special Masters deed for such premises. And a certified copy of the order confirming the report of such sale after such order has become absolute. The description and particular boundaries of the property authorized to be sold under & by virtue of this decree so far as the same can be ascertained from the mortgages above referred to or from the Bill of complaint in this cause are as follows viz: The West Half of the North West-Quarter of section Number Twenty five & the East-part of the East-half of the North East-Quarter of section Number Twenty Six bounded as follows, commencing at the North West-corner of said Section twenty five at a mound thence East ^(Twenty) ~~thirty~~ chains to a stone 30 inches long by 5 inches set in the ground thence South forty chains to a stone 22 x 10 x 5 1/2 inches set in the ground thence West twenty chains to a stone 13 x 11 x 5 inches set in the ground thence North

48 forty chains to a stone $32 \times 11 \times 6$ inches
set in the ground, Thence East four
chains to the place of beginning containing
thirty six acres more or less. Also
the following described lot commencing
nine chains North of the south West
corner of the West half of the South East
Quarter of section number Twenty Three
thence North Twelve chains to a stone
 $17 \times 10 \times 4\frac{1}{2}$ inches set in the ground —
Thence east Twenty chains to a stone
 $24 \times 7 \times 5$ inches set in the ground —
Thence South Twelve chains to a stone
 $24 \times 12 \times 5$ inches set in the ground
Thence West Twenty chains to the place
of beginning containing Twenty four
acres more or less, excepting the north
half of the last mentioned tract pre-
viously sold. Also the following dis-
cribed lot commencing on the section
line between sections number Twenty five
and Twenty six at the North West
corner of the South West Quarter of
said section number Twenty five at
which point is set in the ground a good
and sufficient stone Thence east on the
Quarter section line Twelve chains and fifty
hundredths to a stone eighteen inches wide
long nine inches wide & thick set in the
ground, Thence South five chains & fifty hundredths to a

42 Stone 18x7x3 inches set in the ground,

Thence West-Fifteen chains & fifty hundredths to a Stone 22. 6. 6 inches set in the ground. Thence North five chains & fifty hundredths to the North line of the South East-Quarter of said section Number Twenty Six Thence East-along said line four chains to the place of beginning containing nine acres & seven hundredths the variation of the compass being seven degrees east. Also the following described lands viz: commencing at a Stone 22 + 10; 5 1/2 inches set in the ground at the North East-corner of the West-half of the South West-Quarter of section Number Twenty Five, Thence South forty chains to a Stone 26. 9. 8 inches set in the ground (at corner of lot) Thence West Twenty chains to a Stone 21. 8 1/2 6 inches set in the ground for section corner Thence Thence West-Nineteen chains and ninety five links to a Stone 21. 9. 5 1/2 inches set in the ground. Thence North Twenty chains to a Stone 19. 8. 5 inches set in the ground Thence East-Eight chains and Twenty eight links to a post in the branch. Thence North Nineteen chains & Seventy eight links to a Stone 18. 6. 6 inches set in the ground Thence East Seven chains & forty seven links to a Stone 13. 11. 5 inches set in the ground.

Thence South five and a half chains to a
 Stone $2\frac{1}{2}$ 6.6 inches set in the ground
 Thence east fifteen & a half chains to a Stone
 18. 7, 3 inches set in the ground. Thence
 North five and a half chains to a Stone
 set in the ground. Thence East seven
 and a half chains to the place of Be-
 ginning containing one hundred and
 thirty three & fifty seven hundredths
 $(133\frac{57}{100})$ acres more or less. Also the
 following commencing at the south west
 corner of the West half of the south
 East quarter of Section Number Twenty
 three Thence North nine chains to a
 Stone Thence east Twenty chains to a
 Stone, Thence south nine chains to a
 Stone, Thence West Twenty chains to the
 place of beginning, containing eighteen
 acres more or less Excepting three acres
 in the south West corner of the last
 described lot Variation of Compass on
 lines running east & west $7^{\circ} 10'$ and North
 & South to East all in Township Number
 Twenty Two North Range Number nine
 East of the fourth Principal Meridian
 Situated lying & being in the County
 of Lee and State of Illinois

W. W. Skelton

Judge

#4

Exhibit- "E"

Order Approving Sale February Term AD 1882

Charlotte C. Dixon

vs

James M. Moore, Charlotte M. Moore } Foreclosure
and Theron Cummins

On this 23rd day of February comes the complainant in this cause by Edrall & Loey her solicitors, and submits to the court the report of sale made by Henry B. Houke Special Master in chancery heretofore appointed to make such sale herein and the said report being by the court examined is ordered to stand approved, unless cause to the contrary be shown by to-morrow morning.

And afterwards on the 27th day of February, no cause having been shown to the contrary, the said Special Master's Report of sale in this cause is absolutely approved and confirmed.

Exhibit- "D"

Order approving Deed June Term A.D. 1863
 "Charlotte & Dixon

as
 James M. Mosers, Charlotte Mosers } Inclosure
 and Theron Carnins

And now on this
 29th day of June A.D. 1863, comes the said
 Henry B. Honke Special Master appointed
 to make sale & execute a deed to the pur-
 chaser under the decree heretofore entered
 in this cause, and makes his report to the
 Court that on this day he has executed
 to the complainant Charlotte & Dixon a
 deed for the premises ordered to be sold
 and described in said decree, also comes the
 complainant by Jas. K. Edsall her solicitor
 & enters her Motion that the said Special
 Master's report & the execution of the said
 deed be approved, and the Court being
 sufficiently advised in the premises,
 It is ordered that the said Motion be sus-
 tained, and that the said report & the ex-
 ecution of the said deed be & the same
 is hereby in all things approved and con-
 firmed; and that this cause stand con-
 tinued for further orders."

State of Illinois } Sec County Circuit Court
 Sec County } November Term AD. 1863

Charlotte C. Dixon
 vs
 James M. Mosers
 Charlotte M. Mosers
 Theron Cummins

And now comes
 the complainant by James K. Edsall her
 Attorney and it appearing to the Court
 that the said complainant on the 5th day of
 November 1863 caused to be duly served upon
 the said defendants James M. Mosers &
 Charlotte M. Mosers a certified copy of
 the Decree heretofore entered in this cause
 the same including an order directing
 the said defendants to deliver up the possession
 of said premises to the purchaser thereof un-
 der said Decree & also a certified copy
 of the order of this Court approving the
 Special Master's report of sale under said
 Decree together with a demand for the pos-
 session of said premises so sold & also
 produced to the said defendants James M.
 & Charlotte M. Mosers the Special Master's deed
 for said premises bearing date June 29th 1863
 & that the said defendants who were in the

4-7 possession of said premises then & there
refused to deliver the possession of said
premises to said complainant. It is
thereupon ordered and ~~decreed~~ directed
by the Court- that the said Complainant
have a writ of Execution of the said
order contained in the said decree whereby
the said defendants & all persons claiming
under them since the commencement of
this suit, were directed to deliver the possession
of the said premises sold under said decree
to the purchaser or party to whom the
special Masters deed should be executed
in pursuance of said decree & that such
writ be directed to the Sheriff of said
Lee County commanding him to execute
the said order for possession & put the said
complainant in possession of said
mortgaged lands so sold under said decree
as appears by the special Masters re-
port of sale on file therein: & that
this case be taken from the docket-

W. W. Heaton
Judge

And said Bill is endorsed as follows,
to wit;

" Filed Dec 26th 1863
" By F. Shaw Clk
" pr Joseph Ball D.C. "

48 And thereupon a Summons was issued out of the office of the Clerk of said Court, in said Court, in the words and figures following, that is to say;

" State of Illinois, 3
" Lee County, 3 ss.

" The People of the State of
" Illinois to the Sheriff of Lee County, Greeting;
" We command you that you summon Char-
" lotte C. Dixon and Theron Cumins if they
" shall be found in your County, personally to be
" and appear before the Circuit Court of said
" Lee County on the first day of the next term
" thereof, to be holden at the Court house in
" Dixon, in said Lee County, on the second
" Monday of February A.D. 1864, to answer unto
" James W. Moores and Charlotte W. Moores in
" their certain bill of Complaint filed in our said
" Court, on the chancery side thereof,
" And have you then and then this writ, with an
" endorsement thereon, in what manner you shall
" have executed the same,

" Witness, Benjamin F. Shaw, Clerk of our said
" Court, and the seal thereof, at Dixon, this
" twenty sixth day of December A.D. 1863.

" U.S. Revenue
" Stamp
" 50 cents

Benjamin F. Shaw, Clerk,
per Joseph Pace D. C.

And the said summons so issued as aforesaid was

49 by the sheriff of said County returned endorsed
as follows, to wit;

" State of Illinois, 3

" Lee County, 3^{ps}. I have this 25th day of
January A.D. 1864 duly served the within sum-
mons by reading the same to and in the pres-
ence and hearing of the within named Theron
Pumins and leaving a true copy of the same
with him.

" P. F. Lynn Sheriff
The within named Charlotte C. Dixon is
not found in my County.

" February 8th A.D. 1864. P. F. Lynn. Sheriff

Copy	.25
For Service	.50
Mileage	.05
Return	.10
	<u>.90</u>

And said Summons was further endorsed as
follows. to wit;

" Filed in the Circuit Court this 8th day of
February 1864
" B. F. Shaw. Clerk "

And afterwards, to wit; on the 2nd day of
February A.D. 1864. came the said defendant
Charlotte C. Dixon, by James H. Casale, her
Solicitor, and filed her separate answer to
said bill of complaint, which said answer
is in the words and figures following, that
is to say;

30 " State of Illinois

See County

} See County Circuit Court

Of the February Term A.D. 1864.

The separate answer of Charlotte C. Dixon, one of the defend-
ants in this suit, impleaded with Theron Cummins, her
co-defendant to the Bill of Complaint of James M. Moors
and Charlotte M. Moors his wife Complainants.

This Defendant now, and at all times hereafter
saving and reserving unto herself, all benefit and
advantage of exception to the many errors, uncertainties
and insufficiencies in the said Complainants Bill of
Complaint. Continued for answer thereto, or ^{to} such parts
thereof as she is advised it is material or necessary that
she should answer, says that true it is, that on the 13th day
of November 1861 she filed her Bill of Complaint on the Chancery
side of this Court to foreclose the two certain Mortgages
set out as Exhibits to Complainants Bill against the
Complainants in this suit, together with the said Theron
Cummins, as Defendants therein as alleged Complainants
Bill, & this defendant admits that the said Mortgages
were executed by the said Complainants to this defendant to
secure the payment of the said promissory note on said Bill
specified and that the consideration of said note was the
principal sum therein stated which this Defendant loaned
said James M. Moors, and that it was not given for the
purchase money, or improvement of said premises.
And this Defendant further answering, avers that her said
Bill of Complaint is filed in said Court as aforesaid

was in the usual form and contained the usual allegations of Bills of Complaint in Chancery to foreclose Mortgages, that it claimed and avers that the said Complainants in this suit by virtue of the said Mortgages, mortgaged the whole of said lands and premises to this defendant in fee to secure the payment of said note, and the interest thereon, together with all, and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging, with the rents, issues and profits thereof, and also all the Estate, right, title, interest and claim whatsoever in Law as well as in Equity, which the said Complainants in this suit had in and to the said premises in the manner expressed in said Mortgages,

And that the ^{said} Bill so filed by this defendant contained the usual prayer for a sale of the whole of said mortgaged premises, to pay the said Mortgage debt, and for the foreclosure of the Equity of redemption of said Defendants therein, and also a prayer for general relief, as will more fully appear by the said Bill among the records of said Court in said cause yet remaining, and ready to be ^{produced} ~~forwarded~~.

And this defendant further shows that, upon the filing of said Bill by this Defendant, a writ of Summons was duly issued thereon by the Clerk of said Court, under the seal thereof, directed the Sheriff of said Lee County, commanding him to summon the said defendants in said foreclosure suits, to appear at the then next term of said Court to be begun and holden at the Court House in Dixon in said Lee County on the fourth Monday in November A.D. 1861 and answer this Defendant's said Bill so filed against them, according to the usage and practice of said

32 Court, and which said writ of Summons was duly served upon the said James M. and Charlotte M. Prosser on the said 13th day of November 1861, and more than ten days before the said first day of the said November Term of said Court for the year 1861, as by the said writ and the return thereon endorsed remaining among the records ^{of said Court} will more fully appear,

And further answering this Defendant admits that said deeds of Mortgage were acknowledged and recorded as in said Complainant's Bill alleged.

And this Defendant admits that the Complainants with their family occupied some portion of said premises as a Homestead, as stated in the Bill, but denies that they have ever occupied the whole of said lands and premises as a Homestead, and also denies that the same lie together in one contiguous Tract.

And further answering, this Defendant admits that said Complainants did not appear to answer this said Defendant's said Bill, and that their default was entered and her said Bill taken as confessed and a decree of foreclosure rendered thereon, which contained an order for possession, and that said Exhibit "D" attached to

said Complainant's Bill is a correct copy of said decree. — And further answering, this Defendant denies that either she, or her Solicitors, had any knowledge at the time of taking such decree that said Complainants or either of them claimed and insisted on any right to a Homestead interest in said premises as alleged in Complainant's Bill.

53 This Defendant admits that the said premises except the
lands described in Schedule C, were sold under and
by virtue said decree by said special master at the time
and in the manner alleged in Bill, and that this
Defendant became the purchaser for the sum of \$3,653.³⁴/₁₀₀
and that this Defendant received a certificate of
purchase therefor, as alleged in Bill that the said
sale included (with other lands) the lot of
ground & house & out buildings thereon
occupied as a residence by the said Complainants.
And this Defendant further admits that (the said cause
having been continued upon the Docket of said Court
after the rendition of said Decree) the said special
Master made a report to said Court of such sale under the said decree
at said February Term A.D. 1862. And that this Defendant
by her Solicitors in said cause procured the said Report
of Sale to be approved by said Court, as alleged in said Bill,
that the same was done in open Court, but
whether with the knowledge of said Complainants, this
Defendant knows not. But this Defendant is advised
and believes, that in accordance with the practice ^{and usage} of
said Court, that after a Defendant is regularly defaulted
it is not necessary that such Defendant should be notified
of the subsequent proceedings taken in a Court while
the same is continued upon the Docket of the Court.
And this Defendant further admits that on the 29th
day of June A.D. 1863, she procured the said special
Master to execute to her a Masters deed for said
premises, or sold to her in pursuance of said decree and

54 that (the said cause having been in like manner continued from Term to Term, and then being upon the docket of said Court) at the June Term of said Court for the year 1863, this Defendant, by her said Solicitor, as she lawfully might do, caused an order to be made ~~by~~ said Court approving the Execution of said Deed as alleged in said Bill. And further answering, this Defendant, admits that, she caused a demand in writing for the possession of said premises so sold to her, to be served on said Complainants on the sixth day of November 1863: and further says that at the same time, she caused to be produced and shown to ^{the} said Complainants, a certified copy of the said decree which ^{included the} ~~included the~~ said order for the delivery of the possession of said premises so sold, together with a certified copy of the said order of said Court approving such sale, and the said Masters deed for the premises so sold as prescribed by said decree in such order for possession — And also then and there caused to be delivered and left with said Complainants, a copy of such decree and order for possession, and the order of said Court approving such sale. But that the Complainants refused to surrender up the possession of said premises in compliance with said decree, and that afterwards, to wit, at the November Term of said Court, for the year 1863 (the said cause being yet duly continued upon the docket of said Court as aforesaid), this Defendant did procure the said Court then in session, to make and enter the said order directing a writ of possession to issue

53 To put this Defendant in possession of said premises as alleged in said Bill.

1 And further answering, this Defendant denies that at the time of the incurrence of said Mortgage debt, or at the time of the making of either of said Mortgages, that either this Defendant, or her Solicitors were informed that the said Complainants claimed any Homestead or other rights whatsoever in, and to said premises or any part thereof which were not subject to the lien of said Mortgages. But on the contrary thereof this Defendant avers that it was at that time the expressed purpose, and understanding of all the parties to said Mortgages that the same should and did create a valid lien upon the whole of said Mortgage lands and every interest and right whatsoever of the said Complainants therein, as well legal as equitable in accordance with the express provisions contained in said Mortgages.

2 And further answering, this Defendant upon her best information and belief denies that the said lands so sold to this Defendant, are worth the sum of \$6,500, over and above said alleged Homestead interest of \$1,000. But admits that the whole of said premises are worth \$4,000. But on the contrary thereof this defendant regards the same including said supposed Homestead interest, as a second and insufficient security for the amount of said Mortgage debt including interest and costs and expenses of sale, and a prior Mortgage for about the sum of \$1,000, which had been foreclosed.

5-6 in a part of said lands and this Defendant was com-
pelled to purchase the same, in order to protect her
interests in said premises. And that this Defendant
by her agents, has repeatedly offered to permit the said
James M. Moore and Charlotte M. Moore to redeem the
said premises, even after the said fifteen months, allowed
for redemption had expired, by paying to this Defendant
an amount sufficient to reimburse this Defendant
for the amount of said Mortgage debt, Interest costs, and
Expenses of sale, and the amount she had so expended to
remove prior liens upon said lands. But that the said
Complainants neglected and refused to accept such offers;

4 And this defendant further answering says that as to
the following described portions of said premises, she is
the owner of, and entitled to the possession of the same
independently, and without regard to the said deeds of
Mortgage, and said proceedings to foreclose the same
Executed by the said Complainants to this Defendant
as aforesaid - To wit,

The west half of the north
West quarter of Section No twenty five (25) and the East
part of the East half of the north east quarter of Section No.
twenty six (26) bounded as follows commencing at the
North West corner of said Section. twenty five, at a
monument, thence East twenty chains to a Stone 30 inches
long, $6\frac{1}{2}$ x 5 inches, set in the ground thence South forty
chains to a stone 22 x 10, $5\frac{1}{2}$ inches set in the ground, ~~thence~~
~~thence~~ west twenty four chains to a stone 15 x 11, 5 inches
set in the ground. Thence north forty chains to a stone 32 x 11, 6
inches, set in the ground. Thence East forty chains to the place

57 of beginning, containing ninety six acres, more or less,
Situated in the County of Lee and State of Illinois
in Range 9 in Township 22nd.

5 And this Defendant avers, that as to the said
portions of said premises, the said Complainants here-
before, to wit, on the 28th day of March A.D. 1853, made
and executed to one Sarah Carpenter, a Mortgage
upon the same, to secure the payment of the sum of
\$ 800, five years after the 23rd day of November
1852, which Mortgage was duly recorded in Book
"C" of Mortgages, page 439. March 28th 1853,
that the said Mortgage debt was not paid
by the said Complainants or either of them,
and the same so remaining unpaid, the said
Sarah Carpenter afterwards, to wit, at the February
Term of said Lee County Circuit Court for
the year 1860, obtained a judgment in said
Circuit Court, for the use of Gilbert H. Southwick
against the said Complainants in this suit, for
the foreclosure of said Mortgage in a certain proceed-
ing by Scire Facias and in which proceeding
the amount of her (said Sarah Carpenter's) Mortgage
debt found due upon her said Mortgage was
the sum of \$ 907 ⁷/₁₀ & costs, that such proceedings
were thereupon had upon said judgment for the
foreclosure of said Mortgage, that afterwards, to wit,
on the 13th day of July A.D. 1861, the said portions of
said Mortgage premises, ^{hereinbefore} described were sold
under and by virtue of a Special Execution issued

58

upon said judgment, directed to the Sheriff of said Lee County to the said James R Edsall for the sum of One Thousand & thirty one and 90/100 Dollars, and the said Sheriff then and there issued a certificate of sale to him, the said Edsall, — That this Defendant was thereby compelled to, and did afterwards to, wit on the 30th day of December 1862, buy the said certificate of purchase or sale, and procure the same to be assigned to her, in order to protect her interests in the said premises, and that the said certificate was accordingly assigned to her, and she became, and was, and is the owner of the same, — That afterwards, to wit, on the 15th day of June A.D. 1863, the period of fifteen months allowed for the redemption from such sale having expired, and the said lands not having been redeemed from such sale, the Sheriff of said Lee County, made and executed to this Defendant, a deed for the said premises upon, and in pursuance of the said certificate of sale, and in pursuance of the Statute in such case made and provided, And that this Defendant thereby became, and was and still is the owner of said premises, and yet owns the same^(X)

And this Defendant further answers denies all unlawful combination, and charges of fraud alleged, ^{against} her in said Bill without this that any other matter or thing in said Bill

59

alleged & not herein traversed or denied, confessed
or ~~admitted~~ ^{would} and material to be answered, is true

And this Defendant submits to
the Court that the proceedings in the said
former suit to foreclose said Mortgage, and
the decree of the said Court directing the
whole of said premises to be sold to pay said
Mortgage debt, and the sale, and subsequent
proceedings thereunder, constitute, and are a
legal as well as equitable bar to the said —
Complainants Bill, and the relief sought
by the said Complainants in their said
Bill, and this Defendant prays the same
benefit of this Defence that she would have
been entitled to, had she have pleaded the
same in Bar to said Complainants Bill.
And this Defendant in like manner submits
to the Court that the said Complainants
do not by their said Bill, show themselves entitled
to any equitable relief upon the face thereof,
and prays the same benefit of this Defence
that she would be entitled had she come
to said Bill. And this Defendant having
fully answered, prays that the Injunction
granted herein may be dissolved and that
she may be hence dismissed with her
reasonable costs in this behalf most wrong-
fully sustained,

James H. Edsall
of Counsel for Deft Dixon

Charlotte C. Dixon
Defendant

60 And the said answer is endorsed as follows,
to-wit; "Filed Feb. 2d A.D. 1864.
" B. F. Shaw. Clerk."

And at the same time, to-wit; on the 2d
day of February. A.D. 1864, came the said
defendant Theron Cumins, by James H. Edsall,
his solicitor, and filed his demurrer to the
said bill of Complaint, in the words and
figures following, that is to say;

Cumins
Cumins
" State of Illinois 3ss.
" Les County 3ss. Les County Circuit Court,
" of the February term A.D. 1864.
" The Demurrer of Theron Cumins impleaded
" with Charlotte C. Dixon. defendants to the
" bill of Complaint of James M. Moores and
" Charlotte M. Moores, Complainants,
" This defendant by protestation, not em-
" phrasing or acknowledging all, or any of the
" matters and things in the said Complai-
" ants bill to be true in such manner and
" form as the same are therein set forth and
" alleged, doth demur thereto, and for cause
" of demurrer sheweth, that the said bill of
" Complaint doz not state or show or allege
" facts sufficient to entitle the Complainants
" to the relief prayed for by them, and that
" there is no equity upon the face of their said bill.
" 2nd That the Complainants are barred

61 " and stopped by the said acres of fore-
 " closure extend against them as shown by
 " said bill from now setting up or claiming
 " a homestead right in said premises or
 " any part thereof. Wherefore this defendant
 " demands the judgment of this Honorable Court,
 " whether he shall be compelled to make any
 " further, or any other answer to the said bill,
 " or any of the matters and things therein con-
 " tained, and prays to be hence dismissed,
 " with his reasonable costs in this behalf
 " sustained,
 " J. K. Edsall J. K. Edsall
 " of Counsel Sol for Deft Cummins.

And said demurrer is endorsed as follows, to-wit;
 " Filed Feb 2d A.D. 1864
 " B. F. Shaw, Clerk "

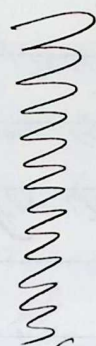
And afterwards, to-wit; on the 5th day of
 February A.D. 1864, came the said Complai-
 ants by their said solicitor, and filed their
 exceptions to the said answer of the said
 defendant, Charlotte C. Dixon, in the words
 and figures following, that is to say;
 " State of Illinois vs.
 " County of Lee vs. Lee County Circuit Court
 " February term A.D. 1864

62 James W. Moors &

"Charlotte W. Moors

"^{as} Charlotte P. Dixon

"Theron Fanning



In Chancery.

" Exceptions taken by the

Complainants to the answer of Charlotte P.

"Dixon one of the defendants to the bill of

"Complaint in this cause for impertinence

"First exception. For that the said answer is

"impertinent from and including the word

"and" in the fourth line from the bottom of

"the eighth page of said answer down to

"and including the word "mortgages" in

"the tenth line from the top of the ninth

"page of said answer.

"Second exception - For that the said answer

"is impertinent from and including the word

"But" in the tenth line from the top of the

"ninth page of said answer down to and in-

"cluding the word "mortgages" in the 22^d & 23^d

"lines from the top of said ninth page of said

"answer.

"Third exception - For that the said answer is im-

"pertinent from and including the word "But"

"in the first line on the top of the tenth page

63 " of said answer down to and including the
" word "offers" the last word on the bottom of
" said tenth page of said answer

" Fourth exception, For that the said answer is
" impertinent from and including the word "and"
" in the first line on the top of the 11th page
" of said answer down to and including the
" word & figures "Township" "22" on the last line
" at the bottom of said 11th page of said answer.

" Fifth exception, For that the said answer is
" impertinent from and including the word "and"
" in the first line from the top of the 12th page
" of said answer down to and including the word
" "same" in the 20th line from the top of the
" fourteenth page of said answer

" Sixth exception, For that the said answer is im-
" pertinent from and including the word "and"
" in the thirteenth line from the top of the
" 2^d page of said answer down to and in-
" cluding the word "mortgages" in the eighth
" line from the top of the 3^d page of said
" answer "

" Seventh exception, For that the said answer
" is impertinent from and including the
" word "and" in the ninth line from the top

65th ing proceedings were had in said cause,
as appears to us of record, that is to say;

"James W. Moores and

"Charlotte W. Moores

" vs

"Charlotte C. Dixon

"and Theron Cummins

Bill for Injunction,

And now on this 22^d
day of February, 1864, came the parties by
their respective solicitors, and the exceptions
of the complainants to the answer of the said
defendant. Charlotte C. Dixon, coming on to
be heard, and the case being sufficiently
advised in the premises, it is ordered that
the said exceptions numbered from one (1)
to five (5), inclusive, be sustained; and
that the two last exceptions, numbered six
(6) and seven (7), be overruled,

And afterwards on this 23^d day of
February A.D. 1864, this cause being set
for hearing by the agreement of the respec-
tive parties made in open court, upon
the complainants' bill and exhibits, the
answer thereto of the defendant Charlotte
C. Dixon, and the demurrer of the defen-
dant Cummins; and upon the stipulations
signed by the solicitor for the complainant, as
well as the solicitor for the defendant Dixon,
to be used as evidence in this cause, which said

66 stipulations in the words and figures follow-
ing, that is to say;

" State of Illinois,

" County of Sec, } Sec County Circuit Court
February term A.D. 1864

" James M. Moors }
" Charlotte M. Moors }
" }
" Charlotte C. Dixon }
" Thoms Cumins }

" Charlotte C. Dixon }

" Thoms Cumins }

On the hearing of the
above entitled cause for the purposes of the
hearing trial of said cause it is admitted by
the said defendant Charlotte C. Dixon that
the promissory note given by said complain-
ant James M. Moors secured by the mortga-
ges referred to, ⁱⁿ said Complainant Bill of
Complaint was given for money loaned to
said James M. Moors by this defendant sub-
sequent to the fourth day of July A.D. 1857, and
the said indebtedness or liability therein ex-
pressed was not incurred for the purchase
or improvement of said premises in said deeds
of mortgages described and set forth.

That at the time of the execution of said mort-
gages said Complainant James M. Moors
was the owner of the lands in said deeds of mort-
gages described and was a householder having
a family consisting of his wife said Charlotte M

67 "Moors and children & that there was then
"his now situated upon a part of the said prem-
"ises a dwelling house, wood shed, smokehouse,
"kitchen out houses, and which said dwell-
"ing house and other buildings at the time
"of the execution of said mortgages the loan of
"said money as aforesaid the said complainant
"James M. Moors together with his said
"family did and from thence hitherto up to
"the present time has occupied as a residence
"and homestead, and that the lot of ground
"on which said dwelling house and other
"buildings are situated is a part of and was
"included in the premises embraced in the
"deeds of foreclosure sale and in the sale
"made by said special master referred to
"in said complainant's bill of complaint
"and that the said James M. Moors & Char-
"lotte M. Moors have not waived or released
"their homestead right therein otherwise than
"by the execution & delivery of said mortgages
"and by the effect of the deeds for the foreclosure
"of said mortgages & the proceedings thereunder,
"in manner & form as set forth in said bill &
"answer thereto by their defendants filed in this
"cause. That the whole of said mortgaged prem-
"ises except those premises described in sched-
"ule "C" attached to said Bill by said deeds
"of foreclosure were ordered to be sold without

68 ordering them to be sold subject to any home-
stead exemption of said James W. Morris
and Charlotte W. Morris therein, as set forth
in exhibit "D" attached to Complainants
bill, and that the sale of said premises was
made by the said Henry D. Foulke Special
Master at the time and in the manner & form
set forth in said Complainants bill of complaint
the purview of said decree,
that the Complainants by their solicitor for
the purpose of this hearing and trial admit
that the defendant Charlotte C. Dixon demand-
ed of the said Complainants the possession
of said premises at the time and in the man-
ner stated in her answer, & caused to be pro-
duced to said Complainants a certified copy
of said decree for foreclosure, including the
order for possession; also a certified copy of
the order of said Court approving such sale;
and produced to said Complainants the
said Special Masters deed, and left with
said Complainants copies of such decree
and orders as stated in the defendants an-
swer, and that the Complainants refused to
deliver up the possession of said premises
accordingly, as stated in said answer.

Dixon Feb 23d 1864.

Jas. K. Edsall,
Sol for Drft Dixon.
Geo. P. Goodwin,
Complainants Solicitor

68 and also upon the summons and return of
the Sheriff in the foreclosure suit referred to in
the pleadings in this case, read in evidence
by the defendant Dixon, whereby and from which
it appears that the said James W. Moore
and Charlotte W. Moore, defendants in said
foreclosure suit and complainants in this
suit were duly served with process in said
foreclosure suit, on the 13th day of Novem-
ber A.D. 1861, and more than ten days
before the first day of the November term
A.D. 1861, of said Lee County Circuit Court,
as alleged in the answer of the said defen-
dant Charlotte C. Dixon; and also upon
the Bill of Complaint exhibits attached
thereto in the foreclosure suit referred to
in the pleadings in this suit, read in
evidence on the part of said defendant
Dixon, which Bill of Complaint is in
the words and figures following, to wit;

70 " State of Illinois }
" Lee County } ss

" In the Lee County Circuit Court
" Of the November Term A.D. 1851

" To the Hon. W. W. Keaton judge of said Court
" in Chancery sitting -

" Your Oratrix Charlotte C.

" Dixon. of the town of Grand Detour County
" of Ill. complaining shows unto this Court, that on
" the twenty-ninth day of November A. D. 1855 James M.
" Mooers of the town Dixon in the County of Lee, for value
" received, made, executed and delivered unto your Oratrix,
" his certain promissory note, in writing, bearing date on
" the day and year aforesaid and thereby promised
" to pay to the order of your Oratrix, five years after the date
" thereof, the sum of twenty-five hundred dollars, with
" interest annually, at the rate of ten per cent. per annum
" the consideration of said note being, for money loaned said
" Mooers by your Oratrix, To Wit: the sum of twenty five
" Hundred Dollars - And the said James M. Mooers
" and Charlotte M. Mooers his wife, to secure the payment
" of the principal and interest mentioned in said promissory
" note, did at the same time execute under their hands
" and seals, and deliver to your Oratrix, a mortgage, bearing
" even date with said note, and conditioned for the pay-
" ment of the said sum of twenty five Hundred Dollars,
" with the interest thereon, according to the condition of the said
" note, by which the said mortgagors, mortgaged unto your

71 " Cratrix in fee, certain lands and real estate, a description
" of which, is contained in a copy of said Mortgage Deed,
" hereto annexed marked Exhibit A to which your
" Cratrix would refer for greater certainty herein and prays
" the same, may be taken and regarded as a part of this
" her bill of complaint; and which said mortgage was duly
" acknowledged and was afterwards recorded as a Mortgage
" in the Recorder's Office of said Lee County, on the sixth day
" of December A. D. 1855, in Book P Pages 38, 39, 40, & 41 - the
" same having been duly filed for record in the Recorder's
" Office on the day and year ^{last} aforesaid -

" And your Cratrix further shows unto your Honor,
" that afterwards to wit: on the ninth day of June A. D.
" 1858 the said James M. Moores and Charlotte M. Moores his
" wife in order to further secure the payment of the said
" promissory note, and as additional security thereto under
" their hands and seals executed and delivered to your
" Cratrix a certain other Mortgage bearing date the day &
" year last aforesaid in like manner conditioned for the
" payment of the said sum of twenty-five Hundred
" Dollars with interest at ten per cent, per annum
" payable annually, according to the tenor and effect of
" said promissory note, by which the said Mortgage,
" Mortgaged unto your Cratrix in fee certain other lands
" and real estate, a description of which is contained in a
" copy of said Mortgage Deed hereto annexed and
" marked Exhibit B to which your Cratrix would refer
" your Honor for greater certainty herein and prays the
" same may ^{be} taken and regarded as a part of this her

82 " bill of complaint; and which said Mortgage, was duly ac-
" knowledged and was afterwards recorded as a Mortgage
" in the Recorders Office in said Lee County on the ninth
" day of June A.D. 1858 in Book ¹⁶ of Mortgages Pages 632-3-4
" the same having been filed for Record in the Records
" Office on the day and year last aforesaid as by the said
" Mortgage, and the certificates of acknowledgement, and
" of the recording aforesaid indorsed thereon and
" ready to be produced as this Court shall direct,
" will more fully appear. And your Oratrix further shows
" that the undivided half of the said premises specified in said
" Exhibit B, is and was, and was intended to be other
" than the undivided half of the same premises specified
" in said Exhibit A, and that the two descriptions when
" taken together were intended to comprise the whole
" of the said premises - And your Oratrix believes and
" states, that the sum of twenty five Hundred Dollars
" with interest as aforesaid from the 29th day of November
" A.D. 1857 remains due and unpaid to your Oratrix,
" And your Oratrix believes and states that Theron
" Cummins has or claims some interest in the said
" mortgaged premises or some part thereof or purchaser
" Mortgage judgment creditor or otherwise, whose
" interest ^{of the} ~~has~~ ^{has} accrued subsequent to the lien
" Mortgages of your Oratrix and are subject thereto
" Your Oratrix therefore asks the aid of this Court
" in the premises and that she above named James M. Moore
" Charlotte M. Moore and Theron Cummins,

73" the defendants in this suit may be summoned to
" appear before this Honorable Court on the Chancery
" side thereof and answer this the bill of your
" Oratrix, according to the rules and practice of the
" said Court, without oath, their answers on oath
" being hereby waived, and that the usual decree may
" be made for the sale of the Mortgaged premises aforesaid,
" and for the payment of the amount due to your Oratrix
" for principal and interest upon the said promissory
" note, and his costs of this suit, and that the said De-
" fendants and all persons, claiming under them,
" subsequent to the Commencement of this suit, and
" all other persons, although not parties to this
" suit, who have any liens by judgement, or
" decree upon the Mortgaged premises, subsequent
" to the said Mortgage of your Oratrix, or any liens or
" claims thereon by or under any such subsequent
" judgement or decree, either as purchasers, incum-
" brances, or otherwise, may be barred and fore-
" closed of all equity of redemption, in the said
" premises unless redeemed in ^{the} manner and
" within the time prescribed by law, and that your
" Oratrix may have such further or such other
" relief as the nature of the case may require, and
" shall seem agreeable to Equity and good conscience &c

John H. Edsall

of Counsel

Edsall & Looney

Solicitors for Complainant

74 " And the said exhibits "A" and "B" attached
" to said Bill so read in evidence, and referred
" to therein, are the same, and true copies of
" the respective exhibits "A" and "B" attached
" and referred to in the Bill of Complaint
" in this cause, reference being thereto had
" for greater certainty,

" And the said cause being thereupon heard
" accordingly, and the court having heard
" the argument of counsel for the respective
" parties, and being sufficiently advised in
" the premises, It is ordered, adjudged
" and decreed by the court, and the court
" by virtue of the power and authority therein
" vested, doth order, adjudge and decree
" that the decree in said foreclosure suit,
" and the proceedings therein, constitute a
" bar to the relief prayed for by the com-
" plainants in this suit, and the equities
" be and are by the court found in favor
" of the said defendant, Charlotte C. Dixon,
" and that the Complainants' Bills be and is
" hereby dismissed; and that the complain-
" ant James M. Moors pay the costs of this
" suit to be taxed, "

75th State of Illinois }
Deer County, } ss.

I Benjamin F. Shaw, Clerk
of the Circuit Court in and for said county
of Deer in the State of Illinois, do hereby certify
that the foregoing is a full, true and complete
exemplification of the Record in said cause,
as appears from the Books and Files yet
remaining in my office,



In Testimony whereof I hereunto
set my hand, and affix the seal
of said court at my office, in
Deer, in said county, this 21st
day of March A.D. 1864.

Benjamin F. Shaw, Clerk
By L. A. Divins, Deputy.

State of Illinois } In Supreme Court
Third Grand Division } ss. To April Term A.D. 1864

James M. Mover &
Charlotte M. Mover
vs
Depts in error

Charlotte C. Dixon &
Heron Camins
vs
Depts in error

Assignment of errors

And now the said

James M. Moores and Charlotte M Moores
plainiffs in error come and say, that in
the record and proceedings aforesaid
there is manifest error in this to wit:

First: The Court erred in not granting the in-
junction and rendering a decree for the relief
prayed for.

Second: The Court erred in decreeing the decree in
said for closure suit and the proceedings
therein constituted a bar to the relief prayed
for by the complainants below in their said bill

Third: The Court erred in decreeing the equities
to be found in favor of said Defendant
Charlotte C. Dixon

Fourth: The Court erred in dismissing the Com-
plainants bill.

Fifth: The Court erred in rendering a decree
against the complainant below James M Moores
for the costs of said suit.

By reason whereof the plaintiffs pray that
said decree and judgment may be reversed

By George P. Woodruff for the
Plaintiffs in error.

State of Illinois }
Third Grand Division }

Supreme Court

April Term 1864.

Charlotte C. Dixon &
Theron Cummings, defendants
in error

vs

James M. Moores &
Charlotte M. Moores
Plaintiffs in error

And now come the said
Charlotte C. Dixon & Theron
Cummings, defendants in
error, by James H. Edsall
their attorney & say that
there is no error in the
said proceedings aforesaid
in manner & form on the
plaintiffs in error bond
above therof in their assignment
of support & error alleged, &
therefore they pray that the
said decree may be affirmed
& that their costs may be adjudged
to them &c

James H. Edsall
Atty for Dfts in error

It is hereby stipulated & agreed
that the portions of Defendant
Charlotte C Dixon, answer
upon pages 55 to 58, inclusive,
of the foregoing record, inclu-
ded in brackets numbered
1, 2, 3, 4 & 5, in red ink, are
the portions of said answer
to which the exceptions of
Complainants below, numbered
1, 2, 3, 4, & 5, respectively were
sustained in the Court below
as mentioned in the Decree
in said Cause -

John Dixon, March 25, 1864.

Joseph Edmell
Atty for Defs in Error
Wm F. Eastman
Atty for Plffs in Error

206 12

James M. Moores

Charlotte Dixon Kent

Reed runs a
founder

Filed April 20. 1864

L. Leland
Clerk