

No. 14539 $\frac{1}{2}$

Supreme Court of Illinois

Shaver

vs.

Woodward et al

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. ~~295~~ *last term*

175

Shaver

Thompson

1863

14529

for the

for which

amount

State of Illinois
Ogle County ss

At a term of said Circuit Court begun and holden in and for the County of Ogle aforesaid at the Court house in Oregon on the 3rd Monday of March in the year of our Lord One thousand eight hundred and fifty four then & there being present the

Hon Ira O Wilkinson Judge
Robert Belight Clerk
Elias Baker Sheriff
William S Miller State Attorney

Be it remembered that afterwards to wit on the 24th day of October A.D. 1854 in a certain cause wherein Anthony H. Shaver was complainant & Levi Woodward & Jacob P Shaver were defendants a bill of complaint was filed in said cause on the Plaintiff side of said Court. Which said bill of complaint now remaining on the files of said Court is in the words & figures following to wit.

State of Illinois
Ogle County ss

Circuit Court of said
County March Term
A.D. 1854

Anthony H. Shaver
vs

Levi Woodward and
Jacob P Shaver

To The Honorable Ira

2 O Wilkinson presiding Judge of said
Court

Your Orator Anthony H
Shaver of the County of Ogle and State of
Illinois verily complaining shews unto
your Honor that on or about the 3rd day
of August AD 1846 your orator borrowed of
Jacob P. Shaver who your orator shews
your Honor is the father of your orator
and resides in Delaware County in the
State of New York the sum of your
hundred and forty four dollars & fifty
cents and to secure the payment of said sum
and interest executed to said Jacob P. a
mortgage on fractions No (1 & 2) one & two of
the (N E) North East quarter of Section (3) Town
in Township (23) County One North & Range (7)
Seven East of the 4th P M. And further that
subsequently in August AD 1853 the said
Jacob P. loaned to your orator another sum
of money which together with the aforesaid
sum first loaned as above mentioned
amounted to the sum of nine hundred &
fifty dollars (\$950.).

And your Orator further shews that at
the time of loaning the aforesaid last mention-
ed sum of money it was mutually agreed
by and between your Orator and the said Jacob P
that your orator was to execute and deliver
unto the said Jacob P in order to secure the
said Jacob P in the repayment of the
aforesaid sum of \$950. a deed of convey-
ance of Fraction No (2) two & the West half
of Fraction No one of the North East quarter

of Section 3 T 23 R 7 aforesaid & was also
to convey as aforesaid a lot of timber
land in Elk Horn Grove being the most
easterly of the two tracts your orator owned
in said Grove which conveyance was to be
executed by your orator with the express
agreement and understanding that said deed
was to operate only as a mortgage to secure
the payment of the aforesaid sum of \$950 &
fifty dollars were left with your orator to be
expended on said premises and it was then and
there agreed by and between your orator and the
said Jacob P that your orator was to have
the right to redeem said premises at any
time on the payment of the sum so loaned
your orator & the sum so left with him by said
Jacob P amounting in all to the sum of one
thousand dollars together with interest
thereon at the rate of seven per cent from the
time of making said agreement to wit on or
about the 15th day of September A.D. 1853 which
agreement so made as aforesaid was subject
to one condition and that was if one of the brothers
of your orators and son of the said Jacob P should
on the return of the said Jacob P to his residence
in the State of New York should elect to remove
to the west and should desire the aforesaid
premises so to be conveyed by deed of your
orator to the said Jacob P that then the
said Jacob P was to have the right to retain
the same but was to cause the son taking the
same to enter upon and improve the same,
whereby your orator would be benefited as he
owned the adjoining land and in case one
of the sons of said Jacob P should elect to

4 to take said premises that then your orator was to retain the fifty dollars left with him by said Jacob P as aforesaid.

And your orator further shows that the deed of conveyance so agreed upon by and between the said Jacob P and your orator was not at the time of making the aforesaid contract executed owing to the inconvenience of getting the same executed at the time, but the same Jacob left this County and returned home to the State of New York with the understanding that your orator should execute and send him a deed of said premises at his earliest convenience.

Your orator further shows that on said Jacob P returning home to his residence in the State of New York he found that some of his sons wished to remove to the west whereby the aforesaid conveyance became in equity as between your orator and the said Jacob P a mortgage discharged of all conditions except to repay the aforesaid sum of \$1000. and interest.

And your orator further shows that in order to carry out the aforesaid agreement he did on or about the 30th day of September A.D. 1853 make and execute together with his wife a deed of said Fraction No 2 & the West half of Fraction No 1 of the N E 1/4 of Sec 8 T 23 N & R 7 East of 4 P M but did not execute a deed of the ten acres of timber as agreed not having a proper survey of the same whereby a good description could be given & caused the same to be recorded and forwarded the same to the said Jacob P and advised him that the

page 2
prairie alone was ample security for his money and that your orator would ~~soon~~ make ^{the} payment and suppress the necessity of two deeds being made and your orator avers that at the time of making the aforesaid agreement that said prairie was to your orator of great value and was of the cash value of \$1500. and the said ten acres of timber was of ^{the value of} 200 \$.

And your orator further complaining shows your Honor that one Levi Woodward who is made a defendant herein and who resided near your orator and who had been an inmate of your orators family and who was originally from the same neighborhood of Country in State of New York where the said Jacob Presided and when a young man and before coming west was formerly known to said Jacob P well knowing the rights which your orator had in and to the aforesaid premises and well knowing of the bargain which existed between your orator and the said Jacob P did some time in March last make several applications to your orator to purchase said prairie to wit said Fraction No 2 and the West half of Fraction No 1 one aforesaid which your orator declined selling and at different times and on different occasions the said Woodward had offered your orator the sum of eleven hundred dollars at another time twelve hundred dollars and at another time thirteen hundred dollars all of which overtures and offers your orator declined, saying he did not wish nor would at that time sell and dispose of said land

6 And your orator further shows that said Woodward failing to procure a title to said prairie land from your orator clandestinely and without the knowledge of your orator repaired to the residence of the said Jacob P in the State of New York and falsely and fraudulently with a view to defraud & cheat your orator out of his right and interest in and to said premises represented to said Jacob P that he had bargained and agreed with your orator that he might have the said premises and that he said Woodward was to pay him the said Jacob P the sum of one thousand dollars and he would arrange the residue with your orator This the said Jacob P at first declined to do saying that he could not execute a deed unless he was so instructed to do by your orator in writing to which said Woodward responded that your orator was ready and willing to give such a request but that he left in great haste and had no time nor opportunity to procure the same, that the bargain was all consummated between said Woodward and your orator and that much trouble and expense would be saved by his the said Jacob P then executing him a deed and receiving the payment of one thousand dollars the amount of the mortgage money going to said Jacob and this said Jacob P confiding and relying upon the representations of said Woodward did on or about the 16th day of May 1854 execute and deliver to the said Woodward a deed of said Fraction No Two & West half of Fraction No one aforesaid and received from said Woodward

in payment there of one thousand dollars
and your orator avers that each and every of the
aforesaid representations so made by the said
Woodward to the said Jacob P were false and
were made by the said Woodward with the
wicked and fraudulent intent of cheating and
wronging your orator out of his reputable and
just interest in and to said premises and the
said Woodward fraudulently and wrongfully
seeks to hold said premises freed and discharg-
ed from all liens and interest your orator has
or had therein

All of which corrupt and fraudulent
acts of the said Woodward tend to the mani-
fold prejudice and injury of your orator. And
in as much as your orator is remediless at
and by the strict rules of the common law and
can only seek relief in a court of Chancery
where matters of this kind are only cognizable
and releivable to the end therefore that
your orator may be relieved in the premises
he prays that the said Jacob P Shaver
may upon his corporal oath full true and
perfect answers make to each and every the
allegations herein contained as fully and min-
utely as if the same were here again repeated
and the said Jacob thereunto again interroga-
ted and that the said Levi Woodward may in
like manner be required to answer this bill
but not upon his corporal oath which is
here by expressly waived & he is required
to file answer herein. And that the
said Woodward may be enjoined from
alienating or disposing of said premises
and that the deed executed by said Jacob P

8 P Shaver to said Levi Woodward may be de-
clared null & void And that your orator's
equitable interest therein may be restored
to him ☐ And for such other and further relief
in the premises as the nature of the case
may require And to your Honor may seem meet
And that a subpoena may issue from the Chan-
cery side of this Honorable Court as is by law
provided
And on y^e 4th Shaver -
No A Vix Sol

By way of Amendment The complainant under
leave of Court asks to insert between lines 8 & 9
on the above page And after the character ☐ The
words - "And that the complainant may be per-
mitted to redeem said premises from said Wood-
ward And on such redemption that said Woodward
may by decree of Court be required to convey to your
orator." And also by way of Amendment on page 5
after the words "and therein" the following - "And
your orator further shows your Honor that he
is now And for a long time And at the time of filing
this bill was ready & willing And will be at all
times be ready and willing to pay the said Jacob
P the amount due him as above or to pay the
same amount to said Woodward should it be
the order or decree of this Court for your orator
so to do

No A Vix Sol

At Shaver -

Endorsed

Filed Oct 24 1854 -

R B. Light Clerk

4 3
And afterwards to wit on the 18th day of March A.D. 1856 an Amended bill of complaint was filed in said Court in said cause. Which said amended bill is in the words and figures following to wit:

State of Illinois In Vacation before the
Ogle County ss May Term of the Circuit Court
 of said County A.D. 1856

Anthony H. Shaver

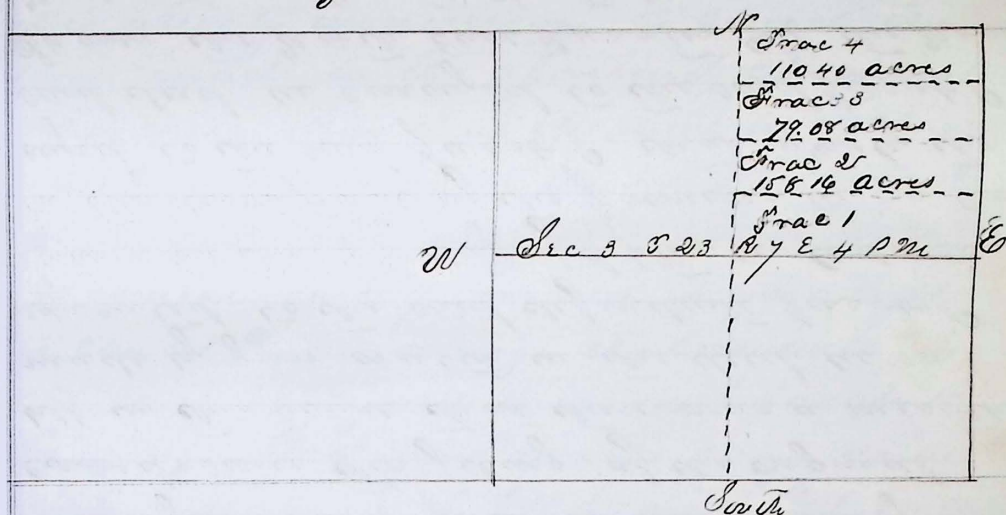
vs

Levi Woodward and
Jacob P. Shaver

The amended Bill of Anthony H. Shaver the Complainant in the above suit to the original bill filed in this Court on the 24th day of October A.D. 1854

And your orator further complaining shows your Honor that he has recently discovered since the filing of the original bill in this cause that there was a mistake made by your orator in the deed he so executed to the said defendant Jacob P. Shaver on the 30th day of September A.D. 1853 in the description of the premises he so conveyed to the said Jacob P. that in and by the said deed he conveyed to the said Jacob P. Shaver the North East Quarter and the North West quarter and the South West quarter of the North East fractional quarter of Section Three in Township Twenty Three North of Range 7 Seven East of the 4th P.M. And your orator

10 further shows that the North East quarter of said Section Three aforesaid is divided into four fractions. A diagram of which section is as follows:



And that the area of said Fractions is as follows. Fraction One & Fraction Two containing $158\frac{1}{2}$ acres. Fraction Three $79\frac{1}{2}$ acres and Fraction Four $110\frac{1}{2}$ acres; and that your orator never had any interest in Fractions Three & Four aforesaid & that the description in this deed so made to the said Jacob P. Shaver should have been fraction No Two & the West half of Fraction No One of the North East quarter of said Section Three & that in and by the deed so made by your orator to the said Jacob P. Shaver only the West half of Fraction One & two of the North East quarter of said Section Three passed to the said Jacob P. containing an area of only $79\frac{1}{2}$ acres.

And that the said North East & North West quarters of said North East quarter of Section Three were premises in which your orator never had any interest & did not intend to convey & further that in the deed so executed

by the said Jacob P Shaver to the said Levi Woodward the like mistake and error occurs that the said premises in said deed are also described as the North East Quarter the North West Quarter and the South West Quarter of the North East fractional Quarter of Section Three and by which the said Woodward only acquired a title to the West half of Lot one & two of the North East Quarter of said section Three aforesaid containing an area of 79¹/₂ Acres and acquired no title whatever to the East half of Lot Two of the North East Quarter of said Section Three but that the fee to the same still remains in your orator Anthony H. Shaver -

And your orator further humbly complaining shows unto your Honor that notwithstanding the aforesaid mistake and notwithstanding the said Levi Woodward through his fraud so practised on your orator and the said Jacob P was only acquired a title to about two thirds parts of the premises he fraudulently endeavored to obtain the whole of still your orator is greatly injured and damaged in the premises and is still ready and willing to pay to the said Jacob P Shaver the thousand Dollars and interest as aforesaid or is willing to pay the same to the said Woodward in the said Woodward standing in the position of an assignee of a mortgage as this Honorable Court may decree -

11 And your orator further complaining

12 Shows unto your Honor that in as much
as your orator is prepared ready and
willing to pay to said Jacob P Shaver or
the said Woodward as aforesaid that
it is utterly unnecessary to correct the
errors made in the aforesaid conveyances
other wise than that the same be declared
null and void or that the said Jacob P
And the said Levi may be required to release
and remise said premises to your orator
to cancel and discharge the covenants in
his said conveyance to the said Jacob P
Shaver. And your orator prays as he
hath in his original bill prayed and for such
other and further relief as this said Annual
ment to the said original bill may require
to a Decree - Sol Anthony W Shaver

(Exhibit Attached to bill)

Anthony W Shaver

J P Shaver

This Indenture made
this Twenty first day of August in the
year of our Lord One thousand eight hundred
and forty six. Between Anthony W Shaver
of the County of Ogle in the State of Illinois
of the first part and Jacob P Shaver of the
County of Andes in the State of New York of
the second part. Whereas the said party
of the first part is justly indebted to the
said party of the second part in the sum
of four hundred and forty four dollars &
fifty cents payable one hundred & forty four

And doth by these presents grant bargain sell remise a line & convey

dollars and fifty cents two years from date the remainder payable one hundred dollars annually until paid with interest from date. Now therefore this indenture witnesses that the said party of the first part for the better securing the payment of the money aforesaid with interest thereon according to the tenor and effect of the said terms of payment above mentioned And also in consideration of the purchase sum of one dollar to him in hand paid by the said party of the second part at the delivery of these presents the receipt whereof is hereby acknowledged hath granted bargained sold remised aliened and conveyed unto the said party of the second part his heirs executors administrators and assigns forever all the land herein after described being and lying in Ogle County in the State of Illinois described as follows The Fraction No one and two (1/2) of the North East quarter of Section No (3) Three in Township No Twenty Three (23) of Range No 7 East containing one hundred and fifty eight acres (158) and 16/100. To have and to hold the same together with all and singular the tenements hereditaments privileges and appurtenances thereunto belonging or in any wise appertaining with with the rents issues and profits thereof And also all the estate interest and claim whatsoever in Law or equity which the party of the first part hath in and to the premises hereby conveyed unto the party of the second part his heirs

144 executors administrators or assigns
and to their only proper use benefit and behoof
forever. Provided Always and these presents
are upon this express condition that if
the said party of the first part his heirs
executors administrators or assigns shall
well and truly pay or cause to be paid
to the said party of the second part his
heirs executors administrators or assigns
the aforesaid sum of money with such
interest thereon at the time and in the
manner specified in the above mentioned
contract according to the true intent
and meaning thereof that then and in that
case these presents and every thing herein
expressed shall be absolutely null and void

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

Signed Sealed and

Delivered in presence of Anthony H. Shaver ES

Edw. H. Shaver

In^o Waterbury

State of Illinois

Ogle County ss

I Jno^o Waterbury a justice
of the peace in and for
said County in the State aforesaid do hereby
certify that Anthony H. Shaver is personally
known to me as the same person whose name
is subscribed to the within mortgage appear-
ed before me this day in person and acknowl-
edged that he signed sealed and delivered the
said instrument of writing as his free act

voluntary act - And for the uses ^{and} purposes
therein set forth.

Given under my hand and seal this
Thirty first day of August A.D. 1856.

Jⁿ° Waterbury L53

Upon the back of said Amended bill appears
the following endorsement to wit -

Filed March 13 1856

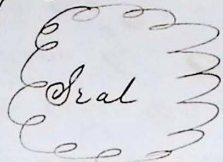
R. B. Sigwt Clerk -

And also among the files of said
cause in said Court there appears a
Subpoena in blank which is in the words
and figures following to wit -

State of Illinois } The people of the State of
Ogle County } Illinois to the Sheriff of said
County Greeting

We command you to summon Levi
Woodward and Jacob Shaver if they be found
in your County personally to be ~~and~~ appear
before our Circuit Court in ~~the~~ for said County
on the first day of the next term thereof to
be begun ~~and~~ holden at the Court house in
Oregon on the third Monday in the
month of March next to answer to a bill
of complaint filed in our said Court
on the Chancery side thereof against
them by Anthony H. Shaver and for them
to do ~~and~~ receive what our said Court
shall then ~~and~~ there consider in that
behalf. And have you then ~~and~~ there this
writ with an endorsement thereon of the

16 manner in you may execute the same
Witness R B Ligar Clerk of our said
Court And the seal there of this day 24th
of October AD 1854 -


Seal

R B Ligar Clerk

Upon the back of said Subpoena
in Chancery is the following endorse-
ment to wit:

Served the within on the within named
Levi Woodward this twenty third day of
January AD 1855 by reading the same in his
presence and hearing and by giving him a true
copy of the within the within named Jacob
Shaver not found in this County

Charles Newcomer

Sheriff Ogle Co Ills.

By E R Tyler Deputy -

And afterwards to wit on the 25th day
of April AD 1856 an answer was filed in
said Court in said Cause which is in
the words and figures following to wit -

State of Illinois In Court of Ogle
Ogle County ss County in Vacation before
The May Term AD 1856

The answer of Jacob Shaver to the
Complaint filed in said Court by Anthony
H Shaver and against said Jacob and
Levi Woodward.

And this defendant

now and at all times reserving to himself all benefits and advantages of excepting to the manifold errors and imperfections in said bill for answer thereunto or so much thereof as he is advised is material to make answer unto answers & says -

That it is true that the said Anthony M. Shaver the Complainant did borrow of this respondent the sum of \$444.00 as is alleged and that it is true that the said Complainant did secure the same by mortgage on the premises set forth in said Complainant's bill according to the best information of this respondent -

And this respondent further admits that it is true that in August 1853 this defendant loaned said Anthony another sum of money which together with the sum first loaned amounted to \$950.00 and that it is true that it was agreed by and between the said Anthony & this respondent that the repayment of said sum of \$950. was to be secured by a deed of Fraction No 1 & the 2^d of Fraction No 1 of the North East quarter of Sec 3 T 23 R 7 E of 4 P.M. as set forth in said bill & also by a deed to timber land in bill mentioned

And this respondent further answering says that it is true that it was mutually agreed by and between the said Anthony & this respondent that the said deed was only to operate as a mortgage to secure the repayment of the said one thousand dollars mentioned and set forth in said

18 Anthony's bill of Complaint And that it is true that the said Anthony was to have the privilege to redeem the said premises at any time on the repayment of the said \$1000. with seven per cent annual interest thereon.

And this respondent further answering says that it is true that there was one condition on which said conveyance was to remain absolute & that was that if this defendant on his returning home to the state of New York should find that either of his sons whom the said Anthony was anxious should remove to the West & settle near him would so remove to the West that the one so doing was to have the privilege of taking the said premises for the amount so due by the said Anthony to this respondent & that was to settle immediately upon & improve the same in which event the said Anthony was to retain the fifty dollars mentioned & set forth in the Complainant's bill. This respondent further answering says it is true that the deed was not executed as was originally intended to have been done at the time of making said contract but that the same was subsequently executed & forwarded to this respondent in the state of New York & that said deed did not embrace the ten acres of timber as was originally intended to have been done but this respondent was satisfied with the security as it was.

And that it is true that neither of the sons of this defendant on his return desired

to go West and settle on said premises after which the said this respondent afterwards received of said premises from the said Anthony was only held as security for the payment of said sum of money and that he verily believes that the said Anthony considered the Prairie & Timber land at the time of executing the said deed was of the value of Seven ten Hundred Dollars

And this defendant further answering say that he had a partial acquaintance with the said Levi Woodward previous to his going west & further that he has no knowledge of the said Woodward making application to the said Anthony for the purchase of said premises previous to his coming to the residence of this respondent nor has he any knowledge of the said Woodward making the said Anthony the said offers of \$1100. \$1200. & \$1300. save as he is advised by said bill of complaint nor that the said complainant refused to accept the said offers nor does this respondent know whether or not the said Woodward left the State of Illinois secretly and without the knowledge of the said complainant. And further that it is true that the said Woodward did come to the residence of this respondent in the State of New York some time in the month of May 1854 & that he did represent there -- to this defendant that he had purchased the said premises

20 of the said Anthony & that it was agreed
between him & the said Anthony that \$1000.00
was to be paid this respondent & the
balance of the purchase money said Wood-
ward represented he was to pay to the
said Complainant And that this deed was
to execute a deed to the said Woodward
that this respondent at first utterly declined
making any such deed & that it is true
that this defendant did decline making
such deed unless instructed so to do
by the said Complainant Anthony in
writing And that it is true that the said
Woodward represented to this respondent
that he left Illinois in great haste
And had no opportunity to procure the
Anthony in writing from said Anthony And
that the said Woodward did make all
the allegations set forth in Complainant's
bill And that it is true that this respondent
did convey said premises to the said
Woodward And that the said Woodward
paid this respondent the sum of \$1000.
as alleged in the said bill And that it is
true that this said respondent was in-
duced to execute the said deed by the
false fraudulent & corrupt representa-
tions of the said Woodward all of which
your respondent has since found to be
false & fraudulent. And this defendant
venly believes that the said Woodward
had a full knowledge of the equitable
interest the said Anthony had in said
premises before he came to see this

6 respondent And said respondent knows
--- he had full knowledge of the
equitable interests of said Anthony as
set forth in said bill before said deed
was executed to him said Woodward
as said respondent had informed him
fully of the same when he Woodward
first came to see this respondent about
purchasing said premises And that he
made false & fraudulent representations
to induce this defendant to execute to
him a deed as aforesaid And that this de-
fendant believes that the said Anthony
is now & has been ready & willing to re-
pay your respondent the principal and
interest his due

And this defendant further answer-
ing the amended bill of the said Anthony
H. Shaver says that he was not advised
of the error mentioned And set forth in
said amendment but that this defend-
ant supposed that the said North East
quarter of Section Three aforesaid was
a regular subdivision of government land
and is only advised to the contrary thereof
by the said amended bill And that he was in
like manner unaware & unadvised of the
error in the deed so made at the fraudu-
lent & corrupt instance of the said Woodward
only as he is advised by said amendment
And this respondent further answering says
that he is not advised and cannot state
whether said complainant would be pre-
judiced if the said Woodward should be

22 permitted to retain the possession of the premises to which he has a title.

And this defendant having fully answered prays hereof to be discharged with his reasonable costs.

Jacob P Shaver -

State of New York
Delaware County

On this 14th day of April 1856 came before me the above named Jacob P Shaver whom I know to be the individual described in and --- executed the above answer and upon his oath deposes and says that the matters and things in the foregoing answer contained are true according to the best information knowledge and belief of this affiant.

Subscribed & sworn to before me this 14th day of April 1856.

A B Douglass

Jacob P Shaver

Justice of the Peace

State of New York
Delaware County
Clerk's Office

I Benjamin
Barnes Clerk of the County of

delaware and ~~and~~ also clerk of
the Court of said County do
hereby certify that A B Douglass
Esquire before whom the annexed
deposition purports to have been
taken was at the time of taking
such deposition a justice of the
peace in and for the County of Dela-
ware aforesaid elected and sworn and
authorized by law to take the same and
that his signature thereto is genuine

In testimony whereof I
have hereunto set my hand
and seal affixed the seal
of said Court and County
this fifteenth day of April
1856

Benj Cannon
clerk-

Upon the back of said answer ---
--- is an encasement which is
in the words and figures following
to wit:

Filed April 25-1856
R. B. Sigler
clerk-

And afterwards to wit on the 13th day of June A.D. 1857 it being one of the days of the June Term of that year of the said Ogle County Circuit Court the following proceeding were entered of record in said Court in said cause to wit:

Anthony H. Shaver

vs

Saml Woodward and
Jacob Shaver

On this day came the said complainant by his Solicitor and on his motion it is ordered that the rule heretofore entered upon the said defendants to answer heretofore be vacated and the former motion of said complainant to dissolve it is ordered that the said defendants file their answers herein within thirty days in default of which the matters and things in the said complainant's bill be taken as confessed.

And afterwards to wit on the 20th day of July A.D. 1857 an answer was filed in said Court in said cause and now remains of the files of said Court.

Which said answer is in the words and figures following to wit:

State of Illinois } Ogle County Circuit-
Ogle County } Court of the June term A.D. 1857

Anthony W. Shaver
vs
Levi Woodward & Bell in Chancery
Jacob P. Shaver

The separate answer of
Levi Woodward to the said Complainant's
original and amended bills of Complaint
herein.

And the said Levi Woodward
one of the above named defendants saving
and reserving to himself all and all manner
of exceptions to the many errors, uncertainties,
& insufficiencies in the said Complainant's
bill of Complaint contained comes and for
answer thereunto saith that he has always
understood & believes that said defendant
Jacob P. Shaver is the Father of the said
Complainant and has been informed and
believes that said Complainant died mortga-
ge said Lot No 2 of the N.E. 1/4 of Sec 3 Town
25 North of range Seven (7) East in said County
that defendant has no knowledge of the said
Complainant loaning or receiving any more
money of the said Jacob P. Shaver to be secured
by mortgage on said lands or otherwise except
that before said Complainant conveyed or
attempted to convey said lands to said Jacob
P. Shaver said Jacob P. informed this defendant
that he talked of buying said lands and also

Said piece of timbered land in said bill
 mentioned of said Complainant for the sum
 of about eight hundred and fifty or sixty
 dollars that he said Complainant asked him
 that sum but that said Jacob P. thought it
 is large a price & that he did not want to buy the
 land but expected to be obliged to buy it to get
 his pay on said mortgage and this defendant
 denies that said sum of one thousand dollars
 or said sum of nine hundred & fifty dollars
 was ever paid to or received by said Complainant
 for said land under any agreement whatsoever
 and this defendant says that said conveyance
 of said lands made by said Complainant
 to said defendant Jacob P. Shaver was not
 made or intended to operate as a mortgage
 but was then executed and delivered and at all
 times thereafter understood and intended as betw
 een the said Complainant and said J. P. Shaver as
 an absolute conveyance in fee simple to said
 lands and this defendant denies that he from any
 source whatever ever heard or was informed that said
 conveyance by said Complainant to said J. P.
 Shaver was intended or understood to be a mortgage
 or that after the making of said deed he ever was
 informed or had reason to believe or suppose that
 said Complainant claimed any right in said
 land or any right to redeem the same for any
 sum whatever but on the contrary was told by
 both said Complainant and ^{said} J. P. Shaver that the
 land belonged to said Jacob P. Shaver until long
 after the filing of Complainant's bill herein &
 that said bill contained the first notice this
 defendant had of any such claim or pretence and

And further answering saith that it is true
that said Complainant made a conveyance absolute
on its face a purporting to ~~that~~ conveyance in fee simple
to said Jacob P Shaver for the North East & North West
& South West quarters of the North East fractional quar-
ter as defendant is informed & believes and defend-
ant also answering saith that he believes that such
description was a mistake and that said land
intended to be conveyed should have been described
as lot 121 and the West half of lot one of the North
East quarter of said section three And your
respondent further answering saith that it is
true that he purchased said last mentioned tract
of land from ^{said} Jacob P Shaver and that he the said
Jacob et cetera and delivered to defendant a deed
intended and supposed by both said Jacob and
this defendant to properly and correctly describe
said land and that this defendant did on or
about the day in said Complainant's bill stated
pay the said Jacob P for said land the sum
of one thousand dollars in cash in full payment
and satisfaction for said land, and further
answering saith that since the filing of the
Complainant's amended bill herein he has examined
more carefully his deed so made him by the said
Jacob P Shaver and finds that said deed conveys
or purports to convey to him the North East quarter
and the North West quarter and the South West
quarter of the fractional quarter of section
three township twenty three north of range seven
East in said County being a part of the North
East fractional quarter of said section

And further answering saith that said
conveyance does so describe said land by

mistake, and this defendant avers that said
 deed ought to be so corrected as to describe and
 convey to this defendant said lot two & the West
 half of lot one in said fractional portions of
 said section three and that this defendant
 is ready & willing and anxious to correct said
 mistake and is ready to execute a quit
 claim deed to such portion of the lands
 described in said conveyance as were therein
 inserted by mistake to the said Jacob P. Shaver
 or to said Complainant conveying said lands
 so inserted in said deed by mistake free from
 all incumbrance done or suffered by this defend-
 ant & releasing all right of action against said
 Jacob P. for or on account of the covenants in
 said deed by said Jacob P. to this defendant
 on the said Complaint and the said Jacob
 P. Shaver making a good and sufficient con-
 veyance of the lands after said intended to be
 conveyed to him so as to perfect this defendant's
 title unto said lands and this defendant
 further avers and swears that it is not true
 that at the time he bargained with said Jacob
 P. Shaver for the purchase of said lands or at
 the time of his purchase of the same or at any
 other time that he represented to said Jacob
 P. Shaver that he had bargained or agreed
 with said Complainant for said lands or
 any interest therein or that he had agreed
 to pay the said Jacob P. Shaver the sum
 of one thousand dollars and any residue
 of money to the said Complainant or that
 he would or was to arrange any sum or
 thing whatever with the said Complainant

8 And this defendant denies that he ever made any agreement with Complainant to buy said lands or that he ever had any knowledge that Complainant had any interest in said lands after the conveyance made by said Complainant to said Jacob P. Shaver and this defendant avers and states the truth to be that he did once or twice enquire of said Complainant if said lands was for sale and when his father the said Jacob asked for the land and at the same time offered to pay or said he would give for said land the sum of one thousand dollars & said Complainant said he could or would get him the land for that price but did not pretend to have any interest in the land and further, answering said that when he applied to said Jacob P. Shaver to purchase said land said Jacob P. Shaver said he asked the sum of one thousand dollars for the land reserving the said piece of timber land mentioned in Complainant's bill which he said he was to let said Complainant have. Whereupon said defendant said if that was the case he did not want said timber land but would take the other portion of said land being said lot two & West half of lot one in said fractional section three at the price of one thousand dollars which the said Jacob P. Shaver after some consultation with his family and after making some inquiries of this defendant as to the location of a Rail Road near said land agreed to take said sum of one thousand dollars for said land and had the said deed intended to convey said lands to this defendant made out and duly executed & delivered to this defendant upon this defendant paying him the said sum of

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one thousand dollars during all which time not one word was said to or by the defendant in relation to the said Complainant having any right to or interest in said land either as mortgagee or otherwise except as to said piece of timber which was by said Jacob reserved & as he said for the said Complainant. And further answering with that it is true that he had formerly some little acquaintance with said Jacob P. Shaver before moving to this state but did not know Complainant until he came to this state to reside and that he did board in the family of said Complainant for a time but some time before he so purchased said land of said Jacob and before said Complainant sold said land to said Jacob & not since and further answering with it is not true that he offered to pay said Complainant any sum of money for said land nor that he said to him or offered to pay any person for said land the said sum of eleven hundred, twelve hundred and thirteen hundred dollars for said land or any greater sum than said sum of one thousand dollars and further answering with that at the time he purchased said land of the said Jacob P. they were not of the value of fifteen hundred dollars as in said bill is alleged but were not of greater value than of said sum of one thousand dollars but the said sum of one thousand dollars was a large price for said land that said land had been by the said Jacob P. held and offered for a long time at the said price of one thousand dollars which price so asked for said —

lands was well known & understood in the neighborhood of said lands & that said lands were for sale at that price but that no person except this defendant could be found to give or who would pay in cash for said lands said sum of one thousand dollars except this defendant - and as to all further and other matters in said bill not herein before specially answered Confessed & admitted says the same are not true Wherefore humbly fully answered the said Complaints bill herein he prays to be discharged with his proper costs in this behalf expended so &c

Levi Woodworth
prolocutor & application
his Solic

On the back of said answer appears an endorsement of filing which is in the words & figures following to-wit

Filed July 20 1854

Wm. W. Smith clerk

32 And afterwards as of October Term Ad
1857 of said ^{court} replication was filed in
said Court in said cause which is in the
words and figures following to wit:

State of Illinois)
Ogle County ss) Court of said
Ad 1857

Anthony H Shaver

vs

Jr Shaver

Jacob P Shaver and
Levi Woodward

The replication of
Anthony H Shaver complainant to the answers
of Jacob P Shaver & Levi Woodward defend-
ants

This repliant saving and reserving unto
himself all and all manner of advantage of
exception to the manifest sufficiency of
the said answers for replication thereunto
saith that he will aver and prove his said
bill to be true certain and sufficient in the
law to be answered unto and that the said
answers of the said defendants are uncertain
in time and insufficient to be replied unto
by this repliant: Without this that any
other matter or thing what-so-ever in said
answers contained material or effectual
in the law to be replied unto confessed
and avoided traversed or denied is true
All which matters and things this repliant
is and will be ready to aver and prove as
this Honorable Court shall direct and
humbly prays as in and by his said

bill be hath already prayed
to a writ Sol
for Comp's

On the back appears the following endorse-
ment to wit

Filed by leave of Court as
of October Term Ad 1857
J. H. Petrie Clerk
By B. F. Stue to Depy

And further upon the files of said
Court in said cause appears the depositions
of Jacob P Shaver and Alexander B Long-
lass which together with the Commission
and interrogatories thereto attached are in
the words and figures following to wit-

State of Illinois The People of the State
Ogle County ss of Illinois to Andrew
Hoover Esq of the Town of
Andes in the County of Delaware and in the
State of New York. Greeting-

Know ye that
we in confidence of your prudence and
fidelity have appointed you and by these pre-
sents do give unto you full power and authority
and do hereby authorize and require you that at a
certain time and place to be designated and appoint-
ed by you for that purpose you do cause the
witnesses whose names are mentioned in
the caption of the enclosed interrogatories as
well on the part of the said Anthony H Shaver
33 Complainant as on the part of the said

Levi Woodward and Jacob P Shaver are
 defendants to come before you and then and there
 diligently and faithfully examine each of
 them apart upon the said interrogatories
 in their respective corporeal oaths first taken
 before you both on the part of said plaintiff
 and defendant. And none other and that you do
 take such their examination and cause said
 interrogatories as they are propounded together
 with the answers of the witnesses there to to
 be reduced to writing in the order in which
 they shall be propounded and answered and
 when you shall have so taken them you shall
 cause the said witnesses to sign their names
 to the same in their proper places in your
 presence and thereupon you will annex at the
 foot thereof a certificate subscribed by
 yourself in which you must state that
 they were sworn to and signed by - - - the de-
 ponents. And the time and place when and where
 the same were taken. After which you are
 to send the depositions with this commission
 and the enclosed interrogatories carefully
 enclosed and sealed up to the clerk of the
 Circuit Court in and for the County of
 Ogle and State of Illinois with the names
 of the parties litigant enclosed thereon
 and this you shall in no wise omit.

Witness R B Sigur Clerk of our said
 Court and the seal thereof this 12th day
 of April 1856

E Seal

R B Sigur
 Clerk

To Levi Woodward & Jacob P Shaver
Gentlemen

You will
please take notice that the undersigned
will on the 12th day of April A.D. 1856 be-
tween the hours of 10 A.M. & 4 P.M. of said day
attend at the office of the Clerk of the
Circuit Court of Ogle County Illinois for
the purpose of suing out a commission
to be addressed to Andrew Harver of
Andes Delaware County in the State of
New York authorizing and empowering
said Harver to take the depositions of
Jacob P Shaver Alexander B. Douglass
Carson A Shaver and Lyman Shaver on
the annexed interrogatories which are also
filed in said Circuit Court of Ogle
County Illinois. And you are further
notified that the deposition of Elizabeth
Shaver wife of William Shaver will be
taken at the residence of the said William
Shaver in the Town of Palo County of
Ogle and State of Illinois on the 14th day
of April next between the hours of 8 A.M.
and six P.M. of said day before some person
authorized to take depositions by law
all of which depositions are taken to
be used and read in evidence on the
trial of a certain suit pending in the
Circuit Court of Ogle County Illinois
on the Chancery side of said Court
wherein I am complainant and you the
said Levi Woodward & Jacob P Shaver
are defendants

36 Dated March 13th 1856

Anthony H Shaver
for H A Murriss Sol

Interrogatories to be propounded to Alexander B Douglass.

1st What is your age and where do you reside and are you or not acquainted with the Complainant Anthony H Shaver and the defendants Levi Woodward and Jacob P Shaver? if you were and how long have you known them?

2nd did you or not ever see the said defendants Levi Woodward and Jacob P Shaver together at any time? if so when and where did you so see said parties together and what was the object of said interview and please state fully all you heard said parties say on said occasion and your means of knowledge

3rd do you or not know any other matter or thing material to be proved by said complainant on the final hearing of said cause if so please declare the same as fully and minutely as if there to specially interrogated

Interrogatories to be propounded to Jacob P Shaver

1st What is your age? and where is your place of residence and are you in

any way connected with Anthony Ho.
Swaver the complainant if so: now:

2nd Did you ever loan said Anthony Ho any
money: if yea if yea on how many occasions
what amount what security you took; when
the same was to be repaid And fully the whole
transaction from the beginning to the end.

3rd Please state whether or not you ever
had a deed to fraction number two & the west
half of fraction number one of the north
East quarter of Section Three Town Twenty Three
N R 7 E of the 4 P M if so for what pur-
pose was the said deed given And had or
not the said said Levi Woodward any know-
ledge of the equitable interest the said
complainant had in the same if so ^{state} fully
all you know of his said knowledge And fully all
you know in regard to the title to said premises

4th Do you know any other matter or thing
material to be proved by said complainant
on the final hearing of said cause: if so please
state the same as fully and minutely as if
thereunto specially interrogated

At A True Sol for Complainant

State of Illinois Ogle County ss.

John P Kendall

being duly sworn upon his oath deposes and
says that he served the within notice on the
within named Levi Woodward on the 27th day of
March A D 1856 by delivering to him a notice

38 similar to the within.

Subscribed & sworn to John P Kendall
before me this 18th day
of June A D 1854
M W Smith Clerk
By W J. Smith Dep.

The depositions of Jacob P Shaver Alexander B Douglass taken in pursuance of and by virtue of a commission issued to the undersigned by the Honorable the Circuit Court of Ogle County Illinois and to the undersigned commissioners directed which depositions are taken to be used and read in evidence on the hearing of a certain suit pending on the Chancery side of said the Circuit Court of Ogle County Illinois wherein Anthony W. Shaver is complainant and Levi Woodward & Jacob P Shaver are defendants. And the said witness Jacob P Shaver being produced & sworn deposes in answer to the several interrogatories proposed to him as follows.

In answer to the first interrogatory says my age is about sixty years my place of residence is in the County of Delaware and State of New York I am connected with Anthony W Shaver he is my son.

In answer to the second interrogatory says I have loaned Anthony W. Shaver money & have done so on two occasions I loaned him the first sum about the last of August 1846 the sum of four hundred and forty four dollars and fifty cents. For the security of the payment

of that sum the said Anthony A. Shaver re-
lent to me a mortgage on some land he then owned
in Ogle County Illinois the description of
which I can not now from recollection state the
last sum I so loaned the said Anthony I so
loaned him in August-1853 the exact amount
of which it is out of my power to state but we then fig-
ured-up the amount of interest on the first sum
loaned and I then paid him a sum which
together - - - - - with the interest
which had accrued on the first sum amounted
to the sum of nine hundred and fifty dollars at
the time which was in the month of August A.D. 1853
The security for the payment of this money was
to be a deed executed by the said Anthony A. Shaver
to me of certain lands contiguous to the farm of
said Anthony A. Shaver being one hundred and
twenty acres of Prairie land being North and North
West of the said Anthony's farm and he was also
further to secure the payment of said sum by
a deed of a lot of timber land in Elkhardt Grove
being the most Easterly of two Ten acres tracts of
timber then said Anthony then owned in said
grove and containing ten acres

This conveyance my deed was to be only
security to me for the repayment of said
nine hundred and fifty dollars and interest
at seven per cent per annum this amount
Anthony was to have his own time to pay in
provided he paid the interest it was however
agreed and understood between the said Anthony
and myself that in case one of my sons should
choose to go West to reside and should -
140 choose to go and reside settle on said prairie

41 - said Anthony was to deed to me. Then if either of my sons should choose to move out and settle on the land and improve it then I was to deed it to said son and he was to pay me the amount - Anthony so owed me and I was to release the said Anthony. This contract was made in Illinois and it was to be determined - immediately on my return to New York whether either of my sons would come West and I was to advise said Anthony immediately. Anthony considered it to be a great advantage to him to have one of his brothers go out West and settle near him.

At the time I loaned the said Anthony the said last sum I also left with him fifty dollars which in case either of my sons did take said premises then said Anthony was to retain the said fifty dollars in consideration of his relinquishing it to his brother. This bargain was some time in being consummated and was finally brought to a close about the middle of September 1853. I soon after returned home to the State of New York and ascertained that none of my sons designed to go West. I omitted to state that in case none of my sons should go West that the fifty dollars I have before spoken of was to be added to the nine hundred & fifty dollars and be repaid by said Anthony.

About the time I was leaving to return home in 1853 Anthony made some effort to get added made to me of the above premises but from some inconvenience it was not executed. But Anthony and his wife died on or about the 30th of September A.D. 1853 and left to me a

Deed which I here with turned to the Commissioner. I am advised that there is a mistake in the deed that it conveys about two thirds of the land that was intended to be conveyed but of this I am utterly unable to state as I am in no wise conversant with government subdivisions. Anthony's deed did not embrace the timber as was contemplated which I considered of no consequence as he advised me that he would refund me the money in a short time if I desired it and have me reconvey him the land. I believe this is the substance of the transaction and the main reason. Why a deed was given instead of a mortgage as we both felt anxious that one of my sons should go out and settle near Anthony and had some hopes of some of them doing so and thought it would be much more convenient to effect that object by taking a deed than by taking a mortgage from Anthony in the event any of my said sons should elect to go West.

In answer to the third interrogatory the witness says = Ans I do not know I have a deed that covers the north East the North West and the south West quarter of section No three (3) in Township twenty three (23) North Range 7 E of 4 Rm. Whether or not the premises mentioned in the interrogatories embrace the above I do not know. I am told that it embraces about two thirds of the fractions this deed was given to secure the repayment of certain sums of money loaned by me to said Anthony as stated in the foregoing answer. The said

42

Woodward knew I think all about the interest Anthony had in the premises. He told me that Anthony had told him all about it.

I think he knew of it at about the time I let Anthony have the money.

In April or May 1854 the said Levi Woodward came to my residence in the state of New York and told me ^{he} wished to buy of me the land my son Anthony had deeded to one. I told him ^{that} it was not my land to sell that it belonged to Anthony, that I only held it in security for what Anthony was owing me which I stated to him to be about one thousand dollars this I think was about all that was said in regard to the land. The first time I saw him he came to my residence again in a day or two and again commenced talking about the land. He told me on this occasion that he had bought out Anthony's interest that Anthony had relinquished the land to him and by that arrangement he was to pay me one thousand dollars and the balance he had or would settle with Anthony. I told him that if that was the case he should ^{bring} a line or ^{an} order to that effect to which he replied that Anthony intended to have given him one, but it would have caused him three or four miles travel and considered too trouble to have got it and that he concluded to come away without it that the whole matter was right. He continued his applications and entreaties ~~representations~~ until at last I told him that if he would make the same statements before the magistrate that took the acknowledgment of the deed that he had before me and my

Family that I would deed him the land,
He stated many other things to induce me
to give him a deed and I did finally I should
judge about the middle of May A.D. 1854
give him a deed of the land the same they were
described in Anthony's deed to me and if there
is a mistake in that deed there is probably a
mistake in the deed from me to Woodruff this
deed was acknowledged before Alexander B. Doug-
lass a Magistrate. When we got to the May-
istrates Office in Delaware County New York
for the purpose of having the deed drawn
et executed and acknowledged and after the
deed was prepared but before the deed was
signed or the consideration paid I told Mr
Douglass the magistrate and Woodruff upon
what terms I executed the deed that the land
or lot mentioned in the deed belonged to my
son Anthony that I only held it in security
for the money I let Anthony have that when-
ever Anthony repaid me the money I was bound
to re-deed the land that I had promised
Anthony the land. And it was always the
understanding that Anthony was to redeem it
if one of my other sons would not go West
and that none of my sons would go West -
I further told him at the same time the manner
in which Mr Woodruff had approached me with
a view of purchasing the land. that I objected
to deeding the land to him till I could hear
from Anthony in writing that Woodruff told
me it was ^{my} use to do that for it had all been
arranged between him and Anthony that he
was to pay me the thousand dollars and the

ballance had been or would be arranged between
 him and Anthony before he started from home
 That Woodward was to buy the lot of one acre
 pay me the thousand dollars and the ballance
 once he was to arrange with Anthony I think
 I stated much more but this is the sub-
 stance of what I now recollect. I now recollect
 of saying in the presence of Mr Dougless
 that Woodward had said to me that Anthony
 had intended to ^{have} given him an order to me or
 to have written to me to make him a deed to all
 of which Woodward assented and pledged his word
 in the presence of the magistrates that it was
 all true and pledged his word to the magistrates
 and to me that it was all right that Anthony had
 arranged it before he started to come out that
 he Woodward was to buy the lot of one ^{and} that he
 was to or had paid Anthony his interest in it
 I then asked Mr Dougless if there could be
 any risk in giving a deed under such cir-
 cumstances - I think Mr Dougless answered
 there would not I then executed and acknowl-
 edged the deed and Woodward paid over to me
 one thousand dollars

There was much more said
 by Woodward than I have above rehearsed
 In answer to the fourth interrogatory the defendant
 answering says

That he thinks he has stated
 all that is essential or material in the forego-
 ing answers and knows nothing further ma-
 terial to be proved by the complainant

Jacob P. Shaver
 Subscribed and sworn to before me at Andes this first day
 of May 1856 Andrew H. ~~Law~~ Comptroller

The Witness Alexander B. Douglass being produced
and sworn deposes as follows

In answer to the first
interrogatory says:—

My age is about 35 years
past— I reside in Delaware County State of New
York I am not acquainted with Anthony G.
Shaver though I may have seen him I have
seen the defendant Levi Woodward I saw him
once and perhaps oftener in May 1854.

Jacob P. Shaver I have known for many
years in Delaware County New York

In answer to the second interrogatory
the Witness deposes saying

That I did see the
said defendant Levi Woodward and Jacob
Shaver together I saw them together at my
residence in Delaware County New York about
the middle of May A.D. 1854 They came before
me to get me to draw and acknowledge a deed

In the capacity of a Justice of the Peace I
prepared the deed from a deed that Mr Shaver
brought with him made I think by his son
Anthony. After I had prepared the deed and
before it was executed or before the considera-
tion was paid Mr Shaver addressing me
and Woodward stated over to us both ^{officer} What
conditions he then executed the deed he said
that the land belonged to Anthony that Anthony
had deeded it to him to secure him for money
he had let him have. If my recollection serve
me one thousand dollars was mentioned as
being the sum Anthony owed him at the time
And he further stated that it was the express

Understanding between him and Anthony
 that if one of his other sons should not conclude
 to go west and take the land in question and
 pay him the amount Anthony owed him that
 then Anthony was to have the land without
 any conditions whatever on the repayment
 of the amount loaned and interest that then
 he was to release Anthony the land that this
 was the express bargain made with Anthony
 before the deed was executed he then went on
 and rehearsed the manner in which Woodward
 had approached him. That he Woodward had
 told him that Anthony had agreed to let him
 have his interest in the land and that he
 was to come on and get a deed from him and
 pay him a thousand dollars that the bal-
 lance had been arranged between Anthony
 and Woodward before he started from
 home that he had refused to execute the deed
 unless he (Shaver) was authorized so to do by
 his son Anthony and that he Woodward
 had told him that Anthony had intended
 to have given him an order or a letter
 authorizing him to make Woodward a
 deed but that he (Woodward) started off in
 a hurry and it would have cost him some
 trouble and travel to have seen Anthony before
 leaving and concluded to come without the
 order to which Woodward assented and said
 it was all right and he had told Mr Shaver
 so and added that he was to buy the lot
 of Mr Shaver and that he was to or had
 paid Anthony for his interest in it —
 After this Mr Shaver stated or inquired

of me is there could be any risk in giving a deed under the circumstances to which I think I replied that there could not or something of that kind.

Said Shaver said at the same time and in the presence of said Woodward that he wanted my advice as Counsel in the matter that they had come up for that purpose as well as to execute the deed if I advised him to. From both of their statements I told Mr Shaver that I thought there could be no danger in signing the deed. Woodward said there could be none at all for (Shaver). Would finish it just as they then had talked it over Mr Shaver then executed the deed and I as Justice of the Peace took the acknowledgment of it. He handed it to Mr Woodward and he then paid Mr Shaver \$1,000 for the land. The distance they came to see me about it was nine miles.

To the third interrogatory Witness says that he knows nothing further that will be material for the complainant to prove on the trial of said Cause.

Alex^r B. Dougless

Subscribed and sworn to
before me ^{at Andes} this first day of
May 1856

Andrew Hawver Comptroller

State of New York }
Delaware County }
}

I Andrew Hawver a
Comptroller duly appointed by the Circuit
Court of Cayuga County and State of Illinois

to take the depositions of the above named
 Witnesses to be read and used in evidence on the
 trial and hearing of a certain suit pending
 on the chancery side of the Circuit Court of
 said County wherein Anthony P. Shaver is
 Complainant and Levi Mowbray and
 Jacob P. Shaver are defendants do hereby
 certify that I caused the said Witnesses to
 come before me and each being severally
 sworn in the above entitled cause each
 depose in manner as I have caused the
 same to be reduced to writing in the
 respective foregoing depositions being
 carefully read over to the respective dep-
 osants they severally signed their respective
 depositions and swore to the same before me
 at my office in the town of Andes County
 and St Lawrence's on this first day
 of May A. D. 1856

Witness my hand & seal
 this first day of May 1856

Anders Hawver
 Commissioner

(Copy of Deed. attached to above Depositions)

This Indenture made this Thirtieth day of September
 in the year of our Lord, one thousand Eight hun-
 dred and fifty three. Between Anthony P. Shaver &
 wife of the County of Ogle & State of Illinois of the
 first part, and Jacob P. Shaver of Delaware County
 & State of New York of the Second part, Witnesseth, that
 the said Party of the first part, for and in consideration

of Eight hundred Dollars. in hand paid by the said party of the second part, the receipt is hereby acknowledged, (and the said party of the second part. forever released and discharged therefrom.) hath granted bargained, sold, remised released, aliened and confirmed and by these presents, doth grant, bargain, sell remise release alien and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the following described lot, piece or parcel of Land, situate in the County of Ogle, and in the State of Illinois, to wit: The North East quarter (NE $\frac{1}{4}$) and the North West quarter (NW $\frac{1}{4}$) and the South West quarter (SW $\frac{1}{4}$) of the Fractional quarter ($\frac{1}{4}$) of Section Number Three (3) Township Number Twenty three (23) North, Range, Number Seven (7) East of the fourth - Principal meridian - It being a part of the North East fractional quarter, of said Section, containing One hundred & Ninety and a half acres, more or less - Together with all and singular, the hereditaments, and appurtenances, thereto belonging or in any wise appertaining and its reversion and reversions - remainder and remainders, rents, issues and profits - thereof, and all the estate, Right, Title interest, claim and Demand whatsoever, of the said party of the first part, either in law or equity, of, in and to the premises above bargained, with the hereditaments and appurtenances, To have and to hold the said premises above bargained, and described with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said Anthony H Shaver, and Sarah his wife, party of the first part, for themselves, their heirs Executors and Administrators, do covenant, grant, bargain and agree, to and with the said party of the second part

57 his heirs and assigns, that, at the time of the
en sealing and delivery of these presents, they are,
well seized of the premises above conveyed, as of a
good, sure, perfect, absolute and indefeasible estate
of inheritance, of the law, in fee simple, and have
good right, full power and authority to grant bar=
gain sell and convey the same, in manner and
form aforesaid, and that the same are free and
clear, from all former, and other grants, bargains
sales, liens, taxes assessments and incumbrances
of what kind or nature soever, and the above bar=
gained premises, in the quiet and peaceful posses=
sion, of the said party of the second part, his heirs
and assigns, against all and every person or per=
sons, 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 Witness whereof, the said part, of the first
part, hereunto set - hand and seal, the day
and year, first above written

Signed Sealed and
Delivered In Presence of }
Wm H Shaver -
C G Holbrook -

Anthony H Shaver 
Sarah Shaver 

State of Illinois }
Ogle County - }

This certifies that on the Thirtieth
day of September Eighteen hundred and fifty three
Before me, C. G Holbrook, a Justice of the Peace

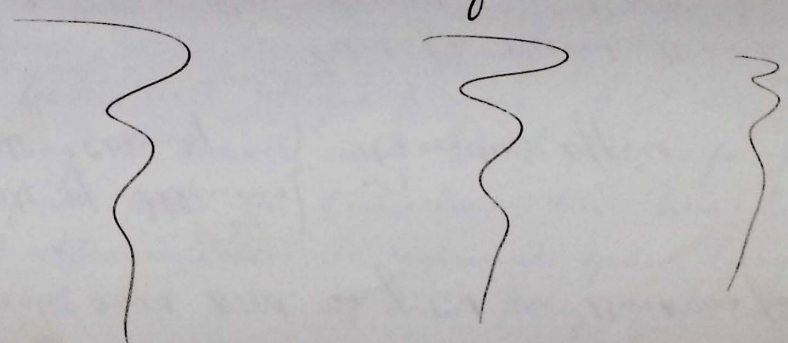
of the County of Ogle, in the State of Illinois appeared Anthony H Shaver and Sarah Shaver his wife, personally known to me to be the real person whose names are subscribed to the foregoing Deed, as having executed the same, and then, acknowledged, the execution thereof, as their free act and Deed.

And the said Sarah Shaver wife of S^r Anthony, (who is personally known to me to be the same person, who subscribed the said instrument of writing) having had the contents of the said instrument made known - and explained to her, and been by me examined separate and apart from her said husband, did acknowledge said instrument to be her free act and Deed, and that she has executed the same, and relinquished her dower, in the Lands and Tenements, therein mentioned voluntarily and freely, and without the Compulsion of her said husband and that she does not wish to retract -

Given under my hand and seal, the day and year, above written

C. G. Holbrook *ES*

Justice of the Peace



(which said Deed. is filed on Back as follows:)

State of Illinois }
Ogle County } Recorder's Office

Filed for Record. March 21, 1854
at 2 O'clock P.M. Recorded in Book "A" of Deeds
page 121. + Examined

----- Recorder

(Upon said Depositions. appears the following en-
dorsement to wit:)

"Filed May 17. 1856"
"R. B. Light - clerk"

And upon the day last aforesaid the Deposition
of Elizabeth Shaver. was filed in said Cause. in
said court, which Deposition is in the words
and figures following, to wit:

Deposition of Elizabeth Shaver, wife of William Shaver, taken at the residence of William Shaver, in the Town of Polo, County of Ogle and State of Illinois in pursuance of Notice, and to be had and used in Evidence on a trial and hearing of a Suit, pending on the chancery side, of the Circuit Court, of Ogle County and State of Illinois, wherein, Anthony H Shaver, is Complainant and Levi Woodward, and Jacob P Shaver are Defendants, and the said Witness, being produced and sworn, deposed, as follows, in answer to the several interrogatories propounded

Intg. 1 Are you acquainted with the parties to the above entitled suit, if so, when and where did you know them and how long have you known them,

Ans. I am, I have known Anthony Shaver for three years, at Elkhorn, or its vicinity. I have known Levi Woodward about the same length of time, and in the vicinity of Elkhorn. I know Jacob P Shaver. I saw him at Anthony Shavers, a year ago last Sept.

Intg. 2 Did you ever reside in the family of Anthony H Shaver if so, when and how long.

Ans I have resided in the family of Anthony H Shaver. - resided there in 1854. resided with them. Six months

Intg. 3 How far did Levi Woodward, reside from Anthony H Shaver, at that time, and were they or not, on intimate terms.

Ans. One mile. Levi Woodward, formerly lived in the family of Anthony Shaver. I frequently saw him pass, while I was there saw him but twice at An. Shavers, while I resided there

Intg. 4

Do you or not. know of Anthony Shaver the complainant having some interest in a tract of land lying north and west of his farm, on which he resided, at the time he lived in his family. if yea. what was that interest.

Answer,

I do not know what interest he claimed to own it. that is the land referred to, lying north, and west, of his farm. it being a tract of One Hundred & Twenty acres. I cannot describe the Land.

Intg. 5

Do you, or not know, that said Woodward, the Def^d knew of the interest, that Anthony H Shaver, had in this said land. if yea. state how you know.

Ans.

I know, that he knew, it. from the fact he tried to purchase it. from the said Anthony H Shaver.

Intg. 6

Do you or not. know. of the said Woodward applying to the said Shaver, to purchase the said land, if yea. state, at about what time, and what you heard, said - between them, and about how long, an interview, did they have.

Ans.

I do know, of his applying to purchase said land, - about the last of April 1854. I heard ~~Wood~~ Woodward offer, Anthony H Shaver, \$1300. for the said Land. and he Mr. Shaver, replied, he could not have, it, as he had bought it expressly for himself, and that there was no use of his talking. they talked, half, or three quarters of an hour, at that time, in regard to the land.

Intg. 1

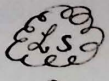
Do you, or not, know of the said Woodward going to the state of New York in 1854, if yea, what time did he leave, and how long after the interview, alluded to, in the foregoing interrogatory

Ans.

I know the said Woodward, went to New York, in 1854 he went about the first or second day of May, and two or three days after the conversation, had, with Mr Shaver in the answer to the above interrogatory Number Seven.

Elizabeth Shaver.

State of Illinois } I Christopher G Holbrook, a Justice of
Ogle County - } the Peace, in and for the County and
State aforesaid, and before whom, the
foregoing Deposition - Do hereby certify that I did on this
day, Cause to come before me, the above named witness
Elizabeth Shaver, who being produced and sworn, Deposed,
in manner, as I have reduced the same to writing, in
the foregoing Deposition & the same, having been carefully
read over, to the said witness, by me, she subscribed
and swore, to the same, before me, at the residence of
William Shaver, in the Town of Polo, in the County
of Ogle and State of Illinois, on this 14th day of April
A D 1856, between the hours of 8. A.M. & Six P.M. of said
Day. - Witness my hand and seal, the 14th day of
April. A D 1856.

C. G. Holbrook 
Justice of the Peace

On the back of said deposition appears the
following to wit:

Filed May 17 1856
R B Light Clerk

57 And afterwards to wit: on the 10th day of October. AD 1857
it being one of the Days of the October Term of that year
of the Ogle County Circuit Court, aforesaid. the following
proceedings were entered in said Court. of said cause, to wit:

Anthony H. Shaver
vs
Levi Woodward +
Jacob P. Shaver

This day, come the said
Defendants by Heaton and Dutcher
their Solicitors and enter their motion to suppress
the Depositions of Jacob P. Shaver & Alexander B. Douglass
depositions herein.

And afterwards, to wit: on the same day the following
proceedings were entered of Record in said Cause

Anthony H. Shaver
vs
Levi Woodward +
Jacob P. Shaver

Again, on this day, come
the said Defendants, by Heaton,
their Solicitor, and enter their motion
that the filing of the said Defendants Answer herein
be approved, and thereupon, come the said Plaintiff by
Meigs, his Solicitor, and the Court being fully advised
in the premises, the said motion is sustained, and by
order of Court the said filing stands approved

And afterwards, to wit: on the 8th day of June. AD
1858, certain Depositions were filed in said Cause, which
are in the words and figures following, to wit:

Dependants- depositions-

State of Illinois
Ogle County

Before Virgil, C. Bogue
County Judge and ex officio Justice of the
Peace of Ogle County State of Illinois-

Depositions of Nicholas P. Shaver-
George Webster- Sally Webster John Ande-
son Elizabeth Shaver- John Hodges- and
Nelson Davis- Notaries in a certain suit
pending in the Ogle Circuit Court in the
Chancery- side track- wherein Anthony P.
Shaver is complainant, and Levi Wood-
ward & Jacob Shaver are defendants. do
now before Virgil C. Bogue Esq. Judge of
Ogle County Court- and ex officio Justice of the
Peace- on the thirty first day of June May and
the 1st day of June- A.D. 1858- at the office of
of said V. C. Bogue Esq- at Polo- in said
County- in the presence of said plaintiff &
said defendant Levi Woodward on the
part of said Defendant Levi Woodward-

And the said Notaries being first duly sworn
deposited testified as follows-

W. C. Bogue J. P.

59 State of Illinois

Ogle County to wit Sally Webster being duly
sworn deposes and says as follows viz-
in answer to the several interrogatories -

1st Interrogatory What is your name age and occupation
and where do you reside -

Ans- Sarah Webster, fifty and, house keeper lives in
Polo - Ogle County - & State of Illinois -

2^d Interrogatory -

Are you acquainted with Anthony H.
Shaver - if so how long have you known him
and are you or not acquainted with Sir
Woodward and Jacob P. Shaver - and when
& where have you been acquainted with
them & how long have you known them re-
spectively -

Ans -

I have been acquainted with Anthony H.
Shaver ever since he was born, I and - I
have been acquainted with Sir Woodward
about 10 ~~years~~ a short time I have known
Jacob P. Shaver ever since I have known
any body he is a partner of mine and
have known him in the State of New York
and in this State.

3^d Interrogatory -

Are you related to Anthony H. Shaver & Jacob
P. Shaver & if so what is the relationship -

Ans - Anthony H. Shaver is a brother of mine &

Jacob Shaw is my father,

4th Feb. 27

By what name are you called in your family?

Ans.

I am called Sally and I don't know but I was christened so -

5th Feb.

Were you at the residence of your father in New York, when Levi Woodward came there to purchase land of him, in Illinois?

Ans.

Yes I was - there

6th Feb.

Did you hear the conversation between your father and Levi Woodward, at the time the bargain was made for the land?

Ans.

No Sir I did not.

7th Feb.

Did you hear any conversation between Woodward and your father at the time Woodward first went to your father about land in Illinois?

I don't think I heard a word pass between Woodward and my father about land in Illinois -

8th Feb.

While Mr Woodward was there did you and your father have a conversation together in a room separate & apart from Woodward about the propriety of selling him land?

Ans- We had a conversation. Separate and a part from Woodward but it was not in relation to land.

9 Int,- Did you not after returning to Woodward from the conversation with your father ask Woodward, if there was a rail road located near the land

Ans- No Sir. I did not.

10 Int,- Did you have a conversation with your father about the propriety of selling the land to Woodward at any time while Woodward was there.

Ans- I don't recollect that I had any conversation with my father in regard to the Woodward case.

11 Int,- Did you know that your father had offered his land in Illinois to any one and if so how much he asked for it.

Ans- No Sir. I did not.

12 Int- Did you go with your father & Mr Woodward to the town of Audus to have a deed executed for the land in Illinois.

Ans- Yes I went in company with them, when they went to get the deed executed.

13- Did you all stop at the same house in Andes- & if so at what house was it? -

Ans- I don't think we did. I think my father got out in the street Mr Woodward & myself went to my uncle Phillips-

14 Sub- Did you see your father again that day-

Ans- No Sir- I don't think I did-

15 Sub- How long did ~~Mr~~ Woodward remain at ~~your~~ your mother's- and how late did you see him there that day-

Ans- I cannot say that he was any longer there than to take dinner- I cannot say that he stayed to tea-

16 Sub- Did your father say when he got out of the carriage in Andes- or at any time he was- there where he was going or what he was going to do-

Ans- I do not recollect that he said any thing about what he was going to do-

17 Sub- Of whom did your father's family consist at the time Woodward was there & who was there besides the family-

Ans- The family consisted of my father, a brother & sister, but my brother was not at home and

also a kind maid & kind girl the
the young man named was Gilbert Finkle

1st Inter- To what subject did the conversation you
had privately with your father while
Woodward was there relate & was there any
thing said about your brother Anthony
H. Shaw. The complexion of, - as con-
nected with the cause in controversy

Ans. Speculated as I said before to me and
family - concerning. I think there was
nothing said about my brother's
connection with the cause in contro-
-versy -

Brother is an inquirer -

1st Inter- Did your father ever make them, one
piece of land in Illinois - at the time
of Woodward's visit -

Ans. Not to my knowledge -
Susan Webster -

Subscribed & sworn to
before me this 31st
day of May A.D. 1858 -
F. A. Bogus, J. P.

State of Illinois } I Virgil A. Bogus a Justice
of the Peace of said County do

P. A. Boyard

Appl County

George A. Webster being dead

1. Self, - What is your name age - occupation
and where do you do reside -

Ans- My name is George R. Webster - my age is
fifty two - I am a farmer - I reside in
Polo - Ogde County - are State, I think is -

2 Int. Are you or not acquainted with the parties
plaintiff and defendants if so how long
have you known them respectively.

others - I am acquainted with the parties,
plaintiff and defendants. I have known
the plaintiff since 1819 - I have known
Wardward since the year, or several years
have known Jacob, P. Shuck since I
was a boy -

Q. Did you at any time have a conversation with Jacob P. Shaver about the land he owned in Illinois which said Shaver afterwards told Mr. Woodward if you wish & while was said conversation held -

Did you at any time have a conversation with Jacob P. Shaver about the land he owned in Illinois which said Shaver afterwards told Mr. Woodward if you wish & while was said conversation held -

Ans. I have a conversation with said Shaver - about the land. I suppose the Woodward owns. The conversation occurred at my home in Buffalo N.Y. - the season said Shaver got it of Anthony M. Shaver. I think

I have a conversation with said Shaver - about the land. I suppose the Woodward owns. The conversation occurred at my home in Buffalo N.Y. - the season said Shaver got it of Anthony M. Shaver. I think

Q. State the conversation as it occurred and particularly what said Jacob P. Shaver said about the land and what he proposed to do with the same - and what he asked for the same -

State the conversation as it occurred and particularly what said Jacob P. Shaver said about the land and what he proposed to do with the same - and what he asked for the same -

Ans. As near as I recollect he said he had lost the land of Anthony M. Shaver. He said not tell me as I recollect what he proposed to do with the land I don't think I ever heard him prize it he told about what it cost him -

As near as I recollect he said he had lost the land of Anthony M. Shaver. He said not tell me as I recollect what he proposed to do with the land I don't think I ever heard him prize it he told about what it cost him -

Q. What did said Jacob P. Shaver say - if any thing as to the cost to him of said land.

What did said Jacob P. Shaver say - if any thing as to the cost to him of said land.

Ans. As near as I recollect said & it was

As near as I recollect said & it was

about eight hundred dollars. It might
have been more - and might have been
less

Q. Did or not said - Jacob P. Shaw - in con-
versation with you - say what land he
had purchased of Anthony M. Shaw -
& was any timber land mentioned
and if so how many acres =

A. I think he told me where it was -
he did not describe the lots in num-
ber, I don't - recollect that any timber-
land was mentioned =

Q. Did or not Jacob P. Shaw tell you that
the said Shaw was to pay the costs in the
suit now pending between Anthony
M. Shaw - complainant and Lin
Woodward - & Jacob P. Shaw defendant
in case said Anthony M. Shaw - did
not succeed in this suit =

A. No sir - he never told me ~~any~~
such a word =

Cross Examination

Q. In your answer to the direct inter-
rogatory do you or not recollect the re-
collection that said Jacob P. Shaw - and
the words - bought, in relation to the land

A. I can't tell it from the direct
question - as I know =

Subscribed & sworn to before me by George A. Bogue -
1st day of June -

State of Illinois } ss
Ogle County } J. Virgil A. Bogue a Justice of the Peace
of said County, do certify that the foregoing
deposition was taken by me at the time and place mentioned
in the Caption thereof, that the said Witness was first
duly sworn & that the same was carefully read to said
Witness and signed by him & then sworn to - Dated
this 1st day of June A.D. 1838,

V. A. Bogue J. P.

Elisabeth Shaver. being duly sworn. deposes
and says. as follows to wit =

Inter 1-

What is your name, age, and, occupation
and where do you live =

Ans -

My name is Elisabeth Shaver - my age is
twenty I am a house keeper - I live in
Buffalo - Cpl County - State of Illinois -

Inter 2

Are you acquainted with Anthony H. Shan-
non and where did you reside in the
year 1854 =

Ans -

Ans

I am acquainted with Anthony H.
Shanon. I resided in his family from the
first of March to the last of September
I was there six months -

Inter 3 -

Did you or not during your residence
with Anthony H. Shanon - hear a conversa-
tion between said Shanon & defendant
Woodward in reference to lands owned
by Jacob P. Shanon - in Illinois - if yes
State, that conversation - as near as you
can recollect the same =

Ans

I did hear such a conversation, I heard
the Woodward offer Anthony H. Shanon three-
two hundred acres - for that land An-
thony said you cant have it Woodward
for I bought it expressly for myself -
it was no use of talking any more
about it =

4 Inter- Did you or not hear Anthony, H. ^{Woodward} ~~Shank~~ say to Woodward, that if he would give ~~xxxx~~ - one thousand dollars in cash - he would get the said land for him =

Ans- No Sir =

5 Sub- Did you or not hear Anthony, H. ~~Shank~~ talk about writing to Jacob P. ~~Shank~~ - sometime out whether, or not, he would buy the land =

Ans- No Sir I did not =

6 Sub- Did you or not hear Anthony, H. ~~Shank~~ - while you were living - ask him say who owned said land in question or say any thing about the five acres - & timber =

Ans- No Sir I did not, nor did I know - any thing about five acres & timber =

7 Sub- Are you related by marriage or otherwise - to Anthony, H. ~~Shank~~ =

Ans- I am I married his cousin =

Group examination =

1 Sub- Was the examination - before or after Mr Wood was out of the State of New York =

Ans- It was before he went East, =
Subscribed before to Elizabeth Thayer =
before me this 1st day
of June 1858 =
J. A. Bogue J. P.

68
State of Illinois

Ogle County

J. Virgil A. Bogue a Justice of the peace of said County, do certify that the foregoing deposition was taken by me at the time and place mentioned in the Caption, that the said witness was first duly sworn and that the same was carefully read to said witness & signed by her and then sworn to - Dated this first day of June A.D. 1858.

V. A. Bogue J. P.

John. Anderson being duly sworn deposes
and says as follows - To wit -

69
1 Sub -

What is your name age and occu-
pation, and where do you reside -

Ans -

My name is John Anderson my age
is about fifty occupation a farmer
I live in Buffalo Township - Cyle County
& State of Illinois.

Sub 2

Did or not you have a conversation with
Jacob P. Shaver or Anthony H. Shaver
in relation to the land - in question
if you state the same -

Ans

I had a conversation with Anthony P. Shaver,
- or, I went to see Anthony Shaver one day
I think it was the same spring -
- times to Woodward - buying the land
in the course of conversation Mr Shaver
got talking about his prairie land
there - he stated, that he had sold the
land to his father, but that his fa-
ther wanted him to take it back
again. But that he declined taking
it, or something like that, that he had
got out of debt or nearly so by selling
it to his father, since his father was get-
- ing to be an old man - and might drop
away - & that if he did take it back - his
notes might fall into some persons hands
that he did not want to have them

Cop Examined -

Query 1

I see Anthony, N. S. Thore - or not
in the course of the conversation referred
to by you as above. Did you recollect
what circumstances and on what terms
he had sold the land to his father -
& if so state

Ans

I presume there was something said
I would be positive, I think there was
something said about his brother, Lyman
and Aaron, something said about
his brothers Aaron - making some
trade with his father & about
Lyman's coming out here to settle
but what that conversation was I
cannot ~~XXXX~~ say -

Query 2

Have you a good memory and can
you recollect the substance and de-
tails and details of the whole con-
versation - as referred to by you -

Ans -

I have a tolerable good memory, so
far. I cannot recollect the exact con-
versation about his brother - referred to in
my answer. The first one interestingly

Query 3 -

Can you recollect distinctly - & clearly -
the substance of that part of the above con-
versation which related to the brother, Aaron
and Lyman - and if so state it -

Ans -

I cannot state positively - what that
conversation was -

Re direct,

Query 4 -

Do you or not know of Jacob, P. Thore
having sold the land, - to Wadsworth by
his own statement or otherwise

Ans -

After Mr Woodward returned from
the East he told me he had bought
the land and showed me a deed
executed by Jacob P. Shove -

long again

Ans -

What I was due that was put
put to carry -

Ans -

It pertains to carry - land in
section three town twenty three range
seven East,

John Anderson -

Subscribed & sworn to
before me - this 1st
day of June - A.D. 1858 -

F. A. Bogard S. C.

State of Illinois

Ogle County ss I Virgil A. Bogie a Justice of the
peace of said County do certify that the
foregoing deposition was taken by me at the time & place
mentioned in the Caption thereof. that the said Witness was
first duly sworn and that the same was carefully read to
said Witness and signed by him & then sworn to

Dated this 1st day of June. A.D. 1858.

V. A. Bogie J. P.

Nicholas A. Shand being duly
sworn - deposes - and says as
follows - to wit -

Inter 1 What is your name age - occupa-
tion and where do you reside -?

Ans My name is Nicholas A. Shand
my age is about fifty nine my
occupation - is farming - I reside
in the town of Buffalo Cpl County
& State of Illinois -

Inter 2 Did you or not have any knowledge
of Jacob P. Shand - owning land
in Illinois - in 1854 - Whether or not
he wished to sell the same - and
was it or not - the lands - sold
to Woodward - & what price he
asked for the ~~same~~ land.

Ans - I think I know of his owning land
on Rock River at that time -

Inter - 3 Did you write to Jacob P. Shand
to enquire to know - whether ~~the~~ or
not he would sell the lands after
wells - sold to Woodward - & if so
what - was the price he fixed on
said land -

Ans - I write presently - that it was the
same piece of land now in con-
tention - not knowing however per ac-
tually - that he was - the owner - but
by the answer - I concluded that he
was owner - I think he said - it was
for sale as things had not turned as he had expected
I think it was a

a thousand dollars - or otherwise -
 Hodges - offered was a thousand
 dollars - with stipulated in
 statement

Ques 4. Have you or not got the letter -
 answered - refused to - in your pos-
 session if not - what has become
 of it =

Ans - I may have it - know it is not
 here - and I cannot but know
~~that~~ as I can find it =

Ques 5. Did or not you inform your father
 that if no one else would give - a
 thousand dollars - for the land -
 you would.

Ans - I think not, there was no such
 words put between us.

~~Long Examination~~

Examination

Ques 1. Did ^{not} Anthony - No. Shaver - say
 to you - that he - wished - you to say
 to your father - that he wished - him
 not to sell - the land to Woodward -
 or ^{any} other person -

Ans - He said - he wished me to say
 to my father - not to sell the land to
 any person - as he would take back
 the land, I don't recollect - as Woodward's
 name was mentioned -

Sub- 2 Did or not, Anthony, Mr. Flannery name
any price he would give for the land
at the time of payment, in ^{the} word he
sent, to your father, - by you =

Ans- I think he acceded to the terms in
my father's letter in regard to price
& I think the price was a thousand
dollars. - Anthony asked my father
to send him the terms of payment

Copy of answer

Sub 1- Please state all the circumstances that
took place between yourself and An-
thony in relation to the land - of the
time above referred to -

Ans- I think Anthony stated that the understand-
-ing was that he was to have the land if
his brother's did not take it & he sta-
-ted that the agreement between him & his
father was that he was to have the
first refusal of the land if he were
to any one besides the boys -

Sub, 2- Was there or not any thing said in
that connection with Anthony - as to
the terms on which he had decided
the land to his father =

Ans- I think the terms were spoken of that he
was to have the land if the boys
did not take it =

Re-Direct, =

Sub, 1- Did or not, you understand that Anthony -
74 was to have the land in controversy - as a

75- gift, or was he to pay a certain amount
& if so how much - was he to pay -

Ans - I did not understand that he was to
have the land as a gift

He was to pay a certain amount
for it - if he took it - I don't think I know
the amount, exactly - he was to pay

Sub 2^d - What was the date of the letter you
quote - off -

Ans - I do not recollect precisely - I think
it was in the winter of 1854, the day
& month I do not recollect -

Sub - 3 - What was the date you left for your
father - state the month & year -

Ans - I think it was in the first of April
1854 - I cannot recollect the day -

Sub - 4 - Was or not, are the letters you have shown
to, received & your information got, before
you went East, -

Ans - In regard to the information by letters it
was got before I went East, -

Sub, 5 - Did or not Jacob P. Shaw - tell you
that he had seen the land to Lin Wood-
ward & got his pay for it?

Ans. I do not think he did directly. & I don't
know - but, that he might, -

Sub 6 - What did you say to your father about
the land - in Illinois - or the sale thereof
& what did your father reply -

Ans - I have the information I got, - from some source I told my father that he had done wrong - in selling the land

Sub 7 - Did you or not, - have a talk with your father - about the sale of the said land to Woodward

Ans I did have a conversation with him about it, -

Sub 8 - What did your father say at the time spoken of by you in the last above inquiry as to the sale of said land to Woodward

Ans He said he had acted in the matter, according to best of his judgment for the interest of Anthony from the reports that were brought to him.

Sub 9 - Did you or not, hear your father say that he had sold the land in question to Woodward -

Ans I think I heard him say that he had sold the lands in question to Woodward -

Corr - assumed

Sub 1 - State to whom your father's report as ~~Marriage~~ bringing him reports as stated by you - in your answer to the 8 above interrogatory and fully - the whole conversation between yourself and your father - in relation to the land in question on that occasion

Excluded to

Ans I think it was quite bright seen by
Mr Woodward. The way it was repre-
sented to him, he thought there was
was no understanding between the
parties. Anthony and Mr Woodward
and thought he was doing his duty
in dividing the land to Woodward

1. Ques. Redict, resumed=
Did or not your father tell you
that Miss Sally Webster, asked him
to sell the land to Woodward.

Ans. I don't think he did if he did
I don't recollect it.

Ques 2 Did or not your father tell you that
Miss Sally Webster thought that Wood-
ward offered all the land was worth

Ans I think he did not, I don't think
there was any conversation about it.

Ques 3 Was you down to your father's house
in the state of New York before or after
your father sold the said land to
Woodward.

Ans I was there before and after & af-
ter too I was not there at the time
of the sale I believe.

Ques 4 Was the conversation related by you
as above before or after the sale of
said land to Woodward.

Ans I suppose it was after as I remem-
bered the sale. Nicholas A. Shaw.

Subscribed & sworn
to before me - this 14th
day of June A.D. 1868.
T. A. Bogardus P.

John Hodges - sworn - deposes
and says - as follows - to wit -

Ques 1- What is your name age occu-
- ~~pation~~ - ~~as you reside~~

Ans- John Hodges, my age is - fifty
four. my occupation - is farm-
- ing - I reside in in Carroll County
of State of Illinois -

Ques 2 Do you know Anthony. W. Shank-
& Levi Woodward and how long
have you known them respectively -

Ans- I know Anthony. W. Shank
I know Levi Woodward -
I have known them for a six
years -

Ques, Did you have any correspondence
with Jacob. P. Shank - by letter - or
otherwise by your self or others
Shank or any other person
in regard to the land - in question
or the purchase thereof if yes - state
the facts - in regard - to such - pur-
- chase & sale or contract

Ans- I had such correspondence with Jacob - P. Shaw - by Nicholas A. Shaw - by letter in regard to the land in question. I wanted to purchase the land, - The answer that was returned by letter to Nicholas A. Shaw - was that I could have the land for a thousand dollars =

Inter 4 Was there any reserve made of lands in ^{of the land} Illinois - If so how much - did the said Jacob P. Shaw reserve -

Ans- There was - no reserve made as I know of =

Inter 5 Did you or not know that said Jacob P. Shaw could file some of timber land - aside from the pre-ric land
Ans Not to any extent - did I know of it =

Inter 6 - What was the date of the letter - you spoke of - as written by Nicholas A. Shaw - to his father in regard to your application to purchase the land in question =

Ans- I can't tell the date =

John Hodge —
Subscribed & sworn
to before me this 1st
day of June 1858
J. A. Bogues J. R.

State of Missouri
Cocke County

I Virgil A. Bogues
a Justice of the Peace of said
County, do certify — that the foregoing
depositions of Nicholas S. Shaver &
John Hodge — were taken by me
on the 1st day of June A. D. 1858, at
my office in P. M. in said County —
as mentioned in the Caption thereof.
That the said depositions were first duly
sworn — and the same was carefully
read over to said deponents, and signed
by them and then sworn to —

Dated this 1st day of June 1858
J. A. Bogues

Gilbert Finckle A Witness sworn not in the notice
Testimony taken by agreement of Counsel to be
allowed or rejected as may hereafter be determined
Henry A. Mix

Interrog 1 What is your name - age - occupation and
place of residence.

Ans 2^d My name is Gilbert Finckle my age is Twenty Nine
I reside in Whiteside, county & State of Illinois - my
occupation is farming

Interrog 2^d Were you or not living with Jacob P Shaver in the year
1854 or when Woodard lost the land. Did you or not know of
said Shaver selling any land in Illinois to said
Woodard and if yes how much did Jacob P Shaver
say he had made on the same

Ans 2^d I was, I did not know of from him. I don't recollect
that I heard him say that he had made any-thing

Interrog 3^d Did you not hear Jacob P Shaver say he made one
hundred dollars in the purchase & sale of his land in Illinois

Ans 3^d No sir

Interrog 4 Have you ever told any person that the said Shaver

8) told you he made one hundred dollars in the sale
of said land.

Ans 4 No sir I think not.

Interrog 5 did or nor Jacob P Shaver tell you what he got for the land and you
replied you made ~~that~~ hundred dollars each and did nor Jacob P
Shaver say yes or no to that in part. —

Ans 5 No sir he did not. No sir he made no such reply

Interrog 6 What did Jacob P Shaver say in answer to what was stated by you
to him contained in interrogatory No 5

Ans 6 He hesitated a while and said that he did not know
that he did.

Subscribed & sworn to Gilbert ^{his} ~~X~~ Finkle
mark

before me this 1st day of June
AD 1858 V A Bogue J.P.

State of Illinois

Ogle County of I Virgil A Bogue a justice of the Peace
of said County do certify that the foregoing deposition of
Gilbert Finkle was taken by me at my office in
the Town of Polo in said County on the first day
of June AD 1858. That the said witness was first duly
sworn and that the same was carefully read to said
witness and signed by him & then sworn to
Dated this first day of June AD 1858

Cornus just p 6.00

V A Bogue J.P.

On the back of which appears the following
opened & filed June 8th 1858 M. Smith Clk

And afterwards to wit! on the 23rd day of November AD
1858. it being one of the days of the November Term of
the Ogle County Circuit Court. AD 1858. the following pro =

On the back of which appears the following
opened & filed June 8th 1858 M. Smith Clk

And afterwards, to wit: on the 23rd day of November AD 1859. it being one of the days of the November Term of the Ogle County Circuit Court, AD 1859. the following proceedings were entered of Record in said cause, to wit:

Anthony H. Shaver

vs

Levi Woodward &
Jacob P. Shaver

Now, on this day, comes the said Complainant by Miss. his Solicitor and the Defendants come by Keaton and Dutcher their Solicitors and the motion of the Defendants, to suppress certain Depositions herein, coming on to be heard, after argument of Counsel, and the Court being fully advised in the premises. It is ordered, that said motion be overruled

And afterwards, to wit: on the 20th day of March, AD 1861. the same, being one of the days of the March Term of the Ogle County Circuit Court, AD 1861. the following proceedings were entered of Record in said cause to wit:

Anthony H. Shaver

vs

Levi Woodward
& Jacob P. Shaver

And now, on this day, comes the said Complainant by Miss and Turner, his Solicitors, and on his motion, leave is given him, to have his Replication herein, filed, as of October 1857, whereupon, this cause, is heard by the Court. —

82 And afterwards, to wit: on the 21st day of March AD 1862 the same, being one of the Days of the March Term AD 1862 of the Ogle County Circuit Court, the following proceedings were entered of Record, in said Cause, to wit:

Anthony H Shaver

vs
Levi Woodward
and Jacob P. Shaver

Now, on this day comes, again, the said Complainant by his Solicitor, and the Defendants, by their Solicitor, and thereupon, it is ordered, that a Decree be entered in this Cause, as the hearing, had in the same, at the March Term, last, and that the equity, prayed, in and by said Bill, be denied, and that the said Complainant's Bill be dismissed at his cost, and that said Defendants have and recover of said Complainant, their costs in this behalf expended and that they have Execution therefor, to which ruling & determination of the Court, the Complainant excepts, and prays an appeal, to the Supreme Court, of this State, which is allowed, upon filing bond, with Nicholas A Shaver, or Henry A Meix as Security, in thirty days in the penal sum of Two hundred Dollars. —

And afterwards, to wit: on the 19th day of April AD 1862, an Appeal Bond, was filed in said Cause, which is in the words and figures, following, to wit:

Know all men by these presents, that I Anthony H Shaver, as principal, and Henry A Meix as Security, are held and firmly bound, unto Levi Woodward, and Jacob P. Shaver, in the penal sum of Two hundred Dollars, for the payment of which, well and truly to be made

83 we bind ourselves, our heirs, executors, administrators and assigns, jointly, severally, and firmly, by these presents,

Witness our hands and seals, this 19th day of April AD 1862,

The Condition of the above obligation is such, that whereas, on the 21st day of March AD 1862, 'it being one of the days of the March Term, AD 1862 of the Honorable, the Circuit Court, of Ogle County, and State of Illinois in a certain cause, therein pending, wherein the above bounden Anthony H Shaver, was complainant and Levi Woodward, and Jacob P Shaver, were Defendants on the chancery side of said court, it was on said day, ordered by the said Circuit Court, that the Decree herein as of the June Term AD 1861, be filed, the same being that the Bill in said cause, be dismissed and Equity prayers be denied, on hearing of said cause, to which Decree the complainant, therein, then and there, excepted, and prays an Appeal, to the Supreme Court, of the State of Illinois, which was allowed, on the said complainant to wit: the above bounden Anthony H Shaver, filing a Bond therein, with Nicholas A Shaver, or Henry A Meix, as Security, in thirty days, in the penal sum of Two hundred Dollars,

Now, if the said Anthony H Shaver the, above bounden as aforesaid, shall prosecute his appeal, with effect, and without delay, and well and truly pay all judgments, costs, interest, decrees and damages, as may be awarded against him, in case said judgment or Decree, shall be affirmed in said Supreme Court, then this obligation to be void, otherwise to remain, in full force and effect,

Anthony H Shaver *Attest*
Henry A Meix *Attest*

Filed April 19th AD 1862.

F. A. Petrie Clerk
By A. F. Shute Depty

Cost of Trans - \$19

State of Illinois
 Of the County of J. Frederick G. Elvie Clerk of the
 Circuit Court in and for
 said County in said State do hereby certify that
 the above and foregoing is a true, full & perfect
 Transcript of the Record & proceedings in the above
 entitled cause as

Witness my hand & seal this
 14th day of October A.D. 1862

J. G. Elvie Clerk
 B. B. Schurlock



153 296 175
Anthony H. Shaver
Seri Woodward et al.
Record & Envs

Filed Apr. 24. 1862
L. Deland
Clk.

Supreme Court of Illinois.
Third Grand Division,
April Term thereof A.D. 1862

Anthony. W. Shaver

vs
Levi Woodward and
Jacob. P. Shaver } Appeal from Ogle

The doctrine that a deed of lands absolute in its terms, may be shown by parol proof to have been intended as a mortgage to secure a debt - has been perhaps settled in this state. See 23 Ill 648 and the cases there cited. It is unnecessary to say that - this is a doctrine fraught with great danger. It renders the statute spe. frauds nugatory in this class of cases and is a violation of the principle that the writing of the parties should be held to contain the whole agreement. If the doctrine had not been established we would be disposed to insist - that - unless there was some proof of accident, fraud or mistake proof of a parol agreement - should not be admitted to vary the terms of the deed. See 2 Strong Eq. Jur. Sec 1018, also sections 153 485, of the 1st volume. The Legislature has it - would seem endeavored to limit it to

cases where the intention could be gathered from something apparent-upon the face of the deed. Pursh's Stat. 156 sec 12. It is so extremely dangerous to permit-a man, who has sold a valuable tract-of land to avoid the effect of his conveyance by mere parol proof that-he only conveyed it to secure a small ^{sum} ~~sum~~ of money, that-the most-clear conclusive and positive evidence should be adduced of such parol arrangement. If an absolute conveyance can thus be changed into a mortgage when no fraud accident-or mistake is shown and when there is no written defeasance and by no other than parol proof that-the grantor, owing the grantee, made him an absolute deed to secure the debt-How frail is the tenure by which the grantee in his deed holds the conveyed premises and how utterly useless may be his solemnly executed conveyance? Such a doctrine ought never, it-seems to us, to have been established, without proof of some fraud accident-or mistake. Never when the grantor knew that-his deed was an absolute one and executed it-with-a full knowledge of its legal effects. Would it-not be better to have the grantor suffer the consequences of

of his neglect-or folly than to so endan-
ger the Will's ~~to~~ real estate?

There was no reason why these parties
could not-as well have expressed their in-
tention in writing as to have left it resting
partially in parol. The debt of \$444.50
had been secured by mortgage on this same
land why, when the amount was increased
was the form of a mortgage abandoned
and that of an absolute deed adopted to
secure ^{the} the same land, the increased debt?
The fact that the usual form of security
was abandoned and an absolute deed execu-
ted seems almost absolutely conclusive
evidence of the intent of the parties
that the conveyance was in discharge
of the debt and not to secure it. The
very ^{Nature} ~~notion~~ of the transaction shows that
the parties did what they intended when
one executed and the other received ~~an~~ abso-
lute deed. The consideration for the deed
was the discharge of the prior debt of
\$444.50 and interest and the additional
money paid by the father to the son. How
could this instrument be a deed for one
purpose and not for another? A deed or
not-a deed depends ^{ing} upon the contingency
of either of the grantors Brothers concluding
to go west; if either of the Brothers went west

and settled on this land the grantee
might - convey the land to him and the
complainant - might - keep the 1000 which
his father had furnished him. The old
note and mortgage must have been
given up as satisfied when the absolute
deed was made, and it does not appear,
and it was not ^{probably} ~~properly~~ so, that any
evidence of indebtedness was given by
the complainant - to his father for the
\$1000. It seems to us exceedingly plain
that all this indebtedness was dischar-
ged by the conveyance and that the ~~money~~
~~sum~~ furnished to the complainant by
his father was the purchase money for the
land, and that the deed of the father to any
grantee would have conveyed the title.
That it would have conveyed the absolute
title to either of the sons who desired to go
west, is most certain and if in the
latter instance we think ~~the~~ the conveyance
to the defendant - Woodward conveyed the
the title because it could not depend up-
on who should be the grantee of the father
whether the conveyance to the father was
an absolute deed or not. It was either
an absolute conveyance when it was ex-
ecuted or a mortgage. To have this abso-

lute deed be made a mortgage by parol
proof that it was given to secure a debt
is hard enough but also to have it de-
pend upon parol proof that it should
be a mortgage or not - a mortgage accor-
ding as this or that person should become
the grantee of the father would be really
carrying the thing rather too far in our hum-
ble opinion. The deed was therefore we think
an absolute one. It is not improbable
that the grantor and grantee may have con-
templated that in case of one of the brothers
not purchasing, the complainant might
repurchase the land if he desired to, but it is
we think clear from the evidence that there
was no contract that the complainant
should repurchase, He might or might
not. Such a contract as this most cer-
tainly would not be valid under the stat-
ute of frauds unless it was in writing.
If it was an actual sale by the com-
plainant to the father in discharge of
the debt it became the land of the grantee
and a parol contract to resell would be
no better we take it than one to sell to an-
other. The evidence of the father of the com-
plainant shows that the absolute con-
veyance was made purposely in prefer^{ence}
to a mortgage, so that he could more con-

merely convey the title to the son who would go west and there was no mistake, no accident, no fraud, and he evidently took the conveyance in discharge of his debt. He says, it is true, that it was a mere security for the repayment of \$750 and 7 per cent interest; but he says also that the complainant was to have his own time to pay in provided he paid the interest. This shows that there was no debt due at any particular period of time, and it is a mere opinion of the witness that it ^{was} a mere security and we do not think the facts and circumstances sustain him in this view of the subject. He of course has a strong feeling in favor of his son's side of the law suit: and it was very easy for him to convince himself that a sale in consideration of the discharge of the debt, with a contemplation that it might be, and not a contract that it should be, reconveyed upon payment of the debt was only a mere security for the debt. The evidence of the Father ^{is clear} is all there is on the subject of the absolute deed being intended as a mortgage, or rather that it was intended to secure a debt. ~~It was never intended for a mortgage or for anything else~~

~~cept an absolute deed and this ought not to be sufficient to satisfy the mind of the truth of it.~~ The only reason why it is for the interest of a party situated as the complainant in this case is to prove an absolute deed to be a mortgage is because the land is worth more than the debt. See the danger. A son sells a tract of land. Puts the full price in his pocket - files his bill to redeem from it as a mortgage for a trifling sum. ^{waives} ~~waves~~ the oath of the defendant and proves by the biased memory of a father or other near relative or by a required witness that the deed though absolute was a mortgage to secure a small sum of money. If there was no evidence to the contrary this evidence of the father ought not to be enough in this case. ~~The statement of complainant that Woodward offered 1100, 1200, and 1300 is probably the reverse order of the matter. Anthony, as the agent of the father having come down from the \$1800 to the consent that that Woodward might purchase for the \$1000 (5)~~

In addition to the evidence of the father is the evidence that Woodward offered to purchase the land of the complainant a few days before he went to New York. As far

© This, he elated in his answer,

as this bears on the question of notice to Woodward of the complainant's equity, if he had any, it - is, if true, important evidence for the complainant. - But as evidence in favor of the absolute deed being a mortgage it amounts to very little. Woodward knew, we presume, that the complainant once owned the land and that he had made a conveyance to his father and he would naturally have talked with the complainant about price for the land, and may have desired him to write to his father about it. The offer, of course, was through the son, of so much for a deed to come from his father and the ^{motive} ~~motion~~ may have been to make Woodward pay more than the \$1000 so there would be a surplus ^{when he would} ~~where~~ he would have been glad to have his father get only \$1000, ^{rather than not sell} Men often say what they do not mean while trading and he would do the same thing if trading for his father as though he was trading for himself. He himself came down probably to consent that Woodward should go and buy of the father for the \$1000. which he did; and a subsequent rise in value may have been the cause of the difficulty and the law suit; The statement of complainant that Woodward offered \$1000, \$1200, and \$1300 is probably the inverse order

① If he took the land back he would have given notes & mortgages to secure the price and he did not desire to have his debts to pay the principal, to this that his father should pass the land in discharge of it.

of the matter, Anthony, as the agent of the father, having come down from the \$1300 to the consent that Woodward might purchase for the \$1000. (55) The refusal of the complainant may have been merely a feigned unwillingness, because he had said to Anderson that spring, "that he had sold the land to the father, that his father wanted him to take it back but that he declined; that he got out of debt by selling the land; that his father was an old man and might drop away and that if he did take it back his notes might come into some person's hands that he did not want to have them" (69)

The declaration of the complainant if true, is quite conclusive evidence that there was an actual sale by the complainant to his father in discharge of the debt and not a mortgage in the form of an absolute deed, to secure it. The father however was willing to deed back and take his money but the complainant was not willing to pay that amount till after a rise in value and then he went to work to revive the old discharged debt and make a mortgage to secure it out of that which was really an absolute deed in consideration of the discharge of it. ②

It not only appears that the complain-

and admitted that the consideration of the deed was the discharge of the debt. ~~For~~ the father himself said ~~the reason he bought it~~ ~~was~~ that he had bought the land of his son and that it cost him about \$800 (63). ^{The father} He also offered to sell the land to Nicholas St. Shaver for the same price which Woodward paid for it; We do not agree that the evidence of Fisher ^{Finley} proves nothing as stated in the abstract. The statement of this witness that when he asked Jacob P. Shaver if he did not make that hundred dollars easy by the purchase and sale of this land "He kinder smiled and said that he did not know that he did" (81) Now that "kinder smiled" in our estimation is not only of importance enough to find a place in the abstract but is pregnant with meaning favorable to the defence. Suppose a man had asked a woman whether she would marry him and she "kinder smiled" and said she did not know that she would. He certainly would not consider his case desperate.

We notice no other evidence in the record bearing on the question whether the land was conveyed or mortgaged. We think the preponderance of the

evidence is to the effect that - the parties did what they meant - to when the deed from father ^{by the son to his father} to son was executed, The son owed the father \$4446.50, The son in consideration of the discharge of this debt and interest and of the payment to him of more money, conveyed this land to his father, which the latter conveyed to Woodward. The son was satisfied with this condition of things, and was glad to be thus out of debt to his father and to have had the cash which he received, And this plan to call the absolute deed a mortgage was an after thought or contrivance to get the land from Woodward for less than it was worth, after a rise in value from a price which was fair at the time Woodward paid it. The Court below decided right on the facts of the case, We have ^{properly} not ^{properly} passed the question of notice. We think Woodward considered that the sale was an absolute one to the father, and that the \$1000 was all he was to pay. Suppose however that there was a verbal understanding between him and complainant that he should pay him something in addition to the sum paid the father. Complainant - can recover it at law.

We think, however, that \$1000 is all
the evidence shows the land was worth
when Woodward bought it and that the
strong probability is that it was with
the consent of complainant that the
father sold to Woodward for that sum

Lee and Blanchard
for Apprais

153 246

Blanchard & Chapman

vs

Levi Woodward

vs
Jacob P. Chapman

Argument for
Appellee

Given May 9, 1872

J. Delmon

CMR

State of Illinois }
Ogle County ss }

At a Circuit Court, sitting as a court
in Chancery, begun and holden at the
Court House in Oregon, in and for the County of Ogle, in
the State of Illinois, on the Third Monday of March
A.D. 1862, the same being the 17th day of said month of
March, then and there being present

The Honorable William W. Heaton Judge of the 2nd J.

Frederick G. Petrie Clerk

John A. Hughes Sheriff

By Edmund C. Sexton his Deputy

Joseph Sears Attorney in Chancery

Attest F. G. Petrie Clerk—

And afterwards to wit:— on the 27th day of
March A.D. 1862, the same being one of the days
of the said March Term A.D. 1862, the following orders
or decrees were filed and entered of record to wit:—

Anthony H. Shaver

} Bill

vs

Levi Woodard } Jacob P. Shaver }

} And now on this day
comes the said Complainant by
H. C. Chip his solicitor, and it

appearing to the Court that the decree of this Court made
at the last March Term thereof, has never been filed & recorded
on motion of said Chip for Complainant, it is ordered that said
decree be filed and entered of record as of the present Term.
& that said Complainant have leave to take & appeal to the
Supreme Court, from the finding of the Court in said

decree, the same as if said cause had been heard & decree entered at the present Term. Whereupon said Complainant prays such appeal which is allowed on the said Complainant filing Bond with Nicholas A. Shaver or Henry A. Ship as security in the penal sum of Two hundred dollars, conditioned according to law

W. W. Heaton Judge

And which decree referred to above is in the words and figures following to wit: —

Anthony H. Shaver

} Bill

vs

Levi Woodard & Jacob P. Shaver

} This cause coming on for hearing & the Court having heard

Bill, Answer, Replication & the proof on file & allegations of the parties, and the arguments of their respective Solicitors & being now sufficiently advised in the premises, it is ordered & decreed by the Court that this Cause & the Complainant's Bill of Complaint filed herein be dismissed & that the Complainant herein pay the costs

John V. Eustace

Judge 22nd Jud. Cir—

State of Illinois }
Ogle County vs }

J. Frederick G. Petrie Clerk of the Circuit Court, in and for said County, in said State, do certify, that the foregoing orders or decrees are true and perfect copies of decrees entered in the above

entitled cause wherein Anthony H. Sharer is Complainant & Levi Woodard & Jacob P. Sharer are defendants & which were sent to this office and filed among the Records thereof by the Hon. William W. Heaton Judge of said Court. Since the Transcript was made out in said Cause for an appeal to the Supreme Court & were filed as of the 27th day of March A.D. 1862. being the last day of the March Term A.D. 1862. of said Circuit Court. by order of said Judge & that the same are truly & correctly copied from the Records of my office

In Testimony Whereof. I have hereunto set my hand. and affixed the seal of said Court. at Oregon. this 26th day of April A.D. 1862

J. H. Petrie Clerk

By M. L. Ettinger Deft

Fees 754

~~296~~ 296

Shaver
vs

Woodward

Admiral River.

Is a part of
the original paper
found in the case
of order of Court April
30. 1882

L. Leland
Clerk

Anthony H. Shaver } appeal to the Supreme
18 } Court from the Circuit
Levi Woodard } Court of Cyle County
Decided at the April Term
Of the Supreme Court for the
Year AD 1862

To the above named Anthony H. Shaver
You are hereby notified that
at the next Term of the Supreme Court
the State of Illinois to be held at Ottawa
On the first Tuesday next after the third
Monday of April next I shall apply to
Said Court for a modification of the decree
of said Supreme Court Remanding said Cause
so as to allow the Court below on good Cause
Shown to permit a rehearing of said Cause
The title of this Cause in the Court below
was Anthony H. Shaver vs. Levi Woodard
and Jacob P. Shaver

April 4 - 1863

Levi Woodard

Read the within to
 the within named
~~James C. Crocker~~ Anthony, H.
 Shaver in his presence & the
 and being of the 1st day
 of April 1863
 for James Samsone
 constable

State of Illinois James Samsone being
 Ofc County first duly sworn says
 that he did on the seventh day of
 April AD 1863 serve upon Anthony
 H. Shaver complainant in this cause
 the within notice by delivering
 to said Shaver a true copy thereof
 and by personally reading the same
 to him and in his presence and
 hearing in the county of Ogle
 State of Illinois

Subscribed & sworn
 before me this 20th day of April 1863
 James C. Crocker
 J. James Samsone

State of Illinois }
La Salle County }^b

On this twenty-second day of April A.D. 1863 personally appeared before Lorenzo Deland, Clerk of the Supreme Court, Levi Woodward the appellee in the Case of Anthony Shaver against him in the Supreme Court decided at the last term who being duly sworn deposes & says that he purchased the premises in controversy in said case with the full & entire belief that the said Jacob P Shaver was the owner of an absolute unincumbered title thereto, & with no suspicion that Anthony & Shaver had any equitable right in the land, purchased, & without the least suspicion that the deed from Anthony & Shaver though absolute in form was really intended as a mortgage. Prior to the time the said Jacob P Shaver took said conveyance from his said son Anthony, & while the said Jacob was on a visit in the neighborhood, the said Jacob had a conversation with affiant, substantially as follows. The said Jacob said he

Heed his son Anthony's Mortgage on
the land, and that he had proposed
to buy the land of his son, & that An-
thony asked for the price of timber
about nine hundred dollars Jacob
A. Shaver said to me. that he thought
that his son asked too much I told
him that the price was reasonable
enough that I had thought of selling
my own farm, & that if I did I would
~~buy~~ ^{buy} the land of him at the price he
said Anthony would take. The father
said he would see me again before
he went East. He went home now
ever afterwards seeing me

Some time after this conversation with
the father and after Anthony had con-
veyed the land to his father, I had a
conversation with Anthony, who lived
near me in which I told him I had
had an offer for my place & that if
I sold I would like to get the old
man's place meaning the land which
I afterwards purchased, & the same in con-
tinuity. Anthony asked me what I
would be willing to give, I said I
would give \$1000. Anthony said he
would write to his father to get the
land for me for that price, and

afterwards Anthony told me he had writ-
ten a letter to his father but had got no
answer. I afterwards went East & pre-
sented the land. There was never any
thing said to me to raise a suspicion
that the land had not been absolutely
sold by Anthony to his father, but in
all conversations on the subject the fa-
ther & Anthony treated the land as actu-
ally belonging to the father, & as having
been sold in consideration of the amount
due on the mortgage, & an additional
sum paid by the father. At the time
of the purchase of the land, by me the
father said that he had bought it of
his son, & that the balance of the price
over the amount of the mortgage had
been paid by the father to Anthony's ac-
count. Affiant never till he was adver-
sely affected by the bill, heard anything
to the contrary. Immediately after his pur-
chase he made large & valuable im-
provements, & the land also having risen
in value. This fraudulent sale was con-
tinued to deprive them of what was
nearly his. Affiant further says that
said Jacob Shams is quite an old man,
of bubble intellect, and one who could be
easily imposed upon & induced to make

inaccurate statements in relation to
conversations had with affiant. Affiant
further says that he ~~has~~^{has} had an inter-
view with the witness Douglas since his
deposition was taken, & said Douglas has
stated to him that he was satisfied that
he was mistaken in relation to the con-
versation mentioned by him having taken
place in presence of this affiant.

Affiant further says that an examina-
tion of the depositions will show that
nearly all but the last page or two
and the whole of the most material portions
are not in the hand writing of the Com-
missioner who took said depositions, and
are upon paper identical in color & tex-
ture ruling & brand with the paper upon
which the Notices filed in the clerk's office
in Ogle County were written. Affiant
fully believes that the material portions
of said testimony were reduced to writ-
ing, & forwarded ^{from Ogle County} to the Commissioner by
some one employed by Anthony ^H Shaver.

Douglas informed this affiant that ~~and~~
the depositions were sent on from the
misleading complaint.

Affiant further says that since the
hearing below he has discovered new
& material evidence, which he did not

at that time known of, & could not
therefore have on the hearing the ~~case~~
evidence since discovered is that men-
tioned in the depositions hereto attached
Officer therefore asks for a modi-
fication of the opinion & order in
this case, so that the Court below
may ^{not} consider it a mandate depri-
ving this Officier from moving for
a rehearing in the Court below
and that Your Honor will so mod-
ify the opinion & order as to remand
the cause simply without commen-
ding the Court below to enter up a
decree if for good cause shown
the Court below should deem it
proper to grant a new hearing of
the cause. Officier hopes that the
unintentionally unjustly severe things
said about him in the opinions may
at some time be recalled. Must be-
cause the evidence of wrong on his part
is untrue, but enough if it were
true. He finds no fault with the
censure coming from those who believed
it merited, and only fears its effects
where he is unknown Levi Woodard

Subscribed & sworn to before me
Apr. 21. 1869. L. Iceland
clerk.

Anthony T. Shaver
vs

Levi Woodard

Deposition of John Hodge a resident
of the County of Carroll, and State
of Illinois, aged ~~about~~ about fifty
seven years, a witness on the part
of the defendant in the above entitled
suit.

Said witness being first duly
sworn, deposes and says, as follows
that I asked Anthony T. Shaver
if he had sold his prairie land to
his father, he said he had, I then
asked him for how much, he told
me, I think about eight hundred dol
lars, I then asked him what was
his motion for selling, the said that
he owed his father, I then asked him
if his father was exacting him, he
said that he was not, but that his
father was getting old, and that his
notes might fall into some body's
hands who would not want to honor
them, and that he had all the land
left that he wanted, and that let him
out of debt.

A short time afterwards, I went to him
and asked him if I could buy the land
of his father, he said that he thought
I could, I then told him my means
were small.

for paying for it, and he thought
it would answer,

I then asked him to write his father
concerning it, which he agreed to
do, I called on him again to see if
he had got any word from his father,
he said that his brother ^{John Clark} wanted
it, and that was in favour of him
having it, and that he had wrote
his father concerning it,

Afterwards had a conversation with his
brother Nicolas Shaver in regard to
said land, he stated that he did not
think that father would let Clark
have it through Anthony, and if I
wanted it I had better put in for it
The said N. Shaver said that he was
going to write his father in a few days
and that ^{he} would enquire if I could
have it, and on what condition, the
information I received ^{Mr. Shaver} through
Nicolas, was that I could have it
for one thousand dollars.

I furthermore say that in all my
conversations with N. Shaver
he never set up any claim that he
owned the said land.

John Hodge

Anthony H. Shaver
and
Levi Woodard }

Deposition of Solomon Shaver
uncle of Anthony, H. Shaver ^{and}, a resident
of Ogle County and State of Illinois,
aged about sixty three years, came be-
fore me John Curcison a justice of the
peace in and for the County aforesaid
and State of Illinois, and after being
severely deposea that as near as he can
recollect it was in the year 1853 says
that he met his brother Jacob P. Shaver
and Anthony, H. Shaver together on the high-
way and had a conversation with them.
J. P. Shaver said that he had bought
a farm of Anthony H. Shaver being 120
acres of the north part of the farm that
he then occupied said 120 acres being raw
prairie without any improvement
and that he had paid too much for
it, witness asked how much and
thinks that he told him about eight
hundred dollars, witness says that
it was cheap enough, and that he
would pay him that for it, if he
had the money, or that if he would
give time, Jacob P. said that he wanted
the money, Anthony H. Shaver said I
tell father that, "he will wait till I
can raise the money that" ^{he} would buy

it back, witney thinking that his
brother Jacob, P. Shaver is about
seventy five years age

Solomon Shaper

William Judson being duly sworn
Question What is your age, Ans. fifty one years
a resident of Ogle County and State
of Illinois,

Did you ever have a conversation
with Anthony K. Shaver in regard to
him selling some land to Jacob P
Shaver his father, it being the same
land that Levi Woodard now oc-
cupies. Ans. yes I did, please state the
conversation, I was at said Shaver's
house, and in course of conversation he
told me that he A. K. Shaver had sold
his prairie land to his father J. P. Shaver
and that he suppose that he sold it
too cheap -

Did you consider it to be a bonifide sale
from the conversation you had with him
and I did so

State of Illinois)
Ogle County,)

I John Judson a Justice of the peace of
said county, do hereby certify the foregoing deposition was
taken by me at the time and place herein in the
caption thereof, that said depositions were first duly
sworn and that after said depositions were written
they were carefully read to said witnesses, and
they thereupon signed the same -

Witness my hand and seal
this eighteenth day of April 1863.

John C. Judson J. P. Clerk

Supreme Court April Term 1863

Anthony Shaver

vs
Lemi Woodward

This cause was tried at the last term, and the decree was reversed & the cause remanded, there was however a mandate of this Court to the Court below to render a particular decree in favor of the complainant. We understand that the Court below regards this as an imperative order & that it has no discretion to allow the cause to be reheard all we ask is that the order may be so modified as to allow the Court below to hear the cause again if it shall be made apparent there that it ought to be tried again. One of the Solicitors for defendants is now present & no decree has yet been entered in the Court below since the reversal of the former one. We desire to have a change of venue & a rehearing be done. As Mr Woodward is a man of good reputation & standing in his neigh

bothered and as he swears in the
most positive manner that the
censure of him in the opinion is
entirely unjust we hope that the
cause may be heard again before
+ that your Honors may have the
pleasure of doing him justice as to
his reputation which he values more
than the property in controversy.

Del and Blanchard
per Woodard

175

Mar

by

Woodard

Sagittarius

Filed April 21. 1863

L. Ireland
Clerk.

175

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862.

ANTHONY H. SHAVER }
 ^{vs.}
LEVI WOODWARD and } *Appeal from Ogle.*
JACOB P. SHAVER. }

ABSTRACT OF THE RECORD.

- 1 BILL in chancery filed in Ogle County Circuit Court by appellant against appellees, at the March term, A. D. 1854.
- 2 Bill states that complainant borrowed of Jacob P. Shaver, who is his father, and resides in the State of New York, \$444.50, and to secure the payment gave said Jacob P. Shaver a mortgage on fractions one and two of the North-east quarter of Section three, Town ^{Mr-} ~~seventy~~-three, Range seven, east of the 4th R.M.
August, A. D. 1853, complainant borrowed of said Jacob P. Shaver a sum sufficient to make the whole amount \$950, and agreed to give said Jacob P. Shaver a deed of fraction No. 2 and W. $\frac{1}{2}$ of fraction No. 3, and also a lot of timber land in Elkhorn Grove, being the most easterly of two tracts that said complainant owned in said Grove.
- 3 Said conveyance was not then executed, because it was then inconvenient to make the same, but it was agreed such conveyance should be executed and should operate only as a mortgage to secure the payment of said \$950, and also \$50 left by said Jacob P. Shaver with complainant, to be expended on said

premises; that said complainant should have the right to redeem said premises upon repaying the said sum of \$1,000, and seven per cent. interest. This right of redemption was subject to one condition, which was that, on the return of the said Jacob P. Shaver to his residence in New York, if one of his other sons should desire to remove West, the land should be deeded to such son who was, in such case, to enter upon and improve such land, which would have been a benefit to the adjoining lands of complainant.

4 On the return of said Jacob P. Shaver, none of his sons were willing to remove West, and the conveyance became a simple mortgage on the payment of one thousand dollars and interest. On the 30th day of September, A. D. 1853, complainant executed a conveyance of the aforesaid land, except the timber land, and sent the same to the said Jacob P. Shaver. The timber land was not included, because it was impossible to give an accurate description of it. The land conveyed was worth \$1,500.

5 Defendant, Woodward, resided near complainant, and had been a member of complainant's family, and was originally in the neighborhood in New York, where Jacob P. Shaver resided, and well knew the right that complainant had in the premises and the bargain between him and Jacob P. Shaver aforesaid, and had frequently applied to complainant to buy the land, and had offered him \$1,300 for the same, but failing to buy the land of the complainant, went to the residence of the said Jacob P. Shaver in, New York, and falsely and fraudulently represented to the said Jacob P. Shaver that he had agreed with complainant that he, said Woodward, might have said premises, and that he was to pay said Jacob P. Shaver \$1,000 and arrange the residue with complainant.

6 Jacob P. Shaver refused to make said conveyance without an order in writing from said complainant. But Woodward assured him that he left in a great hurry and had no time to procure such order; that the bargain was all consummated between said complainant and said Woodward, and that much time and expense would be saved if the said Jacob P. Shaver would receive a thousand dollars and make the conveyance. All of which representations were false and fraudulent. Said Jacob P. Shaver relied on said representations, and did convey said land to said Woodward, and did receive the one thousand dollars from him.

7 Oath to the answer waived.

8 Prayer that the deed from Jacob P. Shaver be set aside.

Amendment to bill filed March 13th, 1856, states that since the filing of the original bill, complainant has discovered that there was a mistake made in the deed made by him to Jacob P. Shaver in a description of the land. That in said deed it is described as the NW $\frac{1}{4}$ and SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ fractional quarter of Sec. 3, Town 23, Range 7, east of 4th P. M.; that the NE $\frac{1}{4}$ of said section 3 is divided into 4 lots—lots 1 and 2 contain 158.16 acres; lot 3, 79.08 acres; lot 4, 110.40 acres.

Complainant never had any interest in lots 2 and 4; that the description should have been lot 2 and the W $\frac{1}{2}$ of lot 1 of said quarter; that by the deed only the title to the W $\frac{1}{2}$ of lots one and two passed said Shaver; that the North-east and North-west quarters of the North-east quarter of said section three were premises in which complainant never had any interest, and which he did not intend to convey.

11 The same error was continued in the deed from Jacob P. Shaver to Woodward.

12 Complainant offers to pay to Woodward the sum of \$1,000 and interest, and prays that Woodward may be required to convey the premises, so far as they were correctly described, to him.

Copy of deed from complainant to Jacob P. Shaver.

16 The answer of Jacob P. Shaver admits the statements of the bill to be true.

25 The answer of Woodward admits that Jacob P. Shaver is the father of complainant, and says he has no knowledge of complainant's borrowing money of said Jacob P. Shaver; denies that the sum of \$950 was loaned by Jacob P. Shaver to complainant; denies that the conveyance from complainant to Jacob P. Shaver was intended to operate as a mortgage.

27 Admits the conveyance from complainant to Jacob P. Shaver. Denies that he ever had any knowledge that said conveyance was intended as an absolute conveyance; that he paid Jacob P. Shaver \$1,000 in full payment for the land; admits the mistake

in the deeds, in the description of the land ; offers to have the same corrected ; denies that he made any representations to the said Jacob P. Shaver, as charged in the bill, or that he offered to buy the land of complainant, as charged ; denies that the lands were worth fifteen hundred dollars ; says that they were worth but a thousand.

Replication.

Deposition of *Jacob P. Shaver*. I loaned Anthony H. Shaver \$444.50 in August, 1846, and took a mortgage on some land he owned in Ogle county. In August, 1853, I loaned him another sum, which made the whole amount loaned \$950. He agreed to convey to me one hundred and seventy acres of prairie land, contiguous to his farm, and north and north-west therefrom, and ten acres of timber in Elkhorn Grove, being the most easterly of two ten acre tracts in said Grove, owned by complainant. The deed was a mere security for the repayment of \$950 and seven per cent. interest. Complainant was to have his own time to pay in, provided he paid the interest. But it was agreed between us that if either of my sons should go out and settle on the land and improve it, then I was to deed the land to him, and he was to pay me the sum complainant owed me. At the time I loaned complainant the last sum, I left with complainant fifty dollars (\$50) which, in case either of my sons did take said premises, was to be retained by complainant in consideration of releasing to his brother this bargain. And in case neither of my sons desired to go West, the \$50 was to be added to the \$950 and be repaid by complainant. Anthony did make the conveyance to me, which I attach to my deposition. I am advised that there is a mistake in the description, but being unacquainted with the government lands I cannot tell whether it is so or not. The deed did not embrace the timber lands, which I considered of no consequence, as complainant assured me he would repay me the money in a short time if I desired it. The reason why I took a deed instead of a mortgage was, we both felt anxious that one of my sons should go and settle near Anthony. I thought it would be much more convenient to effect that object by taking a deed than by taking a mortgage.

Woodward, I think, knew all about the interest Anthony had in the premises. He told me that Anthony told him all about it. I think he knew about it about the time I let Anthony have the money, in April or May, 1854. Woodward came to my

residence in the state of New York, and told me he wanted to buy the land that my son, Anthony, deeded to me. I told him it was not my land to sell, that I only held it in security for about \$1,000 that Anthony owed me. He came to my house a day or two after and told me that he had bought out Anthony's interest; that Anthony had released the land to him; that by the arrangement he was to pay me a thousand dollars, and the balance he had or would settle with Anthony. I told him he should have brought a line to that effect. He replied that Anthony would have given him one but that it would have cost him three or four miles travel, and considerable trouble, to have got it, and he concluded to come without it—but the whole matter was right. He continued his applications, entreaties, and representations, until at last I told him that if he would make the same statement before the magistrate, who took the acknowledgement, that he had to me, I would deed him the land. In May, 1854, I gave him a deed for the land described in Anthony's deed to me. If there is a mistake in one there is probably in the other. When he went before the magistrate to have the deed acknowledged, I told Mr. Douglass, the magistrate, the terms upon which I executed the deed—that the land belonged to my son, Anthony; that I only held it as security for the money I let him have; that I was bound to re-deed it on payment of the money; that I objected to deeding the land to Woodward till I could hear from Anthony in writing, but Woodward told me the matter had all been arranged between him and Anthony; that Anthony had intended to have given him a writing to me.

45 He was to pay me the \$1,000 and arrange the balance with Anthony. Mr. Woodward stated that what I said was all true. The magistrate told me there would be no risk in making the deed under such circumstances, and I made it.

46 Testimony of *Alexander B. Douglass*. My age is 35. I reside in Delaware county, New York. Not acquainted with complainant. In May, 1854, Levi Woodward and Jacob P. Shaver came to my office to get a deed drawn and acknowledged. I prepared the deed from one Mr. Shaver, brought with him from his son, Anthony. I was Justice of the Peace. After the deed was prepared, and before it was executed, and before the consideration was paid, Mr. Shaver stated to Woodward and myself upon what conditions he executed the deed. He said the land belonged to Anthony. That Anthony had deeded to him to secure him for money he let him have, \$1,000 I think he said.

That it was the express understanding between him and Anthony that if one of his other sons should not conclude to go West, and take the land and pay him the amount Anthony owed him, that Anthony was to have the land without any conditions whatever upon the repayment of the money loaned and interest. That this was the express bargain made with Anthony before
 47 the deed was executed by him. That Woodward had told him that Anthony had agreed to let him have his interest in the land. That he was to come and get a deed and pay the \$1,000. That the balance had been arranged between him and Anthony. That he, Shaver, had refused to execute the deed unless he was authorized to do so by Anthony. That Woodward had told him that Anthony had intended to have given him an order authorizing the deed to be made to him, but that he started off in a hurry—that it would have cost him some trouble and travel to have seen Anthony, and he concluded to come without it. Woodward assented, and said it was all right. That he had told Mr. Shaver so. That he was to or had paid Anthony for his interest in the land. Mr. Shaver then asked me if there could be any risk of his executing the deed under such circumstances. I told him I thought not. Woodward said there could be none at all—Mr. Shaver would find it just as they had talked it over. Mr. Shaver then executed the deed.

49 Copy of the deed attached to the deposition.

Deposition of *Elizabeth Shaver*. I know the parties. I resided in the family of Anthony Shaver six months in 1854. Levi
 54 Woodward resided one mile from Shaver's. He formerly lived in Shaver's family. I saw him twice at Shaver's house while I lived there. At that time Anthony Shaver claimed to own the
 55 land referred to lying north and west of his farm, being a tract of 120 acres. I know that Woodward knew of the interest Anthony Shaver claimed in the land, from the act that Woodward tried to purchase the land from Anthony Shaver. The last of April, 1854, I heard Woodward offer Anthony Shaver \$1,300 for the said land. Shaver replied he could not have it, that he had bought it expressly for his own use. Two or three days afterwards Woodward went to the state of New York.

Defendant's proof.

59 Deposition of *Sally Webster*. Age 51. Live in Polo, Ogle county. Acquainted with the parties. Anthony Shaver is a brother of mine. Jacob Shaver is my father.

60 I was at the residence of my father, in New York, when Wood-
ward came there to buy the land in Illinois. I did not hear the
62 conversation in relation to the land. Father's family consisted
of my father, a brother and sister, a hired girl and hired man.

64 Deposition of *George R. Webster*. Age 52. Farmer. Live
in Polo, Ogle county. Know the parties.

The following testimony was objected to:

I had a conversation with Jacob P. Shaver about the land I
suppose Mr. Woodward owns in Illinois. It was the season
Shaver got it of Anthony, I think. He said he had bought the
land of Anthony. I think he said it cost him about \$800—it
might have been more or less. He told me where the land was,
more or less. He did not give the numbers. Don't recollect
that timber land was mentioned, or how many acres.

67 *Elizabeth Shaver*. Age twenty. Live at Buffalo, Ogle county,
Illinois. I am acquainted with Anthony Shaver. I lived in his
family six months. I did hear a conversation between Anthony
H. Shaver and Woodward in regard to this land. Woodward
offered \$1,300 for the land. Shaver refused to sell it. Said he
wanted it himself. This was before Woodward went to the state
of New York.

69 *John Anderson*. Age 50. Occupation, farming. Live in
Ogle county, Illinois. In the spring prior to Woodward buying
the land, Anthony told me he had sold the land to his father.
His father wanted him to take it back again, but that he declin-
ed taking it back. That he got out of debt by selling the land.
That his father was an old man and might drop away. That if
he did take it back his notes might come into some person's
hands that he did not want to have them. Something was said
about his brothers Lyman and Aaron,—about Lyman's coming
out here to settle. Don't recollect the particulars of the con-
versation.

72 *Nicholas N. Shaver*. Age 49. Reside in Ogle County. Think
I knew of Jacob P. Shaver owning land on Rock river in 1854.
I wrote to him to know whether he would sell the land, not
knowing for a certainty that he was the owner. By the answer
I concluded he was the owner. I think he said it was for sale,
as things had not turned out as he expected. I think it was a
thousand dollars, or else the offer was a thousand dollars. I
may have the letter here, but I don't know it.

73 *Cross Ex.* Anthony Shaver wished me to say to father not to sell the land, as he wanted it back. Anthony stated that he was to have the land if his brother did not want it.

78 *John Hodges.* Age 54. reside in Carrol county. I know complainant and Woodward. Had a correspondence with Jacob P. Shaver by Nicholas N. Shaver. I wanted to purchase the land in question. The answer returned by letter to Nicholas N. Shaver was that I could.

80 *Gilbert Finkle*, a witness sworn—not in the notice—testimony taken by agreement of counsel, to be allowed or rejected as might thereafter be determined by Henry A. Mix. Age 23; residence Whiteside county, and deposition proves nothing.

Case heard, bill dismissed, at complainant's costs. Appeal.

83 Appeal bond.

ERRORS ASSIGNED.

84 First. The Court erred in rendering the decree aforesaid, in manner and form aforesaid.

POINTS AND AUTHORITIES.

1st. The deed from Anthony H. Shaver to Jacob P. Shaver was in fact a mortgage. *Tilson vs. Molson et al.* 23 Ill. 648.

2d. Woodward had notice of the facts, so that he only succeeded to the same rights that Jacob P. Shaver had, as mortgagee of the land. Complainant had the right to redeem from him. See testimony of Jacob P. Shaver and Douglass.

3d. Woodward was guilty of a fraud in procuring the conveyance from Jacob P. Shaver, and cannot gain any advantage by such fraud.

26 Dec 1858
Glover, Book Examiner

1873 Haven

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Woodward

Abstract & Points

Filed May 9, 1872

J. S. Woodward
Clerk