

No. 14626

Supreme Court of Illinois

Booker

vs.

Anderson

71641  7

STATE OF ILLINOIS,

April 7, 1864

SUPREME COURT,

THIRD GRAND DIVISION.

Proposed

No. 193

115

J. W. Middleton & Co., Stationers, 126 Lake St.

Baughman

75

Anderson

1864

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Pleas, Continued and held at the Court-house in Bloomington, before the Hon. John M. Scott, Judge of the Circuit Court of the Eighth Judicial Circuit of the State of Illinois, in a certain cause pending in the Circuit Court of McLean county in said State, wherein William Andersson and Melinda Andersson were Complainants, and William Booken and Geo. D. McElhiney were defendants.

State of Illinois

McLean county, ss Be it remembered that heretofore, to-wit, on the 30th. day of March, A. D. 1863, came William Andersson and Melinda Andersson by Brien & Birn their Attorneys, and filed in the office of the Clerk of the Circuit Court of said county their Bill of complaint against William Booken & George D. McElhiney, which Bill of complaint was in words and figures as follows, to-wit:

State of Illinois

McLean county, ss To The Hon. John M. Scott, Judge of the Eighth Judicial Circuit, within and for the county of McLean, in Chancery sitting:

Humblly complaining
Sheweth unto your Honor your Petition,

William Anderson, and your orator, Melinda Anderson, that they are husband and wife and such have been living together for the last fourteen years: that they have now living three children, one aged twelve years, one nine years, and one child one year old. Your orator & oratrix further show your Honor that orator on or about ten years ago, purchased and had conveyed to him in fee-simple, the South half of lot Eighty-four (84) in Allen's addition to the town (now city) of Bloomington, in said county and State; and that the purchase-money of the same has been fully paid; and that at or about the date last aforesaid, your orator built a dwelling-house and made other improvements upon said lot of ground suitable for a residence; and your orator and oratrix have, since about eight years ago occupied as a residence said lot and the building thereon; and your orator and oratrix claim that said premises are now their Homestead. And your oratrix especially claims and insists that she has in no wise or manner done any act or deed, or assented to any act or deed being done by which and her children might or could be divested of their said Homestead.

Your orator and oratrix further show that while

They were so in the possession and occupancy of said lot of ground and said building, and while orator was still the owner of the same, orator became, and was indebted to one William Booker in a large sum of money, to wit, the sum of about \$2250, and to secure the payment of which the said Booker (and whom your orator and oratrix pray may be made defendant to this bill of complaint) took of orator a deed of conveyance, a copy of which is herewith filed, marked "A." and which orator and oratrix pray may be made a part of this bill of complaint; and orator & oratrix beg leave to refer the court to said Exhibit, and the matters and things therein set forth.

Orator and oratrix show that the note of 273 & $\frac{88}{100}$ described in said exhibit was made up the to a large extent of usurious and unlawful interest, to wit: interest at the rate of 15 per cent, per annum; that the principal of said debt \$2250, the remainder of said note being interest at a usurious rate added into the face of the same.

Orator & Oratrix show that the land described in said Exhibit as the N. E. $\frac{1}{4}$ S. 15, T. 23, R. 2, E. was at the time of the executing of said conveyance, improved, or mostly improved, and in cultivation, and

was, at the date of said conveyance worth about \$4000 ⁰⁰/₁₀₀, but with a prior incumbrance, and it with other real estate, of about \$400 ⁰⁰/₁₀₀; and then the other premises described in said exhibit, to-wit: The premises first above described as the Homestead of Orator & Oratrix, was at the time of said conveyance worth about \$3000, but with some incumbrance, referred to above, as being on the other land.

Orator & Oratrix further shew that on or about the 11th day March, A.D. 1862, Orator being still indebted to said defendant on account of said note, and still being unable to pay the same, which Orator & Oratrix sincerely deplore - Robert E. Williams Esq. the Trustee in said deed named, at the request of said defendant, after having advertised said premises in the manner mentioned in said conveyance, offered and sold, at public auction all the lands described in said deed of conveyance to said Bookes, defendant. And thereupon, said Williams executed a deed of conveyance to said Homestead of Orator & Oratrix, as well as to the other land above mentioned, to said Bookes. And thereupon, about the date last aforesaid, upon the pretense that by said sale of said Homestead of Orator & Oratrix, defendant had a right

under said conveyance of said Williams to dispossess orator of said premises, orator was induced to take a written lease of his homestead of said Broken, for the term of one year from the 12th day of March, 1862, and to which lease oratrix was no party.

Your orator & oratrix further show that on the expiration of said pretended lease, said defendant, pretending, or assuming that by the said lease and the foregoing aforesaid, your orator & oratrix had released and waived all their rights and benefits under the Statute, to their homestead aforesaid, viz: about the 19th day of March, 1863, by his attorney, R. E. Williams did institute a writ of Writable Entry & detainer, before G. D. McElhiney, J. P. of said county and State; and caused a copy of a precept from said Justice of Peace to be left at the residence of orator & oratrix - orator being absent from home, which copy of precept is herewith filed marked "B", and made part of this bill of complaint, and which writ of Writable Entry & detainer is now pending and set for hearing before said Justice on 30th day of March 1863 at 10 o'clock, A. M.

Your & oratrix & orator further allege that they are advised of counsel and believe the same to be true, that they have not,

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by the execution of said Trust deed to said
Williams, or by the execution of said lease
by Grantor to said Bookan, dependant, received
or relinquished any of them in and to the
premises aforesaid, as a Homestead; and
Grantor & coatrix further allege that they
never have received or relinquished their
Homestead aforesaid by any other conveyance
whatsoever; and they have ever since their
purchase and improvement of the same, a-
foresaid, been in the actual occupancy of
the same 'till the present time.

Again Grantor alleges that the execution of
said lease by Grantor to defendant, and the
the proceedings now pending before the said
Justice of the Peace for the purpose of dis-
possessing your Coatrix and her said fam-
ily, are a fraud upon the rights of Coatrix
and contrary to the provisions of the Statute
which have been made for the benefit of
as well the wife and children as of the hus-
band.

Coatrix further alleges that she has
no recollection of even appearing before
the said A. W. Rogers, the Notary Public
whose certificate of Acknowledgment appears
to have been attached to said Trust deed
as shown by copy of same (see Exhibit "A.")
and making any acknowledgment of said

trust in said certificate certified; but on the contrary Oratrix alleges that she did at the request of her said husband and in his presence alone, sign her name to said trust-deed, and that once all that Oratrix ever did in and about the acknowledgment of said trust deed - the certificate of the said S. M. Rogers, ^{notary} to the contrary notwithstanding.

Orator and Oratrix allege that the execution of said Trust deed, and the execution of said lease, so far as the same are held and claimed by defendant to be a conveyance or release of Orator & Oratrix' homestead in said premises, or so far as the said lease is held and claimed by said defendant, Booked to have made Orator his tenant, and through that proceeding in relation compel Oratrix and her said children to be liable to defendant under the Statute of Forceful Entry and Detainer, is a fraud upon the rights of Oratrix and her said children.

Orator and Oratrix further allege that by the foregoing aforesaid a cloud is resting upon the title of their said Homestead by which manifest injustice is about being done, to the injury of your Orator and Oratrix - especially to the injury of Oratrix and her said children.

But, inasmuch as Lesator and Lesatrix have no adequate remedy at law, but only in Chancery, where such matters are properly cognizable, Lesator and Lesatrix pray for an injunction issued out of Chancery, directed to the Sheriff of said county, to be executed restraining the said Justice, George D. McElhinney Esq., as foresaid (and whom Lesators also pray may be made party defendant herein) and said defendant, Bookan, from proceeding any further with said Suit of Forceable Entry and Detainer, till further directed by your Honor, upon a proper hearing of this bill; and thus the said Bookan shall be enjoined from intermeddling in any manner with the claim of Lesator and Lesatrix to Homestead in said premises, until your Honor, sitting as Court of Chancery shall pass upon the effect and validity of said lease and trust deed; and the allegations and averments of this bill.

And Lesators pray for process out of Chancery against said defendants, commanding them to appear at the next term of the McLean Circuit Court; and thus fully true and perfect answer make to all the allegations of this Bill.

Lesator and Lesatrix pray that upon a

final hearing of this cause, your Honor will be pleased to enter a decree in this cause, decreeing among other things that said Trust deed shall be held and taken as a void instrument as against the rights of your Grator & Gratrix to their Homestead aforesaid; and that a like decree be entered against said Lease, especially as affecting the right of your Gratrix, as stated above.

And orator and orator's further pray
for such other and particular relief as
unto your Honor shall seem meet and right

And as is duty bound, your Oration
and Oration will be very, &c.

Brien & Birch
Selection for Compliments.

State of Illinois

State of Illinois,
McLean county } ss. I, Melinda Anderson upon oath do say that the matters and things contained in the foregoing bill of complaint, so far as they rest in the knowledge of affiants are true, and so far as the same rest upon the information of others, she believes to be true.

Subscribed and sworn to before Melinda Anderson,
on this 30th day of March,
1863

Jessie Birch
Volany Public

Accompanying said bill of complaint and filed herewith, were two exhibits, marked respectively "A" & "B", which exhibits were in words and figures as follows, to-wit:
Exhibit "A".

"Whereas, William Anderson, party of the first part, of Bloomington, in the county of McLean and State of Illinois, has executed one certain promissory note, of even date herewith, payable to William Bocken or order, two years after the date thereof, for the sum of Ten-Thousand Seven hundred thirty-four $\frac{88}{100}$ dollars: Now therefore, the said William Anderson and Melinda Anderson, his wife, party of the first part, to secure the payment of said note according to its tenor and effect, in consideration of one dollar, and the further sum of twenty hundred and fifty dollars, the receipt whereof is hereby confessed, doth grant, bargain and sell unto Robert E. Williams, of the county of McLean and State of Illinois, his heirs and assigns forever, the premises described as follows, to-wit:

The North-east quarter of Section fifteen (15) Township twenty three (23) North of Range Three East of the Third Principal Meridian. Also, the South half of

Lot Eighty four (84) in Allins addition
to the town (now city) of Bloomington; all
lying and being in the county of McLean
and State of Illinois; together with all
and singular the privileges and appurten-
ances thereto belonging. In Trust, never-
theless that in case default be made in
payment of said note, or any part thereof,
according to the tenor and effect of said
note, then on the application of the legal
holder of the said note, the said Robert
E. Williams, after publishing a notice
in a newspaper first printed in the
city of Bloomington aforesaid, for thirty
days before the day of said sale, to sell
the said premises, and all right and equity
of Redemption of the said Williams Anderson
and Melinda his wife, party of the first
part, their heirs and assigns therein at
public auction at the Court-house door
in said Bloomington, to the highest bidder
for cash, at the time mentioned in such
notice; and to make execute and deli-
ver to the purchaser or purchasers there-
of a deed, or deeds, for the premises so
sold; and out of the proceeds of such sale
to pay all costs and expenses incurred
in advertising and selling said premises,
also, the principal and interest due on said

state, And the said William Anderson and Melinda Anderson, his wife party of the first part, for themselves, their heirs, executors and administrators covenant with the said Robert E. Williams that they are well seized of said premises in fee simple, and that they have full and good right and full power to grant bargain and sell the same in form aforesaid; that the same are free from all incumbrances; and that they will, and their heirs, executors and administrators shall forever warrant and defend the same against the lawful claims of all persons.

Signed and sealed this fourteenth day of April, A.D., 1858

Witness,
Jeremiah Leeming

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William Anderson Seal
Melinda Anderson Seal

State of Illinois,
McLean county, ss, I, Andrew W. Rogers,
a Notary Public, in and for said county,
in the said aforesaid, do hereby certify
that William Anderson, who is personally
known to me to be the same person
whose name is subscribed to the within
Instrument as having executed the same
appeared before me this day in person
and acknowledged that he signed sealed

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and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth. And the said Melinda Anderson, wife of the said William Anderson, having been by me examined separately and apart from, and out of the hearing of her said husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal this fourteenth day of April, A. D. 1858
Filed April 14th, and of Andrew M. Rogers,
Recorded April 20th, 1858 } Notary Public

Exhibit "B".

The People of the State of Illinois
to the Sheriff or any Constable ~~thereof~~ said
county.

State of Illinois,
McLean county } Whereas, complaint
has been made before G. D. McKinney,

Esq., one of the Justices of the Peace of said county, that William Anderson on the 12th. day of March, 1863, at Bloomington in the county aforesaid did unlawfully hold over the lands and possessions of William Booker from R. E. Williams, Agent for said William Booker, then situate, and known and designated as follows, to wit: the South half of Lot Eighty-four in James McLeish addition to the town of Bloomington and then and there did unlawfully put out and expel the said William Booker by his agent R. E. Williams from his said lands and possessions, wherein he had been in quiet and peaceable possession for the space of Eight years preceding, and that his intrusion therein still continued, and the said William Anderson still doth hold and detain the said lands and possessions from the said R. E. Williams, Agent, unlawfully and without right.

We therefore command you to Summon the said William Anderson to appear before the said Justice at his office in Bloomington in said county, on the thirtieth day of March, A.D. 1863, at 10 A.M., to answer the said Complaint.

And have you there and this process
Hereof fail not at your peril.

Given under the hand seal of said
Justice the 19th day of March 1863

G. D. McElhinney, J. P. Seal

Attached to said Bill of Complaint
was order for an injunction, which order
was in words and figures as follows, to wit:

State of Illinois
McLean county

Let injunction issue
as prayed for in the foregoing bill on the
said Melinda Anderson giving bond in
the sum of one hundred dollars, with
good and sufficient surety to be approved
by the clerk of said court.

Given under my hand this 30th,
day of March, A. D. 1863.

John M. Scott
Judge.

And thereupon, on said 30th, day of
March, A. D. 1863, these issues out of said
court a writ of Injunction in words
and figures as follows, to wit:

State of Illinois

McLean county

ss.

The People of

the State of Illinois: To William Bookers
 and George D. McElhiney of said
 county, Greeting:

Whereas, William Anderson and Melinda Anderson have this day filed in the office of the Clerk of the Circuit Court of said county their bill of injunction, showing that upon the said William Bookers claiming to be the owner of and entitled to the possession of the South $\frac{1}{2}$ of Lot Eighty four, in Allen's addition to the Town, now City of Bloomington, in McLean county, Illinois, did on or about the 19th. day of March A.D. 1863, commence a proceeding against them, the said William Anderson and Melinda Anderson, before George D. McElhiney Esqr. to obtain possession of said premises. And whereas, it is further alleged in said Bill that the said William Bookers is not entitled to the possession of said premises; and that the attempt of said Bookers to obtain possession of said premises is a fraud and a great wrong to said Town and said Melinda Anderson.

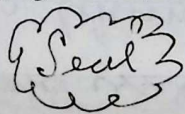
Now therefore, in consideration of the matters and things in said Bill

set forth, we do hereby strictly command and enjoin you the said William Becker and George D. McHenry Esqs. that you and your agents do absolutely and entirely desist and refrain from further prosecuting said suit to obtain possession of said premises, and from in any manner meddling with or interfering with the said William Anderson and Milina Anderson in their possession of the said premises, until said bill shall be fully answered, and the circuit court shall order to the contrary.

Hereof fail not under penalty of the Law.

To the Sheriff of McLean county to execute.

Witness, Lemmon Burr, clerk of the McLean county circuit court and the Seal thereof hereto affixed this 30th day of March, A.D. 1863.

 Seal

Lemmon Burr, clerk

Which writ of injunction was by the Sheriff of said county returned into said court, endorsed as follows, to wit:

Executed this writ on the 31st day of March, A.D. 1863, by delivering a true

copy of the same to the within-named George
D. McElhiney Esq. The within named Wil-
liam Booher not found in my county
N. Dixon, Sheriff.

By George Paske, Deputy.

And also on said 30th day of March 1863
there issued out of said Court a Summons
in Chancery, in words and figures as follows
to-wit:

State of Illinois,

McLean county } ss The People of the State of Illinois:

To the Sheriff of said county, Greeting:

We command you to Summon William Boo-
her and George D. McElhiney, if found in your
county, personally to be and appear before
the Circuit Court of said county of McLean,
on the first day of the next Term thereof,
to be held at the Court-house in Bloom-
ington, on the first Monday in the month
of September next, to answer a certain Bill
of Complaint filed in our said Circuit Court
on the Chancery side thereof, against them by
William Anderson and Melinda Anderson for
Relief. And further to do and receive what
shall then and there by our said Court be ad-
judged against them. And this they are in no
wise to omit. And have you then and there
this writ, and make return thereon in

what manner you execute the same.

Witness: Luman Burr, Clerk of the said
Circuit Court, and the seal thereof
hereto affixed at Bloomington, this
30th. day of March, in the year
of Our Lord, one thousand, eight
hundred and sixty three.

Luman Burr, Clerk.

Seal

Stamp for
fifty cents

Which was by the Sheriff of said County
returned into said Court, endorsed as follows
to-wit:

"Executed this writ on this 31st. day
of March, A. D. 1863, by delivering a true
copy of the same to the within named George
D. McWhiney, Esqr. The within named Wil-
liam Booken not found in my county
J. Dixon, Sheriff
By Geo. Parke Deputy.

And thereupon, afterward, to-wit, on the
21st. day of August, A. D. 1863, came the
said defendant, William Booken, by his at-
torney, and filed his answer to said bill of
complaints; which answer was in words
and figures as follows, to-wit:

State of Illinois,

M. Leam Circuit Court,

September Term, 1863.

William Andersson & wife
 vs.
 William Booken, et al. } In Equity.

And now comes the Respondent, William Booken, in his own person; and saving and reserving to himself all just right of exception to the manifold errors and insufficiencies in the said bill. Yet for answer to the same, on to so much thereof as this respondent is it is material for him to answer to—answering says: This respondent admits the marriage of complainants as stated in the bill, and further admits that complainants have children, as stated in the bill, Respondent further admits the ^{purchase and} payment by complainants of the lot described in the bill, and the building of a house thereon, as is stated in the bill, and the occupancy of the premises by complainants from that time to this. But this respondent utterly denies that said premises are now the Homestead of complainant in contemplation of Law; but says, that said complainants do now and have ever since the 12th day March, A.D. 1862, occupied said premises as the tenants of this respondent; and Respondent here denies the

allegation in the bill, as follows:
 "And your plaintiff especially claims and insists that she has in no wise done any act or deed, or consented to any act or deed being done by which she and her children might or could be divested of the said homestead."

But this respondent says that for some time previous to the 14th day of April 1858, said complainant, William Anderson and his wife, Melinda, had been very anxious to borrow money of this respondent; that this respondent at the said time lived in the State of Ohio, and that said Anderson's family lived in the same vicinity - but at the time of the loan, in Bloomington - and that said Anderson by urgent request and entreaty induced this respondent to come to Bloomington, Illinois; and finally, after long and urgent entreaty by both of said complainants, the wife being fully as active in the matter as the husband (and the respondent here charges that the said Melinda in all the matters connected with the loan, giving security &c. hereinafter described, took as active a part as her said husband) and by giving glowing representations of their means of repayment, and the value of their property,

~~induced this defendant to come to Bloomington~~
~~Illinois; and finally, after long and urgent entreaty~~
~~by both of said defendants complainants the wife~~
~~being fully as active in the matter as the~~
~~husband~~ induced this defendant to loan
 to them (for the security hereinafter described)
 the sum of Twenty-Two hundred and fifty
 dollars. Respondent says that he was loth
 to make said loan, and only did it upon
 the urgent request of both complainants,
 the wife being as active and urgent as the
 husband. Respondent expressly and emphati-
 cally denies that the note for Twenty-
 seven hundred and thirty-four ⁸⁸/₁₀₀ dollars
 described in the trust deed was made up
 to a large extent of usurious and
 unlawful interest, with interest at the
 rate of fifteen per cent. per annum; but
 says that the sum loaned at the date of
 said note was Twenty-Two hundred and
 fifty dollars; and that said note was
 made up of said sum loaned and interest
 thereon at the rate of ten per cent. com-
 pounded semi-annually, for the time
 note had to run the said two years, as by
 the terms of said loan, the interest was
 to be paid semi-annually. And that the
 said note and deed of trust were given
 to secure said sum loaned.

Said deed of Trust is herewith filed, marked "Exhibit A.", and prayed to be taken as part of this answer. And the consideration for the same was as above set forth in this answer, to-wit: To secure said note given for said loan.

Respondent claims that the value of the property in exhibit "A" of this answer, was as stated in the bill, or anything like it; but this respondent says that he believes and now here so charges, that said property was not worth more than half of the sum stated in the bill as their value, to-wit: \$7000, or not even so much as half of that sum, at said time, nor at any time since; and that the Trustee's sale, hereinafter mentioned, said property, considering the prior incumbrance thereon, sold for its full cash value.

Respondent says that Robert E. Williams, the Trustee in said deed of Trust, was mutually selected by both complainant and respondent, and was as much the selection and choice of complainants as of Respondent. Respondent says it is true that the money secured by said deed of trust was not paid, and that the trustee in said deed did at the request of this respondent, proceed to advertise said

property for sale, under said deed of
 Trust. That said Trustee, as this responds
 and believes, and so charges, advertised
 said property for a longer time than
 was required by the terms of said deed
 of Trust; and in addition to all the ad-
 vertisement required by the terms of the
 Deed, had printed bills, advertising said sale,
 pasted in the most public places of the
 county, for some time before the sale;
 and that said trustee took great pains
 to give publicity to said sale; and that
 said trustee tried by all legitimate
 means in his power to make said said
 property bring as large a price as
 possible at said sale; and that said sale
 was in all things fairly, and honestly
 and faithfully conducted; and that at
 said sale, said complainant, Anderson,
 was present, and both complainants were
 near by, and no objection was made
 to said sale by either of said complain-
 ants at the time; that said complainant
 had full knowledge of all the facts at
 the time; and as affiant is informed
 and believes, and so charges, took legal
 advice before said sale, and made no
 objection to the same. And at said sale,
 this respondent became the purchaser of

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the premises (subject to a prior incumbrance thereon, which will be hereinafter described) for the sum of twenty-two hundred dollars, that is, one thousand dollars for the house and twelve hundred dollars for the land. And thereupon, said Williams, Trustee, made executed and delivered to the respondent a deed to said premises, herewith filed, marked "B", and made part of this commission. This respondent now here expressly denies the allegations in the bill about the acknowledgment of the Trust deed to Williams by Mrs. Anderson; but says she freely, voluntarily, and with full knowledge of the facts and the law, both, as this affiant believes, and so charges, acknowledged the same before the Notary, as is set forth in his certificate to said deed.

Respondent says, that before the sale by said trustee, this respondent offered to complainants to extend the time of payment of the money due this respondent on said trust deed for a term of years, if complainants would pay to respondent his interest on said debt; but which they, complainants, declined to do; and this respondent further says, that after said sale and after said trustee had delivered to this respondent said debt upon said sale,

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This respondent offered to complainant to
 give a bond to me convey said property to
 complainant at any time within five years
 provided complainant would pay to respondent
 out interest at the rate of ten per cent. per
 annum on the amount of the debt to
 respondent, annually, and would pay the
 debt at any time within said five years,
 complainant, after taking time to con-
 sider of said proposition, declined to do so;
 and said William Anderson said, as this res-
 pondent would have to pay the prior in-
 cumbrance on said property, that would
 put him, Anderson, about out of debt, and
 he thought it was the best he could do
 with the property; and he preferred to
 let the property go under the sale, un-
 der the Trust deed. Said Anderson then
 stated to this respondent that it did not
 suit him then to move out of said house,
 and proposed to rent the same of res-
 pondent for one year, which respondent
 then agreed to do, and thereupon said
 complainant (as respondent charges with
 full knowledge, concurrence and consent
 of his wife, Melinda, and after taking
 legal advice thereon) and this respondent en-
 tered into a written contract of lease
 for said house, which is herewith filed,

marked "C," and prayed to be taken as part and parcel of this answer. And thereupon said Anderson had his policy of insurance on said property cancelled; and this respondent had the same insured in his, respondent's name. This respondent would further show, that at the time said Trust deed to said Williams was made, and at the time of the sale under the same and the purchase by respondent ~~by~~ of said property, there was a prior incumbrance thereon, and at said trustees' sale the property was sold subject to said prior incumbrance, which was as follows, to-wit: by notes and mortgages - said notes being herewith filed, marked "D" and prayed to be taken as part and parcel of this ~~same~~ answer; and said mortgage is herewith filed, marked "E", and prayed to be taken as part and parcel of this answer, reference being had to said notes and mortgage, the contents of the same will fully and at large appear. And this respondent says, that to remove said prior incumbrances this respondent had to, and did, on the 15th day of July, 1862, pay the sum of six hundred and twenty-two $\frac{40}{100}$ dollars.

This respondent now here says that, as he

is informed and ~~thereby~~ advised, should complainants succeed in setting aside the Trustee's Sale as to the House and Lot, as is sought to be done by this bill, this respondent would be, in Equity, substituted for the original mortgage in said mortgage to Genin, and that the same would not be and in equity is not satisfied. This respondent here says and charges that upon the making of said contract of lease, above mentioned, and in consideration thereof, this respondent delivered to said William Anderson said note in said trust deed to Williams described, although there was a balance then due upon said note to this respondent, after crediting the note with net proceeds of sale under the trust deed, of about nine hundred dollars. And this respondent says, as he is advised, and here charges, should complainants succeed in setting aside said sale of the house and lot, he would be restored to all his rights on said note; and that respondent would be entitled to collect the same of complainant, after crediting it with the proper amount arising from the sale of the land. Respondent now here charges that the amount said property sold for under the said William's Trustee's sale, together

with the prior incumbrance on the same,
 as above set forth, was at the time of
 said Sale, a full and fair cash value
 for all of said property purchased by
 respondent at said Sale. Respondent says,
 as he is advised and now here so charges,
 by the execution and acknowledgements
 and delivery of said deed of trust to
 said Williams, and the Sale under the same
 as above shown, complainants were
 fully divested of all title, rights, claims
 and interest in and to said premises, what
 ever the same were, claimed by any of
 Homestead, or otherwise; and respondent says
 said lease was not a fraud upon the
 rights of Mrs. Anderson, as the same was
 entered into with her knowledge and
 consent, and after taking legal advice
 thereon. Respondent further admits the
 bringing on action of forcible detainer
 entry and Detainer, as stated in the bill;
 and says, as he is advised and now here
 charges, he had and still has a right to
 prosecute the same; and ought to have
 judgment on the same, and possession of
 the said House and lot. Respondent here
 claims that ^{he} ~~complainant~~ is now both in
 law and in equity the owner of the premises
 described in the bill, to-wit: the House and

lot, and is now and has been ever since the 12th day of March, 1863 entitled to the possession of the same; and as he is advised, the complainant have no Equity, and their disjunction should be dissolved and this bill dismissed. Respondent now here denies each and every allegation of the bill not herein above admitted to be true.

And now having, as he is advised, fully answered, he prays that he be hence dismissed with his costs. And as in duty bound &c. &c. William Booken

R. E. Williams, (at)

Pro Respondent.

Subscribed and sworn

to before me, Aug. 21st, 1863

L. Burr, Clerk.

Accompanying said answer, and filed therewith, were Exhibits, A. B. C. D. & E, which exhibits were respectively in words and figures as follows, to-wit:

Exhibit A, is the same as exhibit "A," to the original Bill, as hereinbefore set forth.

Exhibit, B.

State of Illinois

McLean county

I know all men by

These Presents, That Whereas, on the
fourteenth day of April, 1858, William
Andersson made and delivered to William
Booker a note of hand by which said
Andersson promised to pay to the said Booker
two years after the date of said note the
sum of Twenty-seven hundred and thirty-
four $\frac{88}{100}$ dollars, in funds that should be
current at the State Savings Institution
in St. Louis, Mo., for value received; and
Whereas, on said fourteenth day of April 1858,
said William Andersson, joined by his wife,
Melinda Andersson, did make, sign, seal,
acknowledge and deliver to me as Trustee,
a deed of trust, on the North-east
quarter of Section fifteen in Town Twenty-
three North of Range Three East of the Third
Principal Meridian; Also, the South half of Lot
Eighty-four (84) in addition to the
town - now city - of Bloomington, Ill. in the
county of McLean and State of Illinois;
by the terms of which deed of trust, it
was provided, if default should be made
in the payments of said note, on any part
thereof, according to the tenor and effect of
said note, then, upon the application of the
legal holder of said note, I, the said Trustee,
after publishing a notice in a newspaper
printed in the city of Bloomington aforesaid,

For thirty days before the day of sale,
 should proceed to sell said above-described
 premises, and all right and equity of
 redemption of the said William Anderson
 and Melinda his wife, their heirs and assigns
 therein, at public auction, to the highest bid-
 den for cash, at the courthouse door in
 said Bloomington, at the time mentioned in
 said notice; and to make, execute and
 deliver to the purchaser or purchasers
 thereof, a deed or deeds for the premises
 so sold; and out of the proceeds of said
 sale to pay all costs and expenses in-
 curred in advertising and selling said prem-
 ises, and the principal and interest of said
 note; which deed of trust will be found
 recorded in the Records of McLean county,
 Illinois, in Book "F" of Mortgages, on
 page (706) to which reference is here ~~made~~
 made for the full contents of said deed of
 trust. And whereas, said note remaining
 unpaid, great interest on the same up to the
 14th day of October, 1860, and applications
 having been made to me by the said William
 Bookan, the legal holder of, owner and
 payee of said note to proceed and sell
 said premises according to the terms of said
 deed, to raise money to pay said note, I,
 the said Trustee, did proceed to advertise, in

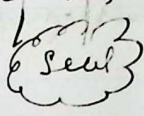
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the Illinois Statesman, or Newspaper, printed and published in said Bloomington, that I, said Trustee, would, on Tuesday the 17th. day of March, 1862, at the Court house door in said city of Bloomington, between the hours of 10 A.M. and 4 P.M., of said 17th. day of March, 1862, proceed to sell said property under the terms and provisions of said Trust deed, to raise money to pay said note; which advertisement was published for five consecutive weeks in said Illinois Statesman, the first insertion being on the 7th. day of February 1862, all of which will appear by the ~~pretended~~ printed notice and certificate of the proprietors of said paper, hereto attached; now—

Know All Men by These Presents, that I, said Trustee, did on said 11th day of March, 1862, at the door of the Court house in said Bloomington, between the hours of one and two o'clock, of said day, proceed to offer said above described property for sale according to the terms of said Deed of Trust and said advertisement; and there being a considerable number of persons, I first offered at public auction to the highest bidder for cash in hand, said South half of Lot 84 in Allen's addition to said Bloomington; and the said William Booken bid therefor the

sum of One Thousand dollars, and that being the highest bid, after crying the same for some time, I struck off said last above-described property to said Booken for said sum of One Thousand dollars. I then offered a public auction for cash in hand to the highest bidder for cash in hand the said North East quarter of Section fifteen, Town twenty-three North of Range Three East of the 3d P.M., and said William Booken bid therefor the sum of Twelve hundred dollars; and that being the highest bid therefor, after crying the same for some time, I struck off the said last described property to said Booken for said sum of Twelve hundred dollars. And thereupon the said Booken paid to me the sum of Twenty-five dollars, to pay costs and expenses of making said sale, and indorsed as a credit on said note the sum of Twenty-one hundred and Seventy-five dollars.

Now, Therefore, in consideration of the premises aforesaid, and by virtue of the power conferred upon me by said Deed of Gift, I do by these presents bargain, sell, alien, release and convey to said William Booken, his heirs and assigns, all the right, title and interest of the said William Anderson and Melinda Anderson, his wife, in and to all of the above described premises.

In Testimony whereof I have hereunto
set my hand and seal This 11th. day of
March, 1862. R. E. Williams 
Justice.

State of Illinois
McLean county }^{ss} I, John D. Larrimore,
a Notary Public in and for said county,
do hereby certify that R. E. Williams,
whose name appears above, and with
whom I am personally acquainted, came
before me this day and acknowledged the
signing and sealing of the foregoing instru-
ment to be his act and deed for the pur-
poses therein specified.

Witness my hand and official seal
this 11th day of March, A.D. 1862.



John D. Larrimore
Notary Public,

Exhibit "C."

This agreement, made and entered into
this 12th day of March, 1862, by and between
William Bookin of the first part, and William
Anderson of the second part, witnesseth: that the
party of the first part has leased and rented to
the party of the second part, and the party of the
second part has leased and rented of the party of
the first part, the South half of Lot eighty-
four, in Alvin's addition to the town - now

city of Bloomington, in the county of
McLean and State of Illinois, for the period
of one year, commencing this day, and
ending the 12th day of March, 1863, for
which the said party of the second part is to
pay the said party of the first part, as rent,
the sum of one hundred dollars in cash;
fifty dollars to be paid six months from
this date, and fifty more twelve months
from this date; and said party of the second
part, further, as rent, agrees to pay
all the taxes, except taxes to the United States
Government, that may be assessed on said
rented premises during said lease; and said
party of the second part is to surrender to
said party of the first part, his heirs or
assigns, peaceable possession of said premises
at the end of said term in as good order
as the same now are in, reasonable wear
and tear and unavoidable accidents excepted.
And this article of agreement is to be kept
for safe keeping with R. E. Williams.

Witness the hands of the said parties of the
date first above written.

William Bookers

William Anderson.

Nov. 4th, 1862. Received of William Anderson
fifty dollars on the within rent, William Bookers
by R. E. Williams, his agent.

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March 18th. 1863. Received of William Anderson
By David Brien, fifty dollars on the within
note.

William Booker, by
R. E. Williams, his agent.

Exhibit "D."

For value received, we or either of us
jointly and severally promise to pay as prin-
cipal debtors to Thomas H. Genin or order,
Five hundred and fifty-six dollars, in one
year from the date hereof, and ten per cent
interest per annum, to be paid yearly there-
on so long as the principal remains unpaid.
Genin may extend the time of payment
from time to time without impairing our
or either of our liability.

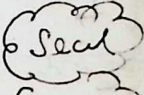
Signed and sealed the 2d. day of May, A.D.
1854.

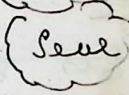
William Anderson, (Seal)

Geo. W. Anderson, (Seal)

To any Attorney of any court of record:
You are hereby authorized to appear for
us or either of us in any suit on the above
note sealed for \$556 - with or without process,
and to confess judgement against us or
either of us for the amount of said note
and interest that may be due thereon at ten
per cent, year, payable yearly, and costs of
suit at any time after it shall be due and
payable, in favor of said Thomas H. Genin,

his personal representatives, on him, on assigns
and to release all errors therein and privi-
edge of appeal Therefrom. Signed and Sealed
the 2d. May, A.D. 1854 -

William Anderson 

Geo. W. Anderson 

[Endorsements] Received, May 9th, 1855, fifty
dollars and sixty cents, the interest on the within
for the first year.

Also: Fifty-five $\frac{60}{100}$ dollars for 2d. year.

Also: \$55 $\frac{60}{100}$ for 3d. year

Also \$55 $\frac{60}{100}$ for 4th year, and to
May 2/61 - and July 15th 1862, \$622 $\frac{40}{100}$ in
full by William Booker by hands of Daniel
Peck Esq.

Exhibit "E."

There is granted, bargained, sold and
conveyed by these presents, by William An-
derson and Geo. W. Anderson to Thomas H.
Genin, his heirs and assigns forever, in
consideration of five hundred and fifty-six
dollars, to them paid by said Genin, the
receipt whereof they hereby acknowledge,
the lots numbered fifteen and sixteen, on
Marietta Street, in St Clairsville, where
George Anderson Sen^r now resides; and also, the
South half of Lot eighty-four (84) in addition
to Bloomington in McLean county,

in the State of Illinois; and also the North West qn. of the South East qn. of Section 31, T. 24, N. of R. one E, containing forty acres; also the South half of Lot 2. S. W. 11308 N. W. Lot 2 N. W. qn. of Sec. 31 T. 23, N. R. 4, E, containing $82\frac{43}{100}$ acres; also the E. 1/4 of N. E. qn. of Section 13 in Town 23 N. of Range 3, E. containing eighty acres - with the hereditaments and appurtenances thereto belonging. To have and to hold said property to said Genin, his heirs and assigns forever.

But if they shall pay to him five hundred and fifty-six dollars according to the tenor of a note for that sum, under seal, bearing ten per cent. interest, payable annually, drawn by them and payable to said Genin or order in one year from its date, and dated the 22. of May, 1854, - then this grant shall be void. as witness our hands and seals the 2d. of May, 1854 -

Signed, sealed, acknowledged William Anderson (Seal)
and delivered in presence of Geo. W. Anderson (Seal)
William Kamm
Geo. Anderson

State of Ohio, Belmont County, ss. On the 13th day of May, 1854, personally appeared before me clerk of a court of Record, viz: the Court of Common Pleas, of said said Belmont County, the above named grantor, William Anderson,

to me personally known to be such grantor, and acknowledged that he signed, sealed and delivered the said deed voluntarily for the purposes therein mentioned.

In Testimony whereof I have hereunto set my hand and affixed the seal of said Court at St. Clairsville in said Belmont County, this 13th day of May, A.D. 1854
John W. Heaton Clerk

State of Ohio }
Belmont County } ss. On the 15th day of May, 1854, personally appeared before me David E. Howell ——— The above grantors, Williams Anderson and Geo. W. Anderson, and acknowledged the signing and sealing of the above deed of Mortgage as their voluntary act, all which is certified under my hand and seal the 15th day of May, 1854.

David E. Howell, (Seal)

Justice of the Peace of Pease
Township, Belmont County,

I acknowledge satisfaction of the debt within mentioned by the payment thereof by William Bookin by hands of Daniel Peck Eggen and release the said mortgage, therefore.

Signed and Sealed the 15th. July 1862.

Thomas H. Genies, (Seal)

And thereupon, at The Regular Septem-
ber term of said Circuit Court, begun
and held in and for said county, on the
7th day of September, A.D. 1863.

Present: Hon. John M. Scott, Presiding Judge.
Lumen Burr, Clerk,
Israel Dixon, Sheriff.

the following proceedings were had in this
cause, as appears of Record, to wit:

Tuesday, September 9th, 1863.
William and Melinda Anderson
vs. Bill for Relief.
William Booker and others

And now at this day come the said
complainants by their attorneys, and the said
William Booker, defendants, having filed
his answer to said complainant's bill, now
comes by his attorney and moves the Court
to dissolve the injunction hereinbefore granted
and allowed; and said motion now coming
on to be heard before the Court is argued by
counsel. And the Court having heard said
motion, and being now fully advised in the
premises, doth consider that said motion be
overruled.

Wednesday, September 10th, 1863.
William Anderson & wife, vs. }
William Booker and others }

And now at this day, on motion of said complainants by their Attorney, leave is granted them by the court to amend their Bill of Complaint in this cause; and on motion of Defendant, Booker, by his Attorney, the complainants are by the court ruled to give a new Disjunction Bond in this cause in the sum of Three Hundred Dollars,

And thereupon, afterwards, to-wit, on the 30th. day of September, A.D. 1868, came said complainant and filed in this cause their amended Bill, which amended bill was in words and figures as follows to-wit:

William Anderson & Melinda Anderson vs. William Booker, et al.	}	Bill for Relief
---	---	-----------------

State of Illinois, McLean County:

The complainants in the above entitled cause now come, and by leave of the court first had and obtained for this purpose, amend their original Bill in said cause in the following particulars to-wit:

First - In regard to the allegation in the original bill where it is stated in the following words and figures, to-wit:

Examination & Corroboration show that the note of \$2734 $\frac{88}{100}$ described in said exhibit was made up to a large extent of usurious and unlawful interest - to wit, interest at the rate of fifteen per cent. per annum; that the principal of said debt was about \$2250 - the remainder of said note being interest at a usurious rate added into the face of the same." Complainants now say that said allegation was made by complainant, Melinda Anderson in the absence of her husband who was at the time of the filing of the original bill absent from the State, and was made upon the recollection of the complainant, Melinda Anderson, from statements made to her by her husband and as she then thought by defendant Booker, also. These complainants now state that said note of \$2734 $\frac{88}{100}$ was made up of the sum of \$2250, which was the principal sum borrowed at the time date of said note and interest on said sum computed at the rate of ten per cent. and compounded every six months for the time the ^{said} note had to run till its maturity, and which interest so computed is added into the face of said note; and complainants further allege, which was not proven or thought of by complainants

Melinda Anderson, at the time of the filing of the original bill, then at the time of execution of the foregoing note of $2734\frac{88}{100}$, at the request of the defendant Bookan, and as a consideration for the obtaining of said loan of \$2250⁰⁰, said complainant Williams Anderson, over and beside the executing to said defendant Bookan, his said note for the sum of $2734\frac{88}{100}$, also then executed and delivered to said Bookan his four other notes, each for the sum of $56\frac{25}{100}$ payable in six, twelve, eighteen and twenty four months from the date thereof respectively; and which last named notes were in consideration of five per cent. usurious and unlawful interest computed upon said \$2250, for the time said $2734\frac{88}{100}$ note had to run till its maturity; and which last mentioned notes of $56\frac{25}{100}$, about the time of their maturity were paid by complainant, Williams Anderson.

And so complainant states that said loan of \$2250, made by defendant Bookan to complainant, Wm. Anderson was usurious, both on the ten per cent. so compounded in face of said note, and in the five per cent. additional, for which said small notes were given.

Complainant further state - which was not remembered by complainant, Melinda Anderson,

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at the time of the filing of the original Bill; that since the maturity of said note of \$2734⁸⁸/₁₀₀, and about six months after, and upon a usurious agreement before that time made between complainant, William Anderson & Defendant, Booker, complainant, William Anderson through said Melinda Anderson paid to said Booker the sum of \$205¹³/₁₀₀ being fifteen per cent. for the period of six months upon said \$2734⁸⁸/₁₀₀ note.

And Secondly, complainant further say, in regard to the matter contained in the following allegation in original bill to-wit:-

"Declarator & Uxatrix show that the land described in said Exhibit as the S. E. 1/4 S. 15. T. 23, N. R. 3, E., was at the time of the execution of said conveyance, improved, or mostly improved and in cultivation, and was at the date of said conveyance worth about \$4000, but with a prior incumbrance or in with other real estate of about \$600⁰⁰/₁₀₀ and that the other premises described in said exhibit, to-wit: The premises first above described, as the Homestead of Uxator and Uxatrix, was at the time of said conveyance worth about \$3000, but with some incumbrance, referred to above, as on the other land."

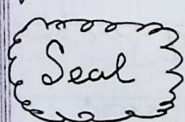
These respondents now further state

that the incumbrance alluded to in said last mentioned allegation, was a deed of mortgage on said lands; but complainants say that they did not mean to state that said deed of mortgage was an incumbrance on the 'Homestead' of complainants as a Homestead, for complainants say that they, in and by said deed of mortgage did not convey or in any manner select their Homestead in the lands last above mentioned.

And now complainants pray as in and by their original bill they have already prayed, &c &c.

William Anderson
Melinda Anderson

Subscribed and sworn to
before me this 14th day
of Sept. 1863.



Jessie Birch
Notary Public

And also on said 30th day of September, 1863 in pursuance of the order of said Court, said complainants filed herein a new Disposition Bond, which bond was in words and figures as follows, to wit:

Know all Men by these Presents, that we William Anderson & Melinda Anderson, & L. M. Leaper, of the County of McLean and State of

Illinois, are halldes and firmly bound
unto William Barker & George D. McElhiney
in the penal sum of Three hundred dollars
lawful money, for the payment of which
well and truly to be made, we do
hereby bind ourselves, our heirs, executors
and administrators, jointly and severally and
firmly by these presents: sealed with our
seals and dated this 29th day of September
A.D. 1863.

The condition of the above obligation is such,
that, whereas, the above bounden William Anderson
and Melinda Anderson have prayed for and obtained
a writ of Injunction from the Circuit Court of said
county, restraining and enjoining the said William
Barker & George D. McElhiney - the said Barker
from prosecuting and the said McElhiney ~~from~~
as a Justice of the Peace, from the hearing
of any suit now pending before the said
Justice, of Forceable Entry & Detainers against
the said William Anderson for the possession of
the South half of Lot No 8 & 1/2 Sims. Addition
to the city of Bloomington, Ill., and en-
joining the said Barker from in anywise
interfering with said Levator & Co's
possession of said premises until the Circuit
Court of said county should make other
order to the contrary; and the said Melinda
Anderson with Dr. J. M. Gish, having at the

commencement of this suit gives bond in the sum of one hundred dollars, conditioned as above, and said Circuit Court having at their September Term, 1863 ordered in said cause that William Anderson and Melinda Anderson execute their bond herein, in the sum of Three hundred dollars, conditioned as above, and to be in lieu of the first bond, referred to above.

I now if the said William Anderson shall pay, or cause to be paid to the said William Booker of George D. McElhiney all such damages as they may sustain by reason of the issuing of said injunction, and also such costs and damages as may be awarded against said complainants by the said Court, in case the said injunction herein granted shall be dissolved, then obligation shall be void, otherwise to remain in full force and effect in law and equity.

Approved by me this 30th day of Sept. 1863. - William Anderson
 John M. Scott, Melinda Anderson
 Circuit Judge of the Eighth Judicial Circuit of the State of Illinois. L. M. Leaper

Seal
 Seal
 Seal

And afterwards, at said September Term of said Court, - To-wit, on the 3d day of October,

A.D. 1863, further order was made in this cause, as appears of record, to wit:

William Anderson & wife,	} Bill for Relief
vs.	
William Booker and others	}

This day comes the said defendant, William Booker by his Attorney, and on his motion leave is granted him by the Court to file a cross-bill in this cause. And said complainants having complied with the rule of the Court requiring them to give an additional bond in this cause, leave is granted them by the Court to withdraw their original Bond filed herein.

And thereupon, a further, to wit, on the on the 24th day of December, A.D. 1863, came the said defendant William Booker and filed herein his Cross-bill; which cross bill was in word and figures as follows to-wit—

State of Illinois
McLean Circuit Court.

December Term, 1863.

William Anderson & Melinda Anderson, his wife,	} <i>Comes</i>
vs.	
William Booker,	

Bill in Equity for Relief.

And now the said Respondent, Williams Bookson, by leave of the Court, files herein this his Cross-bill: And now here asserts and charges that each and every allegation in his answer to the original bill filed on the 21st day of August, 1863 is true in every particular; and now here makes his said answer a part of this his Cross-bill, and prays that the same may be taken and considered by the Court as part of this, his Cross-bill, reference to which answer being had by the Court, the contents thereof will fully and at large appear. And the Complainant herein, still insisting upon the truth of his said answer, and that the same is a ~~true~~ full and perfect defence to the bill, and that the bill has no equity, and should be dismissed; yet in case the bill is returned by the Court, and the relief therein prayed for, or any part of it be granted by the Court, this Complainant in this Cross-bill prays the Court to grant him a decree herein in personam, against the Complainant, Williams Anderson, for the sum of one thousand dollars, the amount bid for the House and lot, at the Trustee's sale, as set up in ~~the~~ bill and answer; with

interest from the date of said sale, also
pay the further amount of money paid to
take up the Genis Mortgage, as stated in
the answer, with interest from the time
the same was paid, as stated in the an-
swer; and that this last amount be de-
clared to be a lien upon the house and
lot described in the bill; and also for the
further sums of money due on the note
from said William Anderson to this
Complainant, as stated in the answer, and
interest on the same from the time the note
was given up, as stated in the answer;
and that upon his decree he have execution,
And that said William Anderson and Melinda
his wife be made defendants to this his
cross-bill, and be required to answer the
same not under oath.

And, as in duty bound, &c &c,

R. E. Williams,

for Bookers.

And at the regular December Term of said
District Court, begun and held in and for
said county, on the 17th day of December A.D. 1863,

Present: Hon. John M. Scott, Presiding Judge
Edward R. Rye, Clerk,

Norval Dixon, Sheriff. -

further order was made in this cause,

as appears of record, to-wit:

Thursday, December 24th. 1863.

William Anderson & Melinda Anderson,

vs.

William Booker and others

} Bill for Relief

And now at this day comes the said William Booker, the complainant in the cross bill in this cause, by his attorney; and on his motion the defendants to said cross bill are by the Court ruled to answer the same by Monday next; on said cross-bill and the matters therein contained will be taken for confessed against them.

And thereupon upon afternoon, to-wit, on the 29th day of December, A.D. 1863, come said complainant and filed their demurrer to the cross-bill of said William Booker, which demurrer was in words and figures as follows, to-wit:

William Booker

vs.

William Anderson

} McLean County Circuit Court
Dec. Term, 1863.

In Answer. —

The demurrer of William Anderson, defendants, to the cross-bill of complainant:

As to so much of complainant's cross-bill whereby the complainant doth entitle himself to have or demand of complainant

any compensation sum of money, or security for the payment of any sum of money on account of or on the Homestead of this complainant, referred to in complainant's cross-bill, or otherwise he prays for any decree reinstating the Senior Mortgage as against the said Homestead, as prayed for. — This defendant by protestations not confessing or acknowledging the complainant's cross-bill to be true in such sort, manner or form as the same matters are therein set forth, this defendant doth demur thereto; and for cause of demurres sheweth that by said complainant's own showing in said cross-bill, this defendant's wife, Melinda Anderson is personally interested in said Homestead, and is not made a party to said cross-bill; and therefore, and for other good causes of demurres in the cross-bill contained, as to so much of complainant's said cross-bill as is demurred unto as aforesaid this defendant doth demand the judgment of this Honorable Court whether this defendant shall be compelled to make any answer thereto, other wise than as aforesaid. And this defendant prays to be hence dismissed, with his costs in this behalf most wrongfully sustained.

Brier & Birch }
Attorneys for Defendant. }

William Anderson,

And also on said 29th. day of December, A.D. 1843, said complainants filed in this cause their replication to the answer of William Booker, which replication was in words and figures, as follows, to wit:

William Anderson & Melinda Anderson	} December Term, McLean Circuit Court 1843	In Chancery,
vs, William Booker		

The replication of William Anderson and Melinda Anderson, complainants, to the answer of William Booker defendants,

These repliants, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereto saith: That he will ever and prove their said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant - inasmuch that any other matter or thing whatsoever is the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is untrue. All which matters and things these repliants are and will be ready to

over and prove as the Honorable Court
 shall direct; and pray as in and by
 the said bill they have already prayed,
 Brien & Birch, } William Anderson
 Salt for Lemps } Melinda Anderson

And afterwards, to wit, on the 31st day of December
 1863, came William Anderson and Melinda
 Anderson, and filed their answer to the cross-
 bill of William Booker; which answer was
 in words and figures as follows, to wit:

State of Illinois } December Term, 1863 of McLean Circuit
 McLean county } ss. court. In Chambers,

William Anderson
 at } The answer of William Anderson &
 William Booker } Melinda Anderson, the
 dependants, to cross-bill filed by William
 Booker, in the cause entitled: William
 Anderson & Melinda Anderson vs. William
 Booker, - pending in said court.

The dependants now cited at all times
 hereafter, saving and reserving to themselves all
 and all manner of exception, benefit or advantage
 that can or may be had or taken to the
 many errors, uncertainties and imper-
 fections in the said cross-bill, for answers
 thereto, or to so much thereof as these dependants

are advised it is material or necessary for him to ^{make} answer to, answering says:

That each and every enactment and allegation of the original bill filed on the 30th day of March, 1863, filed by these respondents and his wife Melinda Anderson, is true in every particular, and now here makes said original Bill a part of this, his answer to said cross-bill, and prays the same to be taken and considered by the court as part of this their answer to said cross-bill, reference to which original bill and the contents thereof, by the court being had, will more fully and at large appear.

And these respondents further answering say: That the South half of Lot 54 in Allen's addition to the Town, now city, of Bloomington, referred to in the original Bill and cross-bill is the Homestead of these respondents; that the same were purchased, built upon and improved by these respondents for a homestead, and that the purchase money for the ground thereof and all the improvements thereon were fully paid for by complainant, before the execution of ~~the~~ either the mortgage on the tract ~~also~~ referred to in the cross-bill, that ^{in and by} neither as may be seen by reference to the same have these respondents or either of them relinquished their rights

to the same as their Homestead, or created any
 lien upon their said Homestead. And respondents
 avers that ^{at} the time of the execution of both
 said Genin mortgage and the Bookers trust deed
 respondents, with their said family resided upon
 said premises, and that neither said Genin
 mortgage nor the Bookers Trust deed was
 executed to secure the purchase money of
 the same, or to secure the payments for the
 improvement of the same, or any portion
 thereof. And these respondents therefore
 deny that any lien whatever has been
 created upon said premises last mentioned, as
 the homestead of this respondent; and that no
 decree therefore can be rendered by the
 court, as prayed for in cross-bill, by
 which a lien can be created upon
 said Homestead for the amount of the Genin
 mortgage, or any portion thereof, in any
 event whatever. But on the contrary this
 respondent insists that said Genin mortgage
 so far as the same is claimed by complainant
 in his Cross-bill to be or to have been
 a lien upon the Homestead of these res-
 pondents is a cloud upon said Homestead by
 which these respondents are liable to be put to
 great annoyance and expense on account
 of the same; and therefore these respondents
 pray the court for a decree by which

Said Genin mortgage, as well as the trust deed aforesaid may be rendered and declared void and of no effect whatever as against the Homestead of these respondents, if, indeed, it appears to the Court that the same has not already been paid off and cancelled.

And these respondents insist that said complainant is cross-bill has by the payments in money made to him by this respondent under said loan or made by complainant, Barker to respondents, William Anderson, and by the lands embraced in said Genin mortgage and the said Trust deed, other than what constituted these respondents' Homestead, been abundantly compensated for all that he has so loaned this respondent, in so paid out under said Trust deed and said Genin mortgage.

These respondents aver that the very consideration upon which said complainant acted in his purchase of said farm lands or sold to him at said Trust deed sale was in fact that the complainant by buying in said farm lands at the low bid he obtained them for more than he took the same, subject to said Genin mortgage appearing, and feeling in conscience bound thereby to pay off said Genin mortgage

If such was not the case, the complainant, by his position and doing therein was acting oppressively towards this respondent, William Anderson. These respondents deny that they by any application either of them even made to complainant Booker, either in Ohio, or Illinois, or any where else, ever used any urgent intreaties or that they were even anxious in their solicitations to respondent for the loan of the money, as charged; or that this respondent, William Anderson's wife, was as active in the procuring of said loan as this respondent, William Anderson, as charged; or that these respondents, or either of them, gave "glowing representations" of their ability or "means of repayment" of the "value of their property," such as "induced the complainant to loan \$", as charged. But these respondents avow the fact to be that complainant was by profession a money lender, and knew at the time he made to respondent - William Anderson, said loan, what respondents' means and ability was to make repayment to him; and that he, complainant, proposed, and agreed to make said loan to respondent, William Anderson for the sale and only consideration of the usurious interest which is set forth in the original and amended bill

of these respondents in this cause - to which original and amended bill these respondents beg leave to refer; and these respondents now here ~~are~~ and anew specifically state the fact to be that said complainant proposed to loan the sum of Twenty-two hundred and fifty dollars to this complainant, William Anderson, upon the following terms, - that is to say: that interest at the rate of ten per cent, per annum was to be compounded upon said sum of \$2250⁰⁰/₁₀₀, for every period of six months of the two years said note was filed to run; and this sum with said interest so compounded and computed made the sum of money specified in the note, described in said decree; and which note this respondent, William Anderson, was required by complainant to execute in order to obtain from him the loan of said sum of \$2250⁰⁰/₁₀₀ for the period of two years.

And further these respondents say that in addition to being required by complainant to execute said note, complainant further required of this respondent, William Anderson, as a further consideration and condition, precedent, to getting the use of said sum of \$2250⁰⁰/₁₀₀ for said period of two years, that this respondent, William Anderson, should agree to pay said complainant five per cent, per annum, upon said \$2250⁰⁰/₁₀₀.

14. 1
for every six months during the two years
said note had to run; and for the payments
of which additional five per cent. four
additional notes were required by com-
plainant to be delivered by respondent,
William Anderson, to complainant, made
payable in 6, 12, 18, and 24 months from the
date of said loan. And these respondents say
that the foregoing is the substance of, if not
the exact terms, fraudulently and usuriously
imposed by complainant upon respondent,
William Anderson; and more the terms res-
pondent was compelled to agree to in order to
obtain the use of said \$2250⁰⁰/₁₀₀ for said period
of two years. And these respondents deny
~~that~~ there was any agreement or un-
derstanding between complainant and this
respondent, William Anderson at the time of
the procuring of said loan (of the \$2250⁰⁰/₁₀₀
aforesaid; that the ten per cent. so com-
pounded and put into the face of said note
was to be paid every six months, or at
any other time short of said period of
two years.

These respondents therefore insist that
said note of \$2734⁸⁸/₁₀₀ so secured by said
deed of trust to be paid to complainant,
and the contract in the relation to the same
as stated above, is usurious, fraudulent and

void, to the extent of the whole amount of interest so as aforesaid computed upon said sum of $2250 \frac{00}{100}$ and put into the face of the said note; and the whole amount of said five per cent. computed upon said $\$2250 \frac{00}{100}$ as above said; that the agreement about said 5 per cent., and the compounding of said 10 per cent., and putting the same into the face of the said note, and the paying of said $\$2250 \frac{00}{100}$ and the giving of said Trust deed to secure the same, was all one single transaction and agreement, which agreement was usurious; and these respondents plead the Statutes of usury in relation to said loan; and pray this Court to be protected against said complainant's oppressive and usurious claims.

These respondents further allege that since the date of the execution of said Trust deed, respondent, William Anderson, has paid to complainant the four above-mentioned five per cent. notes, - each of which was for the sum of $\$56,25$; and that about six months after the maturity of said note of $\$2734 \frac{88}{100}$, respondents did, as required by complainant, pay to him the sum of $\$205,12$, which was fifteen per cent. for six months upon said $\$2734 \frac{88}{100}$. And respondents further say that since the Trust's pretended sale under said

trust deed, respondent, Williams Anderson, has paid the complainant - The sum of \$100 ⁰⁰/₁₀₀, making in all so paid to complainant by respondent under said loan the sum of \$530. ¹³/₁₀₀

Respondent denies that the farm land mentioned in said trust deed, sold at said Trustee's sale for its full value; but on the contrary, that respondent insists that said lands, exclusive of the said Homestead, and with the incumbrance of said other mortgage referred to above, was worth all the balance due complainant under said trust deed at the date of said sale.

Respondents further averring says that as to the allegation that R. E. Williams Esq. was the agent of complainant & respondent Williams Anderson, both in the making of said trustee sale, these respondents deny that he was so the agent of both, but on the contrary was, prior to the making of said sale and at the time thereof the attorney of said complainant in this very matter, and counselling said complainant and acting for said complainant alone, in and about the collection of said claims. But the respondents do not charge, however, that as said attorney said Williams acted otherwise than as a high-minded, honorable attorney should act towards his clients, and would only insist

in respect to the same that his position was not natural to the execution of a mutual trust.

These respondents say they do not know whether said forestry was duly advised ~~or~~ not under said deed of trust or not; and therefore neither affirms or deny the same, and call for proof.

As to this respondent, Williams Anderson being near by at the time of said sale, he says it is true, but denies that he consented to said sale being made. Respondents never consented to the homestead being sold, but did not care so much as to the other lands; yet, as to the other lands, even, in consideration of the times being then hard, or unpropitious for the sale of lands, respondent, Williams Anderson, urged a longer indulgence from complainant, but was denied indulgence. He denies that he ever was counselled by any one to let said sale go on; or that his said wife obtained any such counsel.

This respondent, Williams Anderson, says it is true, if it had not been for the tenderest considerations for the welfare of his family, he would never have interposed any objections to complainant's proceedings in the premises; but he insists that his said wife Melinda, has always insisted to him

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and everybody else, so far as this respondent knows, that in no event or without some compensation adequate to the purchase of a new house, would she consent to part with said homestead.

And respondent, William Anderson, further says that his said wife, having assurances of material aid at one time from one of her own brothers, and shortly before said sale, agreed to complainant through R.E. Williams to pay the sum of \$800.00 to get him to release his pretended claims upon the same, the said \$800.00 to go as a credit upon said last debt note, but this complainant refused.

Respondents admit ~~that~~ at said pretended sale, the homestead was bid off at \$1000, and the other land at \$1200.

As to the extending of the time for payment upon the payment of the interest, as charged, respondent, William Anderson says he was not then able to comply with such hard terms.

Respondent, William Anderson, says, as to the allegations about this respondent, William Anderson, agreeing to pay rent, &c, this respondent says he does not remember very much of what was said in relation to that matter. He supposes he may have said what was charged against him, as he was very much

Troubled with complainant's demands upon him, and was not able to meet them. Respondent says, as to the execution of the lease to the Trustees by complainant to respondent and its acceptance as stated, respondents admits the same, but they deny that said lease is binding in conscience, equity or law.

These respondents deny that complainant should in equity be reinstated for the original mortgage in the Genies mortgage, but insist that the sum is in fact as in equity and good conscience it should be, paid off and satisfied. Respondent denies that in equity and good conscience there was due to complainant after the making of said Trustees sale the sum of nine hundred dollars, or any other sum; and denies that complainant should have any ~~any~~ such decree as prayed for.

And these respondents insist that there is no equity in complainant's cross-bill; and that the same should be dismissed.

And now, having answered every allegation and argument of complainant cross-bill that they are advised it is material or necessary for him to make answer unto - without this, that if there is any other matter or thing in said cross-bill not confessed,

traversed or denied, the same is untrue -
respondent prays to be here dismissed
with his costs, most unseasonably sustained
Brier & Burch } William Anderson
for Respondents }

And Thereupon, afterwards, to-wit on the 4th,
day of January 1864, came said William
Booker, and filed his replication to said
answer of William and Melinda Anderson,
which Replication was in words and
figures as follows, to-wit:

State of Illinois
McLean Circuit Court
December Term, 1863.

William Anderson & wife }
vs. } Bill in Equity for Relief.
William Booker, et al }

And the said William Booker
complainant in the cross-bill, for replica-
tion to the answer to said cross-bill, says,
that said answer to said cross-bill so far as
the same denies any of the allegations of the
cross-bill, is not true; and that the said
cross-bill, and each and every allegation
and charge therein contained is true as this
complainant in said cross-bill will prove
in any manner this Honorable Court shall

direct; where he pray, as in said cross-bill.

R. E. Williams

Sol: for Booken.

And thereupon at said December Term of said Circuit Court, To wit, on the 5th day of January, A.D. 1864, this cause came on for final hearing, and the following decree was rendered herein by said Court, as appears of record, To wit:

Tuesday, January 5th. 1864.

William Anderson & Melinda Anderson	} Bill for Relief
vs.	
William Booken & George D. McElhiney	

And now at this day again come the complainants, by their solicitors, Brier & Birch, and the defendant William Booken, by his attorney, R. E. Williams; and it appearing to the Court by the issue of a summons herein to the Sheriff of McLean County, Illinois, and the return of said Sheriff thereon, that the defendant George D. McElhiney has been regularly served with process herein for more than ten days prior to the first day of the present Term of this Court; and the said McElhiney still failing to appear herein, to put in any answer, or demurrer to complainants bill; and said McElhiney being now here three times solemnly called, and comes not,

but herein wholly makes default, a
Decree ~~pro confesso~~ is therefore herein entered
by the court against the said George D. M.
Elkhiney. And now this cause coming on for
final hearing, upon the original Bill and
amended Bill of Complaint, and the answers,
Booker's answer thereto, and replication of
Complainants to said answer, and upon the
Cross-bill of defendant Booker, which by leave
of the court is filed, and the answer of Com-
plainant to said Cross-bill, and the Repli-
cation of Defendant to said last named an-
swer, and upon the decree ~~pro confesso~~ against
said defendant, George D. M'Elkhiney, and the
following testimony on file in said cause,
to-wit: The note and mortgage executed by
William Anderson & George M. Anderson, to Thomas
W. Genin, and the indorsements thereon: The
Trust deed executed by the complainants to
Robert E. Williams: The testimony of Rob-
ert E. Williams, Jesse Frankenberg and John
Mazon, witnesses examined by defendant,
Booker in this cause; and Dennis M'Barnes
H. H. Fell and M. W. Packard, for complainants,
and the following admission of the parties:
1st. By complainants, that on the 15th day of
July, 1862, defendant Booker paid the Genin
note and mortgage, exhibited in the answer-
ans amounting to \$622⁴⁰/₁₀₀, and the signature

To said Genie note and mortgage are genuine. 2d. By Respondent: Books admits that the four little interest notes given for the five four cent interest, were given and paid by complainants as stated in their amended bill and answer to cross-bill; and that complainants paid the \$205 $\frac{12}{100}$, as stated in answer to cross-bill; and the \$100 as stated in said answer. And it was further admitted by said respondent that the said Genie note and mortgage were given for borrowed money - and other exhibits on file. And this cause having been argued by counsel, and the court being now fully advised in the premises, finds, that at the date of the execution of the Trust deed in complainant's bill mentioned, to-wit, - bearing date April 14th, 1858, executed by complainants to Robert E. Williams, the premises described in said Trust deed, as the South-half of Lot Eighty-four, in Adams addition to the Town now city - of Bloomington, were the homestead of complainants, then, and for six years prior thereto, as husband & wife, ~~were~~ had been living. That complainants were all that time married, having children and living with them on said premises; and that the debt mentioned in said Trust deed was not created on the purchase money of, or on account

of the improvement of said premises; but that the note secured by said Trust deed, was for borrowed money. That complainant did not in and by said deed of Trust, release or waive their statutory rights to said premises as their Homestead. That said Trust deed, so far as the conveyance of the South-half of said Lot No. 84 is concerned, and the sale and conveyance of the same by the said R. E. Williams under said Trust deed to defendant, Barker, are void. And the execution of the contract of lease, of date March 12th, 1862, between said Barker and said William Anderson, is void; and thus the title of complainant, so far as said Trust deed is concerned, and said sale and conveyance thereunder and said lease is still in complainant. The court further finds that the amount of money loaned by Respondent Barker to complainant, William Anderson, at the date of the execution of said Trust deed, and for which the note in said Trust deed mentioned was given, was the sum of \$2250.00 and that the agreement to pay the amount specified in said note at the maturity of the same to-wit \$2734.88; and the execution of the small notes for extra five per cent and not mentioned in said Trust deed, was

one entire agreement, and was unanimous, that said defendant, Broken, under his cross-bill is entitled to claim of and from said complainant, William Anderson at this time the sum of 2250.00, less the amount of the sale of the other lands described in said Trust deed, to wit: The S.E. 1/4 of Section 15, Township 23, N. R. 3, East of the 3d. Principal Meridian, for the sum of \$1200; and less also the whole amount paid by complainant, William Anderson in cash upon said loan, to defendant Broken, to wit: the sum of \$530.12. That there is now due to defendant Broken under his cross-bill, after allowing the credits above named, and setting aside the sale under said Trust deed, as to the said Homestead of complainant, the sum of \$529.88. The court further finds, that said William Broken, since the sale made by Robert E. Williams under the said Trust deed, has paid to Thomas H. Genin the sum of \$622.40 upon the aforesaid Genin note and mortgage. That said note and mortgage are of prior date to said Trust deed, and embrace in it a portion of the lands included in said Trust deed, including the South Half of said lot No. 84, aforesaid, and embracing other lands not mentioned in said Trust deed.

and that having paid off said Genin note and mortgage, Defendant, Booker, in equity is entitled to hold said last named mortgage and note as assignee of the same.

It is therefore ordered, adjudged and decreed by the court now here, that said Trust deed, bearing date the 14th day of April A.D. 1858, executed by complainants to Robert E. Williams, trustee, so far as the same purports to convey the south half of Lot No. (84) Eighty-four, in Allen's addition to the Town (now city) of Bloomington, McLean county Illinois, and the sale made of said last named premises by said Williams as trustee, and the conveyance executed by said trustee to Defendant, Booker, under said Trust deed, so far as the last named premises are concerned, all are, and the same are hereby declared to be, void, and of no force or effect in law or equity; and that the contracts of Lease executed by and between complainant, William Anderson and defendant Booker, filed in this cause, bearing date the 12th day of March, 1862, be, and the same is hereby decreed to be null and void, and of no force or effect whatever, in law or equity; and that the title of complainants in and to the last named premises to be held and enjoyed by them as if

said Trust Deed, and the sale and conveyance of said Trustee Thereunder, and the execution of said lease had never been made. It is further ordered, adjudged and decreed by the Court that the injunction heretofore issued in this cause be made perpetual.

It is further ordered, adjudged and decreed by the Court, that complainant, William Anderson pay on or before the expiration of Sixty days from this date from this state to Defendant William Booker, the sum of \$529.⁸⁸/₁₀₀, and that in default thereof that Defendant Booker have execution therefor as upon judgments at Law. It is further ordered, adjudged and decreed by the Court, that defendant, William Booker be and he hereby is invested under the Genin Mortgage and note with all rights, both legal and equitable which he might or could have had if the said Genin note and mortgage had been regularly assigned to him at the date at which he paid the same. That is to say, he, the said Booker is substituted to all the rights of the said Genin, under the said Genin note and mortgage, whatever the same may have been. It is further ordered by the Court that the complainant William Anderson and Defendant William Booker each pay half the costs of this proceeding.

and that Execution issue against them
therefor.

And now the said Defendant, William
Booker prays an appeal to the Supreme
Court of this State; and the same is allowed
by the Court, upon his giving bond, conditions
as the Law directs, in the sum of Two
Hundred Dollars, with Wilson P. Boyd as
security - within thirty days from this date,

And thereupon on said 5th day of January
A.D. 1844, there was filed herein a certificate
of the of the oral Testimony introduced
upon the hearing of this cause; which tes-
timony, with the certificate thereto attached
was in words and figures as follows, to wit,

Robert E. Williams (for Booker). The day after
this sale under the Trust deed, and after I
had made out and delivered the deed to
Mr. Booker, Mr. Booker and Mr. Anderson
came together in my office. Booker told
Anderson that he didn't want his property,
that he would rather have the money; and
if there was any speculation in the prop-
erty, he would rather Mr. Anderson should
have it: all that he wanted was his mon-
ey and interest; and thus made Mr. An-
derson this proposition - that from that time

he would put the debt at ten per cent. interest, if Mr. Anderson would pay him that interest annually; he would enter into a written contract obligating him that he might have five years to pay the debt in; and in the mean time, whenever he could sell the property for enough to pay the debt, he might do so, and have all over the debt and interest he could sell it for. Mr. Anderson replied that the proposition seemed fair, and he wanted a little time to consider of it before he gave him an answer. And Mr. Booker told him he could take time to consider of it. And thereupon Mr. Anderson went out of the office. And after being absent some time - the length of time I cannot tell he returned to the office and made in substance ~~the~~ (I won't pretend to give his exact words) this reply: - that he had considered of the proposition; and that although it seemed fair and all, that he had a right to expect or ask, yet owing to the largeness of the debt, and the hardness of the times, and the uncertain condition of the country he believed he would not undertake it. Says he: You will have to pay the Genin debt, and that is about all, ^{the debt} I ~~some~~ besides yours, and it will put me

about out of debt; and I have come
 to the conclusion that I had better be
 out of debt and not own the property,
 than owe these debts and have it. If I
 am out of debt, I can support my
 family and get a new home. Booker
 replied - Just as you say; And that ended
 that subject of conversation. Then, according
 to my best recollection, Mr. Anderson
 said to Mr. Booker, it didn't suit him then
 to move; and that he would like to rent
 the house of him - that he supposed it
 would be for rent, and that he might as
 well rent it as any one else. Mr. Booker
 replied: Certainly, he would rent him the
 house; that he would not see it until
 the times improved; that he wanted a
 good man in it, and would leave it
 to him for one year, with the privilege
 of two, if he wanted it. After some
 little talk about the terms, I think Mr.
 Anderson proposed the terms, and Mr.
 Booker agreed. They were both on
 good terms. Mr. Booker asked me to draw
 up the lease, and I commenced writing
 it; and when I was writing, Mr. Booker
 asked Mr. Anderson if I should put in the
 privilege of renewing it a second year
 on the same terms. Mr. Anderson replied -

It was not necessary; that if he wanted it longer, they could agree upon it; and I thereupon drew it for one year. I cannot recollect whether before or after the lease was written, but my best recollection is it was after, that Mr. Anderson again ~~had~~ went out of the office and took the lease with him; and after being absent some time, he returned, and the lease was executed by both parties, and was given to me to hold. After making the sale I had deducted my charges, which Mr. Booker paid me, and credited the balance on this big note, and had given it back to Mr. Booker. Immediately after the lease was executed and given me to keep, Mr. Booker took the note and gave it to Mr. Anderson—saying to him that—when I go home I will write to Mr. Genin, / get the amount of his debt and pay it. I give you up your note and keep the property, pay the Genin debt, and that puts you out of debt, and you can go a new home. Mr. Anderson seemed very much pleased, and privately told me that he was astonished at Mr. Booker's liberality; that he did not expect it.

Mr. Booker told Mr. Anderson that he wanted Anderson ^{to} leave his policy of insurance on

the lease cancelled, and he would take me out in his own name. Anderson said he would have it done; and Mr. Booken instructed me, as soon as I was advised that Anderson's policy was cancelled to take one for him. A short time afterwards I was notified by Mr. Brothers, the agent of the Insurance Company, that Anderson's policy was cancelled; and I took out a policy for Mr. Booken. Mr. Anderson paid me the first installment of rent about the time it became due, and the last a little after it was due. During some part of this conversation, and ^{before} the executing the lease - my best recollection is - that immediately after Anderson had declined to accept the five years arrangement above spoken of, Booken proposed to Anderson that if Anderson and his wife would make to Booken a Quit-claim deed to the property sold under the trust deed, he would give up the note, and square it up; which Mr. Anderson declined to do. At the time of the sale I was acting as Trustee. Booken had no other counsel here, and Booken counselled with me, and prior to the sale I was Booken's counsel - don't know that he had any other.

I advertised this land in a paper, as required by the Irish law, and put up posters, and tried to get as good a price as I could, and gave all the publicity I could. Mr. Anderson was present at the sale, and made no objection, that I heard. The trust sale was made subject to the Quin mortgage - that is, I gave notice at the sale of the existence of this prior incumbrance. In the proposition made by Booker to Anderson for the Quin claim due above spoken of, I am not positive, but it is my best recollection that Booker said he would like to have a release of the mortgaged.

McBarnes (for Anderson). I know the farm formerly owned by William Anderson: it is the N.E. 94. Sec 15 T. 23 R. 3. March 12th, '62, about 100 acres now under cultivation; was a house on it; and some cribs, and a stable, and two young orchards not bearing, each about 100 trees first Rees orchard put out five years ago, the other four years ago. The 100 was partly inclosed by trees. At that time its cash value was \$15 per acre. We paid \$21 $\frac{25}{100}$ per acre for one 80. It is about 7 miles from Bloomington, I live on

same Section. Don't recollect of any time when money was a scarce and property as low as at that time: think it was worth \$15: think it could have been sold for \$10, cash. Don't recollect of any property selling for cash at that time: it was very hard time to sell. It was exceedingly difficult to sell at that time; - not much land selling and many wanting to buy. Don't know that man could buy at his own price: land could be bought very low.

Mr. Frankalberger (for Booker), I know near where this land is - presume I have been all over it: have not been there for several years - March 1862. I can't tell what it was worth: it was not selling at anything like its former full price. I had sold some land East of that about same quality for \$25 per acre: he had paid \$10,000 - and wanted me to take it back and give him a little: I offered to take it back for what was due - about \$12,000 per acre: I didn't want to take it back for that. There was three forty's of Prairie and one forty of Timber, all fenced well, with two pretty good small frame houses: some orchards - trees young. It was 12 miles east

of Blomington. I had rather have the money than take back the land. My place was the most valuable - had a good deal rather have it. Don't know how the Anderson farm lies, or its conveniences, or how it was improved. Shouldn't suppose there was much difference in the value of my farm and this Anderson farm, per acre. Moderately improved lands could be bought at from \$12.50 to \$15 per acre; very little selling - Don't think great many wanting to sell, or wouldn't sell unless obliged to - hardly any selling. I attended the Bookers sale: didn't intend to bid. To a person wanting in land, it ought to have been worth \$15 per acre - ought to fetch \$12: don't think one could do better. Some sold unless obliged to sell. The sloughs were narrow, and mostly natural channels: the land is good.

John Magoun (for Bookers) - I know the land. In March 1862, taking consideration the times at a sale for cash, the reasonable cash value was - \$8.00, a low price; \$15, or a high price. Property was sold at unreasonable prices at that time it is hard to say. The house is a ~~new, small one~~ new shell. One of the orchards don't amount to scarce anything at all, comparatively, Land was

selling at a very great sacrifice. If I had the land to sell myself, I should have thought \$15. a good price. The house was only one room, about 16 x 14, and a small shed outside - or lean-to. Medium done.

Kersey H. Fell (for Anderson) Know the Anderson farm neighborhood - don't know it, personally. Used to own land near it. It was worth about \$20 per acre in March, 1862, cash. Don't know any man that, except forced sales. There were but few sales for cash then. If a person had wanted money, didn't want the land - had to take it on a trust deed, I can't say what it was worth. It was very dark financially. There were many who had to sell and sold cheap; and one could buy up there at very low prices. Nobody tried to sell except those who were obliged to. I had land to sell, and stopped advertising.

M. W. Packard (Witness for Anderson) Know this farm by having been on the road and on the land; but don't know the improvements, only from the testimony which I have heard. It is on the South side of road leading east and west by Ireland's Grove. The land slopes to the South, and the sloughs drain into Kikeapoo.

That land now is worth \$20; but in March 1862, no land of that kind was sold for anything near that. At that time from \$12,00 to \$15,00 over all the land would have brought; and it might have been a hard sale at that. But I think it was worth that. Where a man found a person obliged to sell, he might have bought land at less than that price, from him; but when persons were not obliged to sell, it could not be bought less than that price. There was not a great amount in a forced market. There was considerable forced to be sold.

Complainant Admits - That on the 15th day of July, 1862, Becker paid on the Genin note and mortgage exhibited on the Answer, \$622,40 and admits the signatures to the Genin notes and mortgage to be genuine.

Respondent admits - That the four little interest notes for the five cent interest, were given and paid as stated amended bill and answer to cross bill; and that Complainant paid \$203,12, over and above small notes, as is stated in amended bill. And it is admitted that the Genin note and mortgage were for borrowed money.

These admissions are all for the purposes of

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This Trial, only.

The foregoing pages numbered from 1 to 10 inclusive contain all the oral evidence given on this Trial in open Court of this case - William Anderson et al. vs. William Booker et al. in the Circuit Court of McLean County, at the December Term, A.D. 1863

John M. Scott,
Judge, &c.

And Thereupon, afterwards, on the 30th. day of January, A.D. 1864, came said William Booker and filed his appeal bond in this cause; which Bond was in words and figures as follows, to-wit:

Know all men by These Presents, that we, William Booker and Wilson P. Boyd, of the County of McLean and State of Illinois are held and firmly bound unto William Anderson & Melinda Anderson, in the penal sum of Two hundred dollars, for the payment of which well and truly to be made, one and each of us bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by These presents. Sealed with our seals, and dated at Bloomington this 14th. day of January, Anno Domini one Thousand, eight hundred and sixty-Two.

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The condition of the above obligation is such: That, Whereas, the above named William Anderson of Melinda Anderson did, on the fifth day of January, one thousand, eight hundred and sixty four, at a Term of the Circuit Court then being holden within and for the county of McLean and State of Illinois, obtain a decree against the above bounden William Booken, setting aside a sale made under a Trust Deed from said William and Melinda Anderson to Robert E. Williams, Trustee for William Booken; and for a perpetual injunction, from which decree the said William Booken has prayed for and obtained an appeal to the Supreme Court of said State.

Now if the said William Booken shall duly prosecute said appeal, and shall moreover pay the amount of the judgements, costs, interests and damages, rendered and to be rendered against him the said William Booken in case the said decree shall be affirmed in the said Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and virtue.

William Booken (Seal)
 W. P. Boyd (Seal)

State of Illinois
McLean county } ss. I, Edward R. Rue, Clerk
of the Circuit Court in and for said county,
do hereby certify that the foregoing is a
full, true and complete transcript of the
records and files of my office pertaining
to a certain cause, wherein Williams & Melinda
Anderson are compliants and Williams Bookers
and George D. McElhiney are Defendants.

In testimony whereof I have
hereunto set my hand and seal of
office, this 2d. day of March, A.D. 1864
Edward R. Rue,
Clerk, Cir. Court,



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William Booker
appellant

vs

William Anderson et al.
appellees

Record.

Filed April 20. 1864.
Shelton
Clerk.

vs. \$17.00 paid by
appellant.

E. R. Rere

By

STATE OF ILLINOIS,
Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1864.

WM. ANDERSON & WIFE, Appellees. } Appeal from McLean
—ATS.— } Circuit Court.
WM. BOOKER, Appellant,

And the said appellees, defendants in error, now come and say that there is no error in the record or proceedings aforesaid, or in rendering decree aforesaid, in manner and form as assigned; and therefore they pray that the decree may be affirmed, and that their costs may be adjudged to them, &c.

By **BRIER & BIRCH,**
Att'ys for Appellees.

Wm Anderson + wife appellus
at.

Wm Booker Appellant

Jaider in Error by
Appellus =

Fils day 18. 1864
Iceland
Ch.

State of Illinois

Supreme Court

3d Grand Division

Autumn Term 1864

William Backer Appellant

vs

William Anderson & wife Appellees

Appeal from the Circuit Court
of McLean County

The Appellant assigns the following errors
upon the Record

1st The Court Erred to the prejudice of Appellant
in overruling the Demurrer to the Bill,

2^d The Court Erred to the prejudice of
Appellant, in decreeing in favor of
complaints below,

3^d The Court Erred to the prejudice of
Appellant, in not dismissing the Bill

4th The Court Erred to the prejudice of
Appellant, in not decreeing (if it
instated the bill) in favor of Appellant
on his cross bill, the amount due to him
& lot sold for, the amount paid in the
Gwin note & mortgage, and the amount
due on the note given up to Anderson
by Backer.

For the above errors, and others apparent upon
the face of the record, the Decree should be
reversed and the bill dismissed
H. C. Williams, Counsel for