No. 14801

Supreme Court of Illinois

Fergus et al.

vs.

Tinkham

71641

No. 14801

Supreme Court of Illinois

Fergus

vs.

Thinkham

(2702-17274)

Opinion Breese, J.

No. 14801

Supreme Court of Illinois

Fergus et al

vs.

Tinkham
(Opinion by Breese, Jr.)

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 67.

J. W. Middleton & Co., Stationers, 106 Lake St.

1868

Term

Argued

Decided

~~787~~ 787

~~delivered~~ the opinion of the Court:

Mr. Justice Reese, &c. The ~~two~~ objections made to the decree in this case are 1. That sufficient notice had not been given to the non-resident party of the pendency of the bill. 2. That no proof was made of the exhibits, and that the mortgage was not acknowledged, and 3 A sum larger than the amount claimed by the bill was decreed to complainant.

As to the first ~~objection~~ objections ~~it appears~~ the facts are, that one full four weeks notice by publication as the statute requires. The first publication was on the twenty fourth day of May 1861, and the last on the 24th of June 1861, four full weeks, but the first publication was not 40 days, before the return day of the process, which was the second Monday in July 1861. On the second point, the plaintiffs in error, Fergus and wife, in their joint and separate answer admit they executed and acknowledged the mortgage, thereby rendering proof of those facts unnecessary.

As to the remaining point, it will be seen by the complainant's bill that he claims interest only from January to July, and that is the true time of that branch of his case. He has accounted for twenty days in December 1859, amounting to sixty dollars, which he did not claim in his bill.

His account does not correspond with his allegations, but goes beyond them. On the authority of Chaffin & Bird v Kimball 23 Ill. 36; Brown &

* The plaintiff's counsel says only as to the 1st point, and in all the cases cited by the defendant, that the objection was not taken by the answer, but by motion to dismiss, made after the proofs were closed. This is the only objection argued by counsel.

7 88 -

Bowes et al 21 Ib 17; Morgan vs Smith, 11 Ib 208; - White vs Morrison, Ib 366; The deed must be held ~~the~~ mortgage and must be recorded and ~~the deed recorded and~~ the Cause remanded and Ordering vs Duty on 32 Ib. 23.

Decree reversed.

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Ferguson et al
vs
Fitchburg

Opinion by
Pierce J.

14801

Recorded Book 12.
Page 461.

Printed by Robert Fergus, 12 Clark St.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1865.

ROBERT FERGUS, *et al.*, Plaintiffs in Error,

v.

EDWARD I. TINKHAM, Defendant in Error.

PLAINTIFFS' IN ERROR POINTS AND BRIEF.

Edward I. Tinkham, defendant in error, filed his bill of complaint in the Superior Court of Chicago, against the plaintiffs in error, to foreclose a Mortgage bearing date the 13th of December, 1859. A decree was entered the 4th of December, 1861, for $15,267,50.

The decree is erroneous.

First. It is too large, and greater than the amount claimed in the bill.

The bill, after alleging the execution and delivery of the Note and Mortgage, has the following allegations:—"And your orater further states unto your honor, that on the first day of July, A.D. 1860, an instalment of interest fell due, at the State Bank, in Boston, Massachusetts, according to the terms of said Note, as above set forth, and was unpaid, except for the sum of three hundred dollars, leaving a balance of said instalment of interest amounting to three hundred and fifty dollars, due on the first day of July last, wholly unpaid." (See page 5 of record.)

"And your orator further shews unto your Honors, that on the first day of January, A.D. 1861, another instalment of interest upon said principal sum became due and payable at the State Bank, in Boston, Massachusetts, from the said Robert Fergus, amounting to six hundred and fifty dollars, and was not paid."

"And your orator believes and states, that the sum of ten hundred dollars, for interest due, as above stated, on the first days of July and January last, and the said sum of thirteen thousand dollars, for principal with interest thereon, at ten per cent per annum, since the first day of January, A.D. 1861, is now due and remains unpaid." (See page 6 of record.)

"And, therefore, he brings this, his bill of foreclosure, as well to recover said instalments of interest as the said principal sum of thirteen thousand dollars, secured in and by the said Note and Mortgage."

According to the allegations of the bill of complaint, as stated above, the decree should be for the sum of $15,202,49, as shown by the following computations, made up from the allegations in the bill:—

Balance of Interest due up to the first of January, 1861,	$1,000,00
Amount of Principal, - - - -	13,000,00
Interest on $13,000 from Jan. 1, 1861, to Dec. 4, 1861, (date of decree,) 11 months and 3 days, at 10 per cent,	1,202,49
	$15,202,49

The decree was entered for $15,267,50, and property offered for sale, and sold for that amount. $65,01 more than it should be, according to the complainant's own showing, by his allegations in his bill.

The complainant must recover, if at all, upon the case made by the bill.

Chaffin v. *Heirs of Kimball*, 23 Ill. R. 36.

In *Rowan* v. *Bowles et ux.* v. *Kirkpatrick et ux.*, 21 Ill. R. 17. BREESE, J., says "It is a settled principle, in all cases, that the allegations and proof must correspond—that the latter must make out the former; and that a party will not be entited to relief, although the evidence makes out a clear case in his favor, unless there are averments in the bill of the shape made by the evidence." *Morgan* v. *Smith et al.*, 11 Ill. R. 200. "A party must stand or fall by the case made by his bill. His proof must correspond with the allegations he has made, and not be inconsistent therewith." *White* v. *Morrison et al.*, 11 Ill. R. 366.

In *McKay* v. *Bissett et al.*, 5 Gil. R. 499. TREAT, C. J., says, "A complainant must recover on the case made by his bill. He is not permitted to state one case in the bill, and make out a different one in proof. The allegations and proof must correspond: the latter must support, and not be inconsistent with the former. Although a good case may appear in the evidence, yet if it be variant from the one stated in the bill, the bill will be dismissed."

Story's Eq. Pl., Sec. 257.
Grisley on Evid., 22, 23.
Crocket v. *Lee*, 7 Wheat. R. 522, 525.
Jackson v. *Ashton*, 11 Peters R. 299.
James v. *McKernon*, 6 John. R. 564.

Cases might be cited *ad infinitum*, but we deem it unnecessary to cite further cases in support of a rule of Chancery Practice so well settled. The Court should pronounce its decree *secundum allegata et probata;* and where the decree is for a greater sum than the complainant claims by his bill, it is erroneous, and should be reversed.

28 Ill 156.

SECOND. The decree is erroneous, because there is no proof in the record that the mortgage, on which the decree is based, was ever executed.

The bill contains a copy of the Mortgage, which is made a part of the bill, and alleged by the bill to be a true copy, which is the only evidence on file in the case, with the Note, to support the decree. This copy of the Mortgage is not acknowledged; and there is no other proof in the record of the execution of the Mortgage.

S. Lowes. v. Brown 21 Ill 273. McDaniel v. Cowell 19 Ill 228.

THIRD. The decree is erroneous, because the defendant White was not properly before the Court. The Court did not have jurisdiction of his person, to render a decree against him—White was a non-resident; and to give the Court jurisdiction of his person, it was necessary to publish the notice of the suit four full successive weeks. The publishers' certificate is the only evidence in the record to prove that the Court had jurisdiction of the person of White—and that states that the notice was published for four successive weeks, to wit, 24 times in the *Daily Post;* and we submit to the Court, that the publication of a notice for twenty-four times is not a publication for four weeks required by the Statute.

The decree, if void as to one, is void as to all.

6 Perkins, 247.
12 Johns. 434.
13 Johns. 460.
14 Johns. 417.
6 Cowen, 50.
1 Scam. 552.

For the reasons above stated, we submit that the decree rendered in the above cause is erroneous, and ought to be reversed.

HERVEY, ANTHONY, & GALT,
Att'ys for Plaintiffs in Error.

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Sayers et al
vs
E. J. Tarkington

Pltffs
Briefs & Points

Filed Apl 5. 1845
S Sloan Clk

Printed by Robert Fergus, 12 Clark St.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

ROBERT FERGUS, *et al.*, Plaintiff in Error,

v.

EDWARD I. TINKHAM, *et al.*, Defendant in Error.

ABSTRACT OF RECORD.

This is a Bill in Chancery, brought to enforce a forfeiture for the non-payment of two instalments of interest, and to foreclose the Mortgage.

Page 2 **Bill.** Alleges the execution of Mortgage and Note by Fergus and wife, on the 13th of December, 1859, to David Sears, Jr., for the payment of $13,000, five years after the first day of January, 1860, with interest at 10 per cent, payable semi-annually, to wit: on the 1st day of January and July, in each year; the assignment of Note and Mortgage to complainant; the forfeiture clause in the Mortgage; that on the first of July, 1860, an instalment of interest fell due, which was all paid but $350, which remains unpaid; that on the first of January, 1861, another instalment of interest fell due, amounting to $650, which remains unpaid; for these defaults, whole principal declared due; that there is $1000 due for interest, and the sum of $13000 for principal, with interest thereon at 10 per cent, since the first day of January, 1861; that Margaret Fergus, John T. White, Richard N. Casler, and Mary Brown had an interest in the mortgaged premises.

9 **Copy of Note.**

10 **Copy of Mortgage.** No acknowledgement or proof of execution whatever.

28 **Answer of Robert Fergus and Margaret Fergus.** Admits that Robert Fergus signed the Mortgage, but knows nothing

about its being assigned to complainant; alleges that the beneficial interest is in P. F. W. Peck; denies the right to declare the principal due for non-payment of interest.

38 **Replication.**

40 **Publication Notice against White.** That the bill was filed on the 24th of May, 1861, and summons returnable on the first Monday of July, 1861, notifies White to appear on the first Monday of July.

41 **Certificate of Publication v. White.** That the notice was published for four successive weeks, to wit: 24 times in the *Daily Post*, and the date of the first paper containing the same was the *24th of May*, 1861, and the date of *the last* was the *24th of June*, 1861.

46 **Decree.** Finds the allegations in the bill true. Declares the whole of principal due; and finds the amount due to be $15,267,50; and orders it to be paid in ten days, and in default a sale. The decree was made and entered on the 4th day of December, 1861.

This decree is clearly erroneous, as will appear by the following computation: Note is dated December 13th, 1859, payable five years after the 1st day of January, 1860, for $13,000, at 10 per cent interest.

Interest on $13,000 from Jan. 1, 1861, to Dec. 4, 1861, 11 months and 3 days, at 10 per cent, - - -	$1,202,49
Principal, - - - - - -	$13,000,00
Accrued interest, as shown by the complainant's bill, on on page 5 and 6 of record, - - - -	$1,000,00
	$15,202,49

The complainants, in order to make up the amount of their decree, have reckoned interest on the *accrued* interest at the rate of 6 per cent; thereby *compounding* the interest, contrary to the rule laid down in the case of *Leonard v. Administrators of Williams*, 23 Ill. 377.

HERVEY, ANTHONY & GALT,
Att'ys for Appellants.

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Jeugis

vs

Tinkham

Abstract

Filed Apl 5. 1865

J. Schmidt Clk

Printed by BEACH & BARNARD, 14 Clark St., Chicago.

Supreme Court of Illinois,

Third Grand Division,
APRIL TERM, A. D. 1865.

ROBERT FERGUS, ET AL., *Plaintiffs in Error.*

vs.

EDWARD I. TINKHAM, *Defendant in Error.*

ABSTRACT OF RECORD.

THIS is a bill in chancery for foreclosure of a mortgage for a default in the payment of the balance of an installment of interest due on the first day of July, 1860, and of an installment of interest due on the first day of January, 1861.

Bill alleges the execution, acknowledgment, and delivery of note and mortgage, by Fergus and wife, two of the defendants, bearing date on the 13th day of December, 1859, to David Sears, Jr., for the payment of $13,000 five years after the 1st day of January, 1860, with interest at 10 per cent. per annum, to be paid semi-annually, to wit: on the 1st day of January and July each, in every year.

The recording of the said mortgage in the recorder's office of Cook county, State of Illinois, "in book 50 of mortgages, at page 201, as by "the said mortgage and the certificate of acknowledgment and of the "recording aforesaid indorsed thereon, and ready here in court to be pro- "duced, will fully appear."

The assignment of said note and mortgage for a valuable consideration, before maturity, by said Sears to complainant.

The provision in mortgage, that in default of payment of any installment of interest, the whole principal sum should at once become due and payable at election of said Sears, or his assigns.

That on the 1st day of July, 1860, an installment of interest fell due according to the terms of said note, "and was unpaid, EXCEPT THE "SUM OF THREE HUNDRED DOLLARS, leaving a balance of "said installment of interest amounting to three hundred and fifty dol- "lars, due on the first day of July last, wholly unpaid."

That on the first day of January, 1861, another installment of interest became due, amounting to $650, which was not paid, and yet remains unpaid.

That for default in payment of said installments of interest, has elected to declare principal sum due, and brings bill as well to recover said installments of interest as principal sum of $13,000.

That complainant believes and states, that $1,000 for interest due as above stated, on the first day of July and January, as aforesaid, and $13,000 for principal, with interest thereon at 10 per cent. since the first day of January, 1861, is now due and unpaid.

That Margaret Fergus, John T. White, Richard N. Casler, and Mary Brown, have, or claim to have, some interest in mortgage and premises, or some part thereof.

Prays for sale of mortgaged premises, and for the payment of the amount due for principal and interest upon the said mortgage, and costs, and for general relief.

Note.

"$13,000. CHICAGO, December 13th, 1859.

"FOR VALUE RECEIVED, I, Robert Fergus, of the city of Chicago, and "State of Illinois, five years after the first day of January, A. D. 1860,

" promise to pay to the order of David Sears, junior, of the city of Bos-
" ton, and State of Massachusetts, the sum of Thirteen Thousand Dol-
" lars, at the State Bank, in the city of Boston, and State of Massachu-
" setts, with interest at the rate of ten per cent. per annum, said interest
" to be paid semi-annually, to wit: on the first day of January and July
" each, in every year, also at the State Bank.

" ROBERT FERGUS.

" In presence of }
" J. MASON PARKER. }

" Secured by mortgage of real estate in Chicago. Recorded, lib. 50,
" folio 201, Cook county Registry, Chicago.

" Endorsed:

" DAVID SEARS, JUNIOR,
" By his attorney in fact, without recourse,
" J. MASON PARKER."

Attached to the bill and filled therewith, as exhibits, and as a part thereof, is a copy of the note and mortgage and assignment, as alleged in said bill.

The joint and several Answer OF ROBERT FERGUS AND MARGARET FERGUS:

Admits that Robert Fergus executed and delivered the note, and admits that to secure the payment of said sum of money therein mentioned, to wit; $13,000 and interest, according to the tenor and effect thereof, they, the said Robert Fergus and Margaret Fergus, his wife, did execute acknowledge, and deliver mortgage deed; but is ignorant whether note was endorsed and mortgage assigned to complainant for a valuable consideration, and alleges that beneficial interest in note and mortgage is in one P. F. W. Peck.

Admits that it was provided in said mortgage that if default was made (as is more fully set forth in mortgage, to which reference is made, and a copy thereof made part of this answer) it should be lawful to enter upon the premises, and sell and dispose of the same, and all benefit and equity of redemption.

Admits that, of the installment of interest due on the first day of July, 1860, the sum of $300.00 was paid, but does not admit a balance of $350 unpaid.

Admits that no money has been paid on account of said note or mortgage, since first day of January, A. D. 1861.

Denies the right to declare the principal sum due, and denies the right to foreclose for recovery of principal sum of $13,000, or for the alleged installments of interest.

Denies that $1,000 for interest on the first day of July, 1860, and first day of January, 1861, and that $13,000 principal with interest at 10 per cent. per annum since the first day of January, A. D. 1861, are due and unpaid.

Admits that Margaret has interest in premises as wife of said Robert, but is ignorant whether said White, Casler, or Brown, or either, have any interest in said premises, but that Casler and Brown have been tenants of a portion of said premises.

Avers that complainant has no interest, and that he disclaims having any interest in note and mortgage; that he holds the same for the sole use and benefit of one P. F. W. Peck. That said bill has been filed without the knowledge or consent of said Peck or said Sears, and without proper and lawful authority from any one beneficially interested in said note and mortgage.

Insists that complainant, for the above reasons, has no right to declare a forfeiture, and cannot declare principal sum due; but that such right, if any there be, can only be exercised by the person beneficially interested therein; and that such right, by the terms of said mortgage, is confined to the parties to said mortgage.

Avers that of the said $13,000, $1,500 was not paid to said defendant till 10th day of January, 1860; and that $390 of said $1,500 was kept and retained by agent and attorney of said Sears for alleged commissions on said loan; and that an unlawful and usurious rate of in-

terest was retained upon said loan by said agent of said Sears. That said sum of $390, together with excess of interest by him paid, ought to be allowed him; offers to pay amount justly due upon note and mortgage.

Submits that bill is insufficient, in this, that it does not set forth the interest of other parties who are alleged to be beneficiaries of note and mortgage, and is in other respects deficient, and ought to be dismissed.

Replication TO ANSWER of Robert Fergus and Margaret Fergus.

Summons, and Return of sheriff endorsed thereon, shows that defendants, Robert Fergus, Margaret Fergus, Richard N. Casler, and Mary Brown, were each personally served by the sheriff of Cook county, Illinois, on the 24th day of May, 1861.

Affidavit of the non-residence of defendant White, filed May 24, 1861.

Publication Notice against defendant White. That bill was filed May 24, 1861, and summons issued returnable on the first Monday of July, 1861. Notifies White to appear on first Monday of July, 1861.

Certificate of publication against White. That the notice was published for four successive weeks, to wit: 24 times in the daily edition of the *Chicago Post*, the date of the first paper containing the same was the 24th day of May, 1861, and the date of the last was the 24th day of June, 1861.

Bill taken *pro confesso* against all of defendants except Robert Fergus and Margaret Fergus, September 19, 1861.

Decree made and entered 4th day of December, 1861. States that cause was heard on bill taken as confessed against all of the defendants except Robert and Margaret Fergus, and on the answer of Robert and Margaret Fergus, and the replication to said answer, and upon proofs in open court.

That the court is satisfied that all the material allegations in bill are true, and that by reason of default in the payment of interest on note,

complainant had a right to elect, and has elected to consider and declare the principal sum, secured by note and mortgage, due and payable, and has declared same due and payable; and that principal sum is, and at time of filing bill was, due and payable; and that there is now due and unpaid on note and mortgage, for principal and interest, $15,267.50.

Orders it to be paid within ten days, or in default, a sale of premises, or a part thereof. That sale be made at public auction by one of the masters of court in county where premises are situate. That master give public notice of time and place of sale by advertising same in some newspaper published in Chicago, at least 20 days before day appointed for sale. That master execute to purchaser a certificate of purchase, which shall entitle purchaser, or his assigns or assignees, to a deed of premises, if same are not redeemed according to law.

Report of Sale of Ira Scott, one of the masters in chancery of said court: States and shows, that default was made in the payment of the said sum of money required by decree in this cause, and that said ten days fully elapsed and said sum was not paid, nor was any part thereof paid; and that said master, in pursuance of said decree, publicly advertized the mortgaged premises to be sold at public auction, to the highest bidder, for cash, at the north door of court house in said Cook county, on 10th day of January, A. D. 1862, at 10 o'clock A. M., by causing a notice thereof, containing title of cause, names of parties, the time, place, and terms of sale, with a description of mortgaged premises, to be published 20 days and upwards immediately preceding said sale, in daily edition of *Chicago Post*, a newspaper of general circulation, printed and published in city of Chicago, in said Cook county. That first publication was on 17th day of December, 1861, and that same was continuously published therein until, and including, said 10th day of January, 1862. Day of said sale, notice of sale, and certificate of publication, is annexed to said report, and made part thereof.

That on said 10th day of January, 1862, said master attended at said time and place, and exposed premises for sale at public auction, to the highest bidder for cash.

That premises were then and there fairly struck off and sold to one James H. Woodworth, for the sum of $15,633.89, he being the highest bidder therefor, and that being the highest sum bid for the same.

That said master executed and delivered to said Woodworth the usual master's certificate of purchase, entitling purchaser, assignee or assigns, to a deed of premises at the expiration of fifteen months from date of sale, unless redeemed according to law; and caused to be filed a duplicate of said certificate of purchase, to be filed for record in the recorder's office of said Cook county; and that master has distributed proceeds of sale according to decree.

Confirmation of report, February 3, 1862.

P. L. SHERMAN, AND
CLARKSON & TREE,

For Defendant in Error.

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Schiermbeck

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abstract
Recd by
Dept in Mar

Filed April 27. 1865
L. Leland
Clerk

IN THE

Supreme Court of Illinois,

Third Grand Division---April Term A. D. 1865.

ROBERT FERGUS *et al.*,
Plaintiffs in Error,
v.
EDWARD I. TINKHAM,
Defendant in Error.

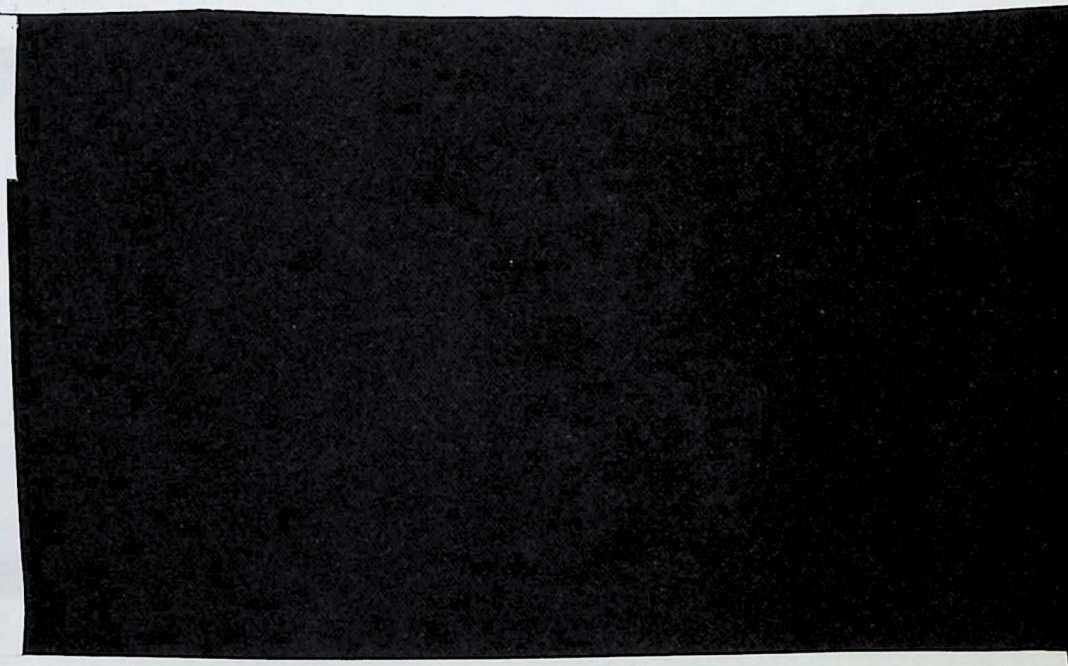
ERROR TO SUPERIOR COURT OF CHICAGO.

POINTS AND BRIEF FOR DEFENDANT IN ERROR.

CASE.

COMPLAINANT below filed a bill for the foreclosure of a mortgage. A decree of sale was rendered, and the property sold to an innocent purchaser, to whom the master in chancery issued the usual certificate of purchase. And upon the report of sale, the same was confirmed by the court.

The mortgage was given to secure an indebtedness and interest, secured to be paid by a note, in the words and figures following:



The pleader, by an error in arithmetic, stated this balance to be less than the true balance. The decree was taken according to the true balance, and hence the first alleged error in this record.

The plaintiffs in error here insist that the court erred in hearing proof of the balance due for interest on the first day of July, 1860, and rendering a decree in accordance therewith, the same being more than the stated balance.

That in so doing, the court violated that general rule in equity more commonly expressed—" *That the allegations and proofs must* " *correspond.*"

The rule, and the condition of its application, is correctly stated as follows, in—

9 Ala., 985, *Gilchrist* v. *Gilman.*

" The general rule in equity, that the proof must correspond with " the allegations, applies only where the evidence in a cause for " relief differs from that set up in the pleadings."

The same is decided in—

6 Wend 75-76-77
Livingston v Van Rensselaer

27 Ala., 507, *Simmons* v. *Williams.*
10 Pet., 208–9, *Boone* v. *Childs.*
11 Wheat., 121, *Harding* v. *Handy.*
5 Wend:; 646, *Harris* v. *Knickerbocker.*
5 Gilm., 504–5, *McKay* v. *Bissett et al.*
11 Ill., 19, *Morgan* v. *Smith et al.*
11 Ill., 366, *White* v. *Morrison et al.*
3 Gill, 408, *Fitzhugh* v. *McPherson.*

James v McKernan
Kelsey v Wilson

6 John. R., 559–63.
2 Comst., 506, and cases cited.

The rule is stated as follows, in—

9 Pet., 503, *Harrison* v. *Nixon.*

"Every bill must contain in itself sufficient matters of fact, *per* "*se*, to maintain the case of the plaintiff, so that the same may be "put in issue by the answer and established by proof. The proof "must be according to the allegations of the parties, and if the "proof go to matters not within the allegations, the court cannot "judiciously act upon them as a ground for its decision, for the "pleadings do not put them in contestation."

The substance of the allegation is, that the said installment of interest became due according to the tenor and effect of the note, and was unpaid, except the sum of $300. All that follows could not mislead, and is merely surplusage.

"*Utile per inutile non vitiatur*," is a maxim as well is equity as in law.

And the issue raised by the allegation is, whether there was a default in the payment of the said installment of interest according to the terms of the note and mortgage; and with this issue thus raised, proof of the correct amount of interest due and unpaid corresponds, is not obnoxious to said stated rule, and the decree will not be reversed.

Moreover, the allegations of a bill not sworn to by complainant, are regarded as mere suggestions of counsel.

16 Ala., 758–9, *McRea* v. *Insurance Bank of Columbia.*

Bullen N. P. 235-

See also, to same point—
3 Rich., 37, *Drake* v. *Ramey*.
Adams v McMillen — 7 Porter, 85, and cases cited.
7 Term R., 3, *Doe* v. *Syburn*.

This objection is cured by amended Record

It is alleged by plaintiffs in error, that there is no proof preserved in the record that Robert and Margaret Fergus executed and acknowledged the said note and mortgage.

The bill alleges, that Robert and Margaret Fergus executed and acknowledged said note and mortgage. And it was taken *pro confesso* as to all of the defendants, except Robert and Margaret Fergus. Therefore, no one, except Robert and Margaret Fergus, can make this objection here.

30 Ill., 28, *Harman* v. *Campbell*.
15 Ill., 99, 100, *Johnson* v. *Donnell*.
14 Ill., 150, *Shillinger* v. *Shillinger*.

Robert and Margaret Fergus filed their joint and several answer, in which Robert Fergus admits that he and Margaret, his wife, executed and acknowledged the mortgage. This answer was signed by Margaret, and she will be held to have adopted the admission, that she executed and acknowledged the mortgage.

20 Wend., 575, *Dyett* v. *North American Coal Co.*

Defendants cannot say here that answer was not signed—for
" Where an answer has been filed in the name of defendant, and
" purports to have been signed by solicitor in his behalf, and the
" case proceeds to hearing and judgment, defendant is bound by
" the decree."

5 Rich. Eq. Rep. (S. C.), 200, *Bailey* v. *Boyce*, and note (*a*), and cases cited.

Record contains sufficient of itself to sustain decree.
16 Ill., 114, *Nichols* v. *Thornton*.
Vandeusen et al v White et al — 12 Ill., 283.
11 Ill., 365.
See also— 29 Ill., 489. Van Meter et al v Lewis et al

The decree recites, that the cause was heard upon the bill taken as confessed against all of the defendants, except Robert and Margaret Fergus, and upon the answer of Robert and Margaret Fergus, and upon proofs in open court, and finds that all the material allegations in the bill are true.

This is sufficient preservation in record.

30 Ill., 184, *Davis* v. *Davis.*

Shellenger v Shellenger 14 Ill., 150.

"It is not necessary that the evidence, upon which the court "acts, should be preserved in the record. But, *it will be sufficient* "*if the record shows that the court heard evidence, and found the al-* "*legations of the bill to be true.*"

14 Ill., 150. found Cases

The decree made on the 4th day of December, A. D. 1861, finds that principal sum was due, and that the amount of principal and interest due and unpaid is $15,267.50.

It is pretended by the plaintiffs in error that this amount is too large.

The interest was not compounded. The decree was for precisely the right amount.

The note, it will be recollected, bears date December 13th, 1859, with interest at ten per centum per annum, payable semi-annually, on the first days of July and January.

STATEMENT.

Interest on $13,000 from December 13, 1859, to July 1, 1860, 6 months, 17 days,	$711.38.8
Deduct paid July 1, 1860,	300.00.0
	$411.38.8
Interest on $13,0000 from July 1, 1860, to January 1, 1861, six months,	650.00.0
Interest on $13,000 from January 1, 1861, to December 4, 1861, (the date of the decree) 11 months, 4 days,	1,206.11.0
Add principal sum, due by the terms of the mortgage,	13,000.00.0
	$15,267.49.8

Say $15,267.50 the amount of the decree.

The bill prays for the payment of the amount due for principal and interest and costs, *and for general relief.*

Under this prayer, the court was authorized to render a decree for the full amount due for principal and interest.

2 Peters, 611–2.

6 John R., 559, *n.*, and cases cited.

In 8 Wend., 353, specific relief asked was permission to redeem. The court say: "Although unskillfully drawn, the object "of the bill seems to be to set aside the mortgage for fraud, and "the prayer for general relief entitles the complainant to any "relief not inconsistent with the case made by the bill."

The mortgage was set aside for fraud.

Whether decree is for too much or too little, is not before this court.

5 Gilm., 498, 499, *Hugunin et al.* v. *Starkweather.*

The rights of plaintiffs in error were not prejudiced by the decree, and in such case decree will not be reversed.

2 Cala., 148, *Kilburn* v. *Ritchie.*

Decree, like a verdict, will not be set aside on the ground of an erroneous finding unless clearly unsupported by evidence.

5 Ohio St. R. (N. S.), 108.

The record shows that the decree had been executed. That the master has sold the real estate in controvercy, under this decree, to an innocent purchaser.

In such case, the Supreme Court, in *Curtis* v. *Brown et al.*, say: "And we repeat, were this decree unexecuted, we should not hes- "itate to reverse it at once. But it has been executed. The land "has been sold under a valid and binding decree of this court, and "purchased by innocent parties.

"It is, no doubt, true, that the reversal of the decree cannot "affect the title acquired under it. It might throw an injurious "suspicion upon the title which might injure them (defendants in "error), but could not benefit her (plaintiff in error.)

"It would be a baren victory, unfruitful of practical results."

P. L. SHERMAN
AND
CLARKSON & TREE,
For Defendants in Error.

Publication notice against
defendant White is sufficient
see 25 Miss 49
Wallen & Spivey

67 - 42

Robert Ferguson et al
Petitioners

- vs -

Edw^d J Tuckerman
Opp^t in Error

Petition & Brief by Opp^t in
Error

Filed April 7 1865
L. Leland
Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the _____ day of December in the year of our Lord One Thousand Eight Hundred and Sixty Nine and of the Independence of the United States of America the Eighty Sixth.

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago.

Van. H. Higgins
Grant Goodrich } Judges.

Carlos Haven Prosecuting Attorney.

Anthony C. Hesing Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that heretofore to wit on the twenty fourth day of May in the year of our Lord one thousand eight hundred and sixty one came Edward T. Tinkham by Scammon McCagg & Fuller his Solicitors and filed in the office of the Clerk of said Superior Court of Chicago, his certain Bill of Complaint against Robert Fergus and others, defendants; which said Bill of Complaint is in the words and figures as follows, to wit.

State of Illinois
County of Cook

To the Honorable the Judges of the Superior Court of Chicago in Chancery sitting.

Humbly complaining Sheweth unto your Honors Gay Orator Edward S Fairbank of the City of Chicago. County and state of Illinois that on the Eighteenth day of December A.D 1859 Robert Fugas of the City of Chicago aforesaid executed and delivered to David Sears Jr of the City of Boston and state of Massachusetts his promissory note of that date whereby he promises to pay to the order of said Sears Thirteen Thousand dollars in Five years after the first day of January A.D 1860 at the State Bank in the City of Boston and state of Massachusetts with interest at the rate of ten per cent per annum and interest to be paid semi annually, to wit; on the first day of January and July Each in every year also at the said State Bank as by said note ready filed in Court to be produced will fully appear, a Copy of which is herewith filed marked Exhibit "A" as part of this Bill.

And now said Robert Fugas to secure the principal and interest mentioned in said note did at the same time with his wife Margret Fugas execute acknowledge and deliver to the said David Sears Jr a mortgage deed bearing even date with the said note and conditioned for the payment of said sum of Thirteen thousand dollars with the interest thereon according to the terms of said note by which the Robert and Margret Fugas mortgaged unto the said David Sears Jr

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in fee certain lands lots and parcels of land described as follows. sub lot One (1) and the North twenty five feet of sub lot Two (2) of the subdivision of original lot six (6) in Block three (3) in the Fractional section Fifteen addition to Chicago being sixty five fronting on State street between Monroe and Adams streets and one hundred and seventy four (174) feet in depth to the alley in rear according to the plats of the same duly recorded in Cook County Registry and praying also to include in said conveyance all of the three brick stores and three buildings there erected and standing upon the above described premises" all of said mortgaged premises being in the City of Chicago Cook County and State of Illinois, which Mortgage deed was afterwards duly recorded in the Recorders office of said Cook County state of Illinois on the twenty first day of December A.D 1859 in Book 50 of Mortgages at page 201 as by the said Mortgage and certificate of acknowledgement and of the recording aforesaid endorsed thereon and ready here in Court to be produced will fully appear a copy which is filed herewith as a part of this Bill Marked Exhibit "A"

And your Orator further states that said note has been endorsed and delivered and said Mortgage assigned and delivered to your Orator by said David Sears Jr for a valuable consideration paid your Orator therefor before maturity and the same are now held and owned by your Orator.

And your Orator further states unto your Honors, that it was among other things provided in and by said Mortgage deed that if the

" said Robert Fugues his heirs executors or administrators
" or assigns should make default in the payment of
" any tax or assessment levied or assessed on said
" premises or any part thereof after the same became
" due and payable so that the premises or any part
" thereof shall be sold by the proper authorities for
" the same or in the payment of any one of the
" instalments of interest at the time and in the
" manner provided in said promissory note
" as the same became due and payable then at
" the election of said party of the second part
" (meaning the said David Sears Jr) his executors ad
" = ministrators and assigns said principal sum
" thereby secured should at once become due and
" payable anything given in the note for the same
" to the contrary notwithstanding said election to be
" made at the time of or at any time after such
" default without notice" as will fully appear by
" reference to the provisions of said deed of mortgage

And your Orator states unto your Honors that on the first day of July A.D 1860 an instalment of interest fell due at the State Bank in Boston Massachusetts according to the terms of said note as above set forth and was unpaid except the sum of three hundred dollars leaving a balance of said instalment of interest amounting to three hundred and fifty dollars due on the first day of July last wholly unpaid And your Orator further shows unto your Honors that on the first day of January A.D 1861 another instalment of interest upon said principal sum became due and payable at the State Bank in Boston Massachusetts from the said Robert Fugues amounting to six hundred and fifty dollars and was not paid and yet remains

wholly unpaid although the said Robert Trapes has been frequently in a friendly manner requested to pay it.

And your Orator states that for such default in the payment of said instalments of interest he has elected to declare the principal sum secured in and by said note and mortgage due and payable, and therefor brings this his bill of foreclosure as well to recover said instalments of interest as the said principal sum of thirteen thousand dollars secured in and by said note and mortgage.

And your Orator believes and states that the sum of ten hundred for interest due as above stated on the first day of July and January last and the said sum of thirteen thousand for principal with interest thereon at two per cent per annum since the first day of January A D 1861 is now due and remains unpaid to your Orator and that no proceedings at law have been had to recover the debt secured by said note and mortgage or any part thereof

And your Orator states and believes that Margret Trapes John T White Richard M Carter and Mary Bowen have or claim some interest in the mortgaged premises or in some part thereof as purchasers mortgagees judgment creditors or otherwise which interests if any are subject and subsequent to the lien of said Mortgage

Your Orator therefor asks the aid of the Court in the premises and that the above named Robert Trapes, Margret Trapes, John T White Richard M Carter and Mary Bowen the defendants in this suit may appear before this Honorable Court in the Court of Chancery and answer this your Orators bill according

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to the rules and practice of the said Court without oath their answer 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 Orator for principal and interest upon the said note and mortgage, 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 judgement or decree upon the mortgaged premises subsequent to the mortgage of your Orator, or any liens or claims thereon by or under any such subsequent judgement or decree either as purchasers incumbrancers or otherwise may be be barred and foreclosed of all equity of redemption in the said premises.

And that your Orator may have such further or such other relief as the nature of the case may require and as to this Court may seem proper and agreeable to equity and as in duty bound your Orator will ever pray

Edward I Tinkham
By his Solicitor
Saml H Fuller

Scammon McCagg & Fuller
of Counsel

The Clerk will please issue summons for the above named defendants returnable to July Term AD 1861

5 Edward I Tinkham

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Robert Fergus
Margret Fergus
John J White
Richard N Carter +
Mary Bown

In Chancery
Bill to foreclose
Mortgage

Scammon McCagg & Fuller
Solicitors

May 24 1861

A.

$13000.00 Chicago December 13th 1859

For value received I Robert Fergus of the City of Chicago and State of Illinois Five years after date First day of January A.D. 1860 promise to pay to the order of David Sears Junior of the City of Boston and State of Massachusetts the sum of Thirteen Thousand Dollars at the State Bank in the City of Boston and State of Massachusetts with interest at the rate of ten per cent per annum said interest to be paid semi annually to wit: on the first day of January and July each in every year also at said State Bank

In presence of
J Wason Parker

Robert Fergus

Secured by Mortgage of real estate in Chicago recorded Lib 50 Folio 201 Cook County Registry Chicago Ill. Endorsed David Sears Junior
by his Attorney in fact
without recourse J Wason Parker

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B.

This Indenture made this thirteenth day of December in the year of our Lord one thousand eight hundred and fifty nine Between Robert Fergus and Margret Fergus his wife in token of her relinquishment of all right of dower in and to the premises herein conveyed both of the City of Chicago and State of Illinois Party of the First part and David Sears Junior of the City of Boston and state of Massachusetts Party of the second part Witnesseth that whereas the said Robert Fergus is justly indebted unto the said David Sears Junior in the sum of Thirteen Thousand dollars ($13000,00) secured to be paid by his promissory note bearing even date herewith and providing that principal sum shall be payable five years after the first day of January A 1860 at the State Bank in the City of Boston and State of Massachusetts and that the interest which shall be at the rate of ten per cent per annum shall be payable semiannually to wit; on the first days of January & July each in every year, also at the said State Bank in Boston aforesaid

Now therefore this Indenture witnesseth, That the said party of the first part for the better securing the payment of the said promissory note at the time and in the manner therein specified and in further consideration of the sum of one dollar to them in hand paid by the said party of the second part hath bargained sold aliened, remised, released, conveyed and confirmed and by these presents do grant bargain sell alien remise release convey and confirm unto the said party of the second part his heirs and assigns forever

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all the following described lands and premises situate lying and being in the City of Chicago County of Cook and State of Illinois and known and described as Sub Lot one (1) and the North twenty five (25) of Sub Lot Two (2) of the subdivision of original Lot Six (6) in Block three (3) in the Fractional section Fifteen addition to Chicago being sixty feet fronting State Street between Monroe and Adams Streets and one hundred and twenty four feet in depth to the alley in rear according to the plats of the same duly recorded in Cook County Registry and meaning also to include in this conveyance all of the three brick stores and other buildings now erected and standing upon the above described premises.

To Have And To Hold the same together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all the estate interest and claim whatsoever in law as well as in equity, which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part his heirs and assigns to his and 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 his Executors Administrators devisees or assigns shall well and truly pay or cause to be paid unto the said party of the second party his executors Administrators or assigns the said principal note above mentioned, at the time and in the manner in said note specified according to the true intent and meaning of said

note, and shall pay all taxes and assessments levied or assessed on said premises or any part thereof at any time before said indebtedness shall be fully paid and satisfied, as the same become due and payable, and shall keep the buildings standing on the land aforesaid insured against fire as hereinbelow covenanted and agreed upon that then and in that case these presents shall be null and void.

And the said Robert Fergus his heirs executors and administrators do covenant and agree to and with the said party of the second part his, executors, administrators and assigns he or they will pay or cause to be paid all taxes and assessments that may be charged laid or assessed on said premises or any part thereof while said indebtedness or any part thereof remains unpaid, or if at any time after any such taxes or assessments shall become due & payable the Fergus or his legal representatives shall neglect to pay the same, so that the premises or any part thereof shall be sold by the proper authorities for the same it may be lawful for the party of the second part to redeem the same at any time thereafter and the amount of any and all such payments so made by said party of the second part his heirs executors administrators or assigns shall be deemed and taken and are hereby declared to be so much additional and further indebtedness due from said Robert Fergus his heirs executors or administrators to said party of second part his executors administrators or assigns as soon as paid by him or them secured by this mortgage bearing interest at Ten per cent and may

collected in the same manner as is hereinafter provided for the collection of the other indebtedness secured hereby, or by suit at law in any Court having proper jurisdiction.

And the said Robert Fergus his heirs executors and administrators do covenant and agree to and with the said party of the second part his executors administrators and assigns that he will keep the buildings standing on the land aforesaid insured against fire while said indebtedness or any part thereof shall remain unpaid in a sum not less than Seventy Five Hundred Dollars ($7500.00) for the benefit of said party of the second part his executors administrators or assigns and payable to him in case of loss at such Insurance office as may be approved J Mason Parker of Chicago aforesaid and in any default thereof shall on demand pay to said party of the second part all such sums of money as he the said mortgagee, shall reasonably pay for such Insurance, with ten percent interest per annum.

But if default shall be made by the said Robert Fergus his executors administrators or assigns in the payment of any tax or assessment levied or assessed on said premises or any part thereof after the same becomes due and payable, so that the premises or any part thereof shall be sold by the proper Authorities for the same, or in payment of any one of said instalments of interest, at the time at the time and in the manner provided in said promissory not as the same become due and payable, then at the Election of said party of the second his executors administrators or assigns

said principal sum secured hereby shall at once become and be due and payable anything in the note given for the same to the contrary notwithstanding; said election to be made at the time of, or at any time after such default without notice, or if default shall be made in the payment of said principal sum at the time and place and in the manner provided in the note given for the same, then and in either of said cases, it shall be lawful for the said party of the second part his executors, administrators or assigns to enter into and upon all and singular the premises hereby conveyed or intended to be, and each and every part thereof and the same from thenceforth peaceably and quietly to have hold and enjoy, and the rents issues and profits thereof to receive and to take to his and their own use and benefit without any hindrance eviction or interruption whatsoever and to sell and dispose of the same or any part or parts thereof, and all benefit & equity of redemption of the said party of the first part his heirs executors administrators devisees or assigns therein at public Auction having first given sixty days notice of the time and place of said sale by publication in any daily newspaper in said City of Chicago, and to adjourn said sale from time to time at his discretion: and as the attorney of said party of the First part for that by these presents duly authorized, constituted and appointed or in the name of the said party of the second part his heirs executors administrators or assigns to make execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of

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conveyance, in the law for the same in fee simple and out of the money arising from such sale to retain the whole amount of said promissory note for said sum of Thirteen Thousand Dollars whether due by the terms of said note or not and the interest thereon then due, and all sums advanced by him or them on account of said property together with the costs and charges of advertisement and sale of said premises or any part or parts thereof including the fee and charges of the attorney or other person making such sale and to render the overplus of the purchase money if any there shall be unto the said Robert Fergus his executors administrators & assigns which sale so to be made shall be a perpetual bar in law and Equity against the said party of the first part his heirs and assigns and all other persons claiming or to claim the premises or any part thereof by, from or under them or any of them; but if the amount realized from said sale after first paying all the costs, charges and expenses including attorneys fees, and all sums of money advanced on account of said property shall not be sufficient to fully pay said note for Thirteen Thousand Dollars and the interest due to the time of said sale then to apply the amount so realized over and above costs and charges first first in payment of the interest then due and to endorse the balance as so much paid on said note given for said principal sum, and the said Robert Fergus his heirs executors and administrators do covenant grant bargain and agree to and with the said party of the second part his heirs and assigns, that at the time of the ensealing & delivery of these presents he is well seized of the premises

above conveyed as of a good sure perfect absolute and indefeasible Estate of inheritance in the law in fee simple and hath good right full power and lawful authority to grant bargain, sell and convey the same in manner and form aforesaid; and that the same are free and clear of all former and other grants bargains sales liens judgements taxes assessments and incumbrances of what kind or nature soever, and the above bargained premises in the quit and peaceable possession of the said party of the second part his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof the said party of the first part shall and will Warrant and Forever Defend

In Testimony Whereof the said Robert Fergus and Margret Fergus his wife in token of her relinquishment of all right to dower in and to the premises herein conveyed and being the party of the first part have hereunto set their hands and seals the day and year first above written

Robert Fergus (Seal)

Margret Fergus (Seal)

State of Illinois } SS
County of Cook City of Chicago }

I Philip A Hoyne a Notary Public in and for the City of Chicago in said County in the state aforesaid do hereby certify that Robert Fergus and Margret his wife personally known to

as the real persons whose names are subscribed to the foregoing mortgage as having executed the same appeared before me this day in person and acknowledged that they signed sealed and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth and the said Margaret Fergus wife of the said Robert Fergus having been by me examined seperate and apart and out of hearing of her husband and the contents and meaning of the said instrument 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

Seal

Given under my hand and seal of office this Twentieth day December A 1859

Know all men by these Presents that I David Sears Junior of the City of Boston and State of Massachusetts the within named mortgagee in consideration of the sum of Thirteen Thousand Dollars ($13000,00) to me paid by Edward S Tinkham of the City of Chicago and State of Illinois, the receipt whereof is hereby duly acknowledged the same being the amount now due on said Mortgage do hereby assign transfer set over and convey unto the said Edward S Tinkham his heirs and assigns the within deed of Mortgage the real estate and premises thereby conveyed to me in Mortgage and the promissory note and debt thereby secured

said note being endorsed without recourse, and all my right, title, interest and estate in and unto the same ~~to the said Edwards & Tinkham~~. To Have and to Hold the same to the said Edward I Tinkham his heirs and assigns to his and their use forever.

In witness whereof I have hereunto set my hand and seal this the twenty eighth day of April A D eighteen hundred and sixty 1860

David Sears Junior
by his attorny in fact
J Wasgn Parker

Seal

State of Illinois
County of Cook
Town of South Chicago } SS

I John Forsythe a Notary Public in and and for the Town of South Chicago in the County and State aforesaid do hereby certify that J Wasgn Parker who is personally known to me as the real person whose name is subscribed to the annexed assignment of Mortgage having executed the same as the Attorny in fact of David Sears Junior appeared before me this day in person and acknowledged that as such Attorny in fact signed sealed and delivered the said assignment of Mortgage as the free and voluntary act of David Sears Junior for the uses and purposes therein set forth

Given under my hand and ~~Seal~~
Notarial Seal this twenty eighth
day of April A D 1860

John Forsythe. Notary Public

Also on the said twenty fourth day of May A. D 1861 there was filed in the office of the Clerk of said Court in said cause, affidavit of non-residence of the said defendant White; Which affidavit is in the words and figures as follows, to wit.

"In Superior Court of Chicago
Cook County. Illinois.
As of June term A. D 1861.

Edward A. Tinkham
vs
Robert Fergus et als
} In Chancery.
Bill for foreclosure.

I Samuel N. Fuller being duly sworn on oath says That John V. White one of the defendants in the above Entitled cause is not a resident of the State of Illinois, but is a resident of the State of New York and further I say not.

Saml N. Fuller."

Subscribed and sworn to before me May 24. 1861.
N. Kimball. Clk"

And thereupon accordingly on the said twenty fourth day of May A D 1864 there was issued out of and under the seal of said Court, Peoples Writ of Summons in said cause; Which Writ with the Sheriffs return thereon indorsed is in the words and figures as follows, to wit.

"State of Illinois
County of Cook } S.C.

The People of the State of Illinois

To the Sheriff of said County Greeting.

We command you that you summon Robert Fergus Margaret Fergus. John. T. White Richard A. Carter and Mary Brown if they shall be found in your County personally to be and appear before the Superior Court of Chicago of said County of Cook on the first day of the term thereof, to be holden at the Court House in the City of Chicago in said County on the first Monday of July next to answer unto Edward L. Tuckham in his certain Bill of Complaint filed in the said Court on the Chancery side thereof;

And have you then and there this Writ with an Endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball Clerk of our said Court and the Seal thereof at the City of Chicago aforesaid this 24th day of May A.D. 1861.

(Seal)

Walter Kimball. Clerk"

"Served the within Writ on the within named defendants Robert Fergus. Margaret Fergus, Richard A. Carter and Mary Brown by delivering to each of them a true Copy, the 24th day of May 1861, the other within named defendant John. T. White not found in my County;

Anthony C. Hesing. Sheriff
by John. A. Kelvin. Deputy."

Now thereafter to wit on the twelfth day of August A D 1861 came defendants Robert Fergus & wife by their Solicitors and filed in the office of the Clerk of said Court their answer to said Bill in words and figures as follows to wit

Cook County
State of Illinois } ss

In Supreme Court of Chicago
In Chancery
of the May Term A D 1861

Edward J Tinkham
vs
Robert Fergus Margret Fergus John J White Richard N Casler & Mary Doe

Bill to foreclose Mortgage

The joint and several answer of Robert Fergus and Margret Fergus to the said complainants bill of complaint.

These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit of exception to the many errors defects and insufficiencies in said Complainants bill of Complaint contained for answer thereunto or unto so much or Each part thereof as these defendants are advised is material for them to make answer unto, answer and say that it is true that on or about the Thirteenth day of December A D 1859 this defendant the said Robert Fergus did execute an instrument in writing of a purport and effect similar to the Exhibit marked Exhibit (A) annexed to said Complainants

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bill of Complaint and delivered the same to one J Mason Parker in the City of Chicago and State of Illinois but this defendant the said Robert does not know anything of the said David Sears Junior other than from the representations of the said Parker and that he never had any direct communication with the said Sears and this defendant the said Robert further answering admits that to secure the payment of the said sum of Money in said instrument in writing named to wit the sum of Thirteen Thousand dollars and interest according to the tenor and effect thereof he did together with his wife Margaret Fergus Execute acknowledge and deliver to the said J Mason Parker a mortgage deed bearing even date with the instrument aforesaid of the premises in said bill Mentioned and described which said Mortgage deed this defendant admits to be similar in tenor and effect to the Exhibit referred in said Bill of Complaint and Marked Exhibit (B) therein And this defendant the said Robert does not know and therefore cannot admit that the said paper writing or note just above mentioned was endorsed and the said and the said Mortgage deed assigned by the said David Sears junior for a valuable consideration to the said Complainant Fairbank but this defendant in fact says that the beneficial interest in said paper writing or note and in said Mortgage deed are claimed to be held and owned by and for the benefit use and advantage of one P F W Peck with the full knowledge of the said Complainant And this defendant the said Robert further answering

admits that it was among the things provided in and by said Mortgage deed that if this defendant his heirs &c should make default &c (as is fully set forth in said Mortgage deed to which reference is hereby made and the said Mortgage or a copy thereof made part of this his answer) that then and in that case it should be lawful for the said David Sears junior his Executors administrators or assigns to enter into and upon all and singular the premises hereby conveyed &c peaceably to hold the same &c and all benefit & Equity of redemption &c as by said Mortgage deed or a copy thereof to be produced & proved will more fully appear

And this defendant the said Robert answering admits that of the instalment of interest which fell due on the first day of July AD 1860 the sum of three hundred dollars were paid by this ~~defendant~~ respondent but he does not admit that there was a balance left unpaid of said instalment justly legally and Equitably due of three hundred and fifty dollars

And this defendant the said Robert admits that no money has been paid on account of said promissory note or on account of said Mortgage deed since the first day of January AD 1861. And this defendant the said Robert denies the right of the said complainant Sunkhaus or any other person or persons on his account to declare the said principal sum secured in and by said note and Mortgage due & payable and further denies the right to foreclose said Mortgage for the recovery as well of the principal sum of thirteen thousand dollars as for the alleged instalments of interest. And this defendant answering denies that the sum of ten hundred dollars for interest due on the first days of July AD 1860 and January last. And also the sum of thirteen

thousand dollars for principal with interest at ten percent per annum since the first day of January A D 1861 are now due and unpaid, and this defendant further admits that no suit at Law has been brought to the knowledge of this defendant—

And these defendants the said Robert and the said Margaret admit that the said Margaret has an interest in said premises as the wife of said Robert, that he the said Robert does not know and can neither admit or deny whether John T White has any interest in the same nor does he admit or deny whether Richard H Casler or Mary Benn have any interest in the same that the said Casler and Benn have been tenants of portions of said described premises. And this defendant the said Robert in fact says that the said Complainant the said E D Sinkham has not and disclaims having any interest whatsoever in said note and Mortgage but that he the said Complainant the said Sinkham alleges that all and any interest he ever had in the same he held and still holds as trustee for the use and behoof of one P F H Peck and that he the said Peck is the only person beneficially interested in the said note and Mortgage. And this defendant the said Robert answering says that on or about the twelfth of February A D 1861 the said complainant Sinkham caused to be inserted in one of the newspapers printed and published in the City of Chicago a certain advertisement for the sale of said Mortgaged premises for and on account of alleged default in the payment of interest by the terms of the before mentioned instrument in writing or promissory note and he the complainant Sinkham in and by said advertisement after reciting the said alleged

promissory note or paper writing and the said Mortgage deed and setting forth the assignment of said note and mortgage by said David Sears junior to him the said Tinkham, and the power of sale in said Mortgage contained, proceeds as follows – to wit.
" "Now therefore I Edward D Tinkham the assignee
" of said note and Mortgage for the use of P H H
" Peck by virtue and in pursuance thereof and of the
" said assignment and in consideration of the premi
" -ises (the power of sale meaning) will sell at public
" auction to the highest bidder for cash on Wednesday
" the seventeenth day of April AD 1861 &c"
the premises in said Mortgage deed described. And this defendant the said Robert denies that the said Peck for whose benefit and behoof the said Mortgage and note are alleged to be held or that the said David Sears junior have ever requested or desired the said complainant to sell or offer for sale the premises in said Trust deed or Mortgage deed mentioned and this defendant says that neither the said Sears nor the said Peck have joined with the said Tinkham in his bill to this Honorable Court for a foreclosure of said Mortgage but this defendant in fact says and alleges the fact to be that said bill for a foreclosure has been filed without the knowledge and consent of the said Sears and said Peck and without proper and lawfully authority from any one beneficially interested in said note and mortgage. And this defendant the said Robert alleges and insists that by reason of the premises and for as much as the said complainant has not and absolutely disclaims having any interest in said note and Mortgage other than as a mere naked trustee for the benefit of others, he the said Tinkham has

no right to declare a forfeiture and that the principal sum secured by said Mortgage and note are due and payable but that such right if any there be (which this defendant the said Robert does not admit) only ~~and solely~~ can be exercised only and solely by the person or persons beneficially & lawfully interested therein and upon their or either of their instance and request. and the said defendant in fact says that neither the said Sears nor the said Peck have ever authorized or required the foreclosure of the mortgage aforesaid either by advertisement as aforesaid or by bill for foreclosure of said Mortgage in order to recover the instalments of interest and the principal sum of Thirteen thousand dollars alleged to be due by said note and mortgage. And this defendant in fact says that said Complainant Pinkham has without authority from either the said Sears or the said Peck or any other person or persons lawfully or equitably entitled to the benefit and use of said Mortgage and the said note, assumed to foreclose said Mortgage and to divest this defendant of his interest in said premises in said mortgage described and without such authority to declare the said principal sum of Thirteen thousand dollars due and payable. And this defendant the said Robert answers and insists that in and by the terms of said Mortgage the right to declare a forfeiture of the terms thereof and that the entire principal shall become due upon any default in the payment of interest is strictly confined and limited to the parties to said Mortgage.

And this defendant the said Robert further answering says that of the said sum of Thirteen

thousand dollars alleged to have been paid to this defendant on the thirteenth day of December AD 1859 the sum of fifteen hundred dollars part thereof was not paid to this defendant till about the tenth day of January A.D. 1860 and that the sum of three hundred and ninety dollars part of said fifteen hundred was kept back and retained by J Mason Parker, agent and attorney of said Sears for alleged commissions in the negotiations in said loan. And this defendant Robert further answering insists that in and by the said Mortgage and the said note an unlawful and usurious rate of interest were retained upon said alleged loan of thirteen thousand dollars besides the said sum of three hundred and ninety dollars as aforesaid retained by the said Parker agent as aforesaid. And this defendant the said Robert further answering insists that the said sum of last above mentioned together with the excess of interest by him heretofore paid ought in Equity to be allowed in the adjustment of accounts between this defendant and the holder or holders of said note and Mortgage. And this defendant the said Robert offers to pay the amount of interest justly and equitably due or found to be due upon the said note and mortgage. And this defendant the said Robert submits to this honorable Court that the said bill of complaint of the said Parker Smithson is insufficient in this that it does not set forth the interest or supposed interest of other parties who are alleged to be the beneficiaries of the said note and mortgage, and is in other respects deficient and ought to be dismissed all of which this defendant the said Robert is

is ready to maintain and prove as this Honourable Court may direct and humbly prays to be hence dismissed with his reasonable costs in his behalf

Robert Fergus
Margret Fergus
By C & Cameron Sols

And afterwards to wit on the Sixteenth day of August A.D. 1861 came said Complainant by his said Solicitors and filed in the office of the Clerk of said Court his Replication to said Answer; which Replication is in words and figures as follows, to wit:

"In Chancery.

In the Superior Court of Chicago
Of the August Term A.D. 1861.

The replication of Edward S. Tinkham Complainant to the joint and several answer of Robert Fergus and Margaret Fergus.

This replicant saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors uncertainties and insufficiencies of the answer of the said defendants for replication thereunto saith that he doth and will ever maintain and prove his said Bill to be true certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain evasive and insufficient in the law to be replied unto by this replicant. Without this that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto confessed or avoided, traversed or denied is true; all which matters and things this replicant is ready to aver maintain and prove as this honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

Sammons McCagg & Fuller
Complainants Solicitors."

And on the 8th day of Sept A D 1861 there was filed in the office of the Clerk of said Court publication notice in said cause in words and figures as follows to wit:

State of Illinois } SS
County of Cook }

Superior Court of Chicago
July Term 1861

Edward S Kinkham

vs

Robert Fergus. Margret Fergus John T White Richard N Carler and Mary Brown

Affidavit of the non-residence of John T White one of the defendants above named having been filed in the office of the Clerk of the Superior Court of Chicago, notice is hereby given to the said John T White that the Complainant filed his bill of Complaint in said Court on the Chancery side thereof on the 24th day of May 1861 and that a summons thereupon issued out of said Court against said defendants returnable on the first Monday of July next 1861 as is by law required.

Now unless you the said John T White shall personally be and appear before said Superior Court of Chicago of Cook County, on the first day of the Term thereof to be holden at Chicago in said County on the first Monday of July 1861, and plead answer or demur to the said Complainants bill of complaint, the same and the matters and things therein charged and stated, will be taken as confessed and a decree entered against you

according to the prayer of said bill

H Kimball
Clerk

Scammon McCagg & Fuller
Compts Solrs

This Certifies that a notice of which the annexed printed slip is a true copy was published for four successive weeks to wit: twenty four times in the daily edition of the Chicago Post a newspaper published in the City of Chicago and of general circulation throughout Cook County and State of Illinois and that the date of the first paper containing the same was the 24th day of May 1861 and that the date of the last paper containing the same was the 24th day of June AD 1861 and that we have received six dollars for publishing the same
Dated Chicago this 2nd day of Sept 1861

Jas H Shaham
T A Eastman
Andre Matteson
} Publishers

And afterwards to wit on the third day of July (being one of the days of the July Term of said Court) AD Eighteen Hundred and sixty one. The following proceedings were had in said cause and entered of record in said Court to wit

At the July Term AD 1861
Wednesday July 3rd AD 1861
In Chancery

Edward I Tinkham
vs
Robert Fergus and others

Bill

On motion of C S Cameron Solicitor for defendant and no objection being made by Scammon McCogg & Fuller Solicitors for Complainant it is ordered that the defendants have time from this day of the until the first day of the August Term next ensuing of this Court in which to file their answer to the Bill of Complaint in said cause

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And afterwards to wit on the 18th day of September (being one of the days of the September term) of this Court, A.D. Eighteen hundred and sixty one the following proceedings were had in said cause and entered of record in said Court to wit

Edward S Tinkham
vs
Robert Fergus. Margaret Fergus John S White Richard N Carler and Mary Brown

Bill in Chancery

This day again comes the said Complainant by Scammon McCagg & Fuller his solicitors and file herein due proof of Publication of notice to the defendants John S White of the pending of the bill of Complaint in this cause against him said notice having been duly printed and published for successive week in the a daily newspaper printed and published in the City of Chicago County of Cook and State of Illinois and of general circulation throughout said County & State the first insertion of said notice having been made full sixty days prior to the return day of the summons issued in said cause and upon return being made that said defendant John S White could not be found after diligent enquiry and affidavit being filed that he was a non resident of said state of Illinois and due personal service of the process of summons issued in said having been had on the defendants Mary Brown and Richard N Carler. On Motion it is ordered that the said defendants John S White Richard N Carler and Mary Brown severally

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plead answer or demur to the bill of Complaint filed in said instanter, and no plea answer or demur being made interposed by them or by any one in their behalf and being severally called in open Court and not appearing it is ordered that default be and is hereby taken and entered of record herein against them and the bill of Complaint taken as confessed by and against said defendants White Baxter and Mary Baxter and each of them for want of their appearance and answer and the defendants Robert Fergus and Margaret Fergus having filed their answer it is ordered that the cause be set down for hearing on the bill answer of said defendants and proofs to be submitted on coming in of the Court on Friday Morning next

And afterwards to wit on the 4th day of December (being one of the days of the December Term of this Court) A D Eighteen hundred and sixty one the following proceedings were had in said cause and entered of record in said Court to wit

Edward S Tinkham
vs
Robert Fergus Margret Fergus. John S White Richard W Carter and Mary Barron

Decree of Sale

This cause having this day been brought on to be heard on the bill of complaint taken as confessed against all the defendants except Robert Fergus and Margret Fergus and on the answer of the said Robert Fergus and Margret Fergus and the replication of said Complaint to said answer and upon proof in Open Court and the Court now here being satisfied that all the material allegations in said bill of complaint contained are true and that by reason of default in payment of interest on said note said complainant had a right to elect and had elected to consider and declare and the principal sum secured in and by said note and mortgage due and payable and has declared the same due and payable, and that said principal sum is and at the time of filing said bill was due and payable and that there is now due and unpaid on said note and Mortgage for principal and interest the sum of Fifteen thousand Six hundred and sixty seven dollars and fifty cents ($15667,50)

On Motion of Scammon McCagg and Fuller complainants Solicitors the said Court doth order adjudge

and decree that the said defendant Robert Fergus pay to the Solicitors of said Complainant the said sum of Fifteen Thousand Two Hundred and Sixty seven dollars and fifty cents together with interest on the same and also pay the Costs of this proceeding within ten days from the entry of this decree and that in default of such payment all and singular the said Mortgaged premises mentioned in said bill of Complaint in said cause and hereinafter described or so much as may be sufficient to raise the amount due to the said Complainant for principal and interest and costs in this cause be sold at Public Auction by and under the direction of one of the Masters of this Court that the sale be made in the County where said Mortgaged premises are situated that the Master give public notice of the time and place of such sale by advertising the same in some newspaper published in the City of Chicago at least twenty days before the day appointed for such sale and that the Complainant or any of the parties to this cause may become the purchaser that the said Master execute to the purchaser or purchasers a certificate or certificates of purchase which shall entitle such purchaser or purchasers or his or her or their assignee or assigns to a deed of said premises if the same be not redeemed within the time prescribed by law and that the said master out of the proceeds retain his fees disbursements and commissions on said sale and pay to the Clerk of this Court the Costs of this proceeding and also pay to the Complainant or his solicitors out of such proceeds the amount so found due as aforesaid together with legal interest thereon

from the day of said report or so much thereof as the purchase money of said Mortgaged premises will pay of the same and that the Master take receipts of the amounts so paid and file the same with his report and that he bring the surplus monies if any there be into Court without 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 judgement by decree or otherwise upon the land described in said Mortgage and his or her or their heirs or personal representatives and all persons claiming under them to be forever barred and foreclosed of and from all equity of redemption and claim of, in and to said mortgaged premises hereinafter described and every part thereof from and after the expiration of Fifteen months from the date of said sale unless said premises shall be sooner redeemed according to law said Master in Chancery or his successor in office execute and deliver to the purchaser at said sale or his assigns or assigns a deed of said premises sold

And it is further ordered that the purchaser or purchasers at said sale or his or their assignee or assigns to whom said deed shall executed and delivered upon the execution and delivery of such deed be let into the possession of said Mortgaged premises or so much thereof as shall be included in said deed. And that any of the parties to this suit who may be in possession of said premises by any person who since the commencement of this suit has come in possession under them

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or either of them deliver possession thereof to such purchaser or purchasers or their assignee or assigns on production of said Masters deed for said premises also a certified Copy of the order confirming the report of such sale

The description of the premises and property Authorized to be sold by virtue of this decree so far as the same can be ascertained from the said Mortgage and bill of Complaint in this cause is as follows viz All the following described lands and premises situate lying and being in the City of Chicago County of Cook and State of Illinois and known and described as Sub Lot one (1) and the North twenty five feet of sub Lot two (2) of the subdivision of original Lot six (6) in Block three (3) in Fractional section fifteen addition to Chicago being sixty five feet fronting on State street between Monroe & Adams streets and one hundred and seventy four feet in depth to the alley in rear according to the plats of the same duly recorded in Cook County Registry together with all of the three brick stores and other buildings erected and standing thereon

And thereafter to wit on the 22d day of January AD 1862 there was filed in the office of the Clerk of said Court in said cause the Masters Report of Sale Which Report together with the notice of sale and certificate of publication thereof is in the words and figures following to wit:

Masters Sale
State of Illinois } ss
County of Cook }

Superior Court of Chicago
In Chancery

Edward S Tinkham
vs
Robert Fergus
Margaret Fergus
Richard N Carker
John S White and
Mary Brown

(Foreclosure of Mortgage)

Public notice is hereby given that in pursuance of a decretal order entered in the above entitled cause on the fourth day of December AD 1861, I, Ira Scott as master in Chancery of the Superior Court of Chicago will sell at public Auction to the highest bidder for cash at the North door of the Court House in the City of Chicago in said County of Cook On Friday the Tenth day of January AD 1862 at ten o'clock in the forenoon of that day the following described land and premises situate lying and being in the City of Chicago County of Cook and State of Illinois, and known and described as sub Lot one (1) and the North

Twenty five feet of sub Lot two (2) of the sub division of original lot six (6) in Block three (3) in fractional section fifteen addition to Chicago being Sixty four (feet) fronting on State Street between Monroe and Adams Street and one hundred and seventy four feet in depth to the alley in rear according to the plat of the same duly recorded in Cook County Regestry together with all the three brick stores and other buildings erected and standing thereon

Ira Scott

Master in Chancery of the Superior Court of Chicago

Dated Chicago Dec 16 1861

This certifies that a notice of Masters sale of which the annexed printed slip is a true Copy was published for three successive week and upwards to wit. Twenty one times in the daily edition of the Chicago Post, a newspaper publishing in the City of Chicago and of general circulation throughout Cook County and the State of Illinois and that the date of the first paper containing the same was the seventeenth day of December 1861 and that the date of the last paper containing the same was the Tenth day January A D 1862 and that we have received Six Dollars for publishing the same

Dated at Chicago this 10th day of January 1862

Jos H Sheahan
F A Eastman
Andrew Matteson
} Publishers

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State of Illinois }
County of Cook } ss

Superior Court of Chicago
In Chancery

Masters Report of Sale

Edward D Tinkham

vs

Robert Fergus Margaret
Fergus John J White
Richard W Carlen and
Mary Bown

To the Honorable the Judges of
the Superior Court of Chicago

In pursuance and in virtue of a decretal order entered in the above cause on the Fourth day of December A.D 1861. By which it was among other things ordered adjudged and decreed that the above named defendant Robert Fergus pay to the solicitors of the named complainant the sum of Fifteen thousand two hundred and sixty seven dollars and fifty cents (said sum being the amount found due at the date of said decree for principal and interest upon the note and mortgage mentioned in the Bill of complaint in this cause (15267,50) together with interest on the same and also pay the Costs of the proceedings in this cause, within ten days from the entry of said decree and that in default of such payment that all and singular the mortgaged premises mentioned in the said Bill of in that cause and hereinafter described or so much thereof as might be sufficient to raise the amount due to the said complainant for principal and interest and costs in this cause be sold at Public Auction by and under the direction of one of the Masters of

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this Court that the sale may be made in the County where said Mortgaged premises are situated that the Master give public notice of the time and place of such sale by advertising the same in some newspaper published in the City of Chicago at least twenty days before the day appointed for such sale, and that the Complainant or any of the parties to this cause might become the purchaser. That the said Master execute to the purchaser or purchasers a certificate or certificates of purchase which shall entitle such purchaser or purchasers or his or her or their agence or assigns to a deed of said premises if the same be not redeemed within the time prescribed by law And that said Master out of the proceeds of said sale retain his fees disbursements and commissions on said sale and pay the Clerk of this Court the Costs of this proceeding and also pay to the Complainant or his solicitor out of such proceeds the amount so found due as aforesaid together with legal interest thereon from the date of said report or so much thereof as the purchasers may of the said Mortgaged premises will pay of the same and that the Master take receipts of the amount so paid and file the same with his report and that he bring the surplus moneys if any there be into Court without delay to abide its further order.

I the subscriber one of the masters in Chancery of this Court do respectfully report that the said defendant Robert Fergus having made default in the payment of the aforesaid sum of money as required by said decree and the ten days within which the same was required to be

said as aforesaid having fully elapsed and the said defendant having failed to pay the same or any part thereof— I the said Master having been charged with the executing of said decretal order by the solicitors for the complainant in this cause, publicly advertised the said Mortgaged premises to be sold by me at public auction to the highest bidder for cash at the North door of the Court House in the City of Chicago said County of Cook on Friday the tenth day of January AD 1862 at ten o'clock of the forenoon of that day. That previous to said sale I caused a notice thereof containing the title of this cause the names of the parties thereto the time place and terms of sale together with a description of said Mortgaged premises to be published for the space of twenty days and upwards immediately preceding said sale in the daily edition of the Chicago Post a newspaper of general circulation printed and published in the City of Chicago in said County of Cook the first insertion of said notice being made in said newspaper on the Seventeenth day of December AD 1861 and the same was continued therein consecutively until and including the tenth day of January AD 1862 the said day fixed for said sale a printed copy of which said notice is hereto annexed which with the certificate of publication thereto affixed is made a part of this report.

And I do further report that on the said tenth day of January AD 1862. the day upon which the said premises were advertised by me to be sold as aforesaid. I attended at the said time and place fixed for said sale and opened

the said premises for sale at public auction to the highest bidder for cash and the same were then and there fairly struck off and sold by me to James H Woodworth at and for the sum of Fifteen thousand six hundred and thirty three dollars and eighty nine cents ($15633.89).
He being the highest bidder therefor and that being the highest sum bidden for the same

And I do further report that I have executed and delivered to said purchaser the usual Masters certificate of purchase entitling said purchaser his assignee or assigns to a deed of said premises as sold at the expiration of fifteen months from the date of such sale unless the same shall sooner be redeemed according to law. and have caused a duplicate of said certificate of purchase signed by me to be filed for record in the office of the Recorder of said County of Cook

And I do further report that I have applied and disposed of the proceeds of said sale as follows viz I have paid to the Clerk of this Court the costs taxed in this suit the same being the sum of Twenty one dollars & Eighty five cents and have taken his receipt therefor which is hereto annexed and have retained for my fees commissions and disbursements on said sale the sum of two hundred and fifty dollars and forty cents ($250.40) and have paid to the solicitor for the Complainant the balance of the proceeds of said sale viz. the sum of Fifteen thousand three hundred and sixty one dollars and sixty four cents ($15361.64) the same being in full of the amount due complainant under said decree for

principal and interest up to the date of said sale and have taken therefor receipts which is hereto annexed reference being made to the statement hereto annexed showing the items of costs commissions fees and disbursements in this cause and the amount due complainant for principal and interest with the period of the computation of the interest and its rate And I do further report that the mortgaged premises so sold as aforesaid were described in said decree and in the Certificate of purchase executed and delivered by me to said purchaser at said sale as follows viz All the following described lands and premises situate lying and being in the City of Chicago County of Cook and State of Illinois and known and described as Sub Lot one (1) and the North twenty five feet of sub Lot two (2) of the subdivision of original lot six (6) in Block three (3) in Fractional section fifteen addition to Chicago being sixty five fronting on State street between Monroe and Adams Street and one hundred and seventy four feet in depth to the alley in rear, according to the plats of the same duly recorded in Cook County Registry together with all the three brick stores and other buildings erected and standing thereon

All of which is respectfully submitted

Chicago January 20th 1862

Ira Scott
Master in Chancery of
the Superior Court of Chicago

Statement referred to in foregoing report

Items of Complainants costs taxed in suit

Compl'ts Clerks Costs. $7,65

Deft " " ,70

Judg. fee 3,00

Sheriff " 4,50

Printer " 6,00

Total Compl'ts Costs $21,85

Items of Masters fees commission & disbursements on sale

Report of Sale $5,00

Certificate of Purchase (in duplicate) 5,00

Commissions on purchase money at rate 3 p Ct on first $200 & 1½ p Ct on balance of Amt paid 233,15

Printers fees for advertising for Masters sale 6,00

Recorders fee for Recording Certificate of Purchase 1,25

Total $250,40

Prin sum due Compl't under decree $15267,50

Int on same from date of decree DEC 4/61 to date of sale Jan 10/62 at rate of 6 per cent per annum being 1 Month & 7 days 94,14

Amt due Compl't Prin & Int at date of sale $15361,64

Entire proceeds of sale $15633,89

Deduct costs taxed in suit - $21,85

Master fees &c $250,40 $272,25

Bal is $15361,64

Ira Scott

Master in Chancery

Superior Court of Chicago
In Chancery

Edward I Tinkham
vs
Robert Fergus Margaret
Fergus John T White
Richard W Carter
and Mary Brown

Received Chicago January 10th 1862 of Ira Scott the Master in Chancery by whom the Mortgaged premises described in the decree entered in the above cause on the fourth day of December 1861 were sold on the tenth day of January AD 1862 the sum of Fifteen Thousand three hundred and sixty one dollars and sixty four cents ($15361,64) the same being in full of the amount due complainant for principal and interest thereon to the date of said sale upon the decree entered in the above cause

Scammon McCagg & Fuller
Sol for Compl'ts

Received Chicago January 10th 1862 of Ira Scott the Master in Chancery by whom the mortgaged premises mentioned in the decree entered in the above cause were this day sold the sum of Twenty one dollars and eighty five cents in full of complainants costs taxed in said suit

Thomas B Carter
Clk Sup Ct Chicago

And afterwards to wit on the 3rd day of February being one of the days of the February Term of this (Court) A.D. Eighteen hundred and sixty two the following proceedings were had in said cause and entered of record in said Court to wit

Edward I Tinkham

vs Bill

Robert Fergus Margaret
Fergus John J White
Richard A Carler and
Mary Brown

This day again comes said Complainant by Scammon McCagg & Fuller his Solicitor and files herein the report of sale by the Master in Chancery of the premises described in Complainants bill under the Decree in this cause and on their Motion no objection being made it is ordered that the Masters report of sale as aforesaid be and the same is hereby in all things approved ratified and confirmed

And afterwards to wit on the third day of August (being one of the days of the August term of said Court) A D Eighteen hundred and sixty four the following proceedings were had in said cause and entered of record in said Court to wit

At the August Term A D 1864
Wednesday August 3rd A D 1864
In Chancery

Edward D Tinkham
vs
Robert Fergus Margaret
Fergus John T White
Richard A Carter and
Mary Brown

Order

On this day came James H Woodworth by his solicitors D L Sherman and Lambert Tree Esqs and filed the following petition notice and affidavits in the above entitled cause

To the Honorable the Judges of the Superior Court of Chicago. (In Chancery sitting)

Your petitioner James H Woodworth of the City of Chicago in the County of Cook and State of Illinois states unto your Honors That heretofore to wit on or about the Fourth day of December A D 1861 by Decree of that date in said cause it was by this Honorable Court ordered adjudged and decreed amongst other things in substance and effect as follows that is to say that at the said sale of the said premises described in the bill of complaint in said cause and hereinafter described in pursuance of the said Decree stating there

the purchaser purchasers thereof or his or their their assignee or assigns to whom a deed should be executed and delivered for said premises upon the execution and delivery of such deed be let into the possession of the said Mortgaged premises in said and said new stating decree mentioned and described or so much thereof as shall be included in said deed and that any of the parties to said suit who may be in possession of the said premises or any person who since the commencement of said has come into possession under them or either of them deliver possession thereof to such purchaser or purchasers or their assignee or assigns on production of the Masters DEED for said premises, and certified copy of the order confirming the report of said sale.

And your Petitioner further states that at said sale so had in pursuance of said stated decree of the said premises in said Bill of Complaint and said stated decree described. to wit, on the 15th day of January A.D. 1862 he purchased the said premises for the full sum of $15633 19/100 which said sum was the just and true value thereof (or nearly so) and received therefor a certificate of purchase of the said premises from the said Master, Made, executed, and delivered in pursuance of said decree and said sale to your Petitioner aforesaid which said Certificate of purchase so made and delivered as aforesaid to your Petitioner as aforesaid was by your Petitioner assigned and transfered to one Philip F. H. Peck and was by the said Peck afterwards for a good and valuable consideration sold, assigned transfered and delivered to your Petitioner who then became

and was the lawful holder and owner thereof and so continued to be and remain until the same was merged by the executing and delivery of a Deed of said premises as hereinafter more particularly mentioned and set forth.

And your Petitioner further states that the said premises were not redeemed from said sale and that after the expiration of fifteen months and upwards then next succeeding the period of said sale, and on or about the first day of July A D 1864 the said Ira Scott so being the Master in Chancery of said Court did make execute and deliver to your Petitioner so being the legal holder and owner of said Certificate of purchase a Deed of conveyance in fee of the said premises in said Bill of Complaint and decree described as follows that is to say. All the following described lands and premises situate lying and being in the City of Chicago in the County of Cook and State of Illinois and known as described as sub Lot one (1) and the North twenty five feet (25) of sub Lot two (2) of the sub division of original lot six (6) in Block three (3) in Fractional section fifteen (15) addition to Chicago being sixty five feet fronting on State Street between Monroe and Adams Streets and one hundred and seventy four feet in depth to the alley in rear according to the plats of the same duly recorded in Cook County Registry together with all the three brick stores and other buildings erected and standing thereon

And your Petitioner further states that on the first day of August A D 1864 he served upon the said Robert Forgus Defendant who at the time of the commencement of said suit and

thence hitherto hath been and still is in the possession and occupancy of said above described premises a certified copy of the said decree so entered as aforesaid by leaving the same with the said Robert Fergus

And your Petitioner further states that at the same time of serving said Copy of said decree he also produced and Exhibited to the said Robert Fergus the said Deed of the said Master so made, executed, and delivered to your Petitioner and that at the same time he also produced and exhibited to the said Robert Fergus a copy of the Order in said cause confirming said Masters report of said sale so made to your Petitioner entered of record in said cause on the third day of February A.D. 1862 certified by the Clerk of said Court under the seal thereof to be a true perfect and complete Copy of said Order and that at the same time he did demand of and from the said Robert Fergus the possession of the said premises in said deed and decree and hereinafter described and mentioned and did demand that the said Robert Fergus should surrender and deliver up to your Petitioner the possession thereof with all of which the said Robert Fergus refused to comply and did then and there absolutely refuse to surrender and deliver up the possession of said premises to your Petitioner

Wherefore your Petitioner prays the aid of this Honorable Court and that there issue from this Honorable Court according to the laws and practice of said Court a Writ of Executing of said Decree so made and entered as aforesaid

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in said Cause and restoring the said Robert Fergus and any and all persons parties to said suit who may be in possession of said described premises or any part thereof and any and all persons who since the Commencement of said suit have or has come into possession of said or any part thereof under said parties or either of them to deliver possession thereof to your Petitioner in accordance with said decree as entered of record in said cause and for such other and further relief as may seem meet and equitable

And your Petitioner will ever pray &c

J W Woodworth

State of Illinois }
Cook County } SS

Lambert Fox of the City of Chicago County of Cook and State of Illinois being duly sworn maketh oath and saith that he this deponent on the second day of August A D 1864 at said City of Chicago duly served the defendant Robert Fergus with a true copy of the foregoing petition and affidavit thereto attached And further this deponent saith not

Lambert Fox

Subscribed and Sworn to before me this 3rd day of Aug 1864

Thos B Carter Clerk

To the above named Defendants

Please take notice that on the 1st

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third day of August A D 1864 upon the opening of Court or as soon thereafter as counsel can be had Heard & I shall in Room number Two (2) of said Court in the Chancery department thereof apply to said Court by petition on the part and behalf of James H Woodworth to whom the said premises mentioned and described in the Bill of Complaint and in the decree of sale entered in said cause have been conveyed by deed by Ira Scott Esq Master in Chancery of said Court for a Writ of Execution of said decree to deliver the possession of said premises so conveyed to the said James H Woodworth in accordance with said decree. The said application will be founded upon the said decree of Fourth of December A D 1861 upon the Masters Deed of said premises conveying the same to the said Woodworth upon the order confirming the sale by the master of the said premises in said described, and upon the Petition of the said Woodworth in respect and all the matters and things therein stated and contained with a copy of which said Petition you are herewith served

Lambert Free &
P L Sherman for Petitioner

Dated Aug 1st 1864

State of Illinois
Cook County } S S

Lambert Free of Chicago in said County in said State being duly sworn maketh oath and saith that he this deponent duly served the defendant Robert Fergus with

saw
a copy of the above notice on the second day of
August A D 1864 at Chicago aforesaid and further
this deponent saith not
Subscribed and Sworn to Lambert Tree
before me this 3rd Aug 1864
Thos B Carter Clerk

And thereupon on motion of the said Attorney for the said James H Woodworth it was ordered by the Court that a Writ of assistance should forthwith issue from this Court in the usual form directed to the Sheriff of the County of Cook commanding him to put the said James H Woodworth in the quiet and peaceable possession of the said premises purchased under the sale made in pursuance of the decree of this Court without delay

And afterwards to wit on the third day of April A. D 1865 there was filed in the office of the Clerk of said Court in said cause, a certain Notice Affidavits & Motion in words & figures &c as follows, to wit:

"In the Superior Court of Chicago

Edward S. Smithham }
vs
Robert Fergus et al }

Messrs Hervey Anthony & Galt
attys for Defts

Sirs

You will take notice that on Monday morning April 3d 1865, at 10 o'clock, or as soon thereafter as Counsel can be heard, We shall move in the Chancery side of said Court, for leave of said Court to supply the file in the above entitled cause, by filing a certified Copy of the original mortgage offered and produced in evidence and filed in said Cause, on the trial thereof, but now missing and lost from the record thereof, And we shall offer in support of said motion the affidavit of Ezra B. Mc Cagg, and John H. Battey, Copies of which accompany this notice, and such other proof as we will deem necessary

Dated April 1st 1865

P. L. Sherman
Lambert Tree
Att'y for Pltf

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State of Illinois } ss.
Cook County }

Edward I Smithham } In the Superior Court of Chicago
vs
Robert Fergus et al }

John H Batten of Chicago being duly sworn maketh oath and saith, That he this deponent is deputy Clerk of the said Superior Court of Chicago., That the original mortgage in said above entitled suit of Edward I Smithham vs Robert Fergus et al is missing from the files in said suit, That this deponent has made diligent search for the same in every place where said mortgage would be likely to be found, if still in the Clerks Office of this Court., That this deponent has been unable to find the said mortgage and believes the same is wholly lost from the files and office of this Court and cannot be found

Jno H Batten

Subscribed & sworn to before me this 1st day of April A D. 1865.
Thos B Carter. Clerk

5 cent Rev Stat Cancelled

State of Illinois } ss.
Cook County }

Edward I Smithham } In the Superior Court of Chicago
vs
Robert Fergus et al }

Ezra B McCagg of the

city of Chicago. and County of Cook aforesaid, being duly sworn maketh oath and saith, that he, the deponent is now, and was at the time hereinafter referred to, a member of the law firm of Scammon Wi. Cagg and Fuller, of the said city of Chicago That the said Scammon Wi. Cagg & Fuller were Solicitors for the Complainant in the above entitled foreclosure suit of Edward S. Burkham Vs Robert Fergus et ab in the Superior Court of Chicago, and commenced said suit. That during the progress of said suit said Scammon Wi. Cagg & Fuller had the original mortgage and note upon which said suit was based and commenced, in their custody and possession - That on the 4th day of December 1871 said suit came on to be heard and a final decree was rendered therein on said day, this deponent appearing for the said Complainant., That at said time this deponent produced and offered in evidence before said superior Court (~~of Chicago~~) in said Cause, and at the hearing thereof, the said original mortgage duly executed and acknowledged by the said Robert and Margaret Fergus, and also the original note, and the same were then and there duly filed with the papers in said suit, since which time this deponent has not seen either said mortgage or note, And this deponent further said That at the time of filing of the Bill of Complaint in this Cause by the firm of Scammon Wi. Cagg & Fuller, they also filed what was intended to be a copy of the said Mortgage which is the same instrument marked by Libel "A" in said suit, That in making said Copy of said mortgage from the original, the Clerk of the deponent inadvertently omitted the signature of

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the said. Philip A Hoefne to said acknowledgement, and hence the reason of the said signature not appearing in said copy.

E. L. McCagg

Subscribed & sworn to before me this 1st day of April A.D. 1865

(5 Cent Rev Stamp Cancelled)

Notarial Seal.

Esquire C. Long
Notary Public

"In the Superior Court of Chicago

Edward J. Smith Jam
vs
Robert Fergus etal

And now comes the said Complainant by his solicitor P.L. Sherman and Lambert Bros. and moves the Court for leave to supply to the file in the above entitled Cause a copy of the original mortgage and certificate of acknowledgement offered and produced in evidence and filed in said Cause in the hearing thereof and now missing and lost from the Record thereof, by filing nunc pro tunc, a copy thereof Certified by the recorder of deeds of the County of Cook.

P.L. Sherman
Lambert Bros
Solrs for Compl

And afterwards to wit on the said third day of April A.D 1865 (being one of the days of the April term of said Court) the following proceedings were had in said cause and entered of record in said Court, to wit,

Edward A. Kirkham . . .

vs

Robert Fergus, Margaret Fergus John J. White, Richard N. Carter and Mary Brown . . .

This day the Motion of the Complainant in said cause for leave of said Court to supply the file in the said cause by filing a Certified Copy of the original Mortgage offered and produced in Evidence and filed in said cause on the trial thereof but now missing and lost from the record thereof coming on to be heard;- P.S. Hamnett and Lambert Tree appearing as Solicitors for the Complainant upon said Notice and Mefs; Sterney, Anthony & Galt appearing on behalf of the defendants thereto On reading and filing the affidavits of E.B. McCagg stating and showing amongst other things that he was Solicitor for the Complainant in this cause upon hearing thereof, and that he then and there produced and offered in Evidence the Original Mortgage referred to in said Bill and answer and that the same was duly executed and acknowledged by the said defendants Robert and Margaret Fergus and also the original Note and that the

55- paine was then and there filed with the papers in said cause and left with the Clerk of said Court, and further stating and showing that the Exhibit "A" referred to in said Bill by mistake or mission of his Clerks in copying failed to show the signature of Philip. A. Hoyne, the Notary Public, who took the acknowledgement of said Mortgage - And on reading and filing the affidavit of S. H. Baker, deputy Clerk of said Court stating and showing among other things that the said Original Mortgage filed in said cause is missing from the files of said cause, and from said Clerks office and that after diligent search and thorough search therefor the same cannot be found, and upon other and further proofs then and there submitted to this Court that the original Mortgage referred to in the Pleadings in said Cause was offered and produced in evidence in said cause, and was duly filed in said cause at the time of the decree therein was entered, and that the same was duly executed and acknowledged and that the same has since been lost from the files of this Court and cannot be found, and that the Copy of the Mortgage offered by the Complainant Certified to by the Recorder of deeds of Cook County from the records thereof is a true Copy of said original Mortgage and acknowledgment and certificate thereof

Now therefore it is Ordered by this Court that this Complainant have leave to file the said Certified Copy of said Mortgage

And acknowledgment and Certificate thereof—
so Certified to be a true Copy as aforesaid
by the recorder of deeds of Cook County,
Nunc pro tunc.

To which deformants by their Counsel
then and there Excepted.

And thereafter to wit: on the 3rd day of April A. D. 1865 there was filed in said Court as of the 4th day of December 1861, by order of the Court herein before set forth, a certified Copy of the mortgage described in the said Bill of Complaint, which Certified Copy of said mortgage is in words and figures as follows to wit:

Robert Fergus to David Sears Jr.

Vol 50 of mortgages at Page 201

This Indenture made this thirtenth day of December in the year of our Lord One Thousand Eight hundred and fifty nine, between Robert Fergus and Margaret Fergus his wife in token of her relinquishment of all right of dower in and to the premises hereinafter conveyed both of the City of Chicago and State of Illinois, party of the first part, and David Sears Junior of the City of Boston and State of Massachusetts, party of the second part. Witnesseth that whereas the said Robert Fergus is justly indebted unto the said David Sears junior in the sum of Thirteen Thousand Dollars ($13,000.00) secured to be paid by his promissory note bearing even date herewith and providing that said principal sum shall be payable Five Years after the first day of January A. D. 1860 at the State Bank

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in the City of Boston and State of Massachusetts, and that the interest which shall be at the rate of ten per cent per annum shall be payable semi annually to wit: On the first day of January and July each every year also at the said State Bank in Boston aforesaid.

Now Therefore this Indenture witnesseth that the said party of the first part for the better securing the payment of the said promissory note at the time and in the manner therein specified, and in the further consideration of the sum of one dollar to them in hand paid by the said party of the second part, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant bargain, sell, alien, remise, convey and confirm unto the said party of the second part his heirs and assigns forever, all the following described lands and premises situate, lying and being in the City of Chicago. County of Cook and State of Illinois and known and described as

Sub Lot One (1) and the North Twenty five feet of Sub Lot Two of the Subdivision of Original Lot six (6) in Block Three in the Fractional Section Fifteen Addition to Chicago

being Sixty five fronting on State Street between Monroe and Adams Street and One Hundred and Seventy four feet in depth, to the alley in the rear according to the plats of the same duly recorded in the Cook County Registry, and meaning also to include in this Conveyance all of the three brick Stores and other buildings now erected and standing upon the above described premises.

To have and to hold the same together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining. And also all the estate, interest, and Claim whatever in Law as well as in Equity which the party of the first part have in and to the premises hereby conveyed unto the said party of the second part, his heirs and assigns and 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, his executors, administrators devisees or assigns shall well and truly pay or cause to be paid unto the said party of the second part, his executors, administrators

41 and assigns the said promissory note above mentioned at the time and place and in the manner in said note specified according to the true intent and meaning of said note, and shall pay all taxes and assessments levied or assessed on said premises or any part thereof at any time before said indebtedness shall be fully paid and satisfied as the same become due and payable, and shall keep the buildings standing on the land aforesaid insured against fire as herein below covenanted and agreed upon, that then and in that case these presents shall be null and void.

And the said Robert Fergus, his heirs, executors, and administrators do covenant and agree to and with the said party of the second part, his executors, administrators and assigns, that he or they will pay or cause to be paid all taxes and assessments that may be laid, charged or assessed on said premises or any part thereof while said indebtedness or any part thereof remains unpaid, or if at any time after any such taxes or assessments shall have become due and payable, the said Fergus or his legal representatives shall neglect to pay the same, so that

said premises or any part thereof shall be sold by the proper authorities for the same, it may be lawful for said party of the second part to redeem the same at any time thereafter and the amount of any and all such payments so made by said party of the second part, his heirs, executors, administrators or assigns as soon as paid by him or them secured by this Mortgage bearing interest at ten per cent, and may be collected in the same manner as hereinafter provided for the collection of other indebtedness secured hereby or by suit at law in any Court having proper jurisdiction

And the said Robert Fergus, his heirs executors and administrators do Covenant and agree to and with the said party of the second part, his executors, administrators and assigns, that he will keep the buildings standing on the land aforesaid insured against fire while said indebtedness or any part thereof shall remain unpaid in a sum of not less than Seventy five Hundred Dollars ($7500.00) for the benefit of said party of the second part, his executors, administrators or assigns and payable to him

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at such insurance office as may be approved by J. Mason Parker of Chicago aforesaid, and in any default thereof shall on demand pay to said party of the second part, all such sums of money as he the said Mortgagee shall reasonably pay for such insurance with ten per cent interest per annum. But if default shall be made by the said Robert Fergus, his heirs, executors, administrators or assigns in the payment of any tax or assessment levied or assessed on said premises or any part thereof after the same becomes due and payable so that the premises or any part thereof shall be sold by the proper authorities for the same, or in the payment of any one of said instalments of interest at the time and in the manner provided in said promissory note as the same becomes due and payable, then at the election of said party of the second part, his, executors, administrators or assigns, said principal sum secured hereby shall at once become and be due and payable anything in the note given for the same to the contrary notwithstanding, said election to be made at the time of, or at any

time after such default without notice, or if default shall be made in the payment of said principal sum at the time and place and in the manner provided in the note given for the same, then and in either of said cases it shall be lawful for the said party of the second part, his executors, administrators or assigns, to enter into and upon all and singular the premises hereby conveyed or intended to be, and each and every part thereof and the same from thenceforth peaceably and quietly to have, hold, and enjoy and the rents, issues and profits thereof to receive and take to his and their own use and benefit without any molestation, eviction or interruption whatsoever and to sell and dispose of the same, any part or parts thereof and all benefit and Equity of Redemption the said party of the first part, his heirs, executors administrators, devisees or assigns therein at public auction, having first given sixty days notice of the time and place of said sale by publication in any daily newspaper published in the said City of Chicago, and to adjourn said sale from time to time

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65- at his discretion and as the Attorney of said party of the first part for that purpose by these presents duly authorized, constituted and appointed or in the name of said party of the second part, his heirs, executors, administrators or assigns to make, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee simple and out of the money arising from such sale to retain the whole amount of said promissory note for said sum of Fourteen Thousand Dollars whether due by the terms of said note or not and the interest thereon then due and all sums advanced by him or them on account of said property, together with the costs and charges of advertisement and sale of the said premises or any part or parts thereof, including the fees and charges of the attorney or other person making such sale, and to render the overplus of the purchase money if any there shall be unto the said Robert Fergus his heirs, executors, administrators or assigns, which sale so to be made shall be a perpetual bar in law and Equity

against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof, by from, or under them or any of them, but if the amount realized from said sale, after first paying all costs, charges and expenses including Attorney's fees, and all sums of money advanced on account of said property, shall not be sufficient to fully pay said note for Thirteen Thousand Dollars and the interest due to the time of said sale then to apply the amount so received first and above costs and charges first in payment of the interest then due and to endorse the balance as so much paid on said note given for said principal sum, And the said Robert Jeffers, his heirs Executors and administrators, do Covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns that at the time of the ensealing and delivery of these presents, he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee simple, and hath good right, full

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power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments and incumbrances of what kind or nature soever and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns against all and every person or persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part shall and will warrant and forever defend.

And it is hereby agreed between the parties to this Indenture, that in the mean time and until default shall be made in the payment of said notes or either of them or some part thereof or interest thereon as aforesaid or in the payment ~~thereof~~ of some tax or assessment it shall and may be lawful to and for the said party of the first part his heirs and assigns peaceably and quietly to have, hold, occupy, use, possess and enjoy the said premises with their appurtenances and to receive

the rents, issues, and profits thereof to his and, their own use and benefit without any hindrance or interruption, suit or disturbance whatsoever of or by the said party of the second part, his executors administrators or assigns, or any other person or persons whatsoever lawfully claiming or to claim the same by, from or under him, them or any of them.

In testimony whereof the said Robert Fergus and Margaret Fergus, his wife in token of relinquishment of all right to dower in and to the premises herein conveyed, and being the party of the first part, have hereunto set their hands and seals the day and year first above written.

Robert Fergus. (Seal)

Margaret Fergus. (Seal)

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State of Illinois }
County of Cook } ss
City of Chicago }

I, Phillip A. Noyes, a Notary Public in and for the City of Chicago in said County in the State aforesaid, do hereby certify that Robert Fergus and Margaret Fergus his wife, personally known to me as the real persons whose names are subscribed to the foregoing Mortgage as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth, And the said Margaret Fergus, wife of the said Robert Fergus, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument 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 men-

tioned without compulsion of her said husband and that she does not wish to retract the same.

Given under my hand and seal of office, this Seventieth day of December, A. D. 1859

L. S.

Philip A. Hoyne,
Notary Public

No 27.210.

Filed Dec 21st 1859.

State of Illinois }
County of Cook } ss.

I, William H. Church Clerk of the Circuit Court, and Ex-officio Recorder in and for said County, in the State aforesaid, do hereby certify that the annexed is a true copy of a certain Instrument filed in my office on the 21st day of December A. D. 1859 and Recorded in Book No 50 of Mortgage on page 201.

Seal

In testimony whereof I have hereunto set my hand and affixed the seal of our said Court at Chicago this 3rd day of April, A. D. 1865

William H. Church,
Clerk of the Circuit Court
and Ex-officio Recorder of
Cook County.

State of Illinois }
Cook County .. } ss

I Thomas B. Carter Clerk of the Superior Court of Chicago, within and for said County and State do hereby certify the above and foregoing to be a full and complete transcript of the papers now on file in my office; together with all orders, decrees and other proceedings entered of record in said Court, in a certain suit therein, on the Chancery side thereof, wherein Edward D. Tinkham is Complainant and Robert Forgue and others, defendants;



In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this twenty fourth day of April A.D. 1865.

Thomas B. Carter
Clerk

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Superior Court of Chicago.

Edward L. Tinkham

vs.

Robert Fergus et al

Transcript.

Filed Apl 6, 1865

L Leland Clk

$22½ Trans.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the _____ day of December in the year of our Lord One Thousand Eight Hundred and Sixty one, and of the Independence of the United States of America the Eighty forth

Present, The Honorable John M. Meson Chief Justice of the Superior Court of Chicago.

Van H Higgins } Judges.
Grant Goodrich }

Joseph D Knox Prosecuting Attorney.

Anthony L. Keeney Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore to wit on the fourth day of May in the year of our Lord one thousand Eight Hundred and Sixty one Edward L Pinkham by Seamon M Cagg his Solicitor filed in the Clerks Office of the Superior Court of Chicago his certain Bill of Complaint Exhibits A and B, and affidavit of non residence which Bill of Complaint Exhibits A & B, and affidavit are in words and figures following to wit:

State of Illinois }
County of Cook }

To the Honorable the Judges of the Superior Court of Chicago in Chancery sitting

Humbly complaining showeth unto your Honors your Orator Edward S. Dunklee of the city of Chicago County and State of Illinois, that on the thirteenth day of December A.D. 1859 Robert Degnes of the City of Chicago aforesaid executed and delivered to Silas Peirce Jr. of the City of Boston and State of Massachusetts his promissory note of that date whereby he promised to pay to the order of said Silas Thirteen Thousand dollars in five years after the first day of January A.D. 1860 at the State Bank, in the City of Boston and State of Massachusetts with interest at the rate of ten per cent per annum said interest to be paid semi annually next on the first day of January and July each in every year. also at the said State Bank as by said note ready here in Court to be produced will fully appear a copy of which is herewith filed marked exhibit "A" as part of this Bill

And the said Robert Degnes to secure

the payment of the principal and interest mentioned in the said note due at the same time with his wife Margaret Degnan execute acknowledge and deliver to the said David Sears Jr. a Mortgage Deed bearing even date with the said note and conditioned for the payment of said sum of thirteen thousand dollars with the interest thereon according to the terms of said note by which the said Robert and Margaret Degnan mortgaged unto the said David Sears Jr in fee certain lands lots and parcels of land described as follows. "Sub lot one (1) and the north twenty five feet of Sub Lot two (2) of the subdivision of original lot six (6) in Block three. (3) in the Kinzie addition to Chicago being sixty six feet fronting on State Street between Monroe and Adams Streets, and one hundred and seventy four (174) feet in depth to the alley, in rear. according to the Plats of the same duly recorded in Cook County Registry and meaning also to include in said conveyance all of the three brick stores and other buildings standing thereon erected upon the above described premises" all of said Mortgaged premises being in the City of Chicago Cook County and State of Illinois which Mortgage Deed was afterwards duly recorded in the Recorders office of said Cook County State of Illinois

on the twenty first day of December A.D. 1859 in Book 50 of Mortgages at page 201. as by the said mortgage and the certificate of acknowledgment and of the recording aforesaid endorsed thereon and ready here in Court to be produced may fully appear. a copy of which is filed herewith as part of this Bill marked Exhibit "B"

And your Orator further states that said note has been unpaid and default and said Mortgage assigned and delivered to your Orator by said David Sears Jr. for a valuable consideration paid by your Orator therefor before maturity and the same are now held by your Orator

And your Orator further states unto your Honor. that it was among other things provided in and by said Mortgage deed. that if the said Robert Degrue, his heirs executors or administrators. or assigns shall make default in the payment of any tax or assessment levied or assessed on said premises or any part thereof. after the same became due and payable. so that the premises or any part thereof shall be sold by the proper authority for the same or in the payment of any one of the instalments of interest at the time and in the manner provided in said promissory note as the same became due and payable. then at the election

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" of said party of the second part (meaning
" the said David Seavey) his executors ad
" ministrators or assigns said principal sum
" thereby secured shall at once become due
" and payable anything in the note given for
" the same to the contrary notwithstanding
" said election to be made at the time of or
" at any time after such default without
" notice" as will more fully appear by
reference to the provisions of said deed of Mortgage

And your Orator further shows unto your Honor that on the first day of July A.D. 1861 an instalment of interest fell due at the State Bank in Boston Massachusetts according to the terms of said note as above set forth and was unpaid except the sum of three hundred dollars leaving a balance of said instalment of interest amounting to three hundred and fifty dollars due on the first day of July last wholly unpaid

And your Orator further shows unto your Honor that on the first day of January A.D. 1862 another instalment of interest upon said principal sum became due and payable at the State Bank in Boston Massachusetts from the said Robert Jenness amounting to six hundred and fifty dollars and was also wholly

and yet remains wholly unpaid although the said Robert Fergus has been frequently in a friendly manner requested to pay it.

And your Orator states that for such default in the payment of said instalments he has elected to declare the principal sum secured in and by said note and mortgage due and payable, and therefore brings this his Bill of foreclosure as well to recover said instalments of interest as the said principal sum of fourteen thousand dollars secured in and by said note and mortgage.

And your Orator believes and states that the sum of ten hundred dollars for interest due as above stated on the first days of July and January last and the said sum of fourteen thousand dollars for principal with interest thereon at ten per cent per annum since the first day of January A.D. 1861 is now due and remains unpaid to your Orator and that no proceedings at law have been had to recover the debt secured by said note and mortgage or any part thereof

And your Orator states and believes that Margaret Fergus John D. White Richard N. Easter and Mary Brown have some interest in the said Mortgaged premises

or in some part thereof as purchasers mortgagees Judgment Creditors or otherwise which interests if any are subject and subsequent to the lien of said Mortgage

Your Orator therefore asks the aid of the Court in the premises and that the above named Robert Scruggs Margaret Scruggs John J White Richard N Easley and Mary Brown the defendants in this suit may appear before this Honorable Court in the Court of Chancery and answer this your Orators Bill according to the rules and practice of this Court without oath, this answer 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 by you Orator for principal and interest upon the said note and Mortgage 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 Orator or any liens or claims derived 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

And that your Orator may have such further or such other relief as the nature of the case may require and as to this Court may seem proper and agreeable to equity and as in duty bound your Orator will ever pray.

Edward I Farkham
By his Solicitor
Danl K Fuller.

Seaman McCagg & Fuller
of Counsel.

The Clerk will please issue summons for the above named defendants returnable 1st July Term A.D. 1861.
Edward I Farkham
vs
Robt Fraguson Margaret Fraguson.
John J White Richard N Carter.
and Mary Brown.

Jn Chancery
Bill to foreclose Mortgage,

Seaman McCagg & Fuller.
Solicitors,

May. 24 1861.

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Exhibit "A"

$13.000.00. Chicago December 13th 1899

For value received I Robt. Teague, of the City of Chicago and State of Illinois Five years after the first day of January A.D. 1900 ~~years after date~~ promise to pay to the order of David Sears Junior of the City of Boston and State of Massachusetts the sum of thirteen thousand dollars at the State Bank of Boston in the City of Boston and State of Massachusetts, ~~in gold coin of~~ with interest at the rate of Ten per cent per annum said interest to be paid semi annually to wit on the first day of January and July each in every year also at said State Bank ~~and in like currency~~

Robt Teague

In presence of
J. Mason Parker

State of Illinois

Secured by Mortgage of Real Estate in Chicago recorded ~~in the Recorder's~~ Lib 5411 m. Folio 204. Cook County Records Chicago Ills.

Endorsed David Sears Junr
By his attorney in fact
without recourse. J. Mason Parker

3/

Exhibit "B"

This Indenture. made this thirteenth day of December in the year of our Lord one thousand Eight hundred and fifty nine,
Between Robert Teague. and Margaret Teague, his wife in token of her relinquishment of all right of dower in and to the premises herein conveyed both of the City of Chicago and State of Illinois party of the first part and David Sears Junior of the City of Boston. and State of Massachusetts. party of the second part. Witnesseth that whereas the said Robert Teague. is justly indebted unto the said David Sears Junior in the sum of Thirteen Thousand dollars ($13000,00) secured to be paid by his promissory note bearing even date herewith, and providing that said principal sum shall be payable five years after the first day of January A.D. 1860 at the State Bank in the City of Boston and State of Massachusetts and that the interest which shall be at the rate of Ten per cent per annum shall be payable semi annually viz: on the first days of January and July in each and every year. also at the said State Bank in Boston aforesaid,

Now therefore this

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Indenture Witnesseth that the said party of the first part for the better securing the payment of the said promissory note at the time and in the manner therein specified and in further consideration of the sum of one dollar to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged have granted bargained sold aliened remised released conveyed and confirmed and by these presents do grant bargain sell alien remise release convey and confirm unto the said party of the said part her heirs and assigns forever all the following described lands and premises situate lying and being in the City of Chicago County of Cook and State of Illinois and known and described as Sub Lot one (1) and the north twenty five feet of Sub-Lot two (2) of the Subdivision of original Lot six (6) in Block three (3) in the fractional section fifteen addition to Chicago being sixty four feet on State Street between Monroe and Adams streets and one hundred and seventy four feet in depth to the alley more or less according to the plat of the same duly recorded in Cook County Register and meaning also to include in this conveyance all of the

there on all plats and other buildings now erected and standing upon the above described premises,

To have and to hold the same together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining and also all the estate interest and claim whatever in law as well as in equity which the party of the first part has in and to the premises hereby granted unto the said party of the second part his heirs and assigns to his and 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 his executors administrators devisees or assigns shall well and truly pay or cause to be paid unto the said party of the second part his executors administrators or assigns the said promissory note above mentioned at the time and place and in the manner in said note specified according to the true intent and meaning of said note and shall pay all taxes and assessments levied or assessed on said premises or any part thereof at any time before said indebtedness

shall be fully paid and satisfied as the same become due and payable and shall keep the buildings standing on the land aforesaid, insured against fire as herein below covenanted and agreed upon that then and in that case these presents shall be null and void

And the said Robt. Fergus his heirs executors and administrators do covenant and agree to and with the said party of the second part his exe- cutors administrators and assigns that he or they will pay or cause to be paid all taxes and assessments that may be laid charged or assessed on said premises or any part thereof while said debentures or any part thereof remains unpaid as & at any time after such taxes or assessments shall have become due and payable- the said Robt Fergus or his legal representatives shall neglect to pay the same. but that the premises or any part thereof shall be sold by the proper authorities for the same it may be lawful for said party of the second part to redeem the same at any time thereafter and the amount of any and all such payments so made by-

said party of the second part his heirs executors administrators or assigns shall be deemed and taken and are hereby declared to be such additional and further indebtedness due from said Robert Degnan his heirs executors or administrators to said party of the second part his executors administrators or assigns as soon as paid by him or them secured by this Mortgage bearing interest at ten per. cent and may be collected in the same manner as is hereinafter provided for the collection of the other indebtedness secured hereby or by suit at law. In any court having proper jurisdiction.

And the said Robert Degnan, his heirs executors and administrators do covenant and agree, to and with the said party of the second part, his executors administrators and assigns that he will keep the buildings standing on the land aforesaid insured against fire while said indebtedness or any part thereof shall remain unpaid in a sum not less than twenty five Hundred ($2500) dollars for the benefit of said party of the second part his executors administrators or assigns and payable to him in case of loss. aforesaid such insurance Office as may be approved by J. Mason Carter of Chicago aforesaid and in any default

thereof shall on demand pay to said party of the second part all such sums of money as he the said Mortgagee shall reasonably pay for on the Insurance. with ten per cent interest per annum

But if default be made by the said Robert Hague his heirs executors administrators or assigns in the payment of any taxes & assessment levied or assessed on said premises or any part thereof after the same become due and payable. So that the premises or any part thereof shall be sold by the proper authorities for the same. or in the payment of any one of said instalments of interest at the time and in the manner provided in said promissory note as the same become due and payable. at the election of said party of the second part his executors administrators or assigns said principal sum secured hereby shall at once become due and payable. any thing in the note given for the same to the contrary notwithstanding said election to be made at the time of or at any time after such default without notice but if default shall be made in the payment of said principal sum at the time and place and in the manner provided in said note given for the same then and in

either of said cases it shall be lawful for the said party of the second part, his executors administrators or assigns to enter into and upon all and singular the premises hereby conveyed or intended to be and each and every part thereof and the same from thenceforth peaceably and quietly to have hold and enjoy and the rents issues and profits thereof to receive and to take to his and their own use and benefit without any hindrance eviction or interruption whatsoever and to sell and dispose of the same or any part or parts thereof and all right and equity of redemption of the said party of the first part his heirs executors administrators devisees or assigns therein at public auction having first given sixty days notice of the time and place of said sale by publication in any daily newspaper published in said City of Chicago and to adjourn said sale from time to time at his discretion and as the attorney of the said party of the first part for that purpose by these presents duly authorized constituted and appointed and in the name of said party of the second part his heirs executors administrators or assigns to make execute and deliver to the purchaser or purchasers thereof a good and sufficient

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and or due of conveyance - in the law - for the same in fee simple. and out of the money arising from such sale to retain the whole amount of said promissory note for said sum of thirteen thousand dollars. whether the same be by the terms of said note or not, and the interest thereon then due. and all sums advanced by him or them, on account of said property together with the costs and charges of advertisement and sale of the said premises or any part or parts thereof including fees and charges of the attorney or other person making such sale, to render the surplus of the purchase money, if any there shall be, unto the said Robert Hague his heirs executors administrators or assigns. which sale so to be made shall be a perpetual bar in law and equity against the said party of the first part his heirs and assigns and all other persons claiming or to claim the premises or any part thereof by from or under them or either of them. but of the amount realized from said sale after first paying all costs charges and expenses including attorneys fees and the sums of money advanced on account of said property shall not be sufficient to fully pay said note for thirteen thousand dollars and the interest due to the time of said sale. then to apply the amount so received as and

5

above exh and Charges first in payment
of the interest then due- and to endorse the
balance as so much paid on said note
given for said principal sum. And the
said Robert Dague, his heirs executors and
administrators, do Covenant grant bargain
and agree- to and with the said party of
the second part her heirs and assigns that
at the time of the ensealing and delivery of
these presents he or well seized of the premises
above conveyed as of a good sure perfect
absolute and indefeasible estate of inheritance
in the law in fee simple and hath good right full
power and lawful authority to grant bargain
sell and Convey the same- in manner and
form aforesaid, and that the same are
free and clear of all former and other
grants bargains sales liens Judgments taxes
assessments, and incumbrances of what
kind or nature soever- and the above bargained
premises in the quiet and peaceable possession
of the said party of the second part her heirs
and assigns against all and every person or
persons lawfully claiming or to claim
the whole- or any part thereof the said party
of the first part shall and will Warrant
and forever Defend,

16 And he hereby agree
between the parties to these Indentures that in

the meantime and until default shall be made in the payment of said notes or either of them or some part thereof or interest thereon as aforesaid or in the payment or some tax or assessment it shall and may be lawful to, and for said party of the first part his heirs and assigns peaceably and quietly to have hold occupy use-possess and enjoy the said premises with the appurtenances and to receive the rents issues and profits thereof to his and their own use and benefit without any hindrance or interruption suit or disturbance whatsoever or by the said party of the second part his executors administrators or assigns or any other person or persons whatsoever lawfully claiming or to claim the same by from or under him them or any of them

In Testimony Whereof the said Robert Dugue, and Margaret Dugue his wife in token of her relinquishment of all right to dower in and to the premises hereby conveyed and they the said party of the first part have hereunto set their hands and seals the day and year first above written

Robert Dugue (Seal)
Margaret Dugue (Seal)

State of Illinois
County of Cook City of Chicago ss } I Philip Adams a Notary Public in and for the City of Chicago in for said County in the State aforesaid do hereby Certify that Robert Fergus and Margaret Fergus his wife personally known to me as the real persons whose names are subscribed to the foregoing Mortgage, as having executed the same appeared before me this day in person and acknowledged that they signed sealed and delivered the said Instrument of writing as their free and voluntary act for the uses and purposes therein set forth And the said Margaret Fergus wife of the said Robert Fergus having been by me examined seperately and apart and out of the hearing of her said husband and the Contents and Meaning of the said Instrument 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 of office this Twenty ninth day of December AD 1859

Philip Adams
Notary Public

Recorded
2 s

Know all men by these presents that I David Sears Junior of the City of Boston and State of Massachusetts hereinafter named mortgagee in consideration of Thirteen Thousand dollars ($13000.00) to me paid by Edward S Dunham of the City of Chicago and, state of Illinois the receipt whereof is hereby duly acknowledged the same being the amount now due on said Mortgage, do hereby assign transfer set over and convey unto the said Edward S Dunham his heirs and assigns the within said Mortgage the real estate and premises thereby conveyed to me in Mortgage and the promissory note and debt thereby secured said note being endorsed without recourse and all my right title interest and estate in and unto the same- To Have and to hold the same- to the said Edward S Dunham his heirs and assigns to his and their use- forever-

In witness whereof I have hereunto set my hand and seal- this the twenty eighth day of April Eighteen hundred sixty eight 1868.

David Sears Junior
by his attorney in fact-
J Mason Parker-

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Know all men by these presents that I Edward I Darkham of the City of Chicago in the County of Cook and State of Illinois in consideration of thirteen thousand dollars $13000.00 to me paid by

the receipt whereof is hereby duly acknowledged the same being the amount now due on said Mortgage do hereby assign transfer set over and convey unto the said

his heirs and assigns the within and aforesaid Mortgage the real estate and premises thereby conveyed by said Mortgage and the promissory note and debt thereby secured said note being endorsed without recourse by Daniel Scott junior, and transferred with this Mortgage to:

and all my right interest and estate in and unto the same. To have and to hold the same to the said

his heirs and assigns to his and their use forever.

In witness whereof I have hereunto set my hand and seal this tenth day of July A.D. eighteen hundred and fifty

Edwd. I Darkham Seal

State of Illinois
County of Cook
Town of South Chicago } ss.

I John Dougherty a Notary Public in and for the Town of South Chicago in the County and in the State aforesaid do hereby Certify that J Mason Parker who is personally known to me as the real person whose name is subscribed to the annexed assignment of Mortgage as having

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executed the same as the attorney in fact of
David Sears Junr appeared before me this day
in person and acknowledged that he as such
attorney in fact signed sealed and delivered the
said assignment of Mortgage as the free and
voluntary act of said David Sears Junr. and
for the uses and purposes therein set forth
Given under my hand and notarial seal this
twenty eighth day of April A.D. 1860
John Forsythe Notary Public

(Seal)

State of Illinois
County of Cook
Town of South Chicago } ss

I John Forsythe a Notary Public in and for the Town of South Chicago in the County and State aforesaid do hereby certify that Edward Dillehay who is personally known to me as the real person whose name is subscribed to the annexed assignment of Mortgage as having executed the same appeared before me this day in person and acknowledged that he signed sealed and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth Given under my hand and notarial seal this tenth day of July A.D. 1860 (Sixty)
John Forsythe Notary Public

(Seal)

Mortgage

Robert Seagrue

and wife

To

David Deans Junior

State of Illinois
Cook County } No 27210.

This Instrument was filed for record on the thirty first day of December A.D. 1859 and duly recorded in Book 50 of Mortgages at page 241.

Wm L Church Clk

Juliu

In Superior Court of Chicago
Cook County Illinois
as of June Term A.D. 1861

Edward L Smithers
vs
Robert Seagrue et als

In Chancery
Bill for foreclosure

I Sam'l H Fuller being duly sworn on oath says that John S White one of the defendants in the above entitled cause is not a resident of the State of Illinois but is a resident,

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of the State of New. and further I say not.

Subscribed and Sworn Sam[e] H Fuller
to before me may 24[th]
1861.
W Kimball Clk

And thereupon afterwards to wit on the day and year aforesaid, there issued out of the Clerks office of the said Superior Court of Chicago. the People's writ of summons which together with the return of the Sheriff endorsed thereon is in words and figures following to wit[t]

State of Illinois
County of Cook } ss. The People of the State of Illinois to the Sheriff of said County Greeting

We command you that you summon Robert Hagus. Margaret Hague. John D. White Richard N Cheeler. and Mary Brown. if they shall be found in your County. personally to be and appear before the Superior Court of Chicago of said County of Cook. on the first day of the term thereof to be holden at the Court House in the City of Chicago in said County. on the first Monday of

July next to answer unto Edward S Durham on his certain Bill of Complaint filed in the said Court on the Chancery side thereof And have you then and there this Writ with an endorsement thereon in what manner you shall have executed the same.

Witness Walter Scott Clerk of our said Court and the seal thereof at the City of Chicago aforesaid this 24th day of May A.D. 1861

Walter Scott Clerk

Seal

Issued the within writ on the within named defendants Robert Fergus Margaret Fergus Richard Wesler and many Blown by delivering to each of them a true Copy the 24th day of May 1861. the other within named defendant John T. White not found in my County

Anthony Hearn Sheriff
by John A Nelson Deputy.

And afterwards to wit on the third day of July in the year aforesaid, said day being one of the days of the July term of said Court the following proceedings were had in said cause and amongst others entries of record in said Court to wit,

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958.
1958

Edward I Fairbanks

vs. Bill

Robert Degnan et al

On motion of S Cameron Solicitor for defendants and no objection being made by Seamon McCagg and Fuller-Solicitor for said Complainant it is ordered that the defendants have time from this day until the first day of the August Term next ensuing of this Court in which to file their answer to the Bill of Complaint in this cause,

And afterwards to wit on the 12th day of August in the year aforesaid the said defendants Robert Degnan and Margaret Degnan by O S Cameron their Solicitor filed in the Clerks office of the said Superior Court of Chicago their certain first and several answer to the Bill of Complaint in said cause which is in words and figures following to wit;

In Superior Court of Chicago
In Chancery
of the May Term A.D. 1861

Cook County
State of Illinois } ss

Edward S Fairbank
vs
Robert Fergus Margaret Fergus
John S White Richard R Easler
and Mary. Renn

Bill to foreclose Mortgage.

The joint and several answer of Robert Fergus and Margaret Fergus to the said complainants Bill of complaint

These defendants now and at all times hereafter saving and reserving to themselves all and all manner of benefit of Exception to the many errors defects and insufficiencies in the said complainants Bill of complaint contained for answer thereunto or unto so much or such part thereof as these defendants are advised is material for them to make answer unto answer and say, that they or either of them do not know that on or about the thirteenth day of December A.D. 1859. this defendant the said Robert Fergus did execute an instrument in writing of a purport and effect similar to the exhibit marked Exhibit (A) annexed to said Complainants Bill of Complaint and delivered the same to one J Mason Parker in the City of Chicago and State of Illinois but this defendant the said Robert does not know any thing of the said Pond Sears pursuit other than

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from the representatives of the said Parker and that he never had any direct communication with the said Dean.

And this defendant the said Robert further answering admits that to secure the payment of the said sum of money in said instrument of writing named to the sum of fourteen thousand dollars and interest according to the tenor and effect thereof he did together with his wife Margaret Ferguson execute acknowledge and deliver to the said Jason Parker a Mortgage deed bearing even date with the instrument of writing aforesaid of the premises in said Bill mentioned and described which said Mortgage deed this defendant admits to be similar in tenor and effect to the exhibit referred to in said Bill of Complaint and marked (Exhibit B) therein.

And this defendant the said Robert does not know and therefore cannot admit that the said paper writing or note first above mentioned was indorsed and the said Mortgage deed assigned by the said David Dean him or for a valuable Consideration to the said Dutcham Complainant, but this defendant in fact says,

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that the beneficial interest in said paper writing or note. and in said Mortgage deed are claimed to be held and owned by and for the benefit use and advantage of one P. H. Jr. Peck. with the full knowledge of the said complainant

And this defendant the said Robert further answering admits that it was among other things provided in and by said Mortgage deed that if the defendant his heirs &c should make default &c (as is more fully set forth in said Mortgage deed to which reference is hereby made and the said Mortgage, or a copy thereof made part of this his answer) that then and in that case it should be lawful for the said David Sears Junior his executors administrators or assigns to enter into and upon all and singular the premises hereby conveyed &c & peaceably to hold the same &c and to sell and dispose of the same &c and all benefit and equity of redemption &c as by said Mortgage deed or a copy thereof to be produced and proved will more fully appear.

And this defendant the said Robert answering admits that of the instalments of interest which fell due on the first day of July A.D. 1865 the

3s

sum of three hundred dollars was paid by this defendant but he does not admit that there was a balance left unpaid of said instalment justly legally & equitably due of three hundred and fifty dollars

And this defendant the said Robert admits that no money has been paid on account of said promissory note or on account of said Mortgage deed since the first day of January A.D. 1865

And this defendant the said Robert denies the right of the said Complainant Wilkham or any other person or persons on his account to declare the said principal sum secured in and by said note and mortgage due and payable and further denies the right to foreclose said Mortgage for the recovery as well of the principal sum of fifteen thousand dollars as for the alleged instalment of interest,

And this defendant answering denies that the sum of ten hundred dollars for interest due on the first day of July A.D. 1860 & January last and also the sum of fifteen thousand dollars for principal with interest at ten per cent per annum since the first day

of January A.D 1861. are now due and unpaid and the defendant further admits that no suit at law has been brought to the knowledge of the defendant

And these defendants the said Robert and the said Margaret admit that the said Margaret has an interest in said premises as the wife of the said Robert that he the said Robert does not know and can neither admit nor deny whether John D White has any interest in the same nor does he admit or deny whether Richard Easley or Easley or Mary Bunn have any interest in the same, that the said Easley and Bunn have been tenants of portions of said described premises

And the defendant the said Robert in fact says that the said Complainant the said E J Dunham has not and disclaims having any interest whatsoever in said note and mortgage but that the said Complainant the said Dunham alleges that all and any interest he ever had in the same he held and still holds as trustee for the sole use and behoof of O. H P Peck, and that he the said Peck is the only person beneficially interested in the said note and mortgage and this defendant the said Robert answering

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says that on or about the twelfth day of February AD 1861 the said Complainant Durkham caused to be inserted in one of the Newspapers printed and published in the City of Chicago a certain advertisement for the sale of the said Mortgaged premises for and on account of alleged default in the payment of interest by the terms of the before mentioned instrument in writing or promissory note, and he the said Complainant Durkham in and by said advertisement after reciting the said alleged promissory note or paper writing and the said Mortgage deed and the setting forth the assignment of said note and Mortgage by said David Learning to him the said Durkham and the power of sale in said Mortgage contained proceeds as follows viz.

"Now therefore I Edward D Durkham "the assignee of said note, and Mortgage for "the use of P F Peck, by virtue and in pur- "suance of, and of the said assignment and "in consideration of the premises" (the power of sale meaning) "will sell at public auction "to the highest bidder for cash on Wednesday the "Seventeenth day of April AD 1861 "the "premises in said Mortgage deed described

And this defendant the said Robert denies that the said Dick for whose benefit and behalf the said mortgage and note are alleged to be held or that the said Paul Sears joins have ever requested or desired the said Complainant Sunkham to sell or offer for sale the premises in said Trust Deed or Mortgage deed mentioned, and this defendant says that neither the said Sears nor the said Dick have come into the said Sunkham in his Bill to this honorable Court for a foreclosure of said Mortgage but this defendant in fact says and alleges the fact to be that said Bill for a foreclosure has been filed without the knowledge and Consent of the said Sears and the said Dick and without the open and unequivocal authority from any one beneficially interested in said note and mortgage;

And this defendant the said Robert alleges and insists that by reason of the premises and for as much as the said Complainant has not and absolutely disclaims having any interest in said note and Mortgage, other than as a mere naked trustee for the benefit of others he the said Sunkham has no right to declare a forfeiture and that the principal sum secured by said Mortgage, and note are due and payable but that such right (if any there be which this defendant the said Robert does not admit) can be exercised

and solely by the person or persons beneficially and lawfully interested therein and upon their or either of their instance and request, and the said defendant in fact says that neither the said Dean nor the said Peck have ever authorized or required the foreclosure of the mortgage aforesaid either by advertisement as aforesaid or by Bill for foreclosure of said Mortgage in order to recover the instalments of interest and the principal sum of thirteen thousand dollars alleged to be due by said Note and Mortgage, And this defendant in fact says that said Complainant Dunham has without authority from either the said Dean or the said Peck or any other person or persons lawfully or equitably entitled to the benefit and use of the said Mortgage and the said Note assumed to foreclose said Mortgage, and to divest this defendant of his interest in said premises in said mortgage described, and without such authority to declare the said principal sum of thirteen thousand dollars due and payable and this defendant the said Robert and Hannah that he and by the terms of said Mortgage the right to declare a forfeiture of the terms thereof, and that the entire principal sum shall become due upon any default in the payment of interest or strictly confirm and

limited to the parties to the said Mortgage

And this defendant the said Robert further answering says that of the said sum of fifteen thousand dollars alleged to have been paid to this defendant on the thirteenth day of December A.D. 1859 the sum of fifteen hundred dollars part thereof was not paid to this defendant until the tenth day of January A.D. 1860 and that the sum of three hundred and ninety dollars part of said fifteen hundred dollars was kept back, and retained by J Mason Parker agent and attorney of said Bean for alleged commissions in the negotiation of said loan

And this defendant the said Robert further answering saith that in and by the said Mortgage, and the said note an unlawful and usurious rate of interest was retained upon said alleged loan of fifteen thousand dollars besides the said sum of three hundred and ninety dollars so as aforesaid retained by the said Parker agent as aforesaid and this defendant the said Robert further answering insists that the said sum last above mentioned together with the excess of interest by him hitherto paid ought in equity to be allowed in the adjustment of accounts between this defendant and the holder or holders of said note and Mortgage

And this defendant the said Robert offers to pay the amount of interest justly and equitably due or found to be due upon the said note and mortgage, and this defendant the said Robert submits to this Honorable Court that the said Bill of Complaint of the said Plaintiffs is insufficient in this that it does not put forth the interest or supposed interest of other parties who are alleged to be the beneficiaries of the said note and mortgage and is in other respects defective and ought to be dismissed. All of which this defendant the said Robert is ready to maintain and prove, as this Honorable Court may direct and humbly prays to be hence dismissed with reasonable Costs in this behalf

Robert Dargue.
Margaret Dargue.
By Solr. Cameron Sol'r.

(10)

And afterwards to wit on the fifteenth day of the month and year last aforesaid, the said complainant by Seamon McCagg and Dallas his solicitors files in office of the Clerk of the Superior Court of Chicago his certain replication to the answer of the said defendants Robert and Margaret Degnan which is in words and figures following to wit:

In Chancery

In the Superior Court of Chicago as of the August Term A.D. 1858

The Replication of Edward D. Tinkham complainant to the joint and several answer of Robert Degnan and Margaret Degnan.

This repliant saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the many insufficiencies and uncertainties and insufficiencies of the answer of the said defendants for replication thereunto saith that he doth and will ever maintain and prove his said bill to be true certain and sufficient in the law to be answered and by the said defendants and that the answer of the said defendants is very uncertain evasive and insufficient

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in the Law to be replied unto by the replicant
without that that any other matter or thing
in the said answer contained material
or effectual in the Law to be replied unto
and not herein and hereby well and sufficiently
replied unto confessed or avoided traversed
or denied is true all which matters and
things the replicant is ready to aver maintain
and prove as this Honorable Court shall
direct and humbly prays as in and by
his said Bill he hath already prayed

Solomon McCagg Solicitor
Complainants Solicitor

And afterwards to wit on the third day of
September in the year aforesaid, there was filed
in the Clerks Office of said Superior Court
the notice and certificate of the publication
of the same which are in words and
figures following to wit

State of Illinois } ss.
County of Cook }

Superior Court of Chicago
July Term 1861.

Edward L Dutcham

vs

Robert Fergus, Margaret Fergus,
John D. White Richard N Butler-
and Mary Brown.

Affidavit of the non resi-
dence of John D. White one of the defendants
above named having been filed in the office
of the Clerk of said Superior Court of
Chicago notice is hereby given to the said
John D. White that the Complainant filed his
Bill of Complaint in said Court on the
Chancery side thereof on the 9th day of May
1861. and that a Summons thereupon issu-
ed out of said Court against said defendants
returnable on the first Monday of July next
as is by law required

Now unless you the said John
D White shall personally be and appear before
said Superior Court of Chicago on the
first Monday in the first day of the Term thereof
to be holden at Chicago in said County on the
first Monday of July 1861 and plead answer
or demur to the said Complainants Bill of
Complaint the same and the matters and
things therein charged and stated will be
taken as confessed and a decree entered against
you according to the prayer of said Bill

W Kimball Clerk

Seamans McCagg & Fuller Complts Solrs

1/0

This certifies that a notice of which the annexed printed slip is a true copy was published for four successive weeks (once in each week) in the Daily edition of the Chicago Post a newspaper published in the City of Chicago and of general circulation throughout Cook County and State of Illinois and that the date of the first paper containing the same was the 24th day of May 1861 and that the date of the last paper containing the same was the 21st day of June A.D. 1861 and that we have received six dollars for publishing the same

Dated at Chicago this 2nd day of September 1861

James F. Sheahan
H. A. Eastman
Andrew Matteson
} Publishers

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And afterwards to wit on the Eighteenth day of the month and year last aforesaid. Said day being one of the days of the September Term of said Superior Court of Chicago for said year, the following proceedings were had in said cause, and amongst others entries of record in said Court to wit.

Edward L Dunham
vs
Robt Deagus. Margaret Deagus.
John F White Richard M Easton
and Mary Brown

Bill in Chancery

This day again comes the said Complainant by E Cummings McCagg his Solicitor and files herein due proof of publication of notice to the defendant John F White of the pendency of the Bill of Complaint in this cause against him, said notice having been duly printed and published for four successive weeks in the a Daily newspaper printed and published in the City of Chicago County of Cook and State of Illinois and of general circulation throughout said County, and State the first insertion of said notice having been made fully sixty days prior to the return day of the Summons issued in said cause, and upon return being made

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that the said defendant John D White cannot be found after diligent enquiry, and affidavit being filed that he was a non resident of the State of Illinois, And due proof of service of process of Summons issued in said cause having been had on the said defendants Mary Brown and Richard M Easler on motion it is ordered that the said defendants John D. White Mary Brown and Richard M Easler personally plead, answer or demur to the Bill of Complaint filed in said cause instanter, and no plea, answer or demurrer being interposed by them or by any one in their behalf and being personally called in open Court, and not appearing it is ordered that default be and is hereby taken, and ~~Confessed~~ entered of record herein against them and the Bill of Complaint taken as confessed by and against the said defendants White, Easler and Mary Brown and each of them for want of due appearance and answer- and the defendants Robert Deegans and Margaret Deegans having filed their answer- it is ordered that the cause be set down for hearing on the Bill answer of said defendants and proofs to be submitted on coming in of the Court on Monday morning next

And afterwards to wit on the nineteenth day of the month and year aforesaid, the said Edward D Durham Complainant filed in the Clerks office of the Superior Court of Chicago by Seamman McCagg his Solicitor his certain replication to the answer put in by the said defendants Robert Dargus and Margaret Dargus which is in words and figures following to wit

In Chancery

In the Superior Court of Chicago of the August Term A.D. 1851

The Replication of Edward D Durham Complainant to the answer of Robert Dargus and Margaret Dargus.

This replicant saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold and uncertainties and insufficiencies of the answer of the said defendants for replication thereunto saith that he doth and will aver maintain and prove his said Bill to be true certain and sufficient in the law to be answered unto by the said defendants and that the answer of the said defendants is very uncertain evasive

and insufficient in the law to be replied unto by the repliant, without this that any other matter or thing in the said answer contained material or effectuall in the law to be replied unto and not herein and hereby well and sufficiently replied unto confessed or avoided traversed or denied is true all which matters and things this repliant is ready to aver maintain and prove as this Honorable Court shall direct and humbly pray as in and by his said Bill he has already prayed

Dep. Seamon W. Cagg & Smiley
Compts Sols.

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And afterwards to wit on the Ninth day of December in the year aforesaid, said day being one of the days of the December Term of said Court for said year, the following proceedings were had in said cause and amongst others entries of record in said Court to wit:

Edward I Fuller

vs

Robert Fergus Margaret Fergus
John D. White Richard N. Easley
and Mary Brown

Decree of Sale

5th
6958.

This cause having this day been brought on to be heard on the Bill of Complaint taken as confessed against all the defendants except Robert Fergus and Margaret Fergus, and on the answer of said Robert Fergus, and Margaret Fergus, and the replication of said Complainant to said answer, and upon proofs in open Court, and the Court now here being satisfied that all the material allegations in said Bill of Complaint contained are true and that by reason of default in the payment of interest on said note said Complainant has a right to elect and has elected to exercise and declare the principal sum secured by said note and Mortgage, due and payable and has declared the same due and payable and that said principal sum is due

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at the time of filing said Bill was due and payable and that there is now due, and unpaid on said note and mortgage for principal and interest the sum of fifteen thousand two hundred and eighty seven dollars and fifty cents ($15287.50)

$15287.50

On motion of Solomon McCagg and Fuller complainants Solicitors the said Court doth order adjudge and decree that the said defendant Robert Hague pay to the Solicitors of said Complainant the said sum of fifteen thousand two hundred and eighty seven dollars and fifty cents by them with interest on the same, and also pay the costs of this proceeding within ten days from the entry of this decree. and that in default of such payment all and singular the said Mortgaged premises mentioned in said Bill of Complaint in this cause, and hereinafter described or so much thereof as may be sufficient to raise the amount due to the said Complainant for principal and interest and costs in this case be sold at public auction by and under the direction of one of the masters of this Court that the sale be made in the County where said Mortgaged premises are situated, that the master give public notice of the time and place of such sale by advertising the same in some newspaper pub-

lishes in the city of Chicago at least twenty days before the day appointed for such sale and that the Complainant or any of the parties to this cause may become the purchaser.

That the said Master execute to the purchaser or purchasers ~~x x x x x x x~~ a certificate or certificates of purchase which shall entitle such purchaser or purchasers or his her or their assignee or assigns to a deed of said premises if the same be not redeemed within the time prescribed by Law, and that the said Master out of the proceeds of said sale retain his fees disbursements and charges in said sale and pay the Clerk of this Court the costs of this proceeding and also pay to the Complainant or his Solicitors out of such proceeds the amount so found due as aforesaid together with legal interest thereon from the date of said Report or so much thereof as the purchase money of the said Mortgaged premises will pay of the same and that the Master take receipts of the amounts so paid and file the same with his report and that he bring the surplus moneys if any there be into Court forthwith 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 or otherwise upon the land described in said Mortgage and his her or their heirs or personal representatives and all persons claiming from or under them be forever barred and foreclosed of and from all equity of redemption and claim of in and to said Mortgaged premises hereinafter described and every part thereof from and after the expiration of fifteen months from the date of said sale unless said premises shall be sooner redeemed according to law. That Master in Chancery or his successor in office execute and deliver to the purchaser at said sale or his assigns or assigns a deed of said premises sold.

And it is further ordered that the purchaser or purchasers at said sale or his or their assignee or assigns to whom said deed shall be executed and delivered upon the execution and delivery of such deed be let into the possession of such Mortgaged premises or so much thereof as shall be included in said deed and that any of the parties to this suit who may be in possession of said premises by 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 or their assigns or assigns on production of the master's deed for said premises and a certified copy of the order confirming the report of sale.

The description of the premises and property authorized to be sold, under and by virtue of this decree, so far as the same can be ascertained from the said mortgage and Bill of Complaint in this cause, is as follows, viz, All the following described land and premises situated lying and being in the City of Chicago County of Cook and State of Illinois and known and described as Sub Lot one (1) and the north twenty five feet of Sub Lot two (2) of the subdivision of original Lot six (6) in Block three (3) in the Subdivision of Section Fifteen addition to Chicago being forty five fronting on State Street between Monroe and Adams streets and one hundred and twenty four feet in depth to the alley in the rear according to the plat of the same duly recorded in Book Twenty Registry together with all of the three brick flats and other buildings erected and standing thereon

State of Illinois }
County of Cook }

I Thomas B Carter Clerk of the Superior Court of Chicago within and for said County and State do hereby certify the above and foregoing to be a full true perfect and complete transcript of all the pleadings on file in my office, together with all the orders and decree made, and entered of record in said Court in a certain cause lately pending in said Court, in the Chancery side thereof, (up to and including the date of the entry of said decree,) wherein Edward D. Mitchell was complainant and Robert Dregus, August Dregus, John S. Wells, Richard N Carter and Mary Dunn were defendants.

In Testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Chicago, in said County this twenty second day of August A.D. 1864.

Thomas B. Carter
Clerk

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Supreme Court

State of Illinois
Third Grand Division

April Term.

Robert Fergus & Margaret Fergus
impleaded &c ~~&c~~
Plaintiff in Error
vs
Edward D. Tuckham
Deft in Error

Assignments
of Error.

And now the said Robert Fergus and Margaret Fergus plaintiffs in error. come and say. that in the record and proceedings aforesaid, there is manifest error in this to wit- First- the decree was not in accordance with the allegations of the complainants bill- Second. The decree is for a much larger amount than was actually due

Third- There was no proof whatever against Margaret Fergus and is for that reason erroneous

Said decree is otherwise erroneous - Wherefore the plaintiff prays that the said decree may be reversed, annulled & held for naught.

Henry. Merry & Tolch
Attys for Plaintiffs in Error

State of Illinois
3rd Grand Division

Let the writ of error in the pregoing case be made to operate as a supersedeas upon the plaintiff in error filing bond with Geo H. Fergus as security in the penal sum of $1000.00, endorsed as required by law. This order being made upon the presentation of the affidavit of the plaintiff in error showing that the decree rendered by the court below has been or is presented as to put the ~~plaintiff~~ defendant in error in possession of premises whose monthly rental is Two Hundred & Thirty Dollars, which affidavit is ordered to be filed ~~with~~ herewith.

October 20. 1864 C. B. Lawrence
Judge 3rd Grand Division

Robert Fergus
et al

vs

Edward L Tuckham

Record Evans
Order for subpoena

Filed October 27 1874
L Leland
Clk

Fees of Manuscript
$12.00
2.B Cartwright