

13233

No. \_\_\_\_\_

# Supreme Court of Illinois

Frik

---

vs.

Baker

---

71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

---

No. 1.

---

Frank  
Baker

233  
1861

STATE OF ILLINOIS, } ss. The People of the State of Illinois,  
SUPREME COURT,

To the Sheriff of the County of

*Kane*

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Kane* County, before the Judge thereof, between *John Trunk*

plaintiff, and *John Barker*

defendant, it is said that manifest error hath intervened, to the injury of the said

*John Trunk*

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

*John Barker*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John Barker*

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *21<sup>st</sup>* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*nine*.

*S. Leland*

Clerk of the Supreme Court.

*by J. B. Rice Deputy*



John Smith  
as Mesr  
John Barker  
Sei fa

Filed April 6, 1839  
in deland  
Clerk

John Barker  
as Mesr

John Barker not found in my  
County. April 4th 1839

E. J. Allen Sheriff Hancock  
County.



STATE OF ILLINOIS,  
SUPREME COURT,

§3. The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF

*Name*

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Name* county, before the Judge thereof, between *John Frank complainant*  
& *John Barker*

defendant, it is said that manifest error hath intervened, to the injury of the said

*complainant*

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *John Barker*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *first Tuesday after the* ~~third~~ Monday in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John Barker*

notice, together with this writ.

WITNESS, The Hon. ~~WALTER B. SCATES~~ Chief Justice of our said Court, and the Seal thereof at Ottawa, this *5th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*eight*.

*L. L. Camd*  
Clerk of the Supreme Court.

*by J. B. Rice Deputy*





John Smith  
vs No 21  
John Barker  
Sei for

Filed  
March 1st 1858  
But  
50  
100  
200  
admitted  
all

This writ not executed the within name  
John Barker not found in my Bail  
wick March 22 1858

G. E. Comins Sheriff of  
Kane County



John Frink plff in error

vs  
John Barker deft in error

Supreme Court

June Term 1855.

Abstract.

This was a bill in Chancery in the Kane Circuit Court by plff in error against deft in error on the 30<sup>th</sup> day of September 1852, setting forth that on the 25<sup>th</sup> day of May 1852 the plff in error entered into an agreement with the deft in error for the purchase of a farm in Aurora Kane County bounded as follows; on the south by a highway or street, B. F. Phillips, by Ira Lake and George Osborn on the East by said Osborn, Harvey Johnson, Nicholas and Austin Wentworth; on the south by land theretofore deeded to plff in error by one Seth Reed; on the west by Omie Sheldon and Joseph P. Reed, which said boundaries by persons means bounded by lands owned by the several persons named. That said agreement so far as deemed essential was reduced to writing signed by the parties, a copy of which agreement was thereto annexed. That the plff in error agreed to pay to the deft in error \$2625, for said farm at the time and in the manner specified in said agreement to wit \$625, in three months from date, and the remainder in two years from date with interest from March 1. 1853, and that the deft in error agreed to execute a deed for the conveyance of said farm to plff in error with covenants of warranty.

And further setting forth, that the plff in error was bound unto the deft in error by instrument in writing bearing even date with the agreement thereby exhibited in the penalty of \$500, to fulfil his agreement for the purchase of the premises.

And that said agreement was made on the part of the plff in error with the express understanding that said farm contained about ninety acres of land, and that it would not vary in quantity more than one acre from ninety acres either more or less and as an inducement to the plff in error to pay said sum of \$2625, for said farm, the said deft in error represented and assured



the deft in error that he had sold and conveyed but little from the original number of acres contained in said farm, and that the same did at the time of making their said agreement contain ninety acres or thereabouts after deducting all and singular the parcels he had theretofore sold and conveyed to other persons, but that the farm for the purchase of which the plff in error bargained might fall short or overrun that number of acres by one acre, and that it would not vary from ninety acres either more or less to exceed one acre. That the sum of \$2625 the price agreed upon was arrived at and fixed upon by estimating said farm as containing ninety acres at its fair value per acre they ascertained and agreed upon the sum of \$2625. as the purchase price thereof, which the plff in error bound himself to pay relying implicitly upon the statements and representations of the deft in error as to the quantity of land contained in said farm. That the words more or less immediately succeeding the words containing about ninety acres contained in said agreement after the description of said farm, were inserted in the agreement solely with reference to the representation of deft in error that there might be one acre more or less than ninety acres in the farm, and not with the intention or understanding that a deficit of several acres of land should not vary the purchase price. That the plff in error had no means of ascertaining the number of acres of land contained in said farm at the time of making said agreement of purchase, and that the said deft in error was well advised and fully understood that the plff in error relied solely upon said statements and based his agreement as to the amount of the purchase money upon such statement alone.

and further setting forth, that on the 14<sup>th</sup> day of July 1852 the plff in error received from the deft in error a deed by him duly executed conveying said farm to the plff in error, and that the plff in error executed and delivered to the deft in error a promissory note for \$625. payable in three months from date, and also a promissory note for \$2000 payable in two years from



date together with a mortgage upon the premises as security for the due payment of said note.

That the plff in error before he received said deed had ascertained that instead of said farm containing ninety acres, it contained but seventy acres, and that at the time of executing said delivering said note and mortgage, the plff in error expressly protected to the deft in error that the plff in error was not bound to pay or secure the whole amount of said \$2625 for said farm; and there ought and should of right be an abatement from the purchase price in the same proportion as the farm had fallen short of ninety acres, and that two ninths of said sum should be deducted from the purchase price, but that the deft in error refused to make such or any abatement, and that the plff in error delivered said note and mortgage under a written protect to the effect aforesaid, and stating therein in substance that the plff in error would not waive his right to seek an enforcement of such deduction and abatement from said purchased price.

And further setting forth, that the deft in error had all the means of knowing that the said farm did not contain over seventy acres of land at the time of making said agreement, and that plff in error was was informed and believed that he well knew that there was but about seventy acres in said farm at the time he so stated and represented to the plff in error that it could not fall short more than one acre of ninety acres, and that the deft in error knowingly and designedly misrepresented the extent of said farm intending to deceive the plff in error thinking to force him either to pay said sum of \$2625. for said farm or the penalty of five hundred dollars.

And charging that the deft in error soon after said agreement was made boasted that he had the plff in error tight, and that when surveyed said farm would be found to contain but seventy acres, and that his bond to the plff in error called for ninety acres more or less, and that plff in error would have to take it and pay the sum agreed upon or pay five hundred dollars



penalty - And that the plff in error had applied to the  
def't in error to rebate from the said purchase price such sum  
as he ought in equity and conscience to do -

Praying, that the def't in error might be enjoined from transferring  
or assigning said notes and mortgage and for an abatement  
of two ninths of the purchase price or such other portion thereof  
as might be just and equitable by an indorsement of the amount  
of such abatement upon said notes and mortgage and for the  
further relief -

The exhibit mentioned in the Bill is as follows,

Know all men by these presents that John  
Barker of the County of Kane and State of Illinois am held  
and firmly bound unto John Frink of the County of Cook and  
State of Illinois in the penal sum of five hundred dollars to  
be paid unto the said John Frink his heirs executors adminis-  
trators or assigns to which payment well and truly to be  
made, I bind myself my heirs executors and administrators  
and every of them firmly by these presents, sealed with my  
this twenty fifth day of May A.D. 1852.

The condition of the above obligation  
is such that whereas the above bounden John Barker has this day  
sold to the said John Frink his heirs and assigns for the sum of twenty  
six  $\frac{25}{100}$  dollars all the following described lot or parcel  
of land to wit" lying and being in the County of Kane and  
State of Illinois and in the township of Aurora and bounded  
on the south by the high way B. F. Phillips Ladin Lake  
and George Osborn and on the east by said Osborn, Harvey  
Johnson Nicholas and Austin Wentworth on the north by  
land heretofore deeded to the party of the second part by  
one Seth Reed and on the west by Orrin Sheldon and Joseph  
P. Ring containing about ninety acres of land to the same  
more or less upon the payment of the said sum being made  
as follows, Six hundred and twenty five dollars three



months from date the following in two years from date and  
interest from the first of March next the said Barker his  
heirs executors and assigns covenants and agrees to and with the  
said John Frink his heirs executors administrators and assigns  
to execute a good and sufficient deed of conveyance in fee simple  
free from all incumbrances with full and proper covenants of  
warranty for the above described premises.

Now if the said parties shall will and truly keep observe and  
perform these said covenants and agreements herein contained  
on their several parts, then this obligation is to be void otherwise  
to remain in full force and virtue.

Sealed signed and delivered }  
in presence of John Frink }

John Barker   
John Frink 

An injunction issued Sept 30. 1852, and on a general demurrer  
to the Bill for want of equity the injunction was dissolved the  
Bill was dismissed March 5. 1853.

The complainant brings the case to this Court by writ of error,  
and assigns for error the dismissal of the Bill.



Abstract

# 1

John Frink plff in error

vs

John Barker deft in error



John Frink <sup>plff in error</sup>  
~~Appellant~~  
vs  
John Barker <sup>diff in error</sup>  
~~Appellee~~

Supreme Court  
June Term 1855.

Abstract.

This was a bill in Chancery filed in the Kane Circuit Court by <sup>plff in error</sup> ~~Appellant~~ against <sup>diff in error</sup> ~~Appellee~~ on the 30<sup>th</sup> day of September 1852, setting forth that on the 25<sup>th</sup> day of May 1852 the <sup>plff in error</sup> ~~Appellant~~ entered into an agreement with the <sup>diff in error</sup> ~~Appellee~~ for the purchase of a farm in Aurora Kane County bounded as follows, on the south by a highway or street, B. F. Philips, by Ira Lake and George Osborn on the East by said Osborn, Harvey Johnson Nicholas and Austin Wentworth; on the south by land theretofore deeded to <sup>plff in error</sup> ~~Appellant~~ by one Seth Reed; on the West by Orin Sheldon and Joseph P. King, which said boundaries by persons means bounded by lands owned by the several persons named. That said agreement so far as deemed essential was reduced to writing signed by the parties, a copy of which agreement was thereto annexed. That the <sup>plff in error</sup> ~~Appellant~~ agreed to pay to the <sup>diff in error</sup> ~~Appellee~~ \$2625 for said farm at the time and in the manner specified in said agreement to wit \$625. in three months from date, and the remainder in two years from date with interest from March 1. 1853. and that the <sup>diff in error</sup> ~~Appellee~~ agreed to execute a deed for the conveyance of said farm to <sup>plff in error</sup> ~~Appellant~~ with covenants of warranty. And further setting forth, that the <sup>plff in error</sup> ~~Appellant~~ was bound unto the <sup>diff in error</sup> ~~Appellee~~ by instrument in writing bearing even date with the agreement thereby exhibited in the penalty of \$500. to fulfil his agreement for the purchase of the premises. And that said agreement was made on the part of the <sup>plff in error</sup> ~~Appellant~~ with the express understanding that said farm contained about ninety acres of land, and that it would not vary in quantity more than one acre from ninety acres, either more or less and as an inducement to the <sup>plff in error</sup> ~~Appellant~~ to pay said sum of \$2625. for said farm, the said <sup>diff in error</sup> ~~Appellee~~



represented and assured the <sup>plff in error</sup> ~~defendant~~ that he had sold and conveyed but little from the original number of acres contained in said farm, and the same did at the time of making this said agreement contain ninety acres or thereabouts after deducting all and singular the parcels he had theretofore sold and conveyed to other persons, but that the farm for the purchase of which the <sup>plff in error</sup> ~~defendant~~ bargained might fall short or overrun that number of acres by one acre, and that it would not vary from ninety acres either more or less to exceed one acre - That the sum of \$2625. the price agreed upon was arrived at and fixed upon by estimating said farm as containing ninety acres at its fair value per acre they ascertained and agreed upon the sum of \$2625. as the purchase price thereof, which the <sup>plff in error</sup> ~~defendant~~ bound himself to pay relying implicitly upon the statements and representations of the <sup>plff in error</sup> ~~defendant~~ as to the quantity of land contained in said farm - That the words more or less immediately succeeding the words containing about ninety acres contained in said agreement after the description of said farm, were inserted in the agreement solely with reference to the representation of <sup>plff in error</sup> ~~defendant~~ that there might be one acre more or less than ninety acres in the farm, and not with the intention or understanding that a deficit of several acres of land should not vary the purchase price - That the <sup>plff in error</sup> ~~defendant~~ had no means of ascertaining the number of acres of land contained in said farm at the time of making said agreement of purchase, and that the said <sup>plff in error</sup> ~~defendant~~ was well advised and fully understood that the <sup>plff in error</sup> ~~defendant~~ relied solely upon said statements and based his agreement as to the amount of the purchase money upon such statement alone, and further setting forth, that on the 14<sup>th</sup> day of July 1852, the <sup>plff in error</sup> ~~defendant~~ received from the <sup>plff in error</sup> ~~defendant~~ a deed by him duly executed conveying said farm to the <sup>plff in error</sup> ~~defendant~~, and that the <sup>plff in error</sup> ~~defendant~~ executed and delivered to the <sup>plff in error</sup> ~~defendant~~ a promissory note for \$625. payable in three months from date, and also a promissory note for \$2000. payable in two years from



date together with a mortgage upon the premises as security for the due payment of said notes.

That the plff in error before he received said deed had ascertained that instead of said farm containing ninety acres, it contained but seventy acres, and at the time of executing and delivering said notes and mortgages, the plff in error expressly protected to the deft in error that the plff in error was not bound to pay or secure the whole amount of said \$2625. for said farm, and there ought and should of right be an abatement from the purchase price in the same proportion as the farm had fallen short of ninety acres, and that two ninths of said sum should be deducted from the purchase price, but that the deft in error refused to make such or any abatement, and that the plff in error delivered said notes and mortgages under a written protest to the effect aforesaid, and stating therein in substance that the plff in error would not waive his right to seek an enforcement of such deduction and abatement from said purchase price.

And further setting forth, that the deft in error had all the means of knowing that the said farm did not contain over seventy acres of land at the time of making said agreement, and that the plff in error was informed and believed that he well knew that there was but about seventy acres in said farm at the time he so stated and represented to the plff in error that it could not fall short more than one acre of ninety acres, and that the deft in error knowingly and designedly misrepresented the extent of said farm intending to deceive the plff in error thinking to force him either to pay said sum of \$2625. for said farm or the penalty of five hundred dollars.

And charging that the deft in error soon after ~~the~~<sup>said</sup> agreement was made boasted that he had the plff in error tight, and that when surveyed said farm would be found to contain but seventy acres, and that his bond to the plff in error called for ninety acres more or less, and that plff in error would have to take it and pay the sum agreed upon or pay five hundred



dollars penalty - And that the plaintiff in error had applied to the debt in error to abate from the said purchase price such sum as he might in equity and conscience to do - Praying, that the debt in error might be enjoined from transferring or assigning said notes and mortgages and for an abatement of two ninths of the purchase price or such other portion thereof as might be just and equitable by an indorsement of the amount of such abatement upon said notes and mortgages & for further relief.

The exhibit mentioned in the bill is as follows

Know all men by these presents that John Barker of the County of Kane and state of Illinois am held and firmly bound unto John Frink of the County of Cook and state of Illinois in the penal sum of five hundred dollars to be paid unto the said John Frink his heirs executors administrators or assignee to which payment well and truly to be made, I bind myself my heirs executors and administrators and every of them firmly by these presents, sealed with my this Twenty fifth day of May A. D. 1852 -

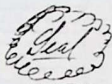
The condition of the above obligation is such that whereas the above bounden John Barker has this day sold to the said John Frink heirs and assignee for the sum of Twenty six <sup>25</sup>/<sub>100</sub> dollars all the following described lot or parcel of land to wit Lying and being in the County of Kane and state of Illinois and in the Township of Aurora and bounded on the south by the highway B. F. Phillips Garden Lake and George Osborn and on the East by said Osborn, Harvey Johnson Nicholas and Amelia Wentworth on the north by land heretofore deeded to the party of the second part by one Seth Reed and on the West by Orion Childers and Joseph P. King containing about ninety acres of land be the same more or less upon the payment of the said sum being made as follows, Six hundred and twenty five dollars three months from date the following in two years from date and interest



from the first of March next the said Barker his heirs executors  
and assigns covenants and agree to and with the said John  
Frink his heirs executors administrators and assigns to execute  
a good and sufficient deed of conveyance in fee simple free  
from all incumbrances with full and proper covenants of warranty  
for the above described premises

Now if the said parties shall well and truly keep observe and  
perform these said covenants and agreements herein contained  
on this several parts, then this obligation is to be void otherwise  
to remain in full force and virtue

Sealed signed and delivered }  
in presence of John King }

John Barker   
John Frink 

An injunction issued Sept. 30, 1852 and on a general demurrer  
to the Bill for want of equity the injunction was dissolved  
the case dismissed March 5, 1853.

The complainant brings the case to this Court by writ of error  
and assigns for error the dismissal of the Bill.



Abstract 8 1

John Frink left in error

vs

John Barker left in error



John Frink

Supreme Court

June Term 1855

John Parker

There are but two questions in the case - The first one is, whether it is a case of actual fraud in the sale of land the party defrauded can have relief in a court of equity by a deduction from the purchase money.

Rawle on Con of title p 462 A says  
and authorities there cited

The idea of the court below that the party had an ample remedy at law by way of defence to the notes is fallacious

1<sup>st</sup> The mortgage may be procured by scin facies as has been done in this case

2<sup>d</sup>. To remove <sup>the liens upon the land</sup> ~~a cloud upon his title~~ by the mortgagee's protestants -

3<sup>d</sup>. Equity has concurrent jurisdiction in all cases of actual fraud -



¶¶ There was <sup>no</sup> waiver of the party's rights, by the execution  
of the notes and mortgage - There was an express  
reservation of all rights, and at the time they were  
tendered and received -



State of Illinois -

In Sup. Court - June Term

AD 1854

John Frink }

vs

John Barker }

And now comes the said  
John Frink p[er] in error by Attorney  
Frink & Att[or] his att[or]s & says that  
in several proceedings aforesaid there  
is manifest error in this to wit  
1<sup>st</sup> That the Court erred in ordering  
the information to be disposed  
2<sup>nd</sup> That the Court erred in sustaining  
the demand to compel's bill  
3<sup>rd</sup> The Court erred in ordering the  
Compel's bill to be dismissed  
Wherefore & for other errors in the  
record & proceedings aforesaid  
the p[er] in error prays that the  
said orders & decrees aforesaid  
may be reversed & annulled & for  
his costs in this behalf

Frink & Hoos  
for p[er]s in error



~~No 41~~  
No 1  
F. v. m. 14

vs  
B. v. m. 14

Assignment of  
Errors

Filed July 21. 1884  
L. Keland Clerk



Supreme Court  
John F. Smith vs  
John Barker  
Compt  
Deft

In Equity  
To L. Ireland Clerk

You will please a writ  
of Error, to the Kane County Circuit Court, to remove  
the record remaining in said court, in the above entitled cause  
to this court, for review, of errors alleged in said record  
June 22. 1854.

R. F. Smith  
Sols for Compt



~~No 1 91~~ ~~No 2~~  
John Frink  
vs  
John Baker  

---

Pee.

Filed June 22<sup>d</sup> - 1854.  
L. Island Clk.



STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of Kane Greeting:

Because, In the record and proceedings, and also in the ~~condition~~ of the judgments of a plea which was in the Circuit Court of Kane County, before the Judge thereof, between John Frink

plaintiff; and John Barker

defendant....., it is said that manifest error hath intervened, to the injury of the said John Frink

as we are informed by his complaints..... the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said John Barker

that he — be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John Barker

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 26<sup>th</sup> day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty One

L. Leland

Clerk of the Supreme Court.

by J. B. Rieker



This writ returned John Barker not  
found in my County

Fees \$0.80

Demarcus Clark

Sheriff of Kane County

Geneva April 5<sup>th</sup> 1861

Ch. 1. Kane

John Barker

No. vs.

John Barker

SCIRE FACIAS.

FILED

April 8<sup>th</sup> A. D. 1861

d. Deland

Clerk.



United States of America  
State of Illinois

pleas before the Hon<sup>ble</sup> Isaac G. Nelson  
Judge of the Thirteenth Judicial Circuit of the  
State of Illinois. at a Term of the Kane County  
Circuit Court begun and holden at the Court  
House in General in said County on the ~~seventeenth~~  
day of February in the year of our Lord  
One Thousand Eight-hundred and Fifty-Three  
Present. Hon Isaac G. Nelson Judge

Isaac G. Wilson      Judge  
 M. M. Boyer      State's attorney  
 Frank B. Spalding      Sheriff

Attest

L. Dearborn Clerk

And whereas hereupon to wit on the 30<sup>th</sup> day of September 1858 the following bill was filed in said court which is in the word, & figures following to wit

State of Illinois

Stam County circuit Court docket

I, the Honorable Isaac G. Nelson  
Judge of the Kane County Circuit Court

Complaining Scheweth,  
unto your Honor. Your Orator John P. Smith of Chicago  
in the County of Cook and State of Illinois that on or  
about the twenty fifth day of May in the year One Thousand  
Eight hundred and fifty-two your orator entered into  
an agreement with John Barber of Aurora in Kane  
County for the purchase of a farm situated in the town  
of Aurora in Kane County in the State of Illinois



bounded as follows to wit. on the South by a highway  
or Street. To S. Phillips. by Ira Lake & Henry Auburn  
on the East, by said Auburn Harvey Johnson, Nicholas  
& Arthur Wentworth on the North by land heretofore  
deeded to your Orator by one Seth Reed and on the West  
by Armin Sheldon & Joseph P. King which said boundaries  
by persons herein bounded by lands owned by several persons  
<sup>names</sup> ~~wanted~~ & by your Orator further shew unto your Honor  
that said agreement so far as deemed essential reduced  
to writing & signed by your Orator & the said John  
Barber a copy of which said judgment agreement is  
herein annexed & marked exhibit "A" & which your orator  
prays may be taken as a part of the stating part of this his  
bill and your Orator further shews unto your Honor  
that he agreed to pay to the said John Barber the <sup>sum</sup> ~~amount~~  
of Two thousand Six hundred & twenty five dollars  
for said farm at the time & in the manner specified  
in said exhibit "A" herein attached & the said John  
Barber binding himself by the terms of said agreement  
to execute a deed for the conveyance of said farm by  
your Orator with covenants of warranty specified  
in said Exhibited agreement & your Orator was to pay  
the said sum of Two Thousand Six hundred & twenty five  
dollars as follows namely. Six hundred and twenty five  
dollars in three months from date, meaning three months  
from the date upon which said deed should be executed  
& delivered to your Orator & the balance of said sum in  
two years from date (meaning two years from the date  
of the execution & delivery of said deed) with interest  
from the first day of next March as will more fully  
appear by reference to said agreement - hereby  
Exhibited as aforesaid. And your Orator further  
sheweth unto your Honor that he was bound



unto the said John Barter. by an instrument in  
writing bearing even date with the agreement hereby exhib-  
ited as he now remembers and believes in the penalty  
of five hundred dollars to fulfil his agreement for the  
purchase of farm with said Barter. And your Orator  
further shows unto your Honor that the said agreement was  
made on his part with the express understanding that said farm  
contained about ninety acres of land & that it would not  
vary in quantity more than one acre from ninety acres either  
more or less & as an inducement to your Orator to pay  
said sum of two thousand six hundred & twenty five  
dollars for the said farm the said John Barter represented  
& assured your Orator that he had sold & conveyed but  
little land from the original number of acres contained  
in said farm & that the same did then at the time of making  
their said agreement contained ninety acres or thereabouts  
after deducting all & singular the parcels he had theretofore  
sold & conveyed to other persons but that the farm for the  
purchase of which your Orator bargained might fall  
short or overrun that number (ninety) of acres by one  
acre and that it would not vary from ninety acres  
either more or less to exceed one acre & your Orator  
expressly states that the sum of two thousand six hundred  
twenty five dollars the purchased price agreed upon was  
arrived at & fixed upon by estimating the value of said lands  
or farm per acre & by estimating said farm as containing  
ninety acres at its fair value per acre they ascertained  
& agreed upon the sum of two thousand six hundred  
& twenty five dollars as the purchase price thereof. which  
your Orator bound himself to pay relying implicitly upon  
the statements & representation of the said John Barter  
as to the quantity of land contained in said farm  
And your Orator further shows unto



Your Honor that the words. "to the same more or less immediately succeeding the words. containing about ninety acres of land containing in said agreement after the description of said farm were inserted in the agreement solely with reference to the representation of said Barstow that there might be one acre more or less than ninety in the farm and not with the intention or understanding that a deficit of several acres of land should not vary the purchase price & your Orator states that he had no means of ascertaining the number of acres of land contained in said farm at the time of making said agreement of purchase and that the said Barstow was well advised & fully understood that your Orator relied solely upon his statement and based his agreement as to the amount of the purchase money upon such statement alone - And your Orator further shows unto your Honor that on or about the fourteenth day of July Eighteen hundred and fifty-two he received from the said John Barstow a deed by him duly executed conveying the said farm to your Orator & your Orator executed and delivered to your Orator the said John Barstow a promissory note for the sum of six hundred & twenty-five dollars payable to said Barstow in three months from date and also a promissory note for the sum of two thousand dollars payable in two years from its date and your Orator also executed & delivered to said Barstow a mortgage upon the purchase lands as a collateral security for the payments of said notes. And your Orator further shows unto your Honor that before he received said deed he had ascertained that instead of containing ninety acres of land said farm contained but seventy acres of land & at the time of executing & delivering said notes



& Mortgage your orator expressly / objected to the said  
 John Barster that your Orator was not bound to pay or  
 secure the whole Amount of said sum of Two Thousand and  
 six hundred & twenty-five dollars for said farm & that  
 there ought and should of right be an abatement of ~~such~~  
~~deduction~~ from the purchase price in the same proportion  
 as the farm has fallen short of ninety acres & that  
 two thirds of said sum should be deducted from said  
 purchase price but the said Barster refused to make  
 such or any abatement & your Orator delivered said  
 notes & mortgages & a written protest to the effect aforesaid  
 & stating therein in substance that your Orator would  
 not waive his right to seek an enforcement of such  
 deduction & abatement from said purchased price

And your orator further shows unto  
 your Honor that the said Barster had all the means  
 of knowing that the said farm did not contain over  
 about seventy acres of land at the time of making said  
 agreement & your orator is informed & believes that he  
 did well know that there was but about seventy acres  
 in said farm at the time he so stated & represented  
 to your orator that it could not full more than one  
 acre short of ninety-acres & knowingly & designedly mis-  
 represented the extent of said farm. intending to deceive  
 your Orator trusting to force your orator either to pay  
 the said sum of Two Thousand six hundred & twenty  
 five dollars for said farm or the penalty of five hundred  
 dollars. And your Orator is informed &  
 believes and therefore charges to be true that the said  
 Barster soon after said Agreement was made bound  
 that he had your orator tight & that when surveyed said  
 farm would be found to contain but seventy acres  
 & his bond to your orator called for ninety-acres only



And your Orator would have to take it and pay the  
sum agreed upon or pay five hundred dollars penalty  
And your Orator has applied to said John Barker in a  
friendly manner to abate such sum from the said  
purchase price stipulated & agreed in & by the agreement  
in writing aforesaid as in Equity and good conscience  
he ought to have done & Your Orator will hope that the  
said John Barker would have complied with the  
reasonable request of Your Orator in this behalf. but  
now so it is may it please your Honor that the said  
John Barker hath withheld under various false  
frivolous pretences utterly refused to comply with the  
reasonable request of your Orator as aforesaid the  
consideration whereof and for as much as your Orator  
has no remedy at law by the strict rules of common  
law & can only be relieved by the said aid of this  
Court. I, the end thereof that the said John Barker  
may without oath (his answer upon oath being hereby  
expressly waived) full true direct & perfect answer  
make to all & singular the statements in this  
your Orators Bill contained And may be restrained  
from selling assigning or in any way transferring said  
mortgages or notes to any other person & that he may  
be compelled by the final order & decree of this Court  
to abate two thirds of the amount of said sum  
of two thousand six hundred & twenty five dollars from  
said purchase price or such other ~~purchase~~ portion thereof  
as shall be just by indorsing the same upon said  
notes & mortgages & receipt the same to your Orator  
to apply thereon or in some other manner under  
the direction of this Court And that your Orator  
may have such other or such further relief in the  
premises as shall be agreeable to your Equity and



good conscience

May it please your Honor the  
premises being considered to grant unto your  
orator the peoples writ of injunction to be issued  
out of this court & under the seal thereof & directed  
to the said John Barker his agents attorneys & solicitors  
therein & thereby under a certain penalty to be therein  
inserted restraining each and every one of them from  
suing selling or in any way transferring either the  
said machinery or said notes or any part thereof to  
any other person from attempting to collect the same  
until the further order of this court

May it also please your  
Honor the premises being considered to grant unto  
your orator the peoples writ of summons to be issued  
out of & under the seal of this court to the said John  
Barker & commanding him to be and appear  
before this Honorable Court on the first day of the next  
term thereof then & then holden to answer unto your  
Orator & stand to and abide such decree as this  
court shall make in the premises & as shall be agreeable  
to equity & good conscience

Hon. Court

John. Davis

Sole for complt -

of course

State of Illinois } John Davis being duly sworn  
County of Cook } upon his oath says he has heard  
reads the foregoing bill of complaint and knows the contents  
thereof and that the same is true of his own knowledge & as  
to the matters therein stated upon information & belief as to those matters  
he believes it to be true

Sworn & subscribed before me  
the 10<sup>th</sup> day of September 1852  
L. C. Ketchum C. J.

John Davis



Exhibit A" referred to in Bill

I know all men by these presents that John Barker of the county of Kane and State of Illinois am. held and firmly bound unto John Smith of the county of Cook and State of Illinois in the penal sum of five hundred dollars to be paid unto the said John Smith his heirs executors administrators or assigns in which payment well and truly to be made. I bind myself my heirs Executors and administrators and Every of them firmly by these presents. Sealed with my this twenty fifth day of May A.D. 1852

The condition of the above obligation is such that whereas the above bounden John Barker has this day sold to the said John Smith his heirs and assigns for the sum of Twenty six \$100 dollars all the following described lot or parcel of land to wit "Lying and being in the county of Kane and State of Illinois and in the Township of Aurora and bounded on the South by the highway B & J Phillips Larkin Lake and George Astor and on the East by said Astor, Harvey Johnson Nicholas & Austin Westmore on the North by land heretofore deeded to the party of the second part by one Seth Reed, & on the West by Armin Sheldon and Joseph Spring containing about Ninety Acres of Land for the same more or less upon the payment of the said sum of being made as follows Six hundred and twenty five dollars then months from date the following in two years from date and interest from the first of March next the said Barker his heirs executors and assigns covenants and agrees to and with the said John Smith his heirs Executors and administrators and



8  
 assigns to execute a good and sufficient deed of conveyance in fee simple free from all incumbrances with full and proper covenants of warranty for the above described premises. — Now if the said parties shall well and truly keep observe and perform these said covenants and agreements herein contained on their part several parts. then this obligation is to be void otherwise to remain in full force and virtue.

Sealed Signed and delivered in  
 the presence of John King

John Barker  
 John Smith

"copy"

And upon the back of said bill was the following endorsement in the words & figures following to wit

John Smith { Have to circuit court  
 John Barker { In chancery — Bill of Compel

Let Inj issue as prayed for on complainant's filing bond running to defendant in penal sum of \$100. condition for payment of all costs and damages that may arise or accrue by reason of the wrongfully issuing of the Inj.

Mark Skinner  
 Judge of the Circuit Court

And whereas in pursuance of the above Order the following injunction was issued which is in the words & figures following to wit

State of Illinois  
 Same County circuit court In chancery

"over"



The People of the State of Illinois

To John Barker and to his  
Agents Attorneys Counsellors and Solicitors and to each  
of you  
Greeting

Whereas it has been represented unto us in  
our State County circuit court in Chancery on the part  
of John Smith complainant that he hath lately exhibited  
his bill of Complaint in our said court against you  
the said John Barker defendant to be relieved touching  
the matters therein complained against you — And  
Whereas it is stated among other things that you are  
combining with others to injure the said complainant  
touching matters stated in said bill and that your  
acting and doing are contrary to Equity and good  
conscience. We therefore in consideration of the premises  
and of the particular matters set forth in said bill do  
strictly enjoin and command you the said John Barker  
and the persons before named and all and every of  
you under the penalty of ten thousand dollars to be  
levied of your and each of your goods chattels lands  
and tenements to our use that you absolutely refrain  
and desist from selling assigning or in any way  
transferring or attempting to collect a certain promissory  
note for the payment of the sum of six hundred  
and twenty five dollars and one note for the payment  
of two thousand dollars executed by John Smith  
against the said John Barker and delivered to you  
about the fourteenth day of July 1852 the first  
payable in three months and the other in two years  
and executed and delivered by you for the purchase  
price of a farm situate in the Town of Aurora in  
Kane County and by you the said John Barker



deeded to the said John Baister and also that  
you refrain and desist from selling assigning or in  
any way Transferring to any other person a certain  
Indenture of Mortgage Executed by the said John Baister  
conveying to you the said John Baister the said farm  
as security for the payment of said Notes and this  
until the further order of this court

Read

Witness Charles B. Wells clerk of our said  
circuit court and the seal thereof at  
General in said County of Kane this  
30<sup>th</sup> day of Sept - AD 1852

Chas. B. Wells  
Clerk

And upon the back of the above Indenture  
writ was the endorsement of the Sheriff which is in the  
words of figures following to wit.

Personally served on the within  
named John Baister by copy Oct 15 1852 at 1  
O'clock P M

L. McCaskey Sheriff of Kane Co  
B. J. J. Perrier spy

1 service 50. copy 50 10 miles 50 not 100 / \$1.00

And upon the filing of the aforesaid  
bill the following summons issued which is in the  
words of figures following to wit

State of Illinois  
Kane County

To the People of the State of Ill.  
to the Sheriff of said County Greeting

We command you that you summon  
John Baister if he shall be found in your



County personally to be and appear before the Circuit  
Court of said County on the first day of the next term  
thereof to be holden at the court house in Geneva in  
said County on the second Monday of November  
next to answer unto the Bill of complaint filed  
by John Smith against you on the chancery side of  
said Court And have you then and then this writ  
with an endorsement thereon in what manner you  
have Executed the same

Seal

Witness Charles B Wells Clerk of our  
said Court and the seal thereof at Geneva  
in said County this 1<sup>st</sup> day of Oct A.D. 1852

Chas B Wells Clerk

And on the back of said summons  
is the endorsement of the Sheriff which is in the words  
of figures following to wit

Personally served on the within  
named John Smith by copy October 15, 1852  
at 4 o'clock P.M.

L. Dearborn Affiant  
By C. D. Revere Deputy

And whereas on the said 30<sup>th</sup> day of September 1852  
the following Power of Attorney and Injunction bond  
was filed in said Court in said Cause

Know all men by these presents  
that I have appointed & do hereby appoint & authorize  
Henry Smith to be my true and lawful attorney  
for me & in my name place and stead to Execute  
any & all such bond or bonds as may be required  
by any Judge of any Court of the State of Illinois



as security to John Barker upon the allowance  
 of a writ of Injunction in a suit do &  
 commenced by me as complainant against said John  
 Barker as defendant in the Kane County Circuit Court  
 in Chancery to restrain the transfer of certain Notes &  
 a Mortgage executed by me to said Barker hereby ratifying  
 the acts of my said attorney in the premises  
 Signed, sealed & delivered  
 in the presence of this 20<sup>th</sup> day of Sept. I must  
 September AD 1852.

"Injunction Bond"

Know all men by these presents that  
 we John Prins and Henry Prins of Chicago in the  
 State of Illinois are held and firmly bound unto  
 John Barker of Aurora in the county of Kane in  
 said State in the penal sum of five hundred dollars  
 lawful money of the United States to be paid to the said  
 John Barker his heirs executors administrators or assigns  
 to which payment well and truly to be made we bind  
 ourselves our - and each of our heirs executors adm-  
 inistrators and assigns jointly by these presents. Signed  
 and sealed by us the 22 day of September AD 1852

The condition of this obligation  
 is such that - whereas an order has been made by the  
 Hon. Marshall Skinner Judge of the Cook County Court of  
 Common Pleas upon a statement of a bill of complaint  
 of the above bounden John Prins as complainant  
 against the above named John Barker praying  
 an Injunction to restrain the said John Barker his  
 agents attorneys and solicitors from transferring certain  
 notes and a mortgage executed by the said complainant  
 to the said John Barker and whereas said bill is



About to be filed in the Kane County Circuit Court  
and said injunction is about to be issued therefrom. Now  
therefore if the said John Smith shall well and truly pay  
to the said John Baister all such damages as may arise  
to the said John Baister in consequence of the issuing  
of said Injunction then the above obligation to be  
voids otherwise in full force and ~~virtue~~ effect

John. Smith ~~all~~  
By Mary Smith his  
Attorney in fact -  
Mary Smith ~~all~~

And afterwards to wit on the  
9<sup>th</sup> day of November A.D. 1852 the following  
Denuer was filed in said Court which is in  
the words of figures following to wit

In Chancery

Kane Circuit Nov. 9. 1852  
John Baister {  
                  at {  
John Smith {      Denuer Bill

This Defendant by protestation  
not confessing or acknowledging all or any of the  
Matters and things in said Complainant's Bill of  
containing to be true in such manner and form  
as the same are therein set forth doth demur thereto  
and for cause sheweth that the said Complainant  
has not in his said Bill ~~set~~ made or stated such  
a case as does or ought to entitle him to any  
Such relief as is thereby sought for from or against  
this defendant Wherefore the defendant prays  
the Judgment of this Court etc

Wm B. Hunt  
Scriber for deft



as security to John Barker upon the allowance  
 & issuing of a writ of Injunction in a suit to &  
 commenced by me as complainant against said John  
 Barker as defendant in the Kane County Circuit Court  
 in Chancery to restrain the transfer of Adam Notes &  
 a Mortgage executed by me to said Barker hereby ratifying  
 the acts of my said attorney in the premises  
 Signed, Sealed & delivered  
 in the presence of this 20<sup>th</sup> day of Sept. I mine  
 September AD 1852.

"Injunction Bond"

I know all men by their presents that  
 we John I mine and Henry I mine of Chicago in the  
 State of Illinois are held and firmly bound unto  
 John Barker of Aurora in the county of Kane in  
 said State in the penal sum of five hundred dollars and  
 lawful money of the United States to be paid to the said  
 John Barker his heirs executors administrators or assigns  
 to which payment well and truly to be made we bind  
 ourselves our - and each of our heirs executors admin-  
 istrators and assigns firmly by their presents. Signed  
 and sealed by us the 22 day of September AD 1852

The condition of this obligation  
 is such that whereas an order has been made by the  
 Hon. Marshall Skinner Judge of the Cook County Court of  
 Common Pleas upon a statement of a bill of complaint  
 of the above bounden John I mine as complainant  
 against the above named John Barker praying  
 an Injunction to restrain the said John Barker his  
 agents attorneys and solicitors from transferring certain  
 notes and a Mortgage executed by the said complainant  
 to the said John Barker and whereas said bill is



About to be filed in the Kane County Circuit Court  
and said injunction is about to be issued therefrom. Now  
therefore if the said John Prins shall well and truly pay  
to the said John Barker all such damages as may arise  
to the said John Barker in consequence of the issuing  
of said injunction then the above obligation to be  
voids otherwise in full force and virtute effect

John. Prins *John*  
By Henry Prins his  
Attorney in fact -  
Henry Prins *John*

And afterwards writ on the  
9<sup>th</sup> day of November A.D. 1832 the following  
Denuer was filed in said Court which is in  
the words of figures following to wit

In Chancery

Kane Circuit Nov. 9. 1832  
John Barker {  
                  at {  
John Prins { Demurrer Bill

This defendant by protestation  
not confessing or acknowledging all or any of the  
Matters and things in said Complainant's bill of  
containing to be true in such manner and form  
as the same are therein set forth doth demur thereto  
and for cause sheweth that the said complainant  
has not in his said Bill set made or stated such  
a case as does or ought to entitle him to any  
such relief as is thereby sought for from or against  
this defendant Wherefore the defendant prays  
the Judgment of this Court etc

W. B. Platte  
Suer for self



573  
And whereas afterwards writ on the  
16<sup>th</sup> day of February A.D. 1853 the following notice was filed  
in said court which is in the words & figures following  
to wit

John Innis }  
" } Same County Circuit Court  
John Bauser } In Chancery

The complainant now craves and  
moves this court that an order be entered therein vacating  
an order entered in this cause at the last term of this  
court dissolving the injunction heretofore issued herein  
and that the injunction be revived

February 11. 1853

Henry Innis  
Solv for Comptee

And Whereas heretofore writ on the  
12<sup>th</sup> day of November A.D. 1852 the same being one  
of the days of the aforesaid Same County Circuit Court  
of the November term of said court A.D. 1852 the following  
among other proceedings were had which are in the  
words and figures following to wit

John Innis }  
" } Bill for Injunction  
John Bauser }

This day comes the defendant  
by Hays and moves to dissolve the injunction herein

And afterwards writ on the 4<sup>th</sup> day  
of December A.D. 1852 the same being one of the days  
of the aforesaid November term of said court the  
following among other proceedings were had which are  
in the words & figures following to wit



John Innes }  
 John Baile } Bill for Injunction

This day comes the defendant and moves to dissolve the Injunction herein the court being fully advised sustains the same and orders said injunction dissolved and for nought held

And afterwards to wit on the 21<sup>st</sup> day of February AD 1853 the same being one of the days of the aforesaid Term being Circuit Court of the February Term thereof AD 1853 the following among other proceedings were had which are in the words of figures following to wit

John Innes }  
 John Baile } Bill for Injunction

This day comes the Complainant by Kemmington & Innes his Solicitors and moves the Court for a rehearing on argument of Motion to dissolve Injunction herein

And afterwards to wit on the 28<sup>th</sup> day of February AD 1853 the same being one of the days of the aforesaid February Term of said Court the following proceedings were had in words of figures following to wit

John Innes }  
 John Baile } Bill for Injunction

This day comes the defendant by Kato and Day his Solicitor and files his Demurrer to the Complainant's bill of complaint. And thereupon come



The complainant by Heronington & Smith <sup>his attorneys</sup> and joins

And afterwards do sit on the 2<sup>d</sup> day of March A.D. 1853 the same being one of the days of the aforesaid February Term of said Court the following among other proceedings were had which are in the words of figures following to wit

John Smith {  
vs { Bill for Injunction  
John Barker }

This day comes the complainant by Smith his solicitor and moves the Court for to revise the Injunction herein after argument of counsel the Court being fully advised overrules the same

And afterwards do sit on the 3<sup>rd</sup> day of March A.D. 1853 the same being one of the days of the aforesaid February Term of said Court the following among other proceedings were had in the words and figures following to wit

John Smith {  
vs { Bill for Injunction  
John Barker }

This day comes on to be heard the defendants demurrer to complainants bill of complaint heretofore filed herein the Court being fully advised sustains the same and orders the bill herein dismissed

It is therefore considered by the Court that the defendant have and recover of & from the complainant his cost about this demurrer expended and have expenses therefor



The complainant by Heronington & <sup>his attorneys</sup> Smith and Jones

And afterwards do sit on the 2<sup>d</sup> day of March A.D. 1853 the same being one of the days of the aforesaid February Term of said Court the following among other proceedings were had which are in the words of figures following to wit

John Smith }  
vs } Bill for Injunction  
John Barker }

This day comes the complainant by Smith his solicitor and moves the Court for to revise the Injunction herein after argument of counsel the Court being fully advised overrules the same

And afterwards do sit on the 3<sup>rd</sup> day of March A.D. 1853 the same being one of the days of the aforesaid February Term of said Court the following among other proceedings were had in the words and figures following to wit

John Smith }  
vs } Bill for Injunction  
John Barker }

This day comes on to be heard the defendants demurrer to complainants bill of complaint heretofore filed herein the Court being fully advised sustains the same and orders the bill herein dismissed

It is therefore considered by the Court that the defendant have and recover of & from the complainant his cost about this demurrer expended and have expenses therefor



State of Illinois  
Kane County

I Luther Dearborn Clerk  
of the Kane County Circuit Court  
do hereby certify that the above and foregoing is a full  
perfect and complete copy of Bill for Imposition.  
Imposition Bond Writ of Imposition. Summons  
Power of Attorney. Notice and Return and a copy  
of the Record in the case of John Smith against John  
Dawson as appears from the Record of the said  
Office

In Witness whereof I have hereunto  
set my hand and the Seal of said Court  
at Geneva in said County this 28<sup>th</sup>  
day of June A.D. 1854

Luther Dearborn  
Clerk





B # F  
No 1

John Smith

4

John Barker

Record

Filed July 15. 1854.  
L. Leland Clk.

\$8.00