

14492

No. _____

Supreme Court of Illinois

Moshier

vs.

Knox College

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No 189

Moshier

A

Kenyon

1892

1402

Dec 18.00 }

A. Complete
Copy
of
The Record and Files
of the
Circuit Court
of
Knox County
in a cause
wherein

Knox College
is Complainant
and
N. S. Patterson
Respondent. Etal.

Knox College
vs
N. S. Patterson etal

Shoreclosure. In Chancery

A True and Complete copy of the Record
and Files of the Circuit Court of Knox
County, State of Illinois, in Chancery
sitting, in a cause in said court on
the Chancery side thereof, wherein
"Knox College" is complainant and
vs. P. Patterson, Timothy Meshiers
Joseph S. Gilpin, John E. Daniels
Foster Pierce, Nathan Brown, Albert
C. Mason, Israel P. Colton, John-
ston, Mead & Company" and Thomas
Mooney are Defendants. — Bill to
Foreclose Mortgage.

September 13th AD 1861.

On this day came the above named
complainants by T. G. Frost, its solic-
itor, and placed upon the files of
this said court its following Bill of
complaint, to-wit:—

Knox Circuit Court In Chancery sitting.
Sept. Term AD 1861.

To Honorable
Charles S. Lawrence, Circuit Judge
of the Fifth Judicial Circuit:—

Your orator, Knox College, a cor-
poration organized under and by
virtue of the Laws of the State of

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Illinois, respectfully shows unto your Honor that on or about the first day of January in the year one thousand eight hundred and fifty six, William B. Patterson became and was indebted unto your Orator in the sum of seven hundred & fifty dollars for the purchase money of the premises hereinafter named mentioned, sold him by your Orator, and being so indebted, in consideration thereof, the said William B. Patterson on the day and year aforesaid, made and executed under his hand to your Orator by the name of the Trustees of Knox Manual Labor College, a certain promissory note & writing obligatory for the sum of seven hundred and fifty dollars payable to your Orator with six per cent interest in three equal annual payments, with ten per cent interest after maturity.

Trustees of
" "

And your Orator further shows unto your Honor, that the said William B. Patterson on the first day of January in the year of our Lord one thousand, eight hundred and fifty six to secure the payment of the principal and interest mentioned in said promissory note, made and executed under his hand and seal and delivered to the said Knox College under the style & name of the Trustees of Knox Manual College, your Orator is a corporation organized

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under the laws of this state, a mortgage conditioned for the payment of the said sum of Seven Hundred and fifty dollars, purchase money of the mortgaged premises and interest mentioned in the said note according to the conditions of the said note; by which said mortgage the said mortgage mortgaged & granted bargained and sold by said mortgage to the said Knox College in fee certain lands and Real Estate situate in the County of Knox in the state of Illinois and described in the said mortgage as follows, to wit: - All that certain tract of land and premises ~~to wit~~ known and described as being the North half of the North half of the South East quarter of section number Twenty one in Township eleven north, range One east of the fourth principal meridian (N. half of N. half of S. E. 1/4 of Sec. 21. T. 11 N., R. 1. E. 4 P.M.) subject to a defeasance therein contained upon payment of said sum of money, - which said mortgage was duly ^{as a mortgage} acknowledged and afterwards recorded in the office of the Recorder of Deeds of the County of Knox in the state of Illinois on the twenty fourth day of April in the year One thousand Eight Hundred and fifty seven in Book Seven of Mortgages on page 363 as by said mort

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page and the certificates of acknowledgment and recording indorsed thereon and ready to be produced in Court and to which your Orator may leave to refer, will most fully appear

And your Orator believes & states that the sum of Seven Hundred and fifty dollars (deducting only thirty four dollars and fifty cents, paid Dec 3^d A.D. 1838 as of that date), with interest to maturity at six per cent, with interest from its maturity at ten per cent, amounting to the sum of \$1080.11, remains due and unpaid to your Orator on the said note and mortgage and that no proceedings at law have been had to recover the debt secured by the said note and mortgage, or any part thereof

And your Orator further states and believes that the said premises described in the said mortgage are meager and scant security for the said sum of Seven Hundred and fifty dollars in said note mentioned and interest mentioned in the said note and mortgage and now due your Orator.

And your Orator further shows unto your Honor & states upon information & belief that John E. Daniels, Foster Pierce, Nathan Brown, Albert C. Mason Israel P. Cotton, Johnston, Mead & Company Thomas Rooney, Timothy Koshier

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Joseph P. Gilpin have, or claim to have
some interest in the said mortgaged
premises or some part thereof as purchaser
mortgagee or otherwise, which interests
if any, have accrued subsequent
to the lien of the said mortgage of your
Orator and are subject thereto.

Your Orator therefore asks the aid
of this Court in the premises and that
the above named William B. Patterson,
Timothy Mosher, Joseph P. Gilpin,
John E. Daniels, Foster Pierce, Nathan
Brown, Albert C. Mason, Israel P.
Colton, Johnston, Mead & Company, & Thomas
Mooney, the Defendants in this suit, may ap-
pear before the Judge of the Circuit
Court at the Court House at Knoxville
on the fourth Monday of September A.D.
1861 in the Court of Chancery and
answer this your Orator's Bill, according
to the rules and practice of said Court
without oath, an ~~oath~~ answer on oath
being hereby waived, and that the
usual decree may be made for the
sale of mortgaged premises aforesaid
and for the payment of the amount due
your Orator for principal and interest
in the said note and mortgage, and
costs of suit; and that the said Defend-
ants and all persons claiming under
them subsequent to the commence-
ment of this suit and all other per-

sons 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 Orator or any liens or claims thereon by any 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 said premises and that your Orator may have such other and further relief as the nature of the case may require and as this Court shall seem agreeable to equity and good conscience.

And may it please your Honor to grant to your Honor Orator the People's writ of Summons issuing out of and under the seal of this Honorable Court to be directed to the said Defendants William B. Patterson, Timothy Mosher, Joseph B. Gilpin, John E. Daniels, Foster Pierce, Nathan Brown, Albert C. Mason, Israel P. Cotton, Johnston, Mead & Co & Thomas Moore therein and thereby commanding them and each of them on a certain day under a certain penalty to be therein inserted that they personally be and appear before the Judge of the Circuit Court in & for said County of Knox on the fourth Monday of September A.D. 1861 at the Court room in Knoxville, then and

uf

They to answer All and Singular the
Premises and to Stand to And abide
by And perform such order And de-
crees therein as shall seem agreeable
to Equity and good Conscience
And your Orator will ever pray
etc.

Thomas G. Frost }
Sol. for Complainant }

And upon the back of said Bill of Com-
plaint appears as follows:—
"Filed Sep. 13. '61 J. H. Lewis clk"

And on this same day,
September 13, A. W. Met, came again said
Complainant by his Solicitor and
placed upon the files of this said Court
his Writ for summons for the
Defendants named in his said above Bill
of Complaint, — Which Writ is as
follows:—

Know Circuit Court Sept. Term A. W. Met
To Circuit Clerk:
Please issue Summons
in Chancery for the Defendants named
in the foregoing Bill Pursuant to the
Prayer of said Bill to Sheriff of
Moore and Adams Counties

T. G. Frost Sol. for Compl
"Filed Sep. 13. A. W. Met J. H. Lewis clk"

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Also On the same day the clerk issued another summons directed to Sheriff of Adams County, in obedience to said order of Complainant. Which summons is as follows:—

State of Illinois
Knox County } ss

The People of the State of Illinois to the Sheriff of Adams County, Greeting:— We command you to Summon Wm. B. Patterson, Timothy Mosher, Joseph B. Gilpin, John E. Daniels, Foster Pierce, Nathan Brown, Albert O. Mason, Israel P. Kelton, Johnston, Mead & Co. and Thomas Moore, if to be found in your County, personally to be and appear before the Circuit Court of said Knox County on the first day of the next term thereof to be holden in the Court House, in Knoxville on the 4th Monday in the month of September inst. to answer a certain Bill of Complaint filed in our said Circuit Court on the Chancery side thereof against them by Knox College and have you then and there this writ and make return thereon in what manner you execute the same

Witness John McGraw, Clerk of our said Circuit Court, at Knoxville this 13th day of September A.D. 1861, the seal of

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said court being herunto attached
L. S. John H. Lewis Clerk
" "

And on this same day,
September 13th A. D. 1861, the Sheriff of
Groves County returned into this said court
the summons first above recited, as to
Timothy Mosher, one of the Defendants
herein, by the following endorsement
on the back of said summons

"Not being able to find Timothy Mosher
I gave to Barton, a member of his family
at his place of abode, a true copy of
the within, explaining to him the con-
tents; the said Barton being white
person over ten years of age; this
13th day of September 1861
"

E. C. Broth Sheriff Groves Co. Ill.
J. C. Cover Deputy

September 19th A. D. 1861

On this day again came the Sheriff of
Groves County and made ^{quarter} return upon
the first summons above named and
recited, by endorsement on the back
of said summons as follows;

"I served the within summons by
reading the same to and giving to
A. C. Mason each one a true copy
of the within, this 19th day of Sep. 1861

E. C. Broth Sheriff Groves Co. Ill.

And of the same date is also this that

likewise appears on the back of said
Summons: - "I accept service A. C. Mason."

Which said summons is filed as
follows: "Filed this 19th day of Sept. A.D. 1861.
J. H. Lewis Clerk."

September 18th A.D. 1861.

On this day the Sheriff of Adams County
made the following return on the second sum-
mons issued therein, by the Clerk of
this said Court, and to him directed

Which return is by endorsement on the
back of said summons as follows:

"I served the within summons by
reading the same to and giving to Joseph
P. Gilpin a true copy of the within
this 18th day of September 1861; but
cannot find in my county William
P. Patterson, Timothy Moshier, John
E. Daniels, Foster Pierce, Nathan
Brown, Albert C. Mason, Israel
P. Cotton, Johnston, Mead & Company
& Thomas Mooney

Maurice Kelly, Sheriff Adams Co., Ill.
By John Steinagel, Deputy
Received my fees Mrs. McKelly, Sheriff Adams Co., Ill.

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September 23^d A.D. 1861

On this day met the Circuit Court of Knox County, state of Illinois, in Court in course, pursuant to Adjournment, of the September Term. The record of which of the Chancery side thereof is as follows:—

State of Illinois

Knox County } ss.

Proceedings in Chancery at the September Term of the Circuit Court of Knox County, before Hon. Charles P. Sawnee, Judge of the 10th Judicial Circuit, at a Court begun and held at the Court-house in the city of Knoxville, in said County on Monday the 23^d day of September A.D. 1861, being the fourth Monday of said month

Present

Hon. C. P. Sawnee Judge

John W. Lewis clerk

E. C. Bron Sheriff

And on the 30th day of September A.D. 1861, during this term of this said court came Timothy ~~by~~ ^{by his solicitor} Moshier, one of the Defendants herein, and placed upon the files of this said court his Answer to Complainant's Bill of Complaint.

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Heretofore filed herein as aforesaid,
Which said answer is as follows:—

In the Knox County Circuit Court
of the 10th Judicial District Illinois
of the September Term A.D. 1885
Knox College

vs.
William C. Patterson
Timothy Hoshier
Joseph B. Elgin
John E. Daniels
Foster Pierce
Nathan Brown
Albert C. Mason
Israel P. Holton

Bill & Foreclose

The answer of Timothy
Hoshier one of the Defendants, to
the complainant's Bill of Complaint,
The said Timothy Hoshier reserving
& himself all right of exception
to the ~~complainant's~~ complainant's
Bill of Complaint, for answer thereto
saith:— He is informed and believes that
the mortgage mentioned and described
in complainant's bill of Complaint was
executed by William C. Patterson
at the time therein set forth for the
amount therein set forth & secure
the purchase money for the land describ-
ed in said mortgage and that said
mortgage was delivered to the

* Amendment to this answer being the sub-
stitution of "1854" for "1861" as to date of
giving for record the deed to J. H. Mosher

complainant and recorded in the office
of the Recorder of Deeds in the County
of Knox and State of Illinois sub-
stantially as alleged and set forth
in the Complainant's Bill of Complaint.

This Defendant further answering
says he has no knowledge, information or
belief touching the amount paid by
said Patterson or the sum now due
if any upon said mortgage save
such information as he derives from the
Complainant's Bill of Complaint.

This Defendant admits he has an
interest as purchaser of the mortgaged
premises but denies that such interest
has accrued subsequent to the time
of the Complainant's said mortgage.
And denies that said interest is sub-
ject to said mortgage but on the con-
trary he avers that on the 5th day
of March A.D. ¹⁸⁵⁴ 1854 the said William
B. Patterson made, executed and
delivered to this Defendant a deed
under his hand and seal duly
acknowledged conveying said
mortgaged premises to this Defend-
ant and this Defendant had the same
filed for record in the office of the
Recorder of Knox County on the 19
day of March A.D. ¹⁸⁵⁴ 1854* and the
same was duly recorded in Vol.
36 of Deeds on page 19 of as appears

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Thereupon the Clerk of said Court
On this same day, issued a summons,
in obedience to said order, as follows

State of Illinois }
Knox County } ss.

The People of
the State of Illinois, & the Sheriff of Knox
County, Greeting:— We command you
to summon Wm. B. Patterson, Timothy
Moshier, Joseph B. Gilpin, John E.
Daniel, Foster Pierce, Nathan Brown
Albert C. Mason, Israel P. Colton,
Johnston, Mead & Company & Thomas Mooney
if to be found in your County, personally
to be and appear before the Circuit
Court of said County on the first day
of the next term thereof to be holden in
the Court House in Knoxville on
the 14th Monday in the month of
September inst. to answer a certain
Bill of Complaint filed in our said
Circuit Court on the Chancery side
thereof against them by Knox College

And have you then and then this writ
and make return thereon in what
manner you execute the same

Witness our hand & the seal of our said
Circuit Court at Knoxville this 13th day
of September A.D. 1861, the seal of
said Circuit Court being herunto attached
J. C. Lewis

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by the certificate of said Recorder
attached to said deed a copy of which
said deed and certificate is filed
herewith marked exhibit "A"

All which matters this Defendant
is ready and willing to ever, men-
tain and prove as this Honorable
Court shall direct and humbly
prays to be hence dismissed with
his reasonable costs and charges in
this behalf most wrongfully sustained

Timothy Mosnier,
Hazard & Brandely, Counsel for Deft.

Filed Sep. 30 '61 J. H. Lewis clerk

Exhibit A.

This Indenture made this Fifth day of March
in the year of our Lord One Thousand Eight
Hundred and fifty seven, Between Mrs. B.
Patterson of the County of Cook and State of
Illinois party of the first part and Timothy
Mosnier of the County and State aforesaid party
of the second part, Witnesseth that the said
party of the first part for and in consideration
of the sum of One Thousand Dollars lawful
money of the United States of America to him
in hand paid by the said party of the second
part, at or before the Enacting, and delivery of
these presents the receipt whereof is hereby acknowledged

Now, revised, released, sold and forever quit claimed
and by these presents do revise, release and
forever quit claim unto the said party of the
second part his heirs and assigns forever, all
the North half of the North half of the
South East quarter of Section Number twenty one
in Township Number Eleven North of the base line
and Range Number One East of the fourth
Principal Meridian in the County of Chautauq and
State of Illinois,

To Have and to Hold the above described
premises unto all the privileges and appurtenances
thereunto, belonging to the party of the second part
his heirs and assigns forever,

In Witness Whereof, the said party of the first
part hereunto set his hand and seal the
day and year first above written,

Wm B. Patterson Seal

State of Illinois
Chautauq County J. S. Chauncey State a Justice of
the Peace for said County do
Certify that on this day personally appeared before
me William B. Patterson whose name appears
subscribed to the foregoing deed of Conveyance as
Grantor Executed the same who is personally known to me
to be the identical person whose name is subscribed to said
Deed as Grantor Executed the same and acknowledged
that he had Executed the same as his voluntary act
and deed for the purposes therein expressed

Given under my hand and Seal of Office at Goldsburg
This fifth day of March A.D. 1857.

Chauncey Whitey P. Seal

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State of Illinois No 22690
Franklin County J. S. Cephas Adams Clerk
of the Circuit Court and
Ex Officio Recorder within and for the County
of Franklin and State aforesaid do Certify that
the within and foregoing instrument of writing
was filed for Record in the 19th day of March
AD 1857, at 11 o'clock AM and duly recorded
in Vol. 36 of Deeds on Page 197. In Testimony
Whereof I have Pursuant per my hand and seal
affixed the seal of said Court at Knoxville
this 19th day of March AD 1857.

Cephas Adams Clerk

BB

Filed September 30th AD 1861
J. S. Cephas Clerk

And on the
 16th day of October A.D. 1861, and dur-
 ing said term of this said Court
 came again the Complainant herein, by his
 Solicitor, and placed on the files
 of this said Court his Replication to
 the answer of Timothy Moshier, one of
 the Defendants herein, heretofore
 filed herein to complainant's Bill of
 Complaint. Which said Replication
 is as follows

Circuit Court Knox County
 Knox College
 v.
 William Patterson
 Timothy Moshier
 & Others } In Chancery
 Sept Term 1861
 Replication

And now comes the
 Complainant by his solicitor & saving &
 reserving to said complainant & saving
 and reserving to himself all benefit
 and advantage of exception to the
 manifold errors & uncertainties in
 the several answers of the Defts,
 Moshier on file in this cause,
 for replication thereto says that the
 said answer is untrue & that he
 will aver and prove his said Bill
 of Complaint true without the alleged
 facts in said answer contained
 T. G. Frost
 Solr. for Complainant

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"Filed Oct. 16th and Mr. J. H. Lewis clerk
October 16th and Mr.

On this day met again the Circuit
Court pursuant to adjournment
Present same as September 23d
and Mr. And on this day
the following proceedings were had
by said court in this cause:

"Ordered by the court that all
causes not otherwise disposed of
be continued until the next term
of this court."

There was no special order of
the court entered in this cause
during this term

January 3d and Mr.

On this day was filed the second
summons issued herein directed to
Sheriff of Adams County as aforesaid
in the said court as follows:-

"Filed this 3d day of January
and Mr. John H. Lewis clerk"

But before this and on
the 9th day of December and Mr., the
clerk of said court issued an alias
(third) summons herein as follows:-

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State of Illinois
 Knox County) ss,
 The People of the State
 of Illinois, To The Sheriff of Knox
 County, Greeting: We command you
 to summon William S. Patterson, Thom-
 as Moshier, Joseph S. Gilpin,
 John E. Daniels, Foster Pierce,
 Nathan Brown, Israel P. Holton,
 Johnston, Mead & Co and Thomas
 Mooney who are impleaded with
 others, if to be found in your county
 personally to be and appear before
 the Circuit Court of said county
 on the first day of the next term
 thereof to be holden at the Courthouse
 in Knoxville on the third Mon-
 day in the month of February next
 to answer a certain Bill of Complaint
 filed in our said Circuit Court on
 the chancery side thereof, against
 them by "Knox College". And
 have you then and there this
 writ and make return thereon
 in what manner you execute
 the same

Witness John A. Fair's clerk
 of our said Circuit Court at Knoxville
 this 9th day of December A.D. 1851
 the seal of said court ^{being} herunto attached,
 J. S. John A. Fair's clerk

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February 1st 1862

On this day the Sheriff of this said Court made return of said ^{last named} summons by endorsement on the back of it as follows:

I served the within summons by reading the same to and giving to William E. Patterson (G. Mosier served on former summons) each one a true copy of the within this 1st day of February 1862, but cannot find in my county the other within named persons

E. C. Brott Sheriff
By J. C. Clover Deputy
Shff's fees: - Serv. 50, 6 miles travel 30 } Copy 50, 100. 10
E. C. Brott Shff.

And on the 3rd day of February 1862 said last named and copied summons was filed in said Court as follows:

"Filed this third day of Feb'y 1862
J. C. Clover Clerk
"

February 1st 1862

On this day met again the Circuit Court of Gray County, State of Illinois in court in course of the February

See below on page
referred to.

where this is re-

Saturday March 1st 1882
Court met pursuant to adjournment
Present same as on first day
of this term. Ordered by the court
that all suits and causes not
otherwise disposed of, be continued
to the next term of this court.

23 Report to this Court

See page just before this for records here omitted by error
June 2nd A. W. B. S.

On this day again met the Circuit court of Knox county, state of Illinois, in court in course of the June Term A. W. B. S. pursuant to adjournment, the record of which covering of the chancery side thereof is as follows:

State of Illinois
Knox County S S

Proceedings in Chancery
Before the Honorable Charles P. Lawrence
at a court begun and held at the
Court House in the city of Knoxville
in said County, on the
first Monday in the month of June
in the year of our Lord Eighteen hundred
and sixty two, It being the
Fifth Judicial Circuit of the
State of Illinois

Present Hon. Charles P. Lawrence Judge
E. C. Pratt Sheriff
John McGraw Clerk
Patrick H. Sanford Master
in Chancery

June 13th 1862 — On this

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day the said Circuit Court met pursuant
to adjournment, Present same as on
June 2nd, the first day of this Term.

Ordered by the Court that all suits
at Common law or Chancery not
otherwise disposed of, be continued
to the next term of this Court

|| ||

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September 22nd A. M. 1862

On this day met again the Circuit Court of Spoo County State of Illinois in court in course of the September term A. M. 1862 pursuant to adjournment. The record of which convening of the chancery side thereof is as follows:—

State of Illinois }
Spoo County } ss. Spoo Circuit Court
September Term A. M. 1862

— Proceedings in Chancery at a court begun and held at the Court House in the city of Spooville in said County and State, before Hon. Charles P. Lawrence Judge of the Fifth Judicial Circuit in said State, on Monday the 22nd day of September A. M. 1862— it being the fourth Monday of said month

Present

Hon. Charles P. Lawrence Judge
Patrick H. Sanford Master in Chancery
John H. Lewis Clerk
Elijah Croft Sheriff

Monday September 29th

Present same as on the 22nd

Court met pursuant to adjournment
Orders that all suits and causes not otherwise disposed of, be continued

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to the next term of this Court.

There was no other or special order
Entered by the Court in this cause,
at this Term.

February 11th A.D. 1863

On this day again met the Circuit Court
of Knox County, State of Illinois,
in Court in course of the February
Term A.D. 1863 pursuant to adjourn-
ment. The record of the the covering
of which of the Chancery side thereof
is as follows:

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February Term A.D. 1863.

State of Illinois
County of Clark

Proceedings in Chancery
before Hon Charles J. Lawrence, Judge of the
Third Judicial Circuit of the State of Illinois
in which is the said County of Clark, at a
Court begun and held at the Court House
in the City of Knoxville, in said County
and State, On the Third Monday of
February, in the year of our Lord One thousand
Eight hundred and Sixty Three, said Monday
being the 16th day of said month of said year,
Present

Honorable Charles J. Lawrence Judge
J. Calvin Crego Sheriff
John H. Lewis Clerk
Patrick H. Sanford Master
in Chancery

February 21st 1863.

Court met pursuant to adjournment, Present
Same as on the 16th of this month

Clark College

Defendants.

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vs
Wm. B. Patterson

On this day cause brought
on by its Solicitor and in his motion it is
ordered by the Court that leave be and the sum
is hereby granted to Complainant by Examine Applicant
W. B. Patterson as a witness herein, and the

Court Therefore Entered the following order,

First County Circuit Court
February Term AD 1863.

First College }
vs }
Demosty Mashie }
Opp B Patterson }

This cause coming on
to be heard on the Bill of Complaint, in
this cause, It is hereby ordered by this Court
that the testimony of William B Patterson
one of the Defendants in this cause be
taken as Evidence in behalf of above named
Plaintiff and that the same be reported
together with the other Evidence to this Court

A. B. Lawrence

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February 24, 1863.

Court met pursuant to adjournment,
Present same as on the 21st of this month,

Trust College

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William B. Patterson and

vs
J. H. Edwards

On this day came
again the Complainant by its Solicitor, and
on his motion the Court ordered as follows
and entered the following decree herein,

Circuit Court Trust County

Trust College

William B. Patterson and

vs
J. H. Edwards

On motion of the
Complainant's Solicitor, Defendants having been
all found well joined, it is ordered adjudged
& decreed that this cause be and the same
is hereby referred to Patrick H. Sanford Esq
Master in Chancery to make proof of the
material facts stated in said bill and compute
the amount due the Complainant on the
note and Mortgage set forth in the bill &
report the same with the evidence to the Court

Feb. 25th 1863.

C. J. Lawrence

March 4th 1863. On this day came Patrick H. Sanford
Master in Chancery as aforesaid and filed with you
the files of this Court his report made in obedience to an
order of this Court heretofore entered therein as
follows: —

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" Report of Evidence

State of Illinois
County of Cook
Third Circuit Court
February Term A.D. 1863,

Deer College Complainant
vs
William B. Patterson et al
Defendants
Hindover, in
Chancery

I, H. Searford Master in Chancery
in and for said County respectfully reports to the
Hon. the Judge of said Court that said Complainant
produced before me as a witness in this cause
William B. Patterson who after being by me first
duly sworn as a witness in this cause testified
as follows,

Sub 1st State your age, place of residence, occupation,
& whether you are one of the parties to this suit
and whether you know all the parties;

Ans. I thirty nine years, live in Galisthry, I was
formerly in the furniture business - I am not
in business now - I am one of the parties
to this suit - I know all the parties to this suit,

Sub 2^d Look upon Exhibit marked "A" & "B" Mortgage
& note in suit in this case, & say whether you
executed the same & whether said note & Mortgage
were given for the purchase money.

Ans - I executed said note and Mortgage, they were given
to Henry the purchase money of the forty acres of

land described in the Mortgage,

Q^u 3. State whether at anytime you executed a deed of the same premises, described in the Mortgage to Timothy Washier & if so when?

Aⁿs - I did execute a deed to Mr Washier of the land described in the Mortgage, sometime in the Spring of 1857. - I think in March -

Q^u 4th State whether or not prior to or at the time of the Execution of this deed Washier had any knowledge or information as to the Existence of this Mortgage in question & if yes, what knowledge or information did he possess & who, if you know gave him the information - State the same fully and at large,

Aⁿs - My impression is he had not any knowledge of the Existence of the Mortgage previous to the Execution of the deed. He did have knowledge of the Existence of the debt against the land sometime in the winter of 1856 & 1857. I proposed to sell this piece of land to Mr Washier, after a little conversation about he asked me if I could make a deed - I told him I supposed I could not at that time as there was a part of the purchase money due the trustees of Amherst College on this land - But I thought I could make that right, or would have that lifted - that I had a trade in contemplation & about consummated with the trustees by which I could lift that all or the greater part.

And further that I should have that matter arranged so that I could make a deed when I pleased, that was the end of that conversation.

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A short time after that I went him again,
 and asked him to make me an offer for the
 land - He did so - He offered me some \$1400
 or \$1500. Dollars, previous to making the offer
 however, he asked me if I could make a deed
 I told him I could - I refused to take the offer,
 at least I should take sometime to do better, if
 I could, - A few days before the deed was
 executed I told him I had sold the land - he
 asked me who to; and I told him I sold
 to Mr Gilpin - he asked me the amount, I
 told him, then he inquired with reference
 to the payments & the making the deed, I told
 him the conditions of the sale, & how the
 payments was to be made, and as to the deed
 I told him I could make a deed, but there
 was a part of the purchase money due the
 trustees yet, that would have to be taken out of
 the sale of the land He wanted to know if when
 it would be paid up and the deed made,
 I told him as soon as Mr Gilpin could be
 would come up -

When Mr Gilpin came Mr Mashier had
 information of that fact & Mashier came in to
 settle up - the sale was turned over to Mashier -
 I made a deed to Mashier & deducted out of the
 purchase money for the land \$800, that was the
 estimated amount due the trustees at that time,
 that was taken out & he gave me credit for
 the balance on what I owed Mashier, He took
 out the \$800, & was to pay the trustees the
 amount due them on the land

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He then made out a deed and signed it - A short time after that he told me that I had given a Mortgage on that land & that Mr. Cary the Treasurer of the College had neglected to get it Recorded

I asked him if he had recorded his deed he got from me, he said he had, I then made a remark how about that, He said that he would not be bound to pay that, or could not make him pay it or something to that effect, I remarked then, "then and you for it then" that was about all. We had a little laugh as a kind of a joke over it.

Enter 3th. State whether any money was paid by Mashier on this sale, or whether the purchase money agreed on between you & him was to be applied & if so how & what was the entire amount of purchase money which he was in any way to allow you in the sale of the land

Ans. No money was paid to me, He was to allow me \$2200. for the land - a part was applied in indebtedness I owed Mashier \$500, of it was to go to the trustees of that College -

All of \$2200. was applied in indebtedness I owed Mashier except the \$500. which he was to pay the trustees.

Enter 6th. State whether as a part of this same transaction when this sale was turned over to Mashier whether there was any arrangement & if so what as to a resale of the same property to Crispin & if you that was said and done on that subject.

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Answer, Gilpin then paid a part of the purchase money to my Agent, who paid it to Washin, The balance Gilpin gave notes & when he paid the notes Washin was to give him a Deed, The whole amount that Gilpin was to pay Washin, including what he paid down, was \$2000. A short time after the first note became due Washin told me that Gilpin had paid it - After all of the notes became due I asked Washin if that matter between him and Gilpin was all right he replied Ayee, or something to that effect.

Gilpin gave Washin two notes of \$500. Each & a \$1000, was paid down.

"Cross Examination"

Q. Art 1. Have you been released from the payment of the note upon which this suit was brought, I mean by the College,

Ans. I don't know that I am legally released

Defendant's Evidence,

The Defendant produced before me John C. Stewart as a witness, who being by first duly sworn by me as a witness in this cause testified as follows,

Int. 1. Q. What is your name, age, and place of residence,

Ans. John C. Stewart, 41 years of age, Residence Calverly, Mo.,

34 Int 2^d Are you acquainted with the parties
to this suit?

Ans. I am acquainted with the Compt-
ant & with the Defendants, William Patterson
Timothy Mashie & Joseph B. Gilpin, I have
known about seven years.

Int 3^d Are you acquainted with Mr
of Mr of the Sec of Sect 21. T. N. S. R
and East of the fourth Principal Meridian, in
Clark County Mo. If you, state whether you
ever negotiated the sale of said tract of land
& if so when for whom, & when,

Ans. I am acquainted with said land
The firm of Stewart Messers Co made sale of the
land described to Joseph B. Gilpin of Quincy for
Mr B. Patterson, the contract was made about
the 21st day of March 1857.

Int 4th On whom was the title of said
land vested at the time the sale was made?

Ans. The title was vested in Timothy Mashie,

Int 5th How came the sale then to be made
by you for Mr Patterson,

Ans. Mr Patterson claimed to be the actual
owner of the land, He said that the title was
in Mr Mashie & that Mr Mashie would make
the deed, that the money was going to Mashie
as he was indebted to him - He said Mr Mashie
wanted to allow him a credit of some \$1500, or
\$1000, - that he had the privilege of selling it
for as much as he could get for it, - that if he
could get \$9000, for it, the amount which was
offered, it would place him in a much better condition,

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that his object was to pay his debts & he had been getting money of Washin, the money was to go to Washin,

(6) Q^{ty} Int 5, How was the payments to be made & to whom,

A^{ns}. The payments was to be made @ \$1000 down and the balance in one & two years to the best of my recollection - the \$1000. was to be paid to Mr Washin in the 1st place - the note was drawn payable to Mrs B Patterson & was to be by him assigned to Mr Washin & was so assigned.

(7) Q^{ty} Int 6th Was anything at that time or during the negotiation said in regard to an encumbrance on the land & if so what was said & by whom,

A^{ns}. Mr Patterson said that the land he purchased of Christ College & that the title was clear, before closing the contract the Records were examined & found to be as he stated,

(8) Q^{ty} Int 7th Was there anything at the time the concluding of the contract said in regard to any portion of the consideration money going to pay the purchase money to Christ College, if so by whom was it paid and who was present,

A^{ns}. There was not - I never heard of it till Mr Washin told me of it about a month ago,

(9) Q^{ty} Int 8th Was Mr Washin present at the time the contract was concluded,

A^{ns}. I think he was - Patterson was present & also Mearns & myself.

D. C. Sanford
Master in Chancery

"Filed March 4. at New York, J. H. Lewis clerk"

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at 11 o'clock AM as appears by the certificate of acknowledgment & of record thereto attached,

Stands said note in said Mortgage M'Entire & described in which there is now due the sum of \$1194.18

P. M. Sanford

Master in Chancery

Filed March 4th A.D. 1863, J. H. Lewis clerk

11 11

March 5 A.D. 1863

Court met pursuant to adjournment

Present the same as on the 24th day of February last

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Therefore said Timothy Mashin one of the A Defendant herein as aforesaid by his solicitor moved the Court for leave to Amend his Answer heretofore filed herein as aforesaid & inter alia,

And now the Court having heard said motion and being fully advised in the premises, It is ordered by the Court that said motion be and the same is hereby allowed.

And it is further ordered that a decree of Sale of the premises mentioned in Complainant's Bill of Complaint as therein prayed in this cause shall be signed by the Judge of this Court in vacation and filed up of this Court — by consent of the parties hereto.

Therefore comes the said A Defendant Mashin by his Solicitor and moved the Court for leave to file a Bill of Exceptions to the rulings and decisions of this Court herein within thirty days from this date.

And now the Court having heard said motion and being fully advised in the premises, It is ordered by the Court that said motion be and the same is hereby allowed.

And now comes said A Defendant Mashin by his Solicitor and prays an Appeal from this Court to the Supreme Court of the State of Illinois.

Therefore it is ordered by the Court that such prayed appeal be and the same is hereby granted to said A Defendant upon this condition that said A Defendant Execute a Bond within

40

Thirty days from this date with Security to be approved
by the Clerk of this Court, in the sum of \$1000.00
by Consent of the parties Hereto,
" "

March 25th A.D. 1863

On this day came the Complainant
and placed upon the files of this
said court a decree of sale of
the premises mentioned and described
in Complainant's Bill of Complaint
as therein prayed, according to
the order of this court heretofore
made therein, which decree
is as follows:

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Dist. Circuit Court
February Term AD 1863

Trust College

vs
William Patterson
Timothy Mashier
Joseph B. Cusin et al

vs
Hon Charles B. Lawrence
Presiding
A Decu

This cause having been this day brought on to be heard upon the bill of Complaint filed therein together as answered by said Defendants except Timothy Mashier and as to him upon bill answers replication and proof said defendants having been duly and personally served with process of summons in this suit and having been three times solemnly called came not but made default, And upon the report of Patrick H. Sanford Esq. Master in Chancery which report was made in pursuance of an order and decree of this Court therefore made in this cause referring it to said Patrick H. Sanford Esq. and of the Master in Chancery to compute the amount due to said Complainant on the note and Mortgage set forth in said bill of Complaint and to take and report of the evidence in this case and upon reading and filing said report found which with the evidence in said cause it appeared that there was due and to the said Complainant at the date of said report for said principal and interest the sum of Eleven Hundred & Twenty four

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Dollars and Eighteen Cents, upon said notes and Mortgage, in said bill described,

Now on motion of Thomas G. Frost, Complainant Solicitor, it is ordered adjudged and decreed and this Court by virtue of the Authority therein vested doth order adjudge and decree that the said Report and all things therein contained do stand ratified and confirmed.

And it is further ordered adjudged and decreed that said Defendant, Patterson, pay said sum so found due and costs of this suit within Thirty days and that in default thereof that said Defendant be forever barred and foreclosed from all Equity of Redemption or claim of, in and to said mortgaged premises and any part and parcel thereof and that all and singular the said mortgaged premises mentioned in the bill of Complaint, in this cause be sold at public Auction, by or under the direction of said Patrick O'Sandford Esq to sell said mortgaged premises and execute this decree and that the said sale be made at the Court House of the County and State in said County and State and that said Master give public notice of the time and place of said sale of these words by publication in a newspaper published in said County and State and posting notice of said sale in three public places in said County that said Master in Execution execute to the purchaser a Certificate of purchase of said mortgaged premises in said sale and that out of the proceeds of said sale he do

Master in Chancery

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pay the costs in this suit and the amount so reported due as aforesaid with the legal interest thereon or so much thereof as the purchase money of the mortgaged premises will pay of the same and that he take receipts therefor and file the same with his report and bring the surplus money coming from said sale into Court to abide the further order of this Court.

And it is further ordered, adjudged and decreed that the SDendant and all persons claiming or to claim from or under them, including said Tenacity Nashier and said Gilpin and all persons having a lien subsequent to said Mortgage by judgment or decree upon said premises their heirs and personal representatives and all persons claiming under such judgment or decree be forever barred and discharged from all Equity of Redemption and claim of, in and to said mortgaged premises and every part and parcel thereof and it is further ordered, adjudged and decreed that the purchase of said mortgaged premises at such sale be let into possession thereof, and all persons in possession surrender the same to said purchaser on production of the Master's deed for said premises,

Dated March 5, 1863, C. B. Lawrence

Filed March 18th 1863
J. H. Lewis Clerk

April 3rd 1863

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On this day came Timothy Moshier
one of the Defendants herein by his Sol-
icitors and filed a Bond as follows:

Know all men by these presents that
we Timothy Moshier and James
H. Rumm of the city of Galesburg
and state of Illinois, are held and
firmly bound unto Knox College in the
sum of sixteen hundred dollars for
the payment of which well and truly
to be made we bind ourselves, our
heirs, executors and administrators
firmly by these presents

Witness Our Hands and seals this
first day of April A.D. 1863.

The condition of the above obli-
gation is such that whereas the said
Knox College did at the February
Term A.D. 1863, of the Circuit Court
of Knox County obtain a decree a-
gainst William S. Patterson, Timothy
Moshier and others whereby it was
ordered, adjudged and decreed
that the said William S. Patterson
pay to said Knox College the sum
of eleven hundred and twentyfour ^{dollars} and
eighteen cents and costs of suit within
thirty days from the date of said decree
and that in default thereof the said
William S. Patterson and the other defend-
ants in said suit be forever barred

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and foreclosed from all equity of redemption or claim of, in and to certain mortgaged premises therein mentioned and that the said mortgaged premises be sold and the proceeds thereof applied to the payment of the sum so decreed to be paid and interest and costs, — From which decree the said Timothy Moshier has taken an appeal to the Supreme Court of the state of Illinois; —

Now if the said Timothy Moshier shall prosecute his Appeal with effect and shall pay said decree, costs interest and damages in case said decree shall be affirmed, then the above obligation to be void; otherwise to remain in full force and effect

Timothy Moshier *Tim*

James H. Blum *Blum*

Filed and Approved by me this
3^d day of April A.D. 1863

John H. Lewis clerk

And on the same day came again said Defendant Moshier and placed upon the file of this said Court his Bill of Exceptions in accordance with an Order of this Court heretofore made herein which

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is as follows: "Bill of Exceptions"

Know all men that I, the said Court of
Chancery, do hereby certify that
William J. Patterson
and Timothy Mashier
of the County of
Illinois, do hereby certify that
the said Bill to be enclosed

It is remembered that in this cause coming on to be heard the Complainant read in Evidence the report of the Master in Chancery of the Evidence produced before him by Complainant to support its Bill to wit a Mortgage Bond and Promissory note described in the bill - said Mortgage was dated on the first day of January A D 1856, recorded in the Register's Office at the County of Knox April 24th 1857. The Counsel for the Complainant at the same time proposing to read the depositions taken before said Master & accompanying his report of William J. Patterson and John C. Stewart whereas the Counsel for the Defendant suggesting that the proper time for the reading of said depositions was after the Defendant had offered his proof the Evidence contained in said depositions being in its nature self-evidencing, - the Court was thereof ^{reading} ~~was thereof~~ ^{permitted} ~~permitted~~ to give the Defendant the opportunity to introduce his proof in the first instance. The Defendant Mashier (by his Counsel) to maintain the issues on his part produced and read in Evidence the original of which the papers on file marked "Dep't Exhibit A" is a copy.

Dep't "Exhibit A"

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This Indenture made this Fifth day of March in the year of our Lord One thousand Eight hundred and fifty seven. Between William, J. Patterson of the County of Clark and State of Illinois party of the first part, and Timothy Washier of the County and State aforesaid of the second part, Witnesseth, that the said party of the first part for and in consideration of the sum of One Thousand Dollars lawful money of the United States of America to him in hand paid by the said party of the second part, at or before the Enrolling and delivery of these presents the receipt whereof is hereby acknowledged have received, released sold and forever quit claimed and by these presents do promise release, and forever quit claim unto the said party of the second part and to his heirs and assigns forever All the North half of the North half of the South East quarter of Section Number twenty one in Township Number Eleven North of the base line and Range Number One East of the fourth principal Meridian in the County of Clark and State of Illinois, To Have and to Hold the above described premises with all the privileges and Appurtenances thereto belonging to the party of the second part his heirs and assigns forever.

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and Year first above written,

Wm J. Patterson Seal

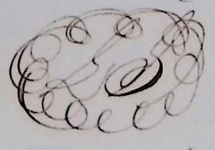
48

State of Illinois
 First County J. S. Chauncy Justice
 of the Peace for said County
 do certify that on the day personally appeared
 before me William D. Patterson whose name appeared
 subscribed to the foregoing Deed of Conveyance
 as having executed the same, who is personally
 known to me to be the ~~same~~ identical person whose
 name is subscribed to said deed as having executed
 the same and acknowledged that he had executed
 the same as his voluntary act and deed for
 the purposes therein expressed

Given under my hand and seal of Office at
 Cahokia this fifth day of March AD 1857.
 Chauncy Justice of Peace

State of Illinois No 20690
 First County J. C. Phelps Clerk of
 the Circuit Court and Ex Officio
 Recorder within and for the said County of First
 and State of ~~Illinois~~ ^{Illinois} do hereby certify that the
 within and foregoing Instrument of writing was
 filed for record on the 19th day of March AD
 1857, at 11 o'clock AM and duly recorded
 in vol. 36 of Deeds on Page 197.

In Testimony Whereof I have hereunto
 set my hand and seal affixed the seal of said
 Court at Cahokia this 19th day of March 1857.



J. C. Phelps Clerk

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Now said Defendant rested his case,

It was admitted on the Hearing in Open Court by the respective parties that the Complainant's Mortgage & notes were given to secure the purchase money of the Mortgaged premises, which was paid by the Complainant to the Defendant Patterson,

The Complainant then further to maintain the issue on this point proposed to read in Evidence the testimony of ^{Mr} William B Patterson reported by the Master in Chancery to the reading of which the Defendant counsel objected on the ground that the said William B Patterson was a party interested in the issue of the suit, which objection was overruled by the Court, and the testimony of the said Patterson was then read in Evidence to which ruling of the Court, and reading of said testimony the Defendant then and there Excepted,

The Complainant then proposed to read in Evidence the testimony of John C Stewart taken on behalf of the Def^y and reported by the Master in Chancery, to which the Defendant objected stating that Mr Stewart was then present & he intended to call him, The Court overruled the objection and said depositions were then read by Complainant Counsel to which ruling of the Court reading of said depositions the Defendant then and there Excepted,

As the Complainant stated this case,

The said Defendant then further to maintain the issues in this part called the aforesaid John, C Stewart who after being sworn testified in substance as follows to wit;

That he is a resident of the City Galveston that he was during the years 1856 & 1857, a member of the firm of Stewart, Munroe & Co of Galveston and that said firm acted as Agents to buy and sell lands and that somewhere about ten days prior to the 21st of March 1857 (AOC could not recollect the date exactly it being so long since it occurred) one Joseph B Gilpin of Quincy Ill made application to said firm by letter to purchase the land mentioned in Complainant's Bill, and that said land was & had been for sometime entered upon the books of said firm as for sale in the name of William B Patterson.

That he immediately called upon Patterson and informed him that said Gilpin desired to purchase the land and asked him his price, AOC gave his price \$2000, and then told witness that the letter was in Timothy Washin but that said Washin would deal the land at his request, that he was indebted to Washin & that if he could get \$2000 for the land it would place him in ^{much} better condition as Washin did not want to allow him but some \$1500 or \$1600 said he had been getting money of Washin and that the money for the land was going to Washin.

Petrus then called upon Mosher and ascertained
 from him that he would deed the land to Gilpin
 for the \$2000, Petrus then wrote Gilpin the
 price and terms of sale and for Gilpin acceded
 to the terms of sale and sent his note up
 to said firm for the amount of the purchase money,
 One Thousand of which was to be paid in a
 few days and was afterwards paid to said Mosher
 I think sometime in the early part of April
 A.D. 1857. Immediately after the note was received
 which was on or about the 21st of March 1857,
 Mosher and Patterson was called into my office
 and the trade was closed by a contract being given
 to Gilpin by which Mosher bound himself to make
 him Gilpin a deed with full covenants of warranty
 and payment of the purchase money but whether
 the contract was signed by both Patterson and
 Mosher or Mosher alone witness cannot not
 recollect, but think by both.

The note was payable to Patterson and
 was by him endorsed and delivered to Mosher
 at the time, and as witness understood from
 what was said at the time the purchase money
 was all going to Mosher - Nothing was said
 about any part going to pay a debt due Snow
 College - but it was represented to witness by
 said Patterson that the land was free from all
 incumbrance, and witness never heard to the contrary
 until since the commencement of this suit -
 Patterson paid the Commission fees for selling the
 land

52 Moshir has since made a deed to Gilpin,
And a note was shown to said witness purporting
to be a note from Joseph B. Gilpin to William B.
Patterson bearing date March 21st 1854, of which
the following is a Copy,

\$600.

On or before the first day of March
A.D. 1854, I promise to pay to William B. Patterson
or order at the Office of Stewart and Meares
& Co. Goldsmiths, the sum of Six Hundred
Dollars with interest at the rate of six per
cent per Annum to be paid Annually on the
first day of March in Each, for value rec^d

in currency

Witness My March 21st 1854, Joseph B. Gilpin
Upon the back of which note appears the following Endorsement
"Pay to the order of Timothy Moshir"
Wm. B. Patterson,

And the witness was asked to state whether
said note was one of the notes to which he had
referred as given for the purchase money of
said land, Witness said it was one of
said notes delivered by him to said Patterson
and by him Endorsed to Moshir

1 On his Examination the witness John C. Stewart
2 testified as follows, The only mode shown of determin-
3 ing the date of this transaction is the date of this
4 Note, as it is a long time since the Occurrence took
5 place & I cannot be positive as to date,

The negotiation was going on for several weeks before it was finally concluded & contract signed — It was carried on by letter — Also after the contract was signed it was sometime before the money was paid. Gilpin who resided at Quincy insisted it should be paid there & some controversy occurred about it & time was consumed before the money was paid.

The remark about the land being ^{clear} ~~clear~~ a few years from incumbrance, was not made in the presence of Mosher. As in my presence,

I had my transaction and conversation mainly with Patterson — after making the arrangement with him, I saw Mosher and told him we had sold it for \$2200 or I thought we could get that, or that we insisted on that as the lowest price and told him he, Patterson said, he, Mosher would give a dud, Mosher said it was all right.

The Defendant further to maintain the issue on his part next offered and read in evidence a deed from said Mosher to said Gilpin conveying said land to said Gilpin which deed bears date the 12th day of November A.D. 1860, and recites a consideration of Twenty two hundred Dollars & contains full covenants of seisin and Warranty, duly acknowledged and recorded in the Recorder's Office of said County on the 17th day of November A.D. 1860.

As the Defendant rested his case,

The case was then submitted to the Court upon arguments of Counsel and taken by the Court under advisement.

Before the rendering of their decision of the Court the Defendant by his Counsel applied to the Court for leave to amend his Answer by inserting with original answers "1861" in place of "1857" as to change the date of filing for Records of the deed to Nashier as the 14th day of March A.D. 1857 instead of the 14th of March A.D. 1861, which Amendment was allowed by the Court & thereupon the Complainant, asked leave to amend his bill by inserting therein the following to wit:

"Amendment of Bill"

Trinity College

Chancery Court

7/1

1867/68.

William Patterson

Proposed Amendment

Timothy Nashier and

Allowed by the Court Masters

The Complainant avers that said Defendant Timothy Nashier & J. A. Delpin said Defendant had notice of the time of the acquiring of the title to said premises by them & of the Execution of the said title to them and each of them of the fact of the Execution of said Mortgage ^{of the} ~~and~~ fact that the purchase money ^{was} ~~is~~ wholly unpaid & well knew the same at the time of the purchase of said premises & that the same were then still due and owing to said Complainant.

J. C. Frost

Filed March 5th 1863, J. H. Lewis, Counselor & Solicitor

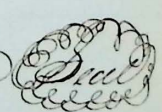
To which the Defendant objected because it was too late & said Amendment would prejudice the rights of said defts.

The Court overruled the defts objection and permitted said Amendment to be made to all of which the Defendant then and there Excepted,

The Defendant then Entered a motion for the further Continuance of said Cause on the ground that said Amendment was material, changing the issue between the parties, & that the Defendant was entitled to put in a further defence,

The Court overruled the Defendants motion for a continuance, and the defts then and there Excepted,

And therefore the Court Entered a decree in favor of the Complainants, & Injurers, all which matters and things of & remain in this case, the defendant prays that his bill of Exceptions may be signed and sealed and made part of the record herein which is accordingly done,

C. P. Lawrence 

Filed April 3^d 1863 J. H. Lewis, Clerk

And on this same day came the parties hereto and placed upon the files of this said Court the following Stipulation

Pratt College

vs
William J. Patterson
Tenancy in Part
et al

In the Circuit Court
of Pratt County, Mo.,
Mar. 5, 1865.
Bill to Foreclose Mortgage,

It is hereby stipulated and agreed that the statement of John C. Stewart contained in his cross Examination as appears in the Bill of Exceptions may be changed to the following extent, strike out after the words "The negotiations" in the 6th line from the commencement of cross Examination the words "was going on for several weeks before it was finally concluded and contract signed" and insert in their stead "for the sale was from one week to ten days prior to Confirmation of sale, to the best of my recollection not to exceed ten days" and in all other respects the Bill of Exceptions to remain as it now is.

J. D. Hunt for Plaintiff
Wm. D. Barclay for Defendant

Filed April 3^d at Mo. B.
John A. Jew's Clerk

State of Illinois
County of Knox

I, John H. Lewis
Clerk of the Circuit Court in and for
said County and State, do hereby cer-
tify that the above and foregoing in-
strument of writing is a true, exact
and complete copy of the record and
files of this said Court in this said
cause above entitled, — Excepting of
the note given as aforesaid by Wm
B. Patterson to Trustees of Knox Man-
ual Labor College and the endorsement
thereon and the mortgage given as
aforesaid by Wm B. Patterson to the Trus-
tees of Knox Manual Labor College to
secure said note, which instruments
are on the files of this Court in this cause
and copies of which follow this certificate
which copies I hereby certify are
true, exact and complete

In testimony whereof I have
hereunto set my hand
and affixed the seal
of said Court at
Knoxville, this
sixteenth day of
April A.D. 1883



John H. Lewis Clerk
J. E. Cheney Deputy

This Deed made this First day of January in the year of our Lord One Thousand Eight Hundred and fifty six, Between William Patterson of Cook County, in the State of Illinois of the first part and The Trustees of Cook Manual Labor College of the State of Illinois, of the Second part

Witnesseth that the said party of the first part for and in consideration of the sum of Seven Hundred and Fifty Dollars paid by the said party of the Second part the receipt of which is hereby acknowledged, do by these presents Grant, bargain, and sell, remise, release, Convey and Confirm unto the said party of the Second part, or their Successors and Assigns a certain tract or parcel of land situated in Cook County in the State of Illinois known and described as being the North half of the North half of the South East Quarter of Section Twenty One (21) in township Number Eleven North of the base line and One (1) East of the fourth Principal Meridian, containing forty acres more or less,

Together with all and singular the Advantages, rights, privileges and Appurtenances thereunto belonging or in anywise Appertaining.

To Have and to Hold the said premises as above described, with the Appurtenances, to the said party of the Second part, or their Successors and Assigns forever.

And the said party of the first part for himself and his heirs, Executors, and

Administrators As Heby Comunt to and with
 the said party of the Second part their Successors
 Executors, Administrators And Assigns that he
 is well seized of the premises above conveyed
 as of a good and indefeasible Estate in Fee
 Simple And has good right to sell and
 convey the same, in manner and form as aforesaid

That they are free from all incumbrances, and
 that the above bargained premises, in the quiet
 and peaceable possession of the said party of
 the Second part, or their Successors or assigns
 against the claim of all persons whomsoever
 will pass Patent and All Quads

Provided Nevertheless, that if the said party
 of the first part, Executors or Administrators, shall
 sell and truly pay to the said party of the second
 part, or their Successors or assigns, the just and
 full sum of Seven Hundred and fifty dollars
 then this Debt, as also a certain Note bearing
 date even with this instrument given by said
 William B Patterson to said Trustees constituted
 to pay the said sum and the interest as descri-
 bed in said note, shall be void; Whereas to remain
 in full force and virtue,

On Testimony Whereof the said William
 B Patterson has hereunto set his hand and
 seal the day and year first above written
 Signed, Sealed and Delivered

in presence of

Wm B Patterson

State of Illinois

County of Cook

Lucius Cary a Notary Public within and for said County.

Do Certify that in this day personally appeared before me Mr. B. Pattison whose name appears signed to the foregoing deed of Conveyance, and who is personally known to me to be the identical person whose name appears signed to said Deed as having Executed the same, and acknowledged that he had Executed it, the said deed of Conveyance as his voluntary act and deed for the use and purpose therein expressed.

Given under my hand and Notarial Seal at Chicago the First day of January One Thousand Eight Hundred and fifty Six,

Lucius Cary
Notary Public's

[Handwritten initials]
\$750.00.

Chicago, January 1st 1856.

For value received I promise to pay the Trustees of Cook Manual Labor College, in three equal Annual payments with Annual interest at the rate of six per cent until due and at the rate of ten per cent on each payment interest after they severally become due.

Mr. B. Pattison

Upon the back of which note appears the following Endorsement
For value received the within note is hereby assigned to Andrew Trux as collateral security for Fifteen Thousand Dollars for which the Trustees of Cook College have given this note and a Mortgage

A. D. Decker
Secretary,

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Dec 3rd 1858 Paid Thirty four & 1/2 the Dollars

Paid March 4th 1863

J. C. Lewis Clerk

State of Illinois No. 4282
Franklin County J. C. Lewis Clerk

of the Circuit Court and
Ex-Officio Recorder within and for the said County
of said State of said, do hereby certify
that the within and foregoing instrument of
writing was filed for record, on the 24th day of
April A.D. 1863, at 11 o'clock A.M. and duly
recorded in Volume 7, of Mortgages, on Page 363.

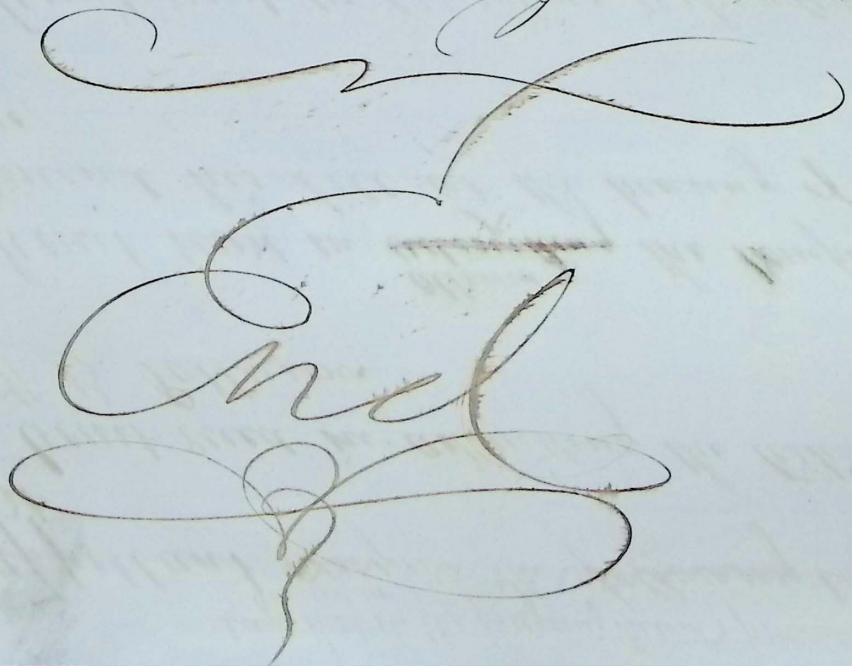
W. W. Whitney Sheriff, I have hereunto set
my hand and seal, and caused the seal of said
Court at Knoxville this 24th day of April
A.D. 1863.



J. C. Lewis Clerk

Paid March 4th A.D. 1863

John C. Lewis Clerk



Says that in the foregoing Record & proceedings there
is manifest the following errors

The appellant ^{is manifest} assigned the following errors
within to wit
1st The Court erred in admitting the testimony
of W. B. Patterson

2d The Court erred in ~~admitting~~ ^{allowing} the Complainant
to amend his bill at the hearing of the
Cause

3d The Court erred in overruling respondents
motion for a continuance

4th The Court erred in decreeing a sale of
the ~~subject~~ ^{subject} premises.

E. W. Hazard
Appellant's Attorney

Filed April 22nd 1883
L. Leland
Clerk

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Mosher et al
vs
Knox College
Record

State of Illinois Supreme Court 3rd Grand division April 22nd 1883

Samuel Mosher et al. vs Appeal from Knox County
Knox College

And now comes the said Appellant by
J. F. [unclear] his motion and says that neither in the record
proceedings or judgment of record is there any error and
therefore the said Appellant prays that the said judgment be
affirmed and its every record costs herein.

J. F. [unclear]
Sols. for Appellant



Supreme Court

April Term 1883

Timothy Mosher
Appellant

v.

Knox College
Appellee

} additional written
argument on the part of the
Appellee
J. G. East Atty for

appellee

II - The objection to the deposition of Stewart was equally untenable. This deposition was taken on the part of Moshier but when once taken it became the property of both parties & could no more be withdrawn by the party offering it than could the oral testimony of a witness produced by him on the trial -

Bradley v. Geiselman. 17 Ill 571

Nil actum apparet in his punctis scriptis -

III - There was no error in allowing on the hearing an amendment of the bill, for the following reasons. First, no actual amendment was necessary, the allegations of the bill were abundantly sufficient. The idea that there was no necessity for the amendment, or that the amendment changed entirely the issue between the parties & operated as an entire surprise upon the defendant, which is entertained by the counsel for the appellants, originated in an entire misconception of the Chancery rules of pleading applicable to a foreclosure suit. The object of the bill is not to set aside, for fraud, or otherwise, the defendant's deed, or to subvert or destroy his title; any effect of this sort is incidental merely. The object of the bill is simply to foreclose the equity of redemption, of the mortgagor & all persons holding under him. It is not usual in practice

(19)

or required by the rules of pleading, on the part of the complainant, to set forth in the bill the nature, character, or extent of the defendant's title. It is sufficient to allege that he claims some title or interest in the mortgaged premises, & that it accrued subsequent to the title of the complainant & is subject thereto. The defendant is thus called on to bring forward his title & establish his rights, which are supposed to be peculiarly within his own knowledge & not within the knowledge of the complainant. It is incumbent on the defendant to set off, with precision & accuracy, his title & his rights & it is not the duty of the complainant to set off their defects. The original pleading bill was itself amply sufficient & the amendments did not materially change the issue. The defective pleading was most manifestly the answer not the bill. The following authorities illustrate & sustain this rule to the fullest extent. In Morgan v. Smith et al. 11 Ill 194, it is stated "that a complainant is not bound to set forth his adversary's right with the same particularity as his own, when the nature and character of those rights is more particularly within the knowledge of the adverse party. It is sufficient for the complainant to allege generally that the adverse party ^{or} claims to have some rights relative to the subject matter of the controversy, leaving the opposite party to disclose in his answer the nature & extent of them."

(30)

This was a bill for a specific performance against Dmi. who made the contract & Montgomery ^{and} Hollister who claimed some interest in the land. The Court in their opinion on page 200. say "The extent & character of the privileges of the defendants ~~was~~ Montgomery ^{and} Hollister being more peculiarly within their knowledge. It was sufficient for the Complainant to allege generally that they had or claimed to have some claim or privilege upon the land; leaving them to disclose in their answer its nature & extent; which they have done. Cooper Eq. Pl. 6; Story's Eq. Pl., Sec. 255.

The Bill alleges, that the Complainant "has learned that Samuel Montgomery ^{and} Henry B. Hollister have set up some claims to a portion of, or to some right upon said land" and charges, that the defendants have combined to "usurp rights & privileges that were never originally reserved in said purchase", and prays that Montgomery & Hollister be compelled to exhibit & show "what right they have to said land, or to any part of it, & all privileges connected therewith;" that the Court determine the rights & privileges that said Montgomery & Hollister are entitled to, out of said land, and that an abatement out — "The foregoing allegations & prayers we think sufficient &c"

In *Unionduke v. Van Kenelaer* 1 Paige N.Y. Ch. Rep. 85; it was held that if the complainant in a mortgage case unconditionally sets out the rights of the

defendants at length his bill may be excepted
to for impotence & it was stated by the court
that if a bill was properly framed "it contained
only a general allegation that the defendants
have or claim some interest in the mortgaged
premises as subsequent purchasers, incumbrances
or otherwise." page 86. As to withdrawing the replication
the repeal provisions of our statute, abrogates special
replications & substitutes general replications in their
stead - This is a mere formal pleading & merely
performs the same office as the similiter, to the
general issue, does at common law; it merely puts
the case at issue. The necessity for withdrawing the
replication, whatever may formerly have been the
rule, cannot exist under our practice. Even the
entire absence of any replication whatever, was
held in 5 Wilm. 225 "not to authorize a reversal"
on the ground that the parties naturally "waive the
filing of replication by treating the cause as at issue
The ~~cause~~ court will allow a replication to be
filed nunc pro tunc 1 Barb. Ch. Practice 252
& this has been allowed

3 W. B. R. 512

1 Vol. Ill Digest 388

3 John. Ch. 363

That the averment as to notice to the defendants,
of Complainant's title, embodied in the amendment -

properly relate to a matter of defence &
to the answer, rather than the bill & need not have
been inserted in the bill at all is abundantly
obvious from the following Authorities -
11 Paige N.Y. Chancery Rep. 434. The rule is
stated as follows "To protect a defendant as a
bona fide purchaser or mortgagee without notice of
the complainant's prior equity, although notice to him
is not charged in the bill"

This Rule is explicitly recognized in the following
language by the Supreme Court of this State
Brown v. Welch 19 Ill. 343.

"A party holding land under a recorded deed to
defend his title, against a claimant under a previous
unrecorded title, must show that he has an equitable,
as well as the legal title, & this must be sustained by
proof that he purchased the land in good
faith ^{and} actually paid for it before notice of the
previous equitable title, he must prove payment of
the purchase money, apart from the acknowledgment
of the deed, Proof that the payment has been
secured is not sufficient" The Court cites
10 Peters 211 ^{and} the rule there laid down with
the comments is as follows "The protection of such
bona fide purchaser is necessary only when the
plaintiff has a prior equity, which can be barred
or avoided only by the union of the legal title with an
equity arising from the payment of the money ^{and}

(23)

receiving the conveyance, without notice, ^{And} as clear
conscience. It is setting up matter not in the bill;
a new case is presented not responsive to the bill,
but one founded on a right & title, operating, is made
out to bar & avoid the plaintiff's equity, which
must otherwise prevail. 9 V. 33, 34. The ~~setting~~
answer setting it up is no evidence against the
plaintiff, who is not bound to contradict or rebut
it. 14 J. R. 63, 74; 1 M. & C. R. 296, 297; 10 J. R.
544, 545; 2 Wheat. R. 383; 3 ibid. 468; 1 J. R.
461. It must be established affirmatively,
independently of his oath. 1 J. R. 559; 1 J. R. 590;
17 ibid. 367; 18 ibid. 532; 2 J. R. 87, 90; 4 B. & C. 753
Amb. R. 589; 4 V. 404, 587; 3 J. R. 583. In setting
it up by plea or answer it must state the deed of pur-
chase, the date, contents & parties briefly; that
the vendor was seized in fee & in possession; the
consideration must be stated with a distinct averment,
that it was bona fide and truly paid, independently of the
recited in the deed. Notice must be given previous
to, & draw to the time of paying the money & delivery
of the deed, and if notice is specially charged,
the denial must be of all circumstances referred to
from which notice can be inferred, & the answer or
plea show how the ~~grantor~~ grantor acquired title.
The rule here laid down prevails with us, except
as to the possession of the grantor, which has been
dispensed with by our Statute, but I have made

(214)

The question principally to show that the duty devolves upon the defendants, to establish not only that they have a conveyance, legal in form, but that they have actually paid for the land. It is not sufficient even that they may have secured the payment of the purchase money. They must have paid it, in fact, before they had notice of the complainant's prior equitable title. The answer which was given upon the arguments to this objection was, that the bill only charges notice and does not charge that they had not paid the purchase money, or in any other way impeach their equitable right to hold their legal title. I have selected the case above referred to, because in that case the report shows that the bill was precisely like this in the particular referred to."

(25)
Merits of Appeal.

Lastly - The elaborate argument of the Counsel for the appellant upon the general merits of the case and particularly with reference to the degree of credit to be attached to the testimony of Patterson deserves a passing notice. This ~~argu-~~

This argument is based upon certain discrepancies in date & details between the testimony of Patterson and that of Stewart the defendant's witness. ^{And} ignores altogether the great points of corroboration between the testimony of the two witnesses going to establish most decisively the truth of Patterson's testimony in regard to all the main ^{And} essential facts in the case.

The difference as to date arises in regard to the question as to whether the negotiations as to the Gilpin sale occurred just prior to or at the time of the death of Moshier or some time subsequent thereto so that the two transactions were connected or were entirely independent of ^{And} disconnected from each other. Patterson's testimony connects them.

It is insisted on the part of the appellant that Stewart's testimony effectually dis-connects the two transactions.

In the first place this difference of date ^{there} being only a difference of about five days according to Stewart's own testimony between the date of Moshier's death ^{And} the commencement of the negotiations for a sale to Gilpin ^{And} his date depending upon the loose general recollection of Stewart, not upon any fixed or

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certain fact or circumstance - not only could not convict either witness of wilful perjury but also fails altogether to show that Patterson was wrong as his recollection is quite as likely to be correct as Stewart's especially as it was his own personal matter while Stewart had no connection with the transaction except as agent for Patterson to sell the property - Against the testimony of Patterson on this point is far more consistent with the entire transaction And Patterson's connection with the sale to Gilpin, testified to by both witnesses than is the testimony of Stewart as to date. As in regard to the statement of Stewart that Patterson represented that the title was in Moshier, ~~the~~ probability is that what was said as to the deed occurred about the close of the negotiation Moshier then deeming it important to make sure his claim before the papers were made out to perfect a sale to Gilpin; for Stewart himself properly testifies that Patterson claimed at the time to be the actual owner of the property & that he himself actually sold it as the property of Patterson.

It is not claimed on behalf of the appellee that the conduct of Patterson was entirely fair and free from deception - but all this does not convict him of perjury. When placed upon the stand he fairly and fully disclosed the whole facts and reveals the secret which his law agent would seem to have been the secret of himself and Moshier and it is this & this only which

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has drawn upon his head all the vituperation ^{and} abuse which by the aid of Counsel Moshier could Command ^{and} which has occasioned the attempt on the part of Moshier to blacken & ruin his character after rendering him effectually bankrupt in property.

It is again insisted that Patterson proves himself unworthy of credit because he "laughed" instead of ^{holding up his hands in} indignant horror at Moshier's attempt to cheat the College ^{and} violate his contract with Patterson.

The obvious answer to all this is, Moshier was his master. Patterson was an embarrassed debtor & Moshier was his creditor, he could not afford to quarrel with Moshier for Moshier had him in his meshes.

He was compelled to submit to his exactions ^{and} to smile upon his villainy.

But what are the facts of corroboration between the two intriguers so studiously concealed from view by the counsel for the appellant?

1st The deed to Moshier ^{and} the commencement of the negotiations with Gilpin occurred according to the testimony of both intriguers about the same time as the notes given by Gilpin were dated the 20th of Moshier's deed the 5th of the same month and the negotiation for the sale to Gilpin according to Stewart's "best recollection" occupied some time viz about ten days prior to the giving of the notes.

The exact date when the negotiation commenced or the terms of sale were first agreed on, is not positively fixed by the testimony of either witness

2^d According to the testimony of both Patterson claimed this land at the time of the sale to Gilpen, as his own ^{and} sold it as his own he employed Stewart, the agent who effected the sale & paid him his commission, according to the testimony of both Patterson claimed at the time that Mosher would allow him for the land only some fourteen or fifteen hundred dollars ^{and} that if he could sell the land for \$2200. to Gilpen he would derive that much additional advantage by this increased price on the sale of the land

3^d It appears also from the testimony of Stewart that his transactions in selling the land for Patterson ^{and} as his property were by Stewart made known to Mosher who stated to him at the same time that Patterson said that he, Mosher, would give the deed that Mosher assented to all that had been done by assenting that it was all right ^{and} that he would execute the deed

It further appears as an undisputed fact in the case that within a very short time after, or about the same time the deed was executed

to Moshier reciting a consideration of about
\$1000+ only. The property was actually sold
to Gilpen for \$2200+ more than double the
nominal price on the sale to Moshier

Now it is to be presumed that
the parties had some correct idea as to the
value of the property and it is not very probable
that Patterson would make an absolute and
unconditional sale to Moshier as a bona fide
purchaser of this property for one half of its
actual value,

But suppose we strike out altogether the testimony of
Patterson there still remains the testimony of Stewart
clearly showing that Moshier held the property in
trust or in part as security for a precedent debt
the amount of the debt not established by any competent proof
and no case made establishing the fact that Moshier was
a bona fide purchaser advancing his money on the
faith of the security or at the time the deed was given

But again suppose we strike out the testimony of
both witnesses the Complainant must still prevail
for it appeared upon the hearing that the Complainant's
mortgage was given to secure the purchase money ^{and}
Moshier entirely fails to show independent of the recital
in his deed that he was a purchaser for valuable
consideration & that he paid his money at the time on the

facts of the title so purchased which under the decision in 18 Ill 343 & 347 by the other authorities already cited it is absolutely essential for him to show in order to establish his character as a bona fide purchaser or to show an equity superior to that of the Complainant's mortgage or sufficient to defeat it.

But the evidence of these witnesses cannot be set aside and accordingly an attempt is made to explain away their testimony.

It is told by way of explanation by the Affiliants Counsel that Patterson being in straitened circumstances applied to Mosher for money. That Mosher refused to pay him his price for the land but finally advanced him \$1000⁰⁰ agreeing when the land was sold to refund to Patterson the surplus after reimbursing himself for the amount of his advance.

Upon the plainest principles of equity then this was nothing more nor less than a mortgage or Trust Deed to secure the sum of \$1000⁰⁰.

The property, as the evidence shows was sold for \$2200⁰⁰ and the entire sum collected & paid to Mosher.

This surplus is more than sufficient to pay the college debt & in equity belongs to them.

It is said that Mosher has guaranteed the title. guaranteed against what? against a mortgage for the payment of which the necessary funds

are already in his hands & which he ought long ago to have applied to its discharge

But after all the criticisms on the testimony of Patterson no candid mind can resist the conviction that the main facts testified to by him are true

It is no answer to the evidence in this case, to denounce with violence & recklessness the minds who testify against the defendant

The facts of the case require an explanation at the hands of Mosher

His counsel feels the pressure - He must explain, a failure to explain is to abandon his defence, He attempts the experiment - And lo! the explanation is itself a Cognovit

J. G. Frost
Atty for Appellee

^{4/3}
No 189

Timothy Mosher
vs

Knox College

Additional written
argument on the part of
the Appellee

Filed May 9, 1863

L. S. Foster
att

L. S. Foster
att for appellee