

12064

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

# Supreme Court of Illinois

Thomas, et al

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vs.

Brown & Miller

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71641  7



1  
State of Illinois }  
County of Cook }

I was before the Honorable Hugh S. Lickley  
Judge of the Seventh Judicial Circuit  
Court of the State of Illinois, and presiding  
Judge of the Cook County Circuit Court  
at a Term thereof begun and held at  
Chicago in said County on the first  
Monday (being the sixth day) of May  
in the year of Our Lord one thousand  
eight hundred and fifty, and of the  
Independence of the United States the  
Seventy fourth,

Present Hon Hugh S. Lickley. Judge  
Squire M. Strong States Attorney  
Jesse Cook Sheriff  
Attest Louis D. Hoard. Clerk

It is remembered that on the  
tenth day of May in the year of Our Lord  
one thousand eight hundred and fifty it  
being one of the days of the May Term of said  
Court, there was filed in the Clerk's Office of the  
said Circuit Court, a certain Transcript which  
is in the words and figures as follows to wit:



United States of America  
 State of Illinois  
 McHenry County } ss Pleas before the Honorable  
 Jesse B. Thomas one of the Justices  
 of the Supreme Court of the State of Illinois and  
 presiding Judge of the Seventh Judicial Circuit  
 of said State at a Circuit Court begun and  
 held at the Court House in Woodstock in said  
 McHenry County and in said Judicial Circuit  
 on Monday the fifth day of April in the year  
 of our Lord one thousand eight hundred and forty  
 seven and of the Independence of the United States  
 of America the Seventy first.

Present The Hon. Jesse B. Thomas, Judge  
 William A Boardman State Attorney  
 Thomas M White Sheriff

Alfred J. Johnson, Clerk.

And thereafter to wit on the  
 eighth day of April the following among other  
 proceedings were had to wit,

Among Thomas, Floris Thomas  
 Annie A Thomas, Ellen Thomas  
 Janett Lee Wolf, Julia Thomas,  
 Mary Thomas, and Ada Thomas  
 infants by their next friend Stanton  
 M. Thomas

Chancery  
 Bill of Complaint

Wm  
 Hiram Brown & Jesse F. Miller



3.

And now comes the Plaintiff by M<sup>c</sup>,  
 Dougal their Solicitor and the Defendants by  
 Morris their Counsel also come and it appearing  
 that the Judge of this Court was Solicitor in  
 this Cause by the agreement of the parties, It is ordered  
 by the Court that the venue herein be changed  
 to the Cook County Court in the said State of  
 Illinois, and that the Clerk of this Court certify  
 and transmit to the Clerk of the said Cook County  
 Court a transcript of the Record and proceedings  
 herein as well as all the papers filed herein  
 or pertaining to this Cause,

The following is a Bill  
 of costs in said Cause,

Complainants Costs,

For Special Term 1846,

Fily Bill 6 $\frac{1}{4}$  Summ fily 6 $\frac{1}{4}$  Fily fily see for costs  
 3 $\frac{1}{4}$  fily pre 6 $\frac{1}{4}$  fily up 6 $\frac{1}{4}$  fily deud 6 $\frac{1}{4}$  taky fily  
 aft 18 $\frac{3}{4}$  taky fily see for costs 3 $\frac{1}{4}$  enty m to pub  
 25, ord 25,

2. 12 $\frac{1}{2}$

A. M. Wait Sheriff sen Summ 50, on 6 $\frac{1}{2}$  Ret 12 $\frac{1}{2}$   
 April 1847, Dec 12 $\frac{1}{2}$  fily 2 Replns 12 $\frac{1}{2}$  fily Sub not  
 6 $\frac{1}{4}$  Ord to chng, ord 25, ord to certify & transmit

1. 25

25, Copy of Record & cert & seal 1. 50

2. 31 $\frac{1}{4}$

Printers Fee.

3. 00

Defendants Costs

8. 68 $\frac{3}{4}$

April 1847, Fily 2 answ 12 $\frac{1}{2}$

12 $\frac{1}{2}$



State of Illinois \ The undersigned Clerk of  
 McHenry County \ the Circuit Court in and for  
 said County and State aforesaid. do hereby  
 Certify that the foregoing is a true and correct  
 transcript of the proceedings had in the above  
 entitled cause as also of the costs and that  
 the accompanying papers are all of the papers  
 filed in, and pertaining to said cause.

Witness my hand & Johnson Clerk of our  
 said Court and the seal thereof  
 at Woodstock in said County this  
 28<sup>th</sup> day of April A.D. 1847.  
 Joel H. Johnson,  
 Clerk.

And afterwards to wit on the same day  
 & year last aforesaid there was filed in the office  
 of the Clerk of the Circuit Court aforesaid a  
 certain other Transcript which is as follows to wit:

United States of America

State of Illinois \

County of Cook \

Shas before the Honorable  
 Giles Spring Judge of the Cook County Court of  
 Common Pleas, within and for the County of Cook  
 and State of Illinois aforesaid, at a regular Term  
 of said Court begun and holden at the Court  
 House in the City of Chicago in said County



and State on the first Monday being the fourth day of February in the year of Our Lord one thousand Eight Hundred and fifty, and of the Independence of the United States the twenty third,

Present the Honorable Giles Spring Judge  
 Daniel M. Story Prosecuting Attorney  
 Isaac Cook Sheriff

Attest Walter Kimball Clerk

Feb. 21/50

Be it remembered hereupon to wit that on the Twenty first day of February A.D. 1850, the said day being one of the days of the said February Term of said Court, for the year aforesaid the following proceedings were had and entered of Record to wit:

In Chancery

Among Thomas Etals

vs  
 Miriam Brown Etals

Bill re

By agreement of Parties

It is Ordered that the Venue in the above entitled cause be changed to the Cook & County Circuit Court,

State of Illinois } S. Walter Kimball Clerk of  
 Cook County } the Cook County Court of Com-  
 mon Pleas, do hereby Certify that the above is  
 a true copy of an order entered at the February



Term A.D. 1850, of said Court Changing the Venue  
in the above entitled cause to the Cook County  
Circuit Court,

Certified under Seal of said Court  
J. D. February 21<sup>st</sup>, 1850,  
Walter Kimball

Clerk

And afterwards to wit on the same day  
year last aforesaid there was filed in the  
Clerks Office aforesaid a certain writ of summons  
which is as follows, to wit:

State of Illinois. M<sup>c</sup>.  
Henry County ss. The People of the State of Illi-  
nois to the Sheriff of said County Greeting: We  
command you that you summon William Brown  
and Jesse F. Miller if they 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 Woodstock in said  
County on the second Monday of September  
Instant A.D. 1846, to answer unto Amory Thomas  
Flora Thomas and Annie A. Thomas, Ellen  
Thomas, Janett A. Stolf, Julia Thomas, Mary  
Thomas and Ada Thomas infants by their next  
friend Stanton M. Thomas in a Bill of com-  
plaint filed against them on the Chancery side  
of said Court, And this you are not to omit.

Summons  
Served  
4 Sept 46



under the penalty of the law, And have  
you then and there this writ, Witness Joel  
H Johnson Clerk of our said Court and the  
Seal thereof at Woodstock in said County  
this fourth day of September 1846,  
Joel H Johnson,  
Clerk

And on the back of said writ was the following  
endorsement thereon, to wit:

Personally served September 14<sup>th</sup> 1846 by  
reading in hearing of Jesse F. Miller and  
delivering him a true copy of the within writ  
Hiram Brown not found H.M. Wait, Shff.  
in my County M Henry Co  
Fees \$1.25

And afterwards to wit on the same day and  
year last aforesaid there was filed in the  
Clerk's office aforesaid the a certain bond for  
costs, which is as follows to wit:

Amory Thomas, Flora Thomas  
and Annie H Thomas, Ellen  
Thomas, Janett Westray, Julia  
Thomas, Mary Thomas, and  
Ada Thomas infants by their next  
friend Stanton M. Thomas  
vs  
Hiram Brown & Jesse F. Thomas  
Stanton M. Thomas

M Henry Co, Ct  
In Chancery  
Bill of Complaint

Miller  
served.



6

Do hereby enter myself security for costs in the above entitled cause and acknowledge myself bound to pay all costs which may accrue, or legally devolve upon the issues mentioned in the above entitled cause, either to the Officers of Court, or to the opposite party herein.

Witness my hand & seal at Woodstock in said County this fourth day of September A.D. 1846.

Stanton M Thomas <sup>my seal</sup>

Taken & entered into before me at and approved by me this fourth day of September A.D. 1846,

Joel H Johnson. Clerk  
Cir Court said Co,

And afterwards to wit on the same day & year last aforesaid there was filed in the Clerk's Office aforesaid a certain other bond for costs which is in words and figures as follows, to wit:

Samuel Thomas, Flora Thomas  
& Annie A Thomas Ellen Thomas  
Janette de Wolf, Julia Thomas  
Mary Thomas & Ada Thomas infants  
by their next friend Stanton M Thomas

or  
Nathan Brown & Jesse F Miller

M Henry County Circuit Court  
September Term 1846,



9

2000

J. H. Johnson

4

Chap

State of Illinois }  
County of McHenry } To The Honorable Richard M  
Associate Justice of the  
Supreme Court and presiding Judge of the Seventh  
Judicial Circuit of the State of Illinois in Chancery  
Selling.

212064-5]



Ellen Thomas, Janett Lee Stelf, Julia Thomas  
 Mary Thomas, and Ada Thomas, infants under the  
 age of twenty one years by Stanton M Thomas  
 their next friend that Samuel Edwards late  
 of the County of McHenry, in the State of Illinois  
 aforesaid, but now deceased, was in his own right  
 seized in fee simple of a certain tract or parcel  
 of land viz the South West Quarter of Section  
 number Twenty Two of Township number  
 forty three (43) North of Range number eight  
 East of the third principal meridian lying and  
 being situate in the County and State aforesaid.  
 And your Orators and Oratrices further  
 show unto your honor that the said Samuel  
 Edwards in his life time to wit on or about the  
 eighth day of June A.D. 1843, made and executed  
 unto Hiram Brown then of the County and State  
 aforesaid (and who your Orators and Oratrices  
 pray may be made a party defendant to this  
 their Bill of Complaint) a Deed of Conveyance  
 for and to the said above described premises  
 a copy of which said Deed is herewith filed as  
 an exhibit (marked A) and made part  
 of this bill. And your Orators and Oratrices  
 further show unto your honor that the  
 said Deed of Conveyance from the said  
 Samuel to the said Hiram although absolute  
 on its face was nevertheless made and executed



by the said Samuel to the said Meriam (giving)  
 of Mortgage for securing the payment of a sum  
 of money to wit the sum of one hundred and  
 ninety five dollars then due from the said  
 Samuel to the said Meriam with interest thereon  
 at the rate of twelve per centum per annum and  
 that the said Meriam Brown at the same time to  
 wit on the day and year aforesaid in consideration  
 of the premises and to secure to the said Samuel  
 Edwards the right of Redemption in and to  
 the said above described Land made ex-  
 ecuted and delivered to him the said Samuel  
 Edwards his the said Meriam Brown, Deed  
 of defeasance of in and to the said Land in  
 the words and figures following to wit. "An  
 Article of Agreement made this eighth day of  
 June A.D. 1843, between Meriam Brown of W<sup>o</sup>  
 Henry County Illinois of the first part and  
 Samuel Edwards of the same place of the second  
 part Witnesseth that if the party of the second  
 part shall first make the payments and  
 perform the covenants hereinafter mentioned  
 on his part to be performed the said party  
 of the first part hereby covenants and agrees  
 to convey and release to the party of the second  
 part by Warranty Deed free of all incum-  
 brances the following Lots pieces or parcels  
 of Land situated in W<sup>o</sup> Henry County

Bond



State of Illinois viz The South West Quarter  
 of Section No Twenty two in Township forty three  
 in Range eight containing one hundred and  
 fifty acres. And the said party of the second  
 part hereby covenants and agrees to pay the  
 party of the first part in consideration for  
 said Land and the uses and benefits of  
 the same the sum of One hundred and ninety  
 five dollars with interest at twelve per cent  
 per annum said payments to be paid in  
 lawful currency of the United States on or before  
 the first day of November A.D. 1843. In case  
 of the failure of the party of the second  
 part to make the payments and perform  
 the covenants herein engaged in his part  
 the party of the first part shall have a right  
 to declare this contract forfeited and determine  
 and to enter upon and take possession of  
 said Land and to have and retain the  
 same and it is mutually agreed that all cove-  
 nants and agreements herein contained shall  
 be extended to and be obligatory upon the  
 Executors Administrators and assigns of  
 the respective Parties. In Witness Whereof  
 the parties has hereunto set his hand and seal  
 on the day and in the year above written,  
 In presence of } William Brown *seal*  
 J. D. Beardsley }

\$195 to be  
 paid on 1 Nov 43

Condition



which said Deed of deforcance was duly acknowledged and recorded according to the Statute in such case made and provided.

And your Orators and Oratrixes further shew unto your Honor that sometime afterwards and while the said principal sum of money and the interest thereon accrued remained unpaid that is to say on or about the twenty second day of September A.D. 1843 the said Samuel Edwards died having previously duly made and published his last will and testament in writing bearing date the said twenty second day of September in the year last aforesaid and duly executed as by the Statute in such case made and provided is required for passing real Estate and thereby amongst other things gave and devised to your Oratrixes Ellen Thomas and Janette de Wolf together with Janette Thomas daughter of your Orator & Oratrix Avery Thomas and Flora Thomas the aforesaid premises in fee and your Orators and Oratrixes herewith file a copy of said Will as Exhibit B as part of this their Bill of Complaint.

And your Orator and Oratrixes further shew unto your Honor that the said Janette



Thomas one of the Heirs under the said Will mentioned, afterwards, to wit on or about the first day of October A.D. 1843, died intestate without issue leaving your Orator and Oratrix Amey Thomas and Flora Thomas her Father and Mother and your Orator Ammi & Thomas and your Oratrix Julia, Mary and Ada Thomas her heirs at law.

And your Orator and Oratrix further shew unto your Honor that the said Samuel Edwards by his last Will and Testament appointed Edward E. Haney, James S. Purson and Eli Henderson Executors thereof and that the said Executors soon after the decease of the said Samuel Edwards to wit on or about the second day of October in the year last aforesaid had Probate made of said Will before C. J. Smith Esquire the Probate Justice of the Peace within and for the said County of McHenry according to the form of the Statute in such case made and provided and possessed themselves of all the personal estate and effects of the said Testator to an amount more than sufficient to pay all his just debts and funeral and Testamentary expenses and that your Orator and Oratrix became entitled under the said Will to the said above described premises subject to the said Mort-



page.

Brown deed

And your Orators and Oratrices represent unto your Honor that afterwards to wit on or about the sixth day of November in the year last aforesaid the said William Brown made and executed unto Jesse F. Miller of the County & State aforesaid a Quit Claim Deed of and for all of his the said William Brown's right title interest claim estate and demand of in and to the said above described premises which said Quit claim Deed was duly recorded according to Law and a copy thereof is herewith filed as Exhibit (marked C) and made part of this Bill.

conveying by way  
of mortgage

And your Orators and Oratrices further show unto your Honor that the said Jesse F. Miller who your Orators and Oratrices pray may be also made a defendant to this their Bill of Complaint at the time that the aforesaid Quit Claim Deed was made and executed to him as aforesaid well knew or had been informed that the said land had been conveyed by the said Samuel Edwards to the said William Brown only by way of Mortgage and for securing the payment of a sum of money due from the said Samuel to the said William and that the said William Brown had executed to the said Samuel Edwards his (the said Honor



deed of Release and or Title Bond of to and for said  
 Lands contemporaneously with the execution of  
 the aforesaid deed of Emancipation by the said  
 Samuel to the said Hiram as hereinbefore fully  
 stated and that the said Jesse F. Miller purchased  
 the interest of the said Hiram Brown in the  
 said premises subject to the right of your Orators  
 and Oratrices as the devisees of the said testator  
 and heirs at law as aforesaid to redeem the  
 same from the said Mortgage by payment of  
 the said principal sum of money and interest  
 secured by the said Mortgage.

And your Orators  
 and Oratrices further shew unto your Honor  
 that the said Mortgage money was not paid  
 at the day or time stipulated by the Covenant  
 of the said Samuel Edwards in the said deed  
 of Release and or title Bond recited, for the payment  
 thereof but there was and has since been continued  
 at interest.

And your Orators and Oratrices further  
 shew unto your Honor that the said Executors of  
 the said Samuel Edwards deceased or some one  
 or more of them have at different times since the  
 decease of the said Samuel Edwards offered to  
 redeem the said above described premises from  
 the aforesaid Mortgage by paying to him the  
 said Jesse F. Miller the full amount due thereon.



offer to pay  
Exp.  
17  
as assignee of the said Hiram Brown both for  
principal and interest thereon, for the benefit of  
your Executors and Matrices Devises and heirs at law  
as aforesaid,

And that Edward C. Harvey one of  
the said Executors on or about the tenth day of  
October 4<sup>th</sup> 1844 actually tendered to him the said  
Jesse F. Miller the sum of Two hundred and  
sixty dollars or thereabouts in full of the prin-  
cipal debt due him as aforesaid and the interest  
there accrued thereon for the purpose of re-  
deeming the said premises from said Mortgage  
demanding a deed of conveyance for said  
Premises according to the Covenants and obli-  
gations of the said Hiram Brown and the said  
Jesse F. Miller as his assignee as aforesaid in the  
said Deed of Conveyance or title Bond fully  
recited and set forth but that said Jesse  
F. Miller then and at all times absolutely  
refused to receive said money for such pur-  
pose or to execute a deed of conveyance as by  
the terms of the aforesaid deed of conveyance he  
was bound to do,

And your Executors and Matrices  
further shew unto your honor that the said  
Samuel Edwards was at the date of his aforesaid  
Deed of Conveyance or Mortgage to the said Hiram  
Brown left by the said Hiram Brown in possession

toward  
\$260 on  
10 Oct. 1844



of the said above described premises and that the same on or soon after the death of the said Samuel came into possession of his aforesaid Executors and afterwards remained in their possession until on or about the first day of May A.D. 1845 when the said Jesse F. Miller after notice to him by the said Executors not to take possession thereof, unlawfully entered upon and took possession thereof cultivating the same and the Crops and Profits and the produce thereof for his own benefit receiving and collecting.

May 45

Miller took  
possession

And your Orators and  
Counsellors further shew unto your Honor  
that the said Jesse F. Miller has during  
the past season sown about seventy acres  
part and parcel of the aforesaid Land  
in Wheat and raised upon and harvested  
and gathered therefrom about eight hun-  
dred Bushels of wheat of the value of about  
three hundred and four dollars which he the  
said Jesse F. Miller is now appropriating  
to his own especial use and benefit,

All of which actings and doings  
pretences and refusals are contrary to equity  
and good conscience and tend to the ma-  
nifest wrong and injury of your Orators and  
Counsellors in the premises, In consideration  
whereof and for as much as your Orators

and



and Oathes are by the strict rules of the  
Common law. wholly remediless and can  
only have adequate relief in the premises  
where matters of this nature are properly  
recognizable and relievable to the end there-  
fore that the said Hiram Brown and  
Jesse F. Miller and their confederates when dis-  
covered may to the best and utmost of their  
several and respective knowledge remembrance  
information and belief full true direct and  
perfect answer make such answers under oath  
being hereby expressly waived to all and sin-  
gular the matters aforesaid and that as fully  
and particularly as if the same were here  
repeated and they and every of them distinctly  
interrogated and more especially that they may  
answer and set forth whether the aforesaid  
deed of Conveyance was not made and executed  
by the said Samuel Edwards to the said Hiram  
Brown by way of Mortgage and to secure the  
payment of the sum of money due from the said  
Samuel to the said Hiram and whether the  
aforesaid Deed of Conveyance was not executed  
by the said Hiram to the said Samuel as part  
and parcel of the said contract and whether  
the aforesaid Jesse F. Miller had not been in-  
formed or did not know when the aforesaid  
Quit Claim Deed was made by the said Hiram

Answer  
under oath  
waived



Brown to him the said Jesse F. Miller as  
 aforesaid that the aforesaid conveyance from  
 the said Samuel Edwards to the said Hiram  
 Brown was made only by way of Mortgage  
 to secure the payment of a sum of money due  
 as aforesaid and that the said Hiram Brown  
 had executed to the said Samuel Edwards  
 his deed of defeasance therefor as heretofore  
 stated and represented; and that the said  
 Defendant Jesse F. Miller especially answer  
 and set forth whether the said Executors of the  
 said Samuel Edwards or some one or more of  
 them have not at divers times offered to re-  
 deem the aforesaid premises from the aforesaid  
 Mortgage and for such purpose to pay him  
 the said Jesse F. Miller the full amount as  
 well of principal as of interest due on said  
 Mortgage and whether the said Executors  
 or one or more of them did not on or about  
 the tenth day of October AD 1844 tender  
 and offer to pay to him the said Jesse F. Miller  
 a sum of money sufficient to discharge the  
 whole amount due of principal and interest  
 on said Mortgage to wit the sum of Two hun-  
 dred and sixty dollars or thereabouts in pay-  
 ment of said debt and for the redemption  
 of said premises from said Mortgage, and  
 demand a deed therefor according to the



terms of the aforesaid deed of defeasance or title  
 Bond and whether he the said Jesse F. Miller  
 did not when such tender was made to him  
 as aforesaid and upon the several occasions  
 when such offers to redeem were made as  
 aforesaid refuse to receive the money so  
 tendered as aforesaid and so due in said  
 Mortgage as aforesaid or to make a deed for  
 the said premises or to permit the same to  
 be redeemed from the said Mortgage, And  
 whether the said Executors or some one or more  
 of them did not or or about the twenty fifth day  
 of May A.D. 1845, notify and forewarn him the said  
 Jesse F. Miller not to enter upon or take possession  
 of the said premises or any part thereof, and  
 whether he the said Jesse F. Miller did not  
 after having been thus notified and forewarned  
 enter upon and take possession of the said  
 premises and afterwards cultivate the same  
 for his own use and benefit; and further that  
 the said Jesse F. Miller state what quantity  
 of said Land he has since entering upon  
 and taking possession thereof, he has cultivated  
 How many acres in wheat what quantity of  
 wheat he has raised and harvested thereon  
 And what is the value thereof, And what  
 sums or sums of money he has received for  
 Rents and profits of said Land and for



produce raised thereon.

And your Orator and Oratrix pray that they may be at liberty to redeem the said mortgaged premises and that an account may be taken by and under the direction and decree of this Honorable Court of the Rents and profits of said Mortgaged premises and of the value of the produce raised thereon while in the occupancy and possession of the said Jesse F. Miller.

And that an account may also be taken of the principal money and interest secured by the said Deed of Mortgage and what now remains due thereon after deducting therefrom the rents and profits of the said Land while in the occupancy of the said Jesse F. Miller as aforesaid or such reasonable compensation for the use and occupation thereof as your Orator and Oratrix in equity and good conscience may reasonably be entitled to demand therefor and that upon the payment thereof your Orator and Oratrix may redeem the said premises they being now ready and willing and hereby offering to make such payment and for that purpose bring the money here into Court.

And that the said Jesse F. Miller may be decreed to reconvey



the premises to your Orators and Oratrices according to their respective shares and rights within such time as your Honor may direct in manner and form as he the said Jesse F. Miller as assignee of the said Miriam Brown is by the terms and conditions of the aforesaid Deed of defeasance or title Bond of the said Miriam Brown bound to do, and possession of the premises forthwith to deliver up to your Orators and Oratrices, and that in default of such conveyance of said premises or delivery of the possession thereof in the manner and form and within the time prescribed by your Honor. Your Orators and Oratrices pray that the Master in Chancery of the said County of M'Henry may be ordered by the Decree of this Honorable Court thereupon to execute a Deed to your Orators and Oratrices as aforesaid of all the interest and Estate of the said Jesse F. Miller in and to the said premises and the Sheriff of the said County of M'Henry to place your Orators and Oratrices in the full possession of the said premises.

And that your Orators and Oratrices may have such other or further relief in the premises as the nature and circumstances of their case may require and to



your Honor may seem meet and proper,  
 And your Patrons and Patrices as in duty  
 bound will ever pray so

Aunty Thomas

Flora Thomas,

Aunni A Thomas,

Ellen Thomas,

Janette De Wolf

Sulia Thomas

Mary Thomas,

Ida Thomas,

By Stanton M. Thomas

their next friend,

Thomas & Wallingall }  
 Ampts Sers

And afterwards to wit on the same  
 day and year last aforesaid there was filed  
 in the Clerk's Office aforesaid a certain process  
 which is as follows to wit:

Aunty Thomas, Flora Thomas  
 & Aunni A Thomas. Ellen Thomas  
 Janett De Wolf. Sulia Thomas  
 Mary Thomas & Ida Thomas infants  
 by their next friend Stanton M. Thomas



Nirvan Brown & Jesse F. Miller,

McHenry County, Ill.  
Sept 5 1846

In Chancery, Bill of Complaint.  
On this Bill being filed the Clerk  
will please issue Summons returnable to the next  
Term,

25 Aug. 1846

Thomas & Ballingall,  
Comptrolors,

And afterwards to wit on the same day  
seven last aforesaid there was filed in the  
Clerks Office aforesaid a certain affidavit which  
is as follows, to wit;

McHenry Circuit Court;  
Quincy Thomas, Flora Thomas  
& Annie & Thomas, Ellen Thomas  
Janett De Wolf, Julia Thomas  
Mary Thomas, & Ada Thomas infants  
by their next friend, Stanton  
M. Thomas

In Chancery,  
Bill of Complaint

<sup>14</sup>  
Nirvan Brown & Jesse F. Miller,

Eli Henderson  
being duly sworn doth depose and say that  
Nirvan Brown one of the defendants in the above  
entitled cause is as this deponent verily believes  
a non resident of the State of Illinois, and



further saith not,  
 Subscribed and sworn to before  
 me this 11<sup>th</sup> day of February  
 1844

J. H. Johnson,

Clerk of the M'Henry Co

Eli Henderson

And afterwards to wit on the same  
 day and year last aforesaid there was filed in  
 the Clerk's Office aforesaid a certain answer of one  
 of the aforesaid named defendants which is as  
 follows to wit:

Answer  
 of  
 Miller

The separate answer of Jesse F. Miller  
 one of the defendants to the Bill of Anney Thomas  
 Flora Thomas, Annie A. Thomas, Ellen Thomas  
 Janette Westbrook, Julia Thomas, Mary Thomas  
 & Ada Thomas Complainants by Stanton M. Thomas  
 their next friend filed in the M'Henry Circuit  
 Court in Chancery against him & his said  
 defendants, This defendant Jesse F. Miller now  
 and at all times saving so for answer to said  
 Bill of Complaint of said Complainants answers  
 and says, its true as he believes, that the said  
 Samuel Edwards (who has since departed this life)  
 in his life time on or about the 8<sup>th</sup> day of June  
 A.D. 1843 was the owner in fee of the S<sup>W</sup> 1/4 of Sect<sup>r</sup>  
 22 T<sup>43</sup>, 4 R<sup>8</sup> East of third prin<sup>l</sup> meridian, lying  
 and being in M'Henry County, State of Illinois  
 and this def<sup>t</sup> further saith its also equally true  
 that



that said Samuel Edwards in his life time, and about the said 8<sup>th</sup> day of June A.D. 1842 did grant bargain, sell and convey unto the said Hiram Brown his heirs & assigns forever the said tract of land by deed with full covenants of general warranty for a valuable consideration then & there fully paid, by the said Hiram Brown to the said Samuel Edwards, to wit the sum of One hundred and ninety five dollars, which said deed was then duly executed and by said Edwards delivered to said Brown and acknowledged on the 13<sup>th</sup> day of said June and afterward duly filed and recorded in the Records Office of said County as prescribed by law as by reference had to an attested copy of said deed when produced will more fully and at large appear as part of this his answer,

This defendant further answering expressly denies that the said deed of conveyance from said Edwards to said Hiram Brown was made and executed by said Edwards to said Brown by way of Mortgage for the securing the payment of the said sum of one hundred <sup>and ninety five</sup> dollars then due from said Edwards to said Brown with interest thereon at the rate of twelve per centum per annum. or to secure the payment of any other sums of or interest whatever as is falsely alleged in said

ask? 13 June 43

Hiram deed was made by way of mortg



Conditional  
Sale

Bill of Complaint. But this Defendant says he is informed & believes and so states the fact to be that the said deed of conveyance from said Edwards to said Brown for said land was in truth in fact a conditional sale of said land to said Brown with an agreement that the said Edwards might repurchase said land of said Brown by his paying to said Brown for the said land the sum of One hundred and ninety five dollars with interest thereon at the rate of twelve per cent per annum on or before the first day of November then next following, but if not paid by that time then the right of said Edwards to repurchase said land should be forfeited and determined and the purchase of said Brown of said Edwards should be absolute, as will more fully and at large appear by reference had to the written agreement signed by the said Brown bearing even date with the deed of conveyance aforesaid and is copied in the complainant's said Bill of Complaint and when produced is prayed to be taken as part of this his answer.

This Defendant answering expressly denies that in consideration of the premises and in order to secure to said Samuel Edwards the right of redemption in and to the said land the said Brown at the same time



Since  
mention  
of deed of  
Defendant

at any other time, made executed and delivered to the said Edwards his deed of defeasance of in to the said land as is truly alleged in said Bill of Complaint. But this defendant avers that said Brown made said deed to said Edwards to secure said Edwards in the right to repurchase the said land by paying to said Brown the purchase money therein stated by the first day of November as heretofore stated and not otherwise - as by reference had to said deed of defeasance will appear.

This defendant

further answering says that he is informed and believes the same to be true and so states the fact to be that the writing named and called in said bill of Complaint as a deed of defeasance and purporting to be an article of Agreement of mutual covenants between the said Edwards and said Brown but signed by said Brown only was never executed by the said Edwards, nor was said Edwards bound in any way to pay said sum of 195 dollars with 12 per cent interest to said Brown for said land or for anything else. And so this defendant saith that the said alleged deed of defeasance as signed by said Brown only was an imperfect contract and void for want of mutuality. That said Brown could not either compell

Article never  
executed by  
S. Edwards

imperfect  
contract  
[1864-15]



said Edwards to pay said money and interest or foreclose what is now alleged and pretended to be a mortgage.

And this defendant further saith that the price paid by said Brown to said Edwards for said land in June 1843 to wit \$195. was a fair cash price for said land at that time, and that the value of said land increased thereafter rapidly, so that in November 1843 it became and was worth \$250 was sold for Two hundred fifty one dollars and a horse as hereinafter named.

This Defendant further answering saith that he is informed & believes the same and so states the fact to be that neither the said Edwards in his life time or his devisees and their heirs the complainants herein, since his death did or would pay to the said Brown the said sum of One hundred twenty five dollars and interest thereon at the rate of Twelve per cent per annum on or before the said first day of November in the year 1843 according to the time limited for that purpose in & by the said alleged deed of ~~conveyance~~ <sup>conveyance</sup> defrauded so signed by the said Brown as hereinbefore stated nor have the said complainants paid or tendered the same to the said Brown or this Defendant at any time since but neglected & refused so to do and this Defendant further saith that said

Brown



31.

Sale to  
Miller

6 Nov 43

B. declared  
a gift void251 cash  
100 hors  
351Miller  
admits any  
notice of  
Mortginnocent  
bona fide  
purchaser

S. 2064-107

Brown on the 6<sup>th</sup> day of November 1843 after the time had elapsed for the payment of said sum of money by Edwards to him, he declared the said alleged deed of depasance to be forfeited and determined and upon the 6<sup>th</sup> day of said November 1843 the said Brown sold & by deed made executed & delivered conveyed the said tract of land to this defendant his heirs & assigns forever for the sum of Two hundred & fifty one dollars by this defendant then & there fully paid down to said Brown for said land in money & a horse worth \$100, which was then a fair cash value of said land at that time which said deed was duly acknowledged and recorded in the Recorders Office of said County according to law as by reference had to said deed ready to be produced will more fully appear,

And this defendant avers that at the time he purchased & paid for the said land as aforesaid he had no notice whatever that said Brown held said land as mortgagee of said Edwards or any other person or persons, nor that the complainants had any claim or title whatever to the same and he avers that he is an innocent and bona fide purchaser for a valuable consideration fully paid without notice of the alleged equity of the complainants



to said land and upon this point he prays the judgment of the Court also

This defendant answering saith he supposed it to be true that the said Paul Edwards died in the last of September 1843 but at what time in that month he doth not know, and that he is informed & believes it true, that said Edwards prior to his death made his last Will & Testament in writing but of the contents thereof he is not acquainted except so far as he is informed by the complainants in the said Bill of complaint, and therefore he leaves the complainant to make proof thereof, and of the alleged right of the complainants to the said land if any they have by virtue of said Will of said deceased.

This Defendant says he is informed & supposes it to be true that Edward E. Harvey James T. Piersons & Eli Anderson were appointed Executors of the said Will of said deceased and that they had the Will proven and admitted to Record and took upon themselves the execution of the same, and this Defendant admits it to be true that said Harvey & Piersons about the last of October in 1844 offered to pay to this defendant the sum of (\$227.) Two hundred and Twenty seven dollars, or thereabouts as executors of said deceased

knows  
nothing of  
the contents  
of the will

Oct 44  
admits  
\$227 was  
tendered



agreed,  
offer to  
stand till  
Sept. got  
revenue

to medium as they alleged the land from  
said sale to Brown it was then agreed between  
said Harvey Persons and this defendant that  
said offer might stand in that position till  
this defendant could get some legal advice as  
to what was best for him to do in the premises  
and that he should notify them of his deter-  
mination as soon as convenient for him so to do  
whether he would receive the money or not, and  
if he should conclude to take the money  
they should then pay it to him and he was to  
make them a quit claim deed of said land at the  
same time and upon these terms the whole mat-  
ter was delayed for a short time and this defen-  
dant further says that soon after this arrange-  
ment was made to wit in February 1845 he this  
defendant called upon said Persons one of the Executors  
aforesaid and informed him that he had con-  
cluded rather than have any trouble about  
the matter to receive the money and make  
the quit claim deed against agreed upon  
provided they would pay him that day or  
by the next day at noon and if they did not  
pay him the money by noon the next day  
he would not receive it after that time and  
this defendant says & so states the fact to be  
that he made & signed a quit claim deed of  
said land to said Executors & at noon the

In Feb 45  
turned  
deed



next day according to his agreement & time appointed tendered to said Persons said deed and demanded the \$195. with 12 per cent interest thereon, but said Executors neglected & refused to receive the said deed & pay him the said money, and this defendant then there declared the contract if any there was to be at an end utterly null & void. And in May 1843, he took possession of said land by building a fence around the same and raised some 22 bushels of wheat on same and no more in that year And this deff denies that any other or different offer was ever made to him by said executors or either of them And he denies that he raised 700 bushels of wheat on said land or any other number than as above stated that year & he denies selling any wheat from said land receiving \$304 for the same or any other sum,

This Defendant answering saith that at the time of the sale of said land in June 1843 the sum of \$195. was a fair price for said land and in October 1844 when said Harvey expressed his willingness to pay the money & interest for said land as heretofore stated the same had raised in value to the amount of five hundred dollars that the same is now worth one thousand dollars as this defendant hath put about four hundred dollars of improvements upon

said

look p. 11  
May 45  
enclosed  
min. 22  
bushels wheat  
since any  
other  
offer

value  
\$500

\$1800  
\$400 improvs



said land since said executors refused to receive the deed & pay him the money for said land as hereinbefore stated,

And this defendant

denies any  
tender was  
made  
none  
made  
him & none  
offered

further saith, that no tender of money has been made by the complainants in this bill named and none has been made by the Executors since this defendant tendered them the deed as hereinbefore stated, and that no money has been deposited in any quarter for him or offered to be brought into Court so that he might receive it if he wanted it, and he saith that said Executors never did tender to him the full amount of \$195 with 12 per cent interest according to the tenor & effect of said alleged deed of defeasance.

denies \$195  
with interest  
was never  
tendered to  
him

This defendant further answering denies all fraud & unlawful combination &c wherewith he is charged without which &c and having fully answered admitted traversed & denied the allegations in said Bill prays hence to be dismissed with his costs &c

Morris & Brown  
Sols for Deft

Jesse F. Miller,

And afterwards to wit on the same day & year last aforesaid there was filed in the Clerk's Office aforesaid a certain answer by me



other of the Defendants which is as follows to wit:

Answer of  
Brown

The Separate answer of Hiram Brown one of the Defendants to the Bill of Complaint of Henry Thomas, Flora Thomas and Annie & Thomas Ellen Thomas, Janette & self, Julia Thomas Mary Thomas & Ada Thomas Complainants by Stanton W. Thomas their next friend filed in the M'Henry Circuit Court in Chancery against this Respondent and Jesse F. Miller Defendants

This Respondent now and at all times saving to himself all benefit of exception to the Complainants said Bill of Complaint answers thereto or to so much thereof as are material and necessary for him to make answer unto answers and saith he is informed & believe it to be true that said Samuel Edwards in the Complainants Bill named departed this life about the time mentioned in said Bill of Complaint and who had previously made and published his last will and testament as set forth in said Bill of Complaint

This Respondent further answering admits it to be true, that the said Samuel Edwards in his life time or about the 8<sup>th</sup> day of June AD 1843 was the owner in fee of the S 1/4 of Section 22 T 43, 4R East of the third principal meridian lying and being in said M'Henry

County



County, and it is also true said Edwards in his life time on the day and year last aforesaid did grant bargain, sell and convey unto this Respondent his heirs and assigns forever the said Quarter Section of land by deed with full covenants of general warranty for a valuable consideration fully paid him therefor to wit the sum of one hundred and ninety dollars which said deed was then and there duly executed and delivered by the said deceased in his life time to this Respondent, and afterwards lost, on the 18<sup>th</sup> day of June 1848 duly acknowledged and subsequently to wit on the 2<sup>d</sup> day of November in said year last aforesaid the said deed was duly filed and recorded in the Records Office of said County according to law, as by reference had to said deed of Record will more fully and at large appear, and this Respondent expressly denies that said deed of conveyance was made and executed to him by the said Edwards by way of Mortgage for the securing the payment of the said sum of one hundred and ninety five dollars then due from said Edwards to this Respondent with interest thereon at the rate of twelve per centum per annum or to secure the payment of any other sum of money or interest whatever as is untruefully alleged in said Bill of Complaint, but that Respondent states and avers

denies it  
was by  
way of  
Mortg.



Conditional  
Sale

avere the fact to be that said deed of conveyance from said Edwards to this respondent so made as herein before stated for the conveyance of said land, was in truth and in fact a conditional sale of said land to this respondent by said Edwards in his life time, with the agreement that said Edwards might repurchase said land of this Respondent on or before the first day of November then next following by paying the Respondent the said sum of One hundred and ninety five dollars with interest thereon at the rate of twelve per centum per annum and it was expressly understood and agreed if the said Edwards did not repurchase & pay for said land the said sum of \$195 with interest as aforesaid on or before the said first day of November then next following after the date of said deed, that then in such case the right of the said Edwards to repurchase said land should be forfeited and determined and the said purchase of this Respondent so made of said Edwards as hereinbefore stated should be absolute as will more fully appear by reference had to the within obligation of this Respondent given to said Edwards bearing date the 8 day of June A.D. 1843 and to which is annexed the Certificate of J. S. Beardsley Clerk of the Co. Courts Court of said County dated the 24<sup>th</sup> day of



of June 1843. This Respondent answering denies that in consideration of the premises, and in order to secure the said Edwards the right of redemption in and to the said land this Respondent at the same time or at any other time, made executed and delivered to the said Edwards his deed of Releaseance of in & to the said land as is untruefully alleged in said Bill of Complaint. But this Respondent states and swears the fact to be that he made and executed to said Edwards his obligation hereinbefore mentioned for the sole and only purpose of securing to said Edwards the right to repurchase the said land from this Respondent by paying this respondent the purchase money agreed upon to wit the said sum of one hundred and ninety five dollars with interest at the rate of twelve per centum per annum on or before the first day of November then next following the date of said obligation, and for no other purpose whatever as hereinbefore stated and as will fully appear by reference had to said obligation referred to in said Bill of Complaint mentioned and this respondent further saith that said supposed deed of Releaseance so made as herein above stated was never signed and executed by said Edwards nor was the said



Edwards bound thereby or in anyway whatever to pay said purchase money and interest aforesaid for said land or any part thereof to this respondent on or before the said first day of November then next following or at any other time but the said writing was voluntarily made & given by this respondent to said Edwards to secure to said Edwards the right of repurchasing said land of this Respondent at the time upon the conditions aforesaid if he wished so to do and for no other purpose whatever, and as this respondent saith that the said alleged deed of depasance so signed by him only, as aforesaid was and still is an imperfect contract and void for want of mutuality and upon this point he prays the judgment of the Court.

This respondent further answering states and swears the fact to be, that the amount paid by this respondent for said land, to wit \$198 at that time was a fair cash price but that he is informed & believes that the said land has within the last year or so increased in value rapidly.

That he sold the same to his co-deft Jesse P. Miller for Two hundred fifty dollars and a horse in the month of November 1843 to wit on the 6<sup>th</sup> day of said month and at that time it was all the said land would



sell for, and said Miller paid this respondent at that time the said sum of \$207 & a horse for said land, and this respondent did then & there execute and deliver to said Miller a deed of conveyance of the said land for the consideration of \$207, fully paid thereof in money & a horse as aforesaid by him to this respondent as aforesaid, as by reference had to said deed when produced will appear.

Denies any  
transfer made  
to him by  
debt or p'ss.  
within the  
time or  
since

That neither the said Edwards in his life time or the complainant since his death did pay or offer to pay the said sum of One hundred and ninety five dollars with interest at the rate of 12 per-centum per annum within the time limited for the purpose to repurchase said land from this respondent according to said stipulation in said supposed deed of defeasance in said Bill named and referred to as part of this answer wherefore this respondent sold & conveyed said land to Deft Miller as hereinbefore stated.

This respondent further answering denies all fraud & in said bill charged and having fully answered all so far as he is charged in & by said Bill prays herein to be discharged with his costs &c

Wm. Brown,  
By Morris his Solicitor



And afterwards to wit on the same day and year last aforesaid there was filed in the Clerk's Office aforesaid a certain notice & certificate thereto attached which is as follows to wit:

State of Illinois } p

M'Henry County } M'Henry Circuit Court, April  
Term 1847.

Amery Thomas, Flora Thomas  
and Annie Thomas, Ellen Thomas  
Janette DeWolf, Julia Thomas, Mary  
Thomas & Ada Thomas, infants by their  
next friend, Stanton M. Thomas

vs

Hiram Brown & Jesse F. Miller

In Chancery  
Bill of Complaint

Satisfactory affidavit having been filed in the Office of the Clerk of the Circuit Court of said County, setting forth that the said Hiram Brown, one of the defendants in the above entitled cause, is not a resident of the State of Illinois. Notice is therefore hereby given to the said Hiram Brown, that the above named Complainants, have filed their Bill of Complaint against you the said Hiram Brown with the said Jesse F. Miller, in the said Clerk's Office, on the Chancery side of said Court and that unless you personally be and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden

at



43.

at the Court House in Woodstock, in said County  
on the fourth Monday of April next, and plead  
answer or demur. To said Complainant's petition  
or Bill, the matters and things therein will be  
taken as confessed and a decree entered ac-  
cording to the prayer of said Complainant's Bill

Witness my hand & seal of Office  
Woodstock, February 12, 1847. Clerk  
Thomas Ballingall.  
Comptrols Exrs,

This is to certify that the notice here-  
unto annexed has been published in the Illinois  
Republican, a weekly newspaper, published at  
Woodstock, McHenry Co Ill, six weeks successively  
W. H. Grogan.

Woodstock McHenry Co. Publisher  
Ills April 23<sup>rd</sup> 1849.

Fee \$ 3.00

And afterwards to wit on the same day and  
year last aforesaid there was filed in the  
Clerks Office aforesaid a certain replication which  
is as follows to wit.

McHenry Co. Court

Amery Thomas Exrs

vs  
Jesse F. Miller comptrol  
with Herman Brown

Said Complainant for

Reply to  
Miller



replication to the several answer of Jesse F. Miller  
 one of the Defendants to the Complainant's Bill of  
 Complaint herein says that the matters & things  
 in the said Complainant's bill set forth & alleged  
 are true in substance & fact & that the matters  
 & things in the said answer of the said defen-  
 dant set forth & alleged are untrue & false & that said  
 Complainant is ready to verify wherefore

M. D. O'Connell.

for Compt.

Said afterwards to wit on the same day  
 and year last aforesaid there was filed in the  
 Clerk's Office aforesaid a certain other replication  
 which is as follows to wit.

M. Henry Esq. Court,  
 Of Chancery.

Amery Thomas Esq.

vs  
 Hiram Brown impleaded  
 with Jesse F. Miller

Said Complainant  
 for replication to the several answer of Hiram  
 Brown one of the Defendants to the Complainant's  
 Bill of Complaint herein says that the matters  
 & things in the said Complainant's Bill set forth  
 & alleged are true in substance & fact and that  
 the matters & things in the said answer of the  
 said defendant set forth & alleged are untrue



and false and this said Complainant is ready to verify. Wherefore he,

McLurgall,

for Compt.

And afterwards to wit on the same day & year last aforesaid there was filed in the Clerk's Office aforesaid a certain exhibit marked 'A' which is as follows to wit:

Warranted deed,

See  
Edwards  
to  
Brown

Samuel Edwards To Herman Brown

\* Herman Brown of the aforementioned County, & State of the second part, hereby certifies that the said party of the first

This Indenture made this eighth day of June in the year One thousand eight hundred and forty three Between Samuel Edwards of the County of McHenry and State of Illinois of the first part, for and in consideration of the sum of One hundred and ninety five dollars in hand paid by the said party of the second part the receipt whereof is hereby acknowledged and the said party of the second part forever released and discharged therefrom, hath granted bargained sold, remised released aliened and confirmed and by these presents doth grant bargain sell remise release alien and confirm unto the said party of the second and to his heirs and assigns forever all the following described lot piece or parcel of land to wit:

The South West quarter of Section 40 Twenty two in Township forty three in Range eight containing one hundred and sixty acres. Together with all and singular the



hereditaments and appurtenances thereto belonging  
 or in anywise appertaining and the reversion and  
 reversions remainder and remainders rents issues  
 and profits thereof and all the estate right  
 title interest claim or demand whatsoever  
 of the said party of the first part either in  
 law or Equity of in and to the above bargained  
 premises with the hereditaments and appurtenances  
 To Have and To Hold the said premises above  
 bargained and described with the appurtenances  
 unto the said party of the second part his  
 heirs and assigns forever. And the said  
 Samuel Edwards for himself his heirs executors  
 and Administrators doth covenant grant  
 bargain and agree to and with the said party  
 of the second part his heirs and assigns that  
 at the time of the enrolling and delivery of  
 these presents he was well seized of the premises  
 above conveyed as of a good sure perfect  
 absolute and indefeasible estate of in-  
 heritance in the law in fee simple and has  
 good right full power and lawful authority  
 to grant bargain sell and convey the same in  
 manner and form aforesaid and that the same  
 are free and clear of all former and other grants  
 bargains sales liens Judgments taxes assessments  
 and incumbrances of what kind or nature soever  
 and the above bargained premises in the quiet



Records Office McHenry County Ill  
I do hereby certify that the above and from  
Samuel Edwards to Hiram Brown is a true copy  
as taken from the Records of this Office Book C, Page  
461 & 2. Given under my hand and Private seal,  
no Official seal having been provided, this 3<sup>d</sup> day  
of September A.D. 1846,

Wm H Beach Clerk <sup>222</sup>

By Wm H Beach Deputy

And afterwards to wit on the same  
day and year last aforesaid there was filed in  
the Clerk's office aforesaid a certain other exhibit  
marked "B" which is as follows to wit:

In the name of God Amen,  
I Samuel Edwards of the County of McHenry  
being weak in body but of sound mind and  
memory do make ordain and establish this to be  
my last will and testament hereby revoking  
all others,

And I do hereby appoint Edward C  
Harvey, James T. Pierson and Eli Henderson  
to be the executors of this my last will and tes-  
tament

1<sup>st</sup> It is my will that all my Just debts be  
paid that sufficient of my personal property be  
sold for that purpose. if my personal property  
should be insufficient, it is then my will  
that my Executors, shall sell sufficient of my  
real

Wm  
Edwards



real estate to satisfy said demand.

2<sup>nd</sup> After the payment of all my Just debts and funeral expenses, I do hereby devise to Eli Henderson, all of my interest both real and personal in the Town lots of Alton in the County of McHenry and State of Illinois.

Also all of my household furniture belonging to me,

3<sup>rd</sup> To Lafayette Thomas I do hereby devise and bequeath all of my wearing apparel Books and Library.

4<sup>th</sup> To Janett Thomas daughter of Aury Thomas Ellen Thomas, daughter of Nelson A Thomas and Jennett DeWolf daughter of Lewis DeWolf, I do hereby devise and bequeath the remainder of my real and personal property, and all of my accounts rights and credits.

The real estate and personal property to be sold, if the executors should deem it necessary and the avails therefrom to be placed in the hands of William C. Kimball in the County Kane and State of Illinois, and Alexander Lawson of McHenry County and State of Illinois as Guardian for the said Janett, Ellen and Janett as aforesaid, upon the Guardians filing good and sufficient security in the Probate office of this County - for the repayment of the moneys to each



upon their becoming of age which shall be at  
 eighteen years old, together with the profits and  
 interests of said money. But if the executors shall  
 not deem it expedient and to the interest of the  
 said Janette Ellen and Janett as aforesaid  
 to make sale of the Estate which falls to them  
 both real and personal, they are to have  
 and keep charge of the same until an advantageous  
 sale can be effected and if the executors can not  
 sell the same they are to put the same out, to the  
 best use for the said Janett Ellen and Janett  
 paying to them yearly, the rents and profits  
 of said Estate until one of them is eighteen  
 years old. Then the <sup>real</sup> property or the annuities  
 thereof to be equally divided. The said Guar-  
 dians or the executors shall have power to let  
 the parents have a portion of said property not  
 exceeding forty dollars each for the education  
 of the said Janett Ellen and Janett as aforesaid.  
 Yearly

I<sup>th</sup> Said Will to remain in the hands of Edmund  
 C. Harvey one of the Executors sealed until after  
 my Decease & then to be opened & proved up  
 according to law.

In Testimony whereof I have  
 hereunto set my hand and affixed my seal this  
 22<sup>nd</sup> day of September in the year of Our Lord  
 one thousand eight hundred and forty three,

Signed



51.

Signed and acknowledged, Samuel Edwards  
 State of Illinois } of Referees. H. P. McAlister, Abner Nager, Hiram  
 McHenry County } <sup>Chambers</sup> at a Court of Probate for said  
 County, begun and held at the Court House in Mc-  
 Henry on the 2<sup>nd</sup> day of October A.D. 1843.

This day per-  
 sonally appeared before me E. J. Smith Probate  
 Justice, of the Peace in and for said County in open  
 Court the above named H. P. McAlister, Abner  
 Nager and Hiram Chambers three credible witnesses  
 being by me duly sworn upon their oaths do say  
 that they were present at the signing of the above  
 Will and that the said Testator Samuel Edwards  
 did sign the above Will as his own act and deed  
 and that they then believed and still do believe  
 that the said testator, at the time of acknow-  
 ledging the same was of sound mind and  
 memory, and that they attested the acknow-  
 ledging of the said Last Will and testament  
 in the presence and by the request of the said  
 Samuel Edwards and in the presence of each other.

In Testimony Whereof I have hereunto set  
 my hand and affixed the private seal of said  
 Court (no official seal being provided at McHenry  
 this 2<sup>nd</sup> day of October A.D. 1843,

E. J. Smith, <sup>seal</sup>  
 Probate Justice of the Peace

I do solemnly swear, or affirm, That



This writing contains the true last will and testament of the within named Samuel Edwards deceased so far as I know or believe and that I will well and truly execute the same, by paying first the debts and then the legacies mentioned therein, as far as his goods and chattels will thereto extend, and the law charge me: and that I will make a true and perfect inventory of all such goods and chattels, rights and credits as may come to my hands or knowledge, belonging to the estate of the said deceased, and render a fair and just account of my executorship, when thereto required by law, to the best of my knowledge and abilities, so help me God,

Sworn and subscribed to, this  
 2<sup>nd</sup> day of October 1843 } E. Henderson  
 E. J. Smith  
 Probate Justice of the Peace

I do solemnly swear or affirm, That this writing contains the true last will and testament of the within named Samuel Edwards deceased so far as I know or believe; and that I will well and truly execute the same, by paying first the debts and then the legacies mentioned therein, as far as his goods and chattels will thereto extend, and the law charge me: and that I will make



a true and perfect inventory of all such goods and chattels, rights and credits, as may come to my hands or knowledge, belonging to the Estate of the said deceased, and render a fair and just account of my executorship, when thereunto required by law, to the best of my knowledge and abilities, so help me God. Sworn and subscribed to, this 2<sup>nd</sup> day of October A.D. 1843

E. Smith C. J. C. Edward Harvey

I do solemnly swear, That this writing contains the true last will and testament of the within named Samuel Edwards deceased so far as I know or believe; and that I will well and truly execute the same by paying first the debts and then the legacies mentioned therein, as far as his goods and chattels will thereunto extend, and the law charge me; and that I will make a true and perfect inventory of all such goods and chattels, rights and credits, as may come to my hands or knowledge, belonging to the estate of the said deceased, and render a fair and just account of my executorship, when thereunto required by law, to the best of my knowledge and abilities, so help me God. Sworn and subscribed to, this 3<sup>rd</sup> day of October A.D. 1843.

E. Smith C. J. C.

James T. Scison



State of Illinois  
 McHenry County } Probate Court  
 Regular Term

McHenry County, }

The last Will and Testament of Samuel Edwards late of McHenry County and State of Illinois deceased was this day produced to the Court of Probate of said County now in session by Edward E. Harvey one of the Executors named in the said Will and proved by the oaths of W. C. McElister, Abner Hager and Hiram Chambers the three subscribing witnesses thereto whose examination was reduced to writing, and it appearing to the satisfaction of the Court that the said Samuel Edwards deceased as aforesaid was at the time of making the same of full age sound in mind and memory and not acting under restraint,

It is thereupon ordered by the Court that the said Will so reduced to writing be made and entered of Record and Probate made thereon, and on motion it is ordered that Letters Testamentary be issued to the said Edward E. Harvey and to Eli Henderson and James T. Purson who were thereupon duly sworn and qualified as such Executors and gave bonds in the sum of Ten thousand Dollars conditioned according to law  
 given



given under my hand and private seal of said Court, no official seal being at M'Henry, this 2<sup>d</sup> day of October A.D. 1843.

E. J. Smith, <sup>see</sup> <sup>seal</sup> <sup>not</sup>

Probate Justice of the Peace,

State of Illinois } p

M'Henry County }

The People of the State of Illinois, to all to whom these presents shall come, Greeting;

Know ye, That whereas Samuel Edwards late of the County of M'Henry and State of Illinois died, on or about the 22 day of September A.D. 1843 as it is said, after having made and published his last will and testament, a copy whereof is herewith annexed, leaving at the time of his death, property in this State which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that Edward C. Harvey James T. Pierson & Eli Anderson have been appointed executors in and by the said last will and testament to execute the same, and to the end that the said property may be preserved for those who shall appear to have a legal right or interest therein, and that the said will may be executed according to the request of the said testator; we do hereby authorize them the said Edward C. Harvey James T. Pierson & Eli Anderson



Person & Eli Henderson as such executors to collect and secure all and singular the goods and chattels rights and credits, which were of the said Samuel Edwards at the time of his decease, in whatsoever hands or possession the same may be found in this State; and well and truly to perform and fulfil all such duties as may be enjoined upon them by the said Will, so far as there shall be propriety, and the law charge them in general, to do and perform all other acts, which now are or hereafter may be required of them by law.

Witness E. S. Smith Probate Justice of the Peace of the said County of McHenry at his Office in McHenry this third day of October in the year of our Lord 1843.

E. S. Smith  
Probate Justice of the Peace

And afterwards to wit on the same day and year last aforesaid there was filed in the Clerk's Office aforesaid a certain bond <sup>marked exhibit C</sup> which is in words and figures as follows to wit:

Know all Men by these Presents That I Hiram Brown now of Plattsville Wisconsin Territory in Consideration of the sum of \$257. Five hundred and fifty one dollars to me in hand paid by Jesse J. Miller of the County of McHenry and State of Illinois the receipt

Brown  
Brown  
Miller



whereof is hereby acknowledged have granted  
 sold and quit claimed and by these presents  
 do bargain sell and quit claim unto the said  
 Jesse F Miller and to his heirs and assigns  
 forever, all of my right title interest claim estate  
 and demand both at law and in equity, and  
 as well in possession as in expectancy of in and to  
 all that certain farm & piece of land situated  
 in the County of McHenry and State of Illinois  
 being the

South West Quarter of Section No 22  
 in Township <sup>in Range 8,</sup> (43) containing 160 acres of land with  
 all and singular the hereditaments and appurtenan-  
 ces thereto belonging.

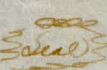
In Witness Whereof I have  
 hereunto set my hand and seal this sixth day of  
 November 1843.

Calvin Seal Witness, Hiram Brown, <sup>24</sup> 43

State of Illinois } This day before me the un-  
 McHenry County } der-signed a Justice of the  
 Peace in and for said County personally appear-  
 ed Hiram Brown to me personally known  
 as the real person who executed the annexed  
 conveyance and acknowledged that he execu-  
 ted the same as his voluntary act and  
 deed for the uses and purposes therein con-  
 tained. Given under my hand and seal



the sixth day of November A.D. 1843

Benjamin Randall 

Recorded October 14<sup>th</sup> 1844. Wm H. Beach  Recorder

Given under my hand and private seal  
no official seal having been furnished this  
1<sup>st</sup> day of May A.D. 1846,

Wm H. Beach  Recorder

Recorder

And afterwards to wit on the same day  
and year last aforesaid there was filed in the  
Clerk's Office aforesaid the following Articles of  
Agreement to wit:

Agreement

Between  
Benjamin  
Randall  
Edward

An Article of agreement made this  
eighth day of June A.D. 1843, Between Miriam Brown  
of McHenry County Illinois of the first part and  
Samuel Edward of the same place of the second  
part. Witnesseth, That if the party of the second  
part shall first make the payments and per-  
form the covenants hereinafter mentioned on  
his part to be performed the said party of the  
first part hereby covenants and agrees to convey  
and assume to the party of the second part  
by Warranty Deed free of all incumbrances the  
following lots pieces or parcels of land situated  
in McHenry County State of Illinois viz:

The South West quarter of Section 40  
Twenty two in Township forty three in Range

Eight



59.

Eight containing One hundred and Sixty acres  
and the said party of the second part hereby  
covenants and agrees to pay the party of the  
first part in Consideration for said Land and  
the uses and benefits of the same the sum  
of One hundred and thirty five Dollars with  
interest at Twelve per cent per annum said  
payment to be paid in lawful currency of  
the United States on or before the first day  
of November AD 1843. In case of the failure of  
the party of the second part to make the pay-  
ments and perform the covenants herein engaged  
on his part the party of the first part shall  
have a right to declare this contract forfeited  
and determined and to enter upon and take  
possession of the said Land and to have and re-  
tain the same and it is mutually agreed that  
all covenants and agreements herein contained  
shall be extended to and be obligatory upon the  
Executors Administrators and assigns of the respec-  
tive parties. In Witness Whereof the parties have  
hereunto set his hand and seal on the day  
and in the year above written,

In presence of  
J. S. Beardsley

William Brown

State of Illinois }  
McHenry County } J. S. Beardsley Clerk of  
the County Commissioners



Court. Do Certify that whose name is subscribed to the within Bond acknowledged that he executed the same for the purposes therein mentioned and I further Certify that I know the said individual to be the same described person who executed the within Bond.

In Testimony Whereof I have hereunto set my hand and seal this  
24<sup>th</sup> day of June A.D. 1848,  
J. S. Beardsley,  
County Clerk

Recorder's Office

McHenry County Ill,

Received }  
Nov. 17/43

This Certifies, That the foregoing Bond was left for Record the seventeenth day of November 1848, and Recorded the eighteenth day of November 1848 in Book C of Records,  
W. H. Beach, Recorder.

deposition  
King

And afterwards to wit on the same day and year last aforesaid there was filed in the Clerk's Office aforesaid a certain deposition which is in the words and figures as follows to wit:

State of Illinois  
McHenry County } depositions of Lyman King  
of the County of McHenry and  
State of Illinois a witness aged about twenty  
sixty five years produced sworn and examined.



before me Truman L. Randall a Justice of the Peace in and for the County and State aforesaid at my Office in said County on the fifteenth day of September 1848 to be used in evidence in a certain suit now pending in Chancery in the Circuit Court of Cook County in said State of Illinois Between Lucy Thomas Flora Thomas Ann Thomas Ellen Thomas Janet Westoff, Julia Thomas Mary Thomas & Ada Thomas by Stanton M. Thomas their next friend, Complainants and Jesse F. Miller impleaded with Hiram Brown Defendants.

Question 1<sup>st</sup> Are you acquainted with the parties to this suit.

Answer to 1<sup>st</sup> Question. Same.

Interrogatory 2<sup>nd</sup> Do you know of Jesse F. Miller one of Defendant in said suit tendering a deed to the executors of Samuel Edwards deceased. If you do state and at what time.

Answer to Interrogatory 2<sup>nd</sup>

Answer of  
deed

This Dependent says that he does recollect of said Defendant making tender of a deed to J. F. Pierson & Eli Henderson, sometime in the month of February or March 1845.

Interrogatory 3<sup>rd</sup> What did the executors say about paying the money.

to Interrogatory 3<sup>rd</sup> This Dependent says that the Executors said that the money was not here but



was to Elgin and that Mr Harvey would fetch it up to morrow morning.

Interrogatory 4<sup>th</sup>, Do you or do you not recollect of Jesse F. Miller saying to the Executors that he would be there at Deponts house to receive the money by 9 O'clock next morning.

Answer to 4<sup>th</sup> Interrogatory this Deponent says he does recollect it.

5<sup>th</sup> Interrogatory, Do you or do you not recollect of said Depondants being at your house the next morning. to the 5<sup>th</sup> Interrogatory.

This Deponent says that he does recollect of Depondants being at his house the next morning.

6<sup>th</sup> Interrogatory, Do you or do you not recollect of comparing the Debt which Jesse F. Miller tendered to the Executors with the Debt which William Brown made to said Miller.

to 6<sup>th</sup> Interrogatory this Deponent says that he did compare them and they were alike from any thing he could discover except they were to different persons.

7<sup>th</sup> Interrogatory, Did you or did you not see any persons tender any money to said Miller on that day or at any other time.

to Interrogatory 7<sup>th</sup>, This Deponent says not to his Recollection.

8<sup>th</sup> Interrogatory, Do you or do you not recollect of Jesse F. Miller delivering the contract for



forfeited as they had not paid the money according  
agreement, to Interrogatory 8<sup>th</sup> This Dependent says  
that he does recollect of Jesse F. Miller making that  
declaration.

X

Cross Interrogatory to No 2, do you or do you not  
recollect of the executors making objections to the  
deed on account of its not being a Warranty  
deed, to cross Interrogatory to 2, this Dependent  
says he does recollect it.

Cross Interrogatory 3<sup>rd</sup> do you recollect of the execu-  
tors saying to Jesse F. Miller that if he would make  
them a Warranty deed the money was ready  
Answer to Cross Interrogatory 3<sup>rd</sup> This Dependent says  
that he recollects of Jesse F. Miller saying that  
he would not make any better deed than he got  
from Brown.

Symon King

State of Illinois

McHenry County

I, the Subscriber a Ju-  
stice of the peace of said  
County, do Certify that the annexed deposition  
of Symon King, was taken by me at the time  
and place mentioned at the time and place  
mentioned in the caption thereof, that the  
said Witness was first duly sworn and that  
the same was carefully read to said Witness  
and signed by him. Dated this 15<sup>th</sup> day of Sep-  
tember 1848.



Blumen Crandall *per* *Blumen*  
 Cost of Deposition of Lyman Knight \$1.20

Opened & filed Oct 28<sup>th</sup>, 1848,

Jas Curtis, cler.

*Lawson* State of Illinois } Depositions of Alexander Caww  
 McHenry County } son of the County of McHenry  
 and State of Illinois a Witness aged about  
 forty four years produced sworn and examined  
 before me Blumen Crandall a Justice of the peace  
 in and for the said County and State afore-  
 said at my office in said County on the fifteenth  
 day of September one thousand eight hundred  
 and forty eight. to be used in evidence in a  
 certain suit now pending in Chancery in the  
 Circuit Court of Cook County in said State  
 of Illinois between Amory Thomas, Flora  
 Thomas, Ann Thomas Ellen Thomas Janet & El  
 Wolf, Julia Thomas, Mary Thomas and Ada  
 Thomas by their next friend Stanton M. Thomas  
 Complainants and Jesse F. Miller impleaded with  
 Henry Brown Defendants,  
 1<sup>st</sup> Interrogatory. Are you acquainted with the  
 parties to this suit?

Answer to 1<sup>st</sup> Interrogatory

This Deponent says, that he is  
 with Mr. Miller and Mr. Brown & Stanton M.



Thomas.

2<sup>nd</sup> Interrogatory. Do you or do you not know of Jesse F. Miller one of the Defendants tendering a deed to the Executors of Samuel Edwards deceased if you do State and at what time.

Answer to 2<sup>nd</sup> Interrogatory. This Dependent says he was called on by Jesse F. Miller and went with him to Symon Kings shed and saw Jesse F. Miller give a deed to J. F. Piersons he took the deed and looked at it he then said the money was at Elgin or that he could get it by going to Elgin Miller then replied anytime between this and to morrow morning at noon does not recollect which would answer Symon King was present at the time it was the latter part of winter think in 1845.

3<sup>rd</sup> Interrogatory. Did you or did you not hear Edward E. Harvey say at any time that he kept back the money tendered to Jesse F. Miller for the land he purchased of Brown for he has a legal right to. for the Estate was owing him.

Answer to 3<sup>rd</sup> Interrogatory This Dependent says that he was a talking on the subject about the land and the money which was to redeem the land with Edward E. Harvey and Harvey said he supposed that Pierson & Henderson would make a damned mess because he used that money but he said that he has a legal

keeping  
money  
by Harvey



right to it because the Estate was owing him  
and he calculated to look out for number  
one,

4<sup>th</sup> Interrogatory, Do you or do you not know  
what improvement there was on the Land in  
question in the Spring of 1845,

Answer to 4<sup>th</sup> Interrogatory, This deponent says  
that there was a small new piece on the  
south line, in the neighbourhood of five or six  
acres,

5<sup>th</sup> Interrogatory, Do you or do you not know what  
amount of improvement there is on the said piece  
of Land at this time and what it is worth,

Answer to 5<sup>th</sup> Interrogatory This deponent says that  
the land is all inclosed and should Judge about  
two thirds plowed should consider it worth  
three hundred and eighty five dollars,

6<sup>th</sup> Interrogatory,

Do you or do you not know this improvement was  
made by Miller and at what time it was  
made,

Answer to 6<sup>th</sup> Interrogatory,

This deponent says that he knows the im-  
provement was made by Miller and it was  
made in 1845, and forty six the breaking was  
done in the summer of 1845, and the fencing  
in the winter following

Alexander Dawson

#385. The  
value of  
improvements



67

State of Illinois }  
 McHenry County } The subscriber a Justice  
 do Certify That the annexed deposition of Alex-  
 ander Dawson was taken by me at the time  
 and place mentioned in the caption thereof  
 that the said Witness was first duly sworn  
 and that the same was carefully read to  
 said Witness and signed by him. Dated  
 this 15<sup>th</sup> day of September 1848

Bennett Crandell <sup>Justice of the Peace</sup>  
 J. P.

Cost \$1.20 Cost of depositions of  
 Alexander Dawson, \$1.20

Opened & filed October 18, 1848  
 Jas. Curtis, Clk.

Loomis

Deposition of Marinus & Sonnis of the  
 County of McHenry in the State of Illinois  
 a Witness aged about thirty three years pro-  
 duced sworn and examined before me Bennett  
 Crandell a Justice of the peace in and for the  
 County and State aforesaid at my Office in  
 said County on the fifteenth day of September  
 One thousand eight hundred and forty eight  
 to be used in evidence in a certain suit  
 now pending in Chancery in the Circuit  
 Court of Cook County in said State of Illinois



between Amory Thomas. Flora Thomas Anne Thomas Ellen Thomas Janet & Mrs. Julia Thomas Mary Thomas and Ada Thomas by Stanton M. Thomas their next friend Complainants and Jesse F. Miller impleaded into Heron Brown Defendants,

1<sup>st</sup> Interrogatory. Are you acquainted with the parties in this suit,

Answer to 1<sup>st</sup> Interrogatory. This Dependent says that he is acquainted with them.

2<sup>nd</sup> Interrogatory. Do you or do you not know the South west quarter of Section 40 Twenty two Township forty three Range eight east of third principal meridian,

Answer to 2<sup>nd</sup> Interrogatory. This Dependent says that he does.

3<sup>rd</sup> Interrogatory. Do you or do you not know what improvement there was on said quarter section in the spring of 1845 if you do please state,

Answer to 3<sup>rd</sup> Interrogatory this Dependent says that there was not far from ten acres

4<sup>th</sup> Interrogatory. Do you or do you not know what amount of improvement is on said quarter section of Land at this time and what said improvement is worth and when it was made.

Answer to 4<sup>th</sup> Interrogatory. This Dependent says



69.

value  
of improv<sup>t</sup>  
by Miller  
\$400-

that the improvement was made by Jesse  
F. Miller about one hundred acres is true which  
was done in the summer of 1845, the quarter sec-  
tion is all enclosed and was done in the Winter  
following and should consider the improve-  
ment worth four hundred dollars.

Interrogatory Do you or do you not know that  
the Executors of Samuel Edwards deceased  
knew that Jesse F. Miller was making said  
improvement or have you had any conversation  
with any of them concerning it if you have  
state it.

time enough  
for M. to  
quit when  
forbid.

Answer to 5<sup>th</sup> Interrogatory This Depo-  
nent says that they frequently passed by where Miller  
was making the improvement and had a  
conversation with Henderson about it and  
heard Harvey say it would be time enough  
for Miller to quit when the Executors forbid  
him.

M. A. Loomis

State of Illinois (the subscriber a justice of  
McHenry County) the peace of said County do  
Certify that the above Depo-  
sition of Marinus A. Loomis was taken by me at the  
time and place mentioned in the caption thereof  
and that the said Witness was first duly  
sworn and that the same was <sup>carefully</sup> read to him  
the said Witness, and signed by him.



Dated this 15<sup>th</sup> day of September 1848,  
 Beman Crandall <sup>3922</sup>  
 Cost 87½ Cost Defendants of Marins J. S.  
 & Loomis \$ 0. 87½  
 Opened & filed Oct 18<sup>th</sup> 1848  
 Jas Curtis, Clk

Robinson Deposition of Nathaniel P. Robinson of  
 the County of McHenry in the State of Illinois  
 a Witness aged about thirty four years pro-  
 duced sworn and examined before me Beman  
 Crandall a Justice of the peace in and for the  
 County and State aforesaid at my Office in  
 said County on the fifteenth day of September  
 1848 to be used in evidence in a certain suit  
 now pending in Chancery in the Circuit  
 Court of Cook County in said State of  
 Illinois Between Amory Thomas Flora Thomas  
 Ann Thomas Ellen Thomas. Janet Lettolf. Julia  
 Thomas. Mary Thomas, and Ada Thomas by Stanton  
 M Thomas their next friends complainants and  
 Isaac F Miller impleaded with Hiram Brown  
 Defendants,

1<sup>st</sup> Interrogatory Are you acquainted with the  
 parties to this suit.

to 1<sup>st</sup> Interrogatory this Deposition says that he  
 is.

2<sup>nd</sup> Interrogatory Do you or do you not know



of the Executors of Samuel Edwards deceased  
tendering any money to Jesse F. Miller,  
Answer to 2<sup>nd</sup> Interrogatory This Dependent  
says that he was called on by Edward C.  
Harvey in Oct. 1844 and went with him and  
J. T. Pierson to W. Vanosdel field where Jesse F.  
Miller was they said to Mr. Miller that they had  
come to tender ~~him~~ some money to him on that  
land which he had bought of Brown Miller  
said that he would see his Counsel and  
if he thought best he would accept it  
and would make as good a title as he had  
from Brown Mr. Harvey said in presence of  
J. T. Pierson that he would risk that title  
he knew it was good,

Proof of  
conditional  
tender

3<sup>rd</sup> Interrogatory Do you or do you not re-  
collect of comparing this deed with the deed  
which Jesse F. Miller had of Hiram Brown  
for the same piece of land,

Answer to 3<sup>rd</sup> Interrogatory

This Dependent says that he did and found  
them to correspond,

4<sup>th</sup> Interrogatory Do you or do you not  
recollect of Jesse F. Miller declaring the  
Bond and contract forfeited and if you do  
recollect, state the time and place

Answer to 4<sup>th</sup> Interrogatory

This Dependent says that he does recollect it



was at Lyman King's house some time in the month of February after they came to make the tender.

money  
at Springfield

3<sup>rd</sup> Interrogatory Did you or did you not hear Eli Henderson say where he thought the money was at the time the deed was tendered,

Answer to 3<sup>rd</sup> Interrogatory, This deponent says that he heard Mr. Henderson say that he guessed that a part of it was at Springfield  
A. H. Robinson.

State of Illinois }  
McHenry County }

I the subscriber a Justice of the peace of said County do Certify that the above deposition of Nathaniel H. Robinson was taken by me at the time and place mentioned in the caption thereof that the said Witness was first duly sworn and that the same was carefully read to said Witness and signed by him. Dated this 5<sup>th</sup> day of September 1848  
Raman Crandall

Left Deposition of A. H. Robinson Cost \$0. 87 1/2  
(Cost 87 1/2)

Jesse T. Miller impleaded  
with Hiram Brown  
att



Amory Thomas, Flora Thomas  
 Abel Thomas, Ellen Thomas  
 Janet Westfall Julia Thomas  
 Mary Thomas and Ada Thomas  
 by Stanton M Thomas their next  
 friend Complainants,

The above named  
 Complainants will take notice that on the 15<sup>th</sup>  
 day of September next we shall proceed to take  
 the depositions of Major J. Travis, Lyman King  
 Benjamin F Douglas, A Robinson Abraham  
 Pincint W M Wait, Alexander Dawson  
 Marcius A Brown, George C. Crane and  
 Arthur E Blood and others at the office  
 of Beman Crandall a Justice of the peace of  
 McHenry County and State of Illinois and  
 continue from day to day till the same  
 shall be taken which will be used as  
 evidence on the hearing of the above named  
 suit now pending in said Cook County  
 Court August the 24<sup>th</sup> 1848,

Jesse F. Miller  
 Hiram Brown

Defendants,

State of Illinois }  
 McHenry County } The deposition of Horace W  
 Wells Horace B. Throop Ben-  
 jamin Douglass of the County of McHenry in

Town



the State of Illinois of lawful age witnesses produced sworn & examined before Thomas B Albright Esquire a Justice of the Peace in and for said County & State aforesaid on the 7<sup>th</sup> day of February A.D. 1848 at the Office of the above named Justice of the Peace, in pursuance of notice to be read as evidence on the trial of a certain suit in Chancery now pending in the Cook County Court wherein Among Thomas, Flora Thomas Annie Thomas, Ellen Thomas, Jennett Henry & Julia Thomas Mary Thomas & Ada Thomas infant heirs, and by Stanton Thomas their next friend complainants and Jesse F. Miller Defendant impleaded with Anna Brown,

Compt<sup>y</sup> proof  
H. C. Miller

1<sup>st</sup> Question by complainants are you acquainted with the parties to this suit.

Answer. I am acquainted with Defendant Jesse F. Miller & Among Thomas one of the complainants.

2<sup>nd</sup> Question By same are you with the S. N<sup>o</sup> 4 of Section 22 T<sup>h</sup> 43, of d<sup>o</sup> 8 in dispute between the parties.

Answer I do not know the land by description but I know the land in dispute between the parties.

3<sup>rd</sup> Question by same what was that land worth for aene or or about the 8<sup>th</sup> day of June 1843 sales about the 6<sup>th</sup> day of Nov of the same year

Answer In my judgment the land was at that



worth \$5.

75.

time worth about five dollars per acre,  
4<sup>th</sup> Question by same, did you ever hear the  
defendant Miller say anything in regard to  
the purchase of said land of the said Abram  
Brown,

Answer I never did directly or indirectly

### Cross Interrogatories

1<sup>st</sup> Question by Defendant are you acquainted  
with the land now owned by John B Lockwood  
how far is it situated from the land in  
question,

Ans<sup>r</sup> I am acquainted with it & it is situated  
about  $\frac{3}{4}$  of a mile.

2<sup>nd</sup> Question by same is the Land of said  
Lockwood as valuable as the land in question

Ans<sup>r</sup> I should think not.

3<sup>rd</sup> Question By same in what does the dif-  
ference in the two tracts of lands consist.

Ans<sup>r</sup> In my opinion there is three differ-  
ences in the way of making it as good as the  
land in question first the soil is not so  
good. 2<sup>nd</sup> the Quarter section in dispute has  
more convenient to stock water & 3<sup>rd</sup> the next  
road passing the  $\frac{1}{4}$  in dispute is a greater through  
fare, than the road past same Lockwood's  
Land.

4<sup>th</sup> Question by same do you not know that



the land of said Lockwood was government land as late as the month of June in the year 1843  
 Ans<sup>r</sup> 4<sup>th</sup>

5 Question By same was there not vacant lands south of Lockwoods adjoining it of great value with the land in dispute at that time,

Ans<sup>r</sup> I believe there was vacant land there but not of equal value with the land in dispute

6 Question By same have you not purchased government land since June 1843 adjoining your Farm & how far is it from the land in question

Ans<sup>r</sup> Yes I have about  $\frac{3}{4}$  of a mile from Land in question,

7 Question By same was or was not the land you purchased as good land as that in dispute

Ans<sup>r</sup> It was not,

8 Question by same In what does the difference consist

Ans<sup>r</sup> In the face of the land,

9 Question By same what proportion of the said land you purchased is unfit for cultivation

Ans<sup>r</sup> perhaps 10, 15, or may be 20 acres on the 80.

10 Question by same. Is not the soil of the balance of the 80 similar to that of the 14 in dispute

Ans<sup>r</sup> I should think that a portion of it is and further this document saith not,

N. C. Wells



H. B. Throop

77

1<sup>st</sup> Question to Moses B. Throop by complainants, Are you acquainted with parties of this suit  
Ans<sup>r</sup> Yes

2<sup>nd</sup> Question by same are you acquainted with the S<sup>W</sup> 1/4 of Section 22 T43, R of Range 8 in dispute between the parties. Ans<sup>r</sup> Yes,

3<sup>rd</sup> Question by same what was the land worth per acre on or about the 8<sup>th</sup> day of June 1843 & also about the sixth day of November of the same year,

Ans<sup>r</sup> I could not put it less than five dollars

4<sup>th</sup> Question by same did you ever hear the defendant Miller say anything in regard to the purchase of said Land of the said Hiram Brown,

Ans<sup>r</sup> I do not recollect that I ever did.

### Cross Interrogatories

1<sup>st</sup> Question By defendant do you not know that there was government land within a mile or less of the 1/4 in dispute of fair quality subject to be entered about that time,

Ans<sup>r</sup> I think there was.

### Recalled by Complainants

1<sup>st</sup> Question by Complainant is not land considered worth more after it is entered than it is before,

Ans<sup>r</sup> I believe it is generally, and further this deponent saith not

Moses B. Throop

Land then  
subject to  
entry

worth  
more after  
entry.



78  
Douglas

1<sup>st</sup> Question to Benjamin Douglass by complainants  
are you acquainted with the parties of this suit,  
Ans<sup>r</sup> I am

2<sup>nd</sup> Question By same are you acquainted with the  
SW<sup>1/4</sup> of Section 22 Town 43, 4 of R<sup>8</sup> in dispute,  
between the parties. Ans<sup>r</sup> I am,

3<sup>rd</sup> Question by same what was the land worth  
per acre on or about the 8<sup>th</sup> day of June 1843  
value about the 6<sup>th</sup> day of Nov<sup>r</sup> of the same year  
Ans<sup>r</sup> I should ~~think~~ say about 4 Dollars per  
acre,

4<sup>th</sup> Question by same did you ever hear the  
Defendant Miller say anything in regard to the  
purchase of said Land of the said Abram Brown  
Ans<sup>r</sup> I heard him say that he had purchased  
of said Brown,

5<sup>th</sup> Question By same did you ever hear the  
said Miller say that he was not to lose any  
thing by the purchase,

Ans<sup>r</sup> to And further this Deponent saith not,  
Benjamin Douglass

waite

1<sup>st</sup> Question to Henry M Waite by complainants  
are you acquainted with the parties of this  
suit. Ans<sup>r</sup> I am,

2<sup>nd</sup> Question By same are you acquainted with  
SW<sup>1/4</sup> of section 22 T<sup>43</sup> 4 of Range 8 in dispute  
between the parties. Ans<sup>r</sup> I know the land

in



in dispute but not by the number,  
 3<sup>rd</sup> Question by same did you ever hear the defendant  
 Miller say anything in regard to the purchase  
 of the said Hiram Brown, Ans<sup>r</sup> I think not

4<sup>th</sup> Question By same did you ever hear  
 Brown say that he held the land in dispute  
 for money loaned, Ans<sup>r</sup> I have,

Cross Interrogatories

1<sup>st</sup> Question to Henry M Wait by defendant, to whom  
 did said Brown say he let have money,

Ans<sup>r</sup> Mrs Money

2<sup>nd</sup> Question By same State your knowledge of the  
 transaction, Ans<sup>r</sup> I heard Brown say to Money  
 that if he Money would get said Edwards &  
 Sawsons note he said Brown would take said  
 note and give said Money the money & pair  
 of Boots the amount of money was two hundred  
 and thirty dollars I think,

3<sup>rd</sup> Question By same did you understand by said  
 Brown that said Edwards made him a deed  
 to said land for the said note,

Ans<sup>r</sup> I dont recollect anything about it,

H. M. Wait

The Defendant by his Sol<sup>r</sup> excepts to the 4 question  
 to Henry M Wait by Compt<sup>r</sup> & the answer thereto,

Morris for deff<sup>t</sup>



Beardsley

1<sup>st</sup> Question to Ziba S. Beardsley By complain-  
ant are you acquainted with the parties of this  
suit. Ans<sup>r</sup> I am

2<sup>d</sup> Question By same are you acquainted with  
the S<sup>d</sup> 1/4 of Section 22, T<sup>4</sup>S, R<sup>8</sup> in dispute  
between the parties

Ans<sup>r</sup> I know the land in dispute but not by its  
numbers.

3<sup>d</sup> Question By same what was that land worth  
per acre on or about the 8 of June 1843 value about  
the 1<sup>st</sup> day of Apr of the same year, Ans<sup>r</sup> about  
five dollars,

4<sup>th</sup> Question By same was you present when Ed-  
wards made the deed to Brown of the Land in  
dispute,

Ans<sup>r</sup> I made a deed from Edwards to Brown but  
do not know from the numbers but think it was

5<sup>th</sup> Question By same what did you ever hear  
Brown say in regard to holding a note on Edwards

Ans<sup>r</sup> I heard him say that he had a note  
against I should think Edwards,

6<sup>th</sup> Question By same what did you ever hear  
Brown say in regard to holding this land  
in security for the payment for said note,

Ans<sup>r</sup> The Language was as near as I can  
recollect like this, that he had a debt against  
Edwards which was secured by mortgage  
or otherwise he was to make the money out  
of



of the land or the indebtedness of Mortgage  
or security cannot define exactly which I can  
not say positively that the word mortgage  
was used.

Cross Interrogatory  
at Question By Defendant, Do you know what  
the nature of the Indebtedness was,  
Ans: I do not,

J. S. Beardsley

State of Illinois } I do hereby Certify that  
McHenry County } the depositions of Horace C  
Hells, Horace B. Throp, Ben-  
jamin Douglass Henry M. Wait, John S. Beardsley,  
was sworn to & signed by the Deponents before me  
& in my presence & that the said depositions  
was taken by me on the seventh & fourteenth  
days of Feb A.D. 1848 at my Office in said County  
of McHenry & State of Illinois,

Given under my hand & seal this 14<sup>th</sup>  
day of Feb A.D. 1848,

Thos B. Allright J.P. 

Justices Fee administering 5 Oaths \$0.31

Sixteen hundred words each 2.69 & 3.00

Opened & filed Feb 17, 1848,

J. Curtis. Clerk



Jesse F. Miller impleaded with  
 and William Brown  
 Anny Thomas, Flora Thomas Annui  
 Thomas, Ellen Thomas Sanett de Wolf  
 Julia Thomas, Mary Thomas, & Alva Thomas  
 infants as by Stanton Thomas their next  
 friend Complainants

State of Illinois, In Chancery  
 The Complainants will take  
 notice that on the 13<sup>th</sup> day of January next  
 I shall proceed to take the depositions of  
 Alexander Dawson and others at the Clerk's  
 Office of the County Court of said Cook County  
 in the City of Chicago in the State of Illi-  
 nois and to continue from day to day till  
 the same shall be taken, which will  
 be read in evidence in the hearing of the  
 above named suit now pending in said  
 Cook County Court,

Respectfully Yours &c  
 Jesse F. Miller,

By Morris & Brown his Sols

J. H. Hef<sup>rs</sup>

Thomas & Ballingall  
 Sols for Compls

Chicago December 20<sup>th</sup> 1847.  
 Recd a copy of the within notice this twentieth  
 day of December 4<sup>th</sup> 1847

e. J. Ballingall



J. Ballingall Solr for Off.

State of Illinois }  
 Cook County } Depositions taken before James  
 Curtis Clerk of the Court of Common Pleas Cook  
 County Court in and for the County of Cook  
 and State of Illinois at his office in Chicago  
 in said County to be used on the hearing of  
 a certain Cause in Chancery depending and  
 undetermined in said Cook County Court  
 wherein George Thomas, Flora Thomas Annie  
 Thomas, Ellen Thomas, Janett Lee Half Julia  
 Thomas, Mary Thomas and Ada Thomas infants  
 by Stanton Thomas their next friend are Com-  
 plainants and Jesse T. Miller and Abram  
 Brown are Defendants taken on the part of said  
 Defendant Miller in pursuance of the notices here-  
 unto annexed on the thirteenth and fourteenth  
 days of January in the year of Our Lord  
 One thousand eight hundred and forty eight,

Lawson

Alexander Lawson a Witness on the  
 part of the Defendants being first duly sworn  
 according to law in answer to the interrogatories  
 proposed to him makes answer as follows;  
 1<sup>st</sup> Interrogatory by Defendants. What is your  
 age and where do you reside and do you  
 know the parties to this suit if so how long  
 have you known them respectively



Answer, I am forty four years of age I reside in the County of McHenry in the State of Illinois, I am acquainted with Jesse S Miller defendant to this suit I have known Miller about ten years and became acquainted with Brown in the fall of 1842, <sup>and I have been acquainted with him ever since</sup> and I have been acquainted with Amory Thomas for more than eight years I know the children of Amory Thomas, I don't know Janet herself I don't know that I am acquainted with Stanton M Thomas many of the other complainants by name though I believe I know the family of the Thomases.

2<sup>nd</sup> Interrogatory, Were you acquainted with Samuel Edwards prior to his decease and how long have you known him,

Answer I should think that I was acquainted with him for four or five years previous to his death which occurred in the year 1843

3<sup>rd</sup> Interrogatory State what if anything you know of the sale by said Edwards in his life time to the defendant Brown of the South West Quarter of section number twenty two (22) Township number forty three (43) in range eight (8) containing One hundred and sixty (160) acres of land which is mentioned and described in the pleading in this cause Was it intended to be a mortgage or a sale or what State all you know about it

Answer M<sup>r</sup> Edwards and myself borrowed three

Dawson &  
C<sup>o</sup> M<sup>r</sup> Brown  
of Brown  
\$300.



hundred & 300 dollars of Hiram Brown when  
 the money became due we were unable to pay and  
 M<sup>r</sup> Edwards and myself having joined in the note  
 for the payment of this money. I proposed to him  
 that if he Edwards would pay this money to Mr  
 Brown. I would pay into the School Fund what  
 I owed the Fund so that he could have the  
 money to assist him in paying this note to Brown.  
 At that time in pursuance of this agreement Edwards  
 was to sell M<sup>r</sup> Brown One hundred and sixty  
 acres of land in ~~pay for~~ payment for the said  
 note said land being the premises above  
 described to enable him to pay off and discharge  
 the note. In consequence of this agreement the  
 land was sold and deed of conveyance executed  
 in the month of June 1843 at the time of the  
 conveyance Brown told Edwards that he would  
 not take the land as security nor accept of a  
 mortgage upon it, and that he would purchase  
 the land absolutely and unconditionally and  
 Brown at the same time said that if Edwards  
 would pay him a certain sum of money  
 or before a specified time he would re-annex  
 the property to him. Witnesses at the time took  
 M<sup>r</sup> Brown in the land and previous to the execu-  
 tion of the deed I showed him the land.  
 4<sup>th</sup> Interrogatory, State what if anything you know  
 or heard Edwards say how he intended that

Brown refused  
 to take mortg.  
 or land for  
 security -  
 buy it absolutely



transaction to be considered was it as a security for the money or an absolute payment of the debt due from him to Edwards.

It was a  
sale of the  
land - with  
right to buy

Answer. He stated at the time that he sold the land in payment of the debt and subsequently said that unless he could procure the money to pay according to the stipulation between him and Brown he would be obliged to lose the opportunity of repurchasing the land.

5 Interrogatory. State what was paid by Defendant Miller to Defendant Brown for the land in controversy if you know.

Answer Miller paid to Brown one Bay State Horse of the value as they estimated it of One hundred dollars (\$100) Afterwards saw the Horse in possession of said Brown.

6<sup>th</sup> Interrogatory. At what time was the horse delivered to Brown in pursuance of this sale.

Answer. It was given up upon the same day that the sale was made sometime in the fall of the year 1843.

7 Interrogatory. State what if anything you know of Miller having the money to pay for the land at that time.

Answer. I told Miller the amount for which I supposed I could purchase the land and he procured the amount in gold and placed it in my hands but afterwards found that

Sworn



I was unable to purchase it for the price I had mentioned and delivered up the money to Witter when he finally made the purchase he was obliged to pay in addition to this amount the horse before mentioned. The amount of money put into my hands was over Two hundred dollars and the precise amount I do not now remember, It may have been two hundred and fifty or more.

Alexander Dawson a Witness on the part of the Defendants Cross examined by complainant.

1<sup>st</sup> Interrogatory What portion of the money borrowed by you and M<sup>r</sup> Edwards was borrowed by you and what portion by M<sup>r</sup> Edwards and at what time was the same borrowed.

Answer One half was due from each of us.

2<sup>nd</sup> Interrogatory Who negotiated the borrowing of the money from M<sup>r</sup> Brown.

Answer M<sup>r</sup> Mory.

3<sup>rd</sup> Interrogatory Did you or M<sup>r</sup> Edwards hear any conversation or negotiation with M<sup>r</sup> Brown in relation to making the loan of said money.

Answer M<sup>r</sup> Edwards knew about it but had nothing to do with the matter. Stried to loan the money but could not succeed.

4<sup>th</sup> Interrogatory Was the note made for the purpose of raising money upon it from M<sup>r</sup> Brown.

Answer The note was made in payment

Dawson  
& Edw.

owed

Money \$300

& gave their

note - this was

sold to Brown

where else

Edw. was to

pay it to B.

was to pay

school note



of money due from us to Moony for work done by him upon a bridge but I cannot say whether the note was made payable to Moony or Brown,

5<sup>th</sup> Interrogatory When that note was executed was it not understood between you & Moony that it was to be used for the purpose of borrowing money of Brown

Answer, I should think that that was the object,

6<sup>th</sup> Interrogatory Was it used for that purpose and if so how much was borrowed on the same,

Answer, Mr Moony told me that he obtained Two hundred sixty dollars for it,

7<sup>th</sup> Interrogatory, How much of that note was paid before or at the time of the execution of the deed referred to in the pleadings,

land conveyed  
in payt. of  
note

Answer There was no money paid to my knowledge but the land mentioned in the deed was conveyed in payment of the note,

8<sup>th</sup> Interrogatory Was you present when the contract filed with the papers in this case was executed,

Answer, I was present when such a writing was executed which was at the same time with the execution of the deed

9<sup>th</sup> Interrogatory How was the amount of original indebtedness reduced to the sum of One hundred and ninety five (\$95) Dollars,

Answer I cannot say how it was done,

10<sup>th</sup> Interrogatory At or about the time of the making of the said deed and contract was there any



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negotiation or ~~agreement~~ arrangement between you and Edwards and Brown for the purpose of extending the time of the payment of the said money. Also state all that took place or was said in relation to it,

Answer Mr. Moory said he could raise the money of Mr. Brown but we were to pay Mr. Moory twenty <sup>twenty</sup> 20 dollars to do it,

11 Interrogatory. Was about the time that the note fell due did you or Mr. Edwards apply to Mr. Brown for an extension of the time for the payment of the said note or any part of it,

Answer I do not know that there was,

12<sup>th</sup> Interrogatory, at the time the deed was made state what was said between Edwards and Brown in relation to his being then able to pay the note and whether he Edwards did not request Brown to give him further time for the payment of the said note or at any other time,

Answer, he did not at the time of the execution of the deed, at the time the note became due we were unable to pay and Mr. Brown agreed with me that he would <sup>buy</sup> pay one hundred and sixty (60) acres of land of Mr. Edwards he said he would buy the land of Mr. Edwards absolutely and unconditionally, that he would have nothing to do with a mortgage upon it but

B. S. he would buy land absolutely not take any mortgage.



but would permit Mr Edwards to repurchase upon the payment of a specified sum of money at a certain time,

13<sup>th</sup> Interrogatory State what Brown said about bonds and mortgages, did not he say that he would not take bond and mortgage and assign as a reason the difficulties in collecting and foreclosing mortgages, but that he would take lands of Edwards for the amount due on the note and would have an absolute deed of the same, but that Edwards might have the privilege of purchasing the lands back by paying the amount due upon the note together with twelve percent interest on the same at some future day or words of statements in substance to that effect, If not <sup>state</sup> what he did say as nearly as you can recollect,

Answer as to the twelve per cent Interest I don't know but as to the other statements they are true,

14<sup>th</sup> Interrogatory Were the Deed and Bond executed under and in pursuance of that arrangement,

Answer They were as understood it,

15<sup>th</sup> Interrogatory Was the note given by you and Edwards given up at the time that said deed was executed or did it ever come into possession of Edwards in his life time to your knowledge,



91.

Answer, I do not recollect about that but I presume it was given up to him as I have never seen it since,

16<sup>th</sup> Interrogatory, You state that Miller gave you money to purchase this land of Brown did you tell Miller at that or any other time the situation of said land in relation to the contract between Brown and Edwards and did you tell him that the administrators of Edwards claimed a right of redeeming or repurchasing said land or any interest in the same  
Answer, Miller and I talked the matter over and he understood the situation of it as well as I did  
17<sup>th</sup> Interrogatory, What was the said land worth per acre on the eighth day of June 1843 in your judgment,

Land worth  
\$2.50 per  
acre - 1843

Answer, I should think it might be worth two dollars and a half per acre, at that time,

18<sup>th</sup> Interrogatory, Is Janet Thomas dead and if so at what time did she die,

Answer, There was one of Aunty Thomas's daughters that died about three weeks after the death of said Edwards,

19<sup>th</sup> Interrogatory, did you ever hear Miller say that the administrators of the Estate of Edwards or either of them had offered to pay the amount due to Miller for said land,

Answer I never heard so from him,



92.  
20<sup>th</sup> Interrogatory. At the time that you was negotiating to buy said tract of land did any of said Administrators state to you or offer to pay the amount due to Brown and claim the right of reconveyance of said lands,

Answer They did not to my knowledge,

21<sup>st</sup> Interrogatory. Do you of your own knowledge know that Miller paid to Brown any money whatever for said land, Answer I do not,

22<sup>nd</sup> Interrogatory. Do you know or have you heard Miller say that if he Miller did not hold said lands that Brown was to pay him back the price of said horse,

Answer I do not know the fact from either of the parties nor have I heard Miller say so,

23<sup>rd</sup> Interrogatory Was Samuel Sheppard present at the time that said deed and bond was made and was said deed executed on the day on which the same bears date,

Answer He was not present to my recollection I cannot tell the day on which the papers were signed but they were both made on the same day at my house,

24<sup>th</sup> Interrogatory Was Ziba S. Beardsley there at that time and did he take the acknowledgment of the deed upon the same day,

Direct examination resumed

1<sup>st</sup> Interrogatory Had Morry anything to do with



the note or the payment thereof after it went into the hands of Brown or not,

Answer He had not,

2<sup>nd</sup> Interrogatory. Was Moory present and did he take any part in the negotiation with Edwards for the sale of the land and the payment of the note above mentioned

Answer He was not,

3<sup>rd</sup> Interrogatory. What then did you mean by your answer to the tenth cross interrogatory,

Answer I then referred to the Original transaction of the note and the getting of the money from Brown in the Winter prior to the sale of the land,

4<sup>th</sup> Interrogatory. State how if at all you paid Edwards or Brown your half of the note.

Answer I settled my half with M<sup>r</sup> Edwards,

5<sup>th</sup> Interrogatory. What amount was due from you and Edwards to money for which the note was executed,

Answer. It was all due,

6<sup>th</sup> Interrogatory. Did Miller place the money in your hands to purchase the land of Brown before or after the time allowed for Edwards to purchase had expired,

Answer. It is my impression that it was after 7<sup>th</sup> Interrogatory. Was it at the time and after the money was put into your hands that you



informed Miller of the existence of this bond from Brown to Edwards and talked over the rights of the respective parties,

Answer It was before the money was put into my hands that we talked over and afterwards also.

8<sup>th</sup> Interrogatory, Was it before the first day of November 1843 or afterwards that you had the conversation or was it after that time,

Answer I cannot recollect the precise time,

### Cross Examination Resumed

1<sup>st</sup> Interrogatory Was you allowed by Money more than Two hundred and eighty dollars for said three hundred dollars note and was not the discount on said note made by said Brown the sum of forty dollars,

Answer, I do not know whether the discount was included in said note but we allowed him twenty dollars and I understood from Money that the discount was forty dollars.

### Direct Examination Resumed

1<sup>st</sup> Interrogatory Was Miller at the time of your conversations with him about Edwards right to repurchase informed by you and others who were present at the sale of said land by Edwards to Brown that the sale of the land to Brown was made with the condition that

if

Condition  
of the sale  
proved



95.

if Edwards did not repurchase by a given time mentioned in the bond that such sale was absolute.

Answer. I told him that was the fact,  
Alexander Lawson

Sheppard

Samuel T. Sheppard a Witness produced and sworn on the part of the defendants in answer to the Interrogatories proposed to him at the same time and place and for the same purpose as set forth in the foregoing deposition of Alexander Lawson makes answer as follows to Wit:

1<sup>st</sup> Interrogatory, How old are you and where do you reside? Do you know the parties Defendants and Complainants in this cause and how long have you known them,

Answer I am fifty years old and reside at Crystal Lake in McHenry County State of Illinois. I have been acquainted with the Defendant Miller about nine years and with Defendant Brown about five years. I know Amory Thomas and have known him about nine years I know his wife and some of his children but am not acquainted with any of the other complainants.

2<sup>d</sup> Interrogatory Were you acquainted with Samuel Edwards of McHenry County



96.

in his life time now deceased,  
 Answer, I became acquainted with him in the  
 year 1840 and was intimately acquainted with  
 him from that time till the time of his decease  
 which occurred in the year 1843.

I Interrogatory State whether you were present  
 or not on the thirtieth of June in the year 1843  
 at the sale and transfer by Edwards to Brown  
 of the South West Quarter of section number 22  
 in Township forty three 43, range eight 8 east  
 situate in McHenry County, Iowa State whether  
 it was a sale by Edwards of the land in question  
 or intended as a Mortgage or what it was or what  
 they said about it at the time.

Answer. I was present when the bargain was made  
 and when the writings were commenced to be  
 drawn up Mr Brown said that the sale to him  
 must be an absolute sale and was to be in pay-  
 ment of certain note or notes signed by Edwards  
 and Clawson and also some other persons whose  
 name I do not now recollect and to which Ed-  
 wards replied that such was to be the terms  
 of the sale or conveyance. After the delivery  
 of the deeds Edwards informed me that he  
 obtained the note of Brown, the land was  
 sold in payment of the note above mentioned  
 which I saw delivered in the month of  
 January or February preceding.

was sale  
 absolute  
 in pay-  
 of note

Edw. took  
 up note  
 & gave an  
 bond in  
 payt.

22



4<sup>th</sup> Interrogatory State what if anything you have heard Edwards say in relation to this transaction subsequent to that time.

Answer Sometime in the month of August or September following I had a conversation with Mr Edwards in which he told me that he was afraid he should not be able to make up the money necessary for the repurchasing the land sold by him to Brown. He said you know that if I fail to make up the money by the day mentioned the land is gone irrevocably as I have no lien upon it unless I pay the very day.

5<sup>th</sup> Interrogatory, Was anything said at the time of the conveyance of the land above mentioned about the right to repurchase and if so what and by whom, said,

Answer Mr Edwards asked from Mr Brown the privilege of having the land rededed to him provided the money was paid by a certain day Mr Brown told him that he would make a contract that provided the money was paid by the very day he could have the land again but that he should have a right in case of a failure to sell it to the next person that would buy it Mr Edwards said that all he wished was an opportunity to repurchase by such

conversation  
of  
repurchasing



a time as was fixed and agreed upon  
 6<sup>th</sup> Interrogatory. Look at the obligation pur-  
 porting to be signed by Hiram Brown  
 which is made an exhibit in this cause  
 and state whether you was present and saw  
 the same or any part thereof written,  
 Answer I was present when the most if not all  
 of it was written,

7<sup>th</sup> Interrogatory. State whether you are  
 certain and positive that the land in ques-  
 tion was sold and conveyed to said Brown in  
 payment of a preexisting debt and that said  
 debt was extinguished thereby;

Answer I was informed so by Mr Edwards after-  
 wards and such I believe to be the agreement at  
 the time,

8<sup>th</sup> Interrogatory. State what if anything you know  
 of the payment by Miller to Brown and the time  
 when and how much for the land in  
 question,

Answer, The deed was made November 6<sup>th</sup> 1843  
 and a horse was delivered by Miller to Brown  
 in part payment for the land. the amount of  
 the value of the horse was not inserted in the  
 deed as I was informed by Mr Brown. The money  
 mentioned in the deed was the money paid at  
 the time of the execution of the deed in ad-  
 dition to the price of the horse I was not

present



99.

B. S. he  
on the  
money

X 101

present and did not see the money paid but afterwards saw Brown in possession of the money when Brown informed him that he had received the money.

Samuel T. Sheppard a Witness on the part of Defendants cross examined by complainant,  
1<sup>st</sup> Interrogatory. You state in your answer to the third direct interrogatory that Mr Brown said that the sale to him must be an absolute sale How came Brown to make such statements and what reason did he assign why the sale must be absolute,

Answer. In the morning Mr Brown accompanied by Mr Currier I think it was Currier came to consult me in relation to the transaction and I stated to him that if he took a mortgage upon the premises it would take him as long to collect it as to sue the note. He then said that he would buy it but in such a way that he could sell it at a certain day for he said he would not have his money out of his hands beyond his controul. The reason he assigned for wishing the sale to be absolute was to prevent any lawsuit or any litigation whatever,

2<sup>d</sup> Interrogatory. What did he say about making the sale absolute at the time of making the deed,



Answer Brown said that it must be arranged so that he could sell to the next purchaser so as to make his money again in case of failure on the part of Edwards to repurchase,

3<sup>rd</sup> Interrogatory. Do you recollect the balance that was said to be due on said note at that time and how long the time was in which Edwards was at liberty to pay the balance due and at what rate of interest and what was the land conveyed by an absolute deed to secure the payment of that sum of money.

Answer, I do not recollect hearing the amount due on the note mentioned or any interest mentioned. <sup>The note itself, as mentioned,</sup> I think the agreement was made in the early part of June and my recollection is that the money was to be paid about the month of October or November afterwards understood from Mr. Edwards and at the time of the commencement of making of the papers from both the parties that the sale was made absolute for the securing the payment of the sum of money due on said note.

4<sup>th</sup> Interrogatory. What in your judgment were the said lands worth at that time per acre  
Answer I should think that the lands might have been sold for two dollars per acre and I should think they were

correct

up on the  
\$2.00



worth that price,

1<sup>st</sup> Interrogatory, Do you know of the death of Janet Thomas and at what time did she die,

Answer I believe she died about three weeks after the death of Mr Edwards

Direct Examination Resumes

1<sup>st</sup> Interrogatory, Was the land in question conveyed to Brown in payment of the note or not,

Compts Counsel excepts to the Question

Answer, I so understood it from both parties

2<sup>d</sup> Interrogatory, State what became of the note  
Answer I know nothing about it except what was told me by Mr Edwards He told me it was given up to him,

3<sup>d</sup> Interrogatory, Was any other executed in the place of it to your knowledge,

Answer, Not that I ever heard of

4<sup>th</sup> Interrogatory, Was the note due and payable at that time,

Answer, I so understood it from both the parties I believe,

5<sup>th</sup> Interrogatory, What do you mean, to be understood in your answer to the third and fourth Interrogatory in saying that the money was to be paid about the month of October or November,



Answer I mean to be understood as saying  
 that the money should then fall due for the  
 repurchase of the land,

Cross Examination Resumed,

1<sup>st</sup> Interrogatory Was said note made payable to  
 said Brown,

Answer According to the best of my recollection  
 it was made payable to Mr Money,

2<sup>nd</sup> Interrogatory Did said Brown take  
 the absolute conveyance of said lands for the  
 purpose of enabling him to realize the amount  
 that was then due on said note without  
 being put to the necessity of suing the same  
 and to enable him to sell said lands  
 after the time when said money was  
 agreed to be paid to make the amount  
 of the same and to avoid the necessity  
 of suing,

Answer, The reason he assigned for wishing  
 the deed to be made absolute was, in order  
 that when the money became due he  
 might sell the land and make the money

Samuel F. Sheppard

State of Illinois }  
 Cook County } This is to certify that  
 the foregoing depositions  
 of Alexander Dawson and Samuel F. Shep-  
 pard were taken sworn to and subscribed  
 by



103. by the said deponents before me the undersigned  
at the time and place and for the purpose in  
the caption of Alexander Sawsons deposition above  
named,

In Testimony whereof I have hereunto  
subscribed my name and affixed the  
seal of said Court at Chicago in  
said County this 14<sup>th</sup> day of January  
1848.

James Curtis, Clerk

Depositions Fee \$ 7.50<sup>74</sup>

Opened & filed Feby 7, 1848.

James Curtis Clerk

And afterwards to wit on the same day  
and year last aforesaid there was filed in the  
Clerks office aforesaid a certain stipulation  
or agreement which is in words and figures as  
follows to wit:

Emory & Flora Thomas  
and others

vs  
Abram Brown & Jesse  
F. Miller

Cook County Court  
of Common Pleas

In Chancery

Stipulation by the parties to the above entitled suit that  
the Complainants will admit on the trial of this  
cause that the debt Jesse F. Miller paid in



money to said Left. Airam Brown on the purchase of said land the sum of Two hundred & fifty one Dollars besides the Horse as they are informed believe to be true, also that this cause shall be submitted to a hearing in vacation & before the next term of said Court & to be heard by Judge Hickey Dec<sup>r</sup> 27<sup>th</sup> 1849,

E. Goodrich  
Cnpts Solo  
Morris for Left,

And afterwards to wit on the fifth day of June in the year of Our Lord one thousand eight hundred and fifty two it being one of the days of the May Term of said Circuit Court the following among other proceedings were had to wit:

Anny Thomas & Flora Thomas  
& Fannie A. Thomas, Ellen Thomas  
Janett Lett Vol. Julia Thomas  
Mary Thomas and Ada Thomas  
infants by their next friend  
Stamton M. Thomas,

Airam Brown & Jesse F.  
Miller

In Chancery

This cause



having been heretofore brought on to be heard upon the pleadings exhibits & proofs and the Court being now fully advised thereupon and it appearing to the Court that the transactions set out in the said Bill that is to say the conveyance of the land therein mentioned from Samuel Edwards to Hiram Brown and the articles of agreement therein mentioned was part and parcel of one and the same entire transaction and was intended by the parties to the same as a security for the loan of money by way of mortgage and that the said Complainants are entitled to redeem the land so conveyed and described in the said Bill of Complaint from the said Mortgage and the lien of the same by paying to the said defendant Jesse F. Muller the amount due and which the said mortgage was intended to secure being the sum mentioned in the said articles of agreement with interest thereon at the rate of twelve per cent per annum to the date hereof which said sum amounts to the sum of four hundred and five dollars.

do hereby  
 Give 5. 1852  
 \$405.

It is therefore ordered adjudged and decreed that the said Complainants or some of them pay to the said defendant



to be paid by  
6 Sept 52

Jesse F. Miller on or before the sixth day of  
September next the said sum of Four  
hundred and five dollars and that upon  
the payment thereof as aforesaid the said lands  
described in the said Bill of Complaint  
that is to say

The South West Quarter of section  
number Twenty two in Township number  
forty three (43) North of Range number eight  
(8) East of the third principal meridian

be and from thenceforth stand  
redeemed of and from the said mortgage  
and the lien thereof.

And it is further ordered  
that within five days after the payment of  
said sum of money the said Jesse F. Miller  
convey said premises by a Quit Claim deed  
so as to vest all his estate both legal and  
equitable therein unto James S. Pierson one  
of the executors of the said Samuel Edmunds  
deceased in trust to convey the same to the  
Complainants their heirs or assigns according  
to their respective rights and interests in said  
premises and in default of making such con-  
veyance by said Jesse F. Miller within said  
time that the Master in Chancery of  
Cook County be and he is hereby em-  
powered and directed to execute and

deceive



Deliver a Masters deed of the said premises to the said James T. Purson In trust as aforesaid which deed shall rest in him all the estate both legal and equitable of the said Jesse F. Miller.

And it is further Ordered that the Complainants pay their own costs and that the Defendant Jesse F. Miller pay the Defendants costs in this suit.

And afterwards to wit on the Twenty third day of December in the year last aforesaid there was filed in the Clerk's office aforesaid the following affidavit which is as follows to wit:

State of Illinois }  
McHenry County }

I the undersigned do State under oath that I was present and saw J. T. Purson tender to Jesse F. Miller four hundred five dollars & demand of him a Quit Claim Deed of the South West Quarter of Section 4, Twenty two in T 43, 4 R 8 East of 3 principle meridian said tender & demand was made on the 1<sup>st</sup> day of September A.D. 1852, at the house of the said Miller in the above State & County

Reman Smadell,

tender \$405,  
1 Sept. 1852.



Subscribed & sworn to before  
me this tenth day of Sept<sup>r</sup>  
1852,

John W. Salisbury Justice of the Peace

And on the Back of said Affidavit was the  
following Certificate to wit:

21<sup>st</sup> Dec<sup>r</sup> 1852

McHenry Co. Ill.

I hereby Certify that the  
within John W. Salisbury  
Agre was at the time of signing the above a  
Justice of peace within and for the Co of  
McHenry State of Illinois and that all  
signatures from him is in good faith and  
true his official acts,

Witness my hand at Woodstock  
Ill this 21<sup>st</sup> day of December 1852,

Enos W. Smith Clerk

By Lud Smith Depy

And afterwards to wit on the same  
day and year last aforesaid there was  
filed in the Clerk's Office aforesaid a  
certain other affidavit which is as follows  
to wit:

State of Illinois In Cook Circuit Court  
Cook County



Young Thomas, Henry  
Thomas, Annie Thomas  
Ellen Thomas & others

vs  
Nathan Brown & Jesse F. Miller

James T. Purson  
being duly sworn deposes and says that he  
tendered to said Jesse F. Miller on the 1<sup>st</sup>  
day of September 1852 the sum of Four  
hundred and five dollars to said Jesse  
F. Miller at his house in McHenry  
County, State aforesaid and demanded  
from him a quit claim deed of the pre-  
mises in the decree in said case de-  
scribed as in said decree directed  
which said Miller refused to  
make and has never to this day made  
to this affiant.

And this affiant brings here  
into Court said sum of money & prays  
the Court to order the Master in Chancery  
of this Court to make to this affiant  
a deed of said premises as in said  
decree provided & ordered.

Subscribed & sworn to  
before me this 28<sup>th</sup>  
Dec<sup>r</sup> 1852.

L. D. Hoard

J. T. Purson



And afterwards to wit on the twenty  
third day of December in the year last  
aforesaid it being one of the days of the  
December Term of said Circuit Court the  
following among other proceedings were had  
to wit:

Amory Thomas Flora Thomas  
& Abner & Thomas, Ellen Thomas  
Janett Lettolf, Julia Thomas  
Mary Thomas and Ada Thomas  
infants by their next friend  
Staunton M Thomas

In Chancery

vs  
William Brown & Jesse F. Miller

And now at this day  
again comes the said Complainants by  
Grant Goodrich their Solicitor and it  
appearing to the Court by the affidavit  
of Beniam Crandall and James T. Pierson  
that the sum ordered by the decree in  
this cause to be paid to said Miller  
was on the first day of September 1852  
tendered to said Miller, and also a quit  
claim deed of the premises described in said  
decree demanded of said Miller and which  
he refused and neglected to make and has  
not yet done to this affiant, And the said  
Pierson having brought the sum named in

said



said decree into Court and deposited  
the same with the Clerk to await the fur-  
ther order of this Court.

It is therefore ordered  
that the Master in Chancery of this Court  
of Cook County make to said James O  
Purson a deed of the South West Quarter  
of Section number Twenty two in Township  
number forty three north of Range fourteen  
East of the third principal meridian in con-  
formity with the directions of the decree in this  
case formerly made and that said Miller  
pay the costs of this motion and said  
deed,

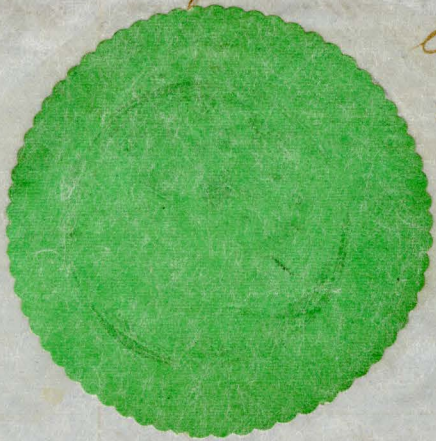
State of Illinois }  
Cook County }

I Louis Alford  
Clerk of the Circuit Court in and for said  
County do hereby Certify That the foregoing  
contains a full true and perfect copy of all  
the papers in the case wherein Henry Thomas  
Etals are Complainants and Miller & Brown  
Defendants, and of the proceedings had in the  
Circuit Court relative to the same,

And I further certify That I  
have compared the foregoing copies with  
said Original papers and with the



of said Court on file at my Office and that  
the same is in every respect a true and per-  
fect Transcript of all the papers & proceedings  
in aforesaid entitled cause,



Given under my hand and the  
seal of said Circuit Court at  
Chicago this 8<sup>th</sup> day of March  
A.D. 1853.

L. L. Hoard

Clk. Civ. Court



State of Illinois }  
Supreme Court }

The said Jesse F. Miller  
plaintiff in Error comes and says that  
there is error in the foregoing  
an annexed Record to his prejudice  
in this to wit -

First That the Court below erred in decreeing  
in favour of the Complainants, now Defts in  
error, compelling said Miller to convey the land  
mentioned - that said bill should have been  
dismissed with costs.

Second. That said decree and every branch  
of it thereof is erroneous & should  
have been for plff in error.

Third. That the Court erred in giving time  
by the decree to 5<sup>th</sup> Sept. 1832 for the  
Defendants in error to pay the money  
to plaintiff in error.

Fourthly That the Court erred in said decree in  
not requiring the Defendants to pay  
interest on the amount of the decree  
till paid - amounting to \$10. at 6 per cent.

Fifthly The Court erred in said decree, the same should  
have been for plaintiff in error - because  
there was no tender or proof of tender of  
the principal & interest - which should



have been amended & proved to entitle the  
Def't in Error to such a decree. For these  
& other errors in said Record the plaintiff  
in Error prays that a writ of Error  
may be issued to the said Def't  
in error to wit: Amey Thomas.

Alora Thomas, Annie A. Thomas,  
Ellen Thomas, Lavett DeWolf, Julia  
Thomas, Mary Thomas, and Ada Thomas  
Defendants in error. and that  
said Decree may be reversed  
and set aside. with costs &c.

by Thickering his Solicitor  
Def't. Enter the appearance in  
Def't. Day then is no such error as are  
supposed in said Record & pray  
the Court to affirm said Decree.  
Gamp Goodrich  
Def't Adm.

77  
Circuit Court

77  
Amey Thomas Ad

Brown & Miller

12064

Westbrook

Transcript

Prepared

Filed June 23. 1858.

L. Deland Clerk

12064  
1853

For p. 30.00



Deft. Amos Thomas et al  
ad  
Deft. F. Miller

It appears from the testimony in  
this case that Edwards in his life time  
& Dawson borrowed of Brian  
Brown - that when the note became  
due, a question in regard to raising  
\$195 of the same was had between Brown &  
Edwards. <sup>the</sup> Claim to Shupland the witness  
(in record 99 page) to consult with him  
in relation to the matter. Witness stated  
to him that if he took a mortgage, it  
would take him as long to collect it as  
to pay the note. Brown then said he would  
lend it but in such away that he could  
sell it on a certain day - for he would  
not have his money out of his hands  
beyond his control - wanted sale  
absolute to prevent loss suit -  
(also 100 page) Brown said it must be so  
fixed that he could get the note paid  
in case of ~~his~~ <sup>his</sup> money in case of  
failure.

That the money was to be paid Oct or Nov -  
Understand sale was made absolute  
for paying the payment of money due  
on said note - In also page 102  
So in the testimony of J. S. Brady on  
page 80. to wit - Brown said he held  
the land for security - was to make  
the money out of it.

A. M. Wark. had Brown say he held  
the land for money loaned - (in record  
page 76. Feb. 4 -



It is manifest that the land was  
 to be put into Brown's hand to receive the pay-  
 ment of the money which was owing by Edwards  
 to Brown - They consulted before with  
 Bradley how the money could be most  
 effectually secured on the land - They had  
 evidently contemplated a mortgage,  
 but on the suggestion of Bradley, con-  
 cluded to make it an absolute sale -  
 But for the original purpose to receive  
 payment of the money - and to avoid  
 delay of foreclosure -

From the whole testimony there can be no  
 doubt the deed was made to receive payment  
 & if so what was from Henry can be  
 adopted, it was a mortgage - & once  
 a mortgage, always a mortgage -

The deed was given & defeasance given  
 back - Now if this defeasance had  
 been in the body of the deed, who would  
 have disputed that it was a mortgage -  
 The Courts say, if defeasance is made  
 at the time of the deed, though it be a  
 separate instrument, it will have the same  
 force & effect as if contained in the  
 deed itself -

|                       |                         |
|-----------------------|-------------------------|
| See 4 Arch 142. & 3 - | 1, Meap. 443            |
| 3 Holt 354            | 1 News Cuy Cons 264     |
| 6. " 405 -            | 1 Dexters N.J.R. 534    |
| 6 Penn. 390           | Strong Cases            |
| 2 Call top page 360   | 2 Story Equity Dec 1018 |
| 3 J. J. Marshall 353  | 1 Ordey 407             |
| 3 Yergu 525           |                         |

Courts will not permit debtor to give or convey  
 away his right of redemption

7 Johns Chy 39-40 - 4 Penn. 157



the case in 17 Decy -

The party received his money & 14 per-  
cent interest - & the deed is just  
& protects the rights of infants

But even if it were a conditional pur-  
chase, Miller made void the operation of time  
by treating with the parties, & advancing by parole  
the money at a subsequent time

7 Decy 273 - 4 Decy 1 - 349 - 1 Mutually 117  
3 Story equity Dec 775 & 4 - 6 Paige 407 - 14 Petu  
173

Chas. Woodrich  
Drift Solis.



9 Wheat. 529

2 Story Equity Dec 1009 & 1019

The fact, that the Mortgage, in cases  
where an absolute deed has been given,  
& the question is whether it is a condi-  
tional sale or a mortgage, retains the  
possession, is a controlling fact -

By the testimony, it appears Edward  
retains possession until his death,  
& Brown did not have possession,  
but Miller took possession after  
he purchased which was & now -

Besides, the deed given by Brown  
to Edward recognizes the possession  
in Edward. In agreeing if he does  
not pay to give up possession -

But there is another fact which is significant  
& always in any case of doubt ought  
to control -

The amount owing was \$195  
The land under 160 acres

Thorp testifies the land was worth \$ per  
acre at time of conveyance \$800.

|             |      |      |
|-------------|------|------|
| Wells. Says | \$5- | 800. |
|-------------|------|------|

|        |     |     |
|--------|-----|-----|
| Dunlap | \$4 | 640 |
|--------|-----|-----|

|         |      |      |
|---------|------|------|
| Bradley | \$5. | 800. |
|---------|------|------|

2 other witnesses say not

|           |      |     |
|-----------|------|-----|
| less than | \$2- | 320 |
|-----------|------|-----|

|    |          |
|----|----------|
|    | 320      |
| 6/ | 3680     |
|    | \$613.33 |

Nothing is worth an acre  
\$613.33 - We can never be allowed  
that Courts of equity misfeits of party  
shall obligate him to such exactions.  
The value so much above the amount  
owed, rebuts every presumption of



an absolute sale - 2 Cond. 483

It would be monstrous under the  
circumstances to subject these heirs to  
such hardship -

When there is any doubt, Courts of  
equity always lean in favor of  
constituting such a transaction as a  
mortgage -

Here the party was to receive 12 per cent  
interest for the forbearance of his  
money, on a debt due, & proposed  
to be paid.

It is objected that there is no covenant  
by Edwards to repay the money, & that  
this is the law -

But Marshall in 2<sup>d</sup> Cond. Npts. page  
481 - says this is not necessary -

There are other cases establishing the  
same position -

The cases cited by pliff. in error to sustain his  
2 point, are cases of specific performance  
I have no objection to redemption of mort-  
gages - a denial of the existence of  
a mortgage, rendered a trustee  
in money - & rendered a trustee in  
money -

If there is no error in 3 points - if the  
law this Court can modify the decree

Pliff. 5 points is not tenable - it was  
discretionary in the Court when to re-  
quire money to be paid into Court -

The case cited from L. J. C. was a refusal  
to enlarge time to redeem - & with



Ezra F. Miller

res.

Amory Thomas vs

Error to Cook.

It appears by the pleadings & proofs that H. Brown held a note against Saml. Edwards & two other persons for ~~\$250~~ \$300. then due (June 8. 1843) No charge in the bill by Edwards & devisees, that either of the makers of said note was insolvent or unable to pay it - or that Brown seeking security for its payment. But it plainly appears from the written & oral evidence, that Edwards should and he did sell and convey by <sup>absolute</sup> deed the land in question to Brown in payment of the note which was given up to Edwards on 8 June 1843. That Brown gave this obligation to Edwards to convey the land back on payment of \$195, with 12 per cent on or before the first day of Nov. 1843, but failing to pay, it should be void.

While in treaty for such sale - the evidence of Dawson & Shepard show clearly - that Brown refused to take a mortgage or any thing of that nature. but he would buy the land in payment of the note, and give an absolute deed and he would convey land back on payment of the \$195. with 12 per cent &c. and that Edwards agreed that such was the terms of the sale & agreement - and that it should not be a mortgage. the papers were accordingly made & note given up.

The clear intention of the parties was to make a conditional sale - as Brown was giving up a note well secured at the time by two other persons besides Edwards.

Edwards died - neither he or his <sup>residuary</sup> devisees (Dyft in error) paid or offered to pay on the 1 Nov. 1843 or before - and on the 6<sup>th</sup> November 1843 Brown sold & conveyed the land to plff in Error for \$250. cash.

In October 1844 Edwards' Executors said to Miller "we have come to redeem the land" Mr. Miller says, let me see my Counsel & I will let you know if it's best for me to raise the money or not. No money tendered.



Miller <sup>was</sup> advised to <sup>it</sup> receive, rather than have a law suit - so he  
offered his deed to them & demanded the money - gave them  
till noon the next day to get - they did not get - or offer  
it to him - he declared their contract ended - thus it stood -  
Miller in May 1845 enclosed the land by fence -  
(it being vacant & unoccupied prairie land) - he has  
cultivated part of it ever since - made valuable  
improvements to the amount of \$385. to \$400. on it -  
<sup>which they saw him doing and did not forbid it.</sup>  
Afterwards to wit - 6 Sept 1846 when land raised in  
value the <sup>said</sup> Devises of Edwards filed their bill  
in Ill. Henry Circuit Court - charging the deed  
of Edwards to be a mortgage to secure pay of \$195.  
The Ct below (Brown & Miller) by answer & reply  
that it was a mortgage - and even it was a conditional  
sale ~~with~~ the privilege to repurchase -

They saw Miller improving the land after they refused  
to pay the money & take the deed & said <sup>it</sup> was time for him to  
to leave when requested. The court below on these facts on the  
5 June 1852. declared by decree it was a mortgage -  
and that Miller on payment of principal & interest  
to wit \$405. by the Executors to convey to them  
in trust for the Devises the land - & gave them to the  
5 September 1852 (3 months) to pay the \$405 which  
was the principal & interest to 5 June 1852 - without  
requiring interest, till paid in that 3 months - each party  
to pay their own costs.

Such are the Chief facts in this case

These are the following points made in the  
case to reverse it.

First. That the transaction was a conditional  
sale and not a mortgage & bill ought to have been dismissed.  
In 2 Edwards R. (N.Y.) 138 is just such a case - where  
the vice Ch. says - "When the debt forming the consideration



"of the Deed is extinguished at the time by express  
"agreement - the grantor having the privilege of refunding  
"or not at his election, there it must be deemed a  
"Sale upon conditions" &c. This opinion was affirmed  
by the Chancellor in 6 Paige 480.

all the cases ~~show~~ the rule to be, that the clear  
intention of the parties must govern & determine its true character.  
Here we show it was the express agreement & intention of the parties  
to make a conditional sale - not a mortgage - 1 Call's R. 280-6.

2<sup>d</sup> Point. That the Decree is erroneous - because -  
the Defts in error failed to prove a tender of  
the money at any time before suit - because  
they refused to pay the money when the deed  
was offered by Miller & money demanded.  
The Bill should have been dismissed without prejudice  
at least, if not, absolutely, in such a case.

He who seeks equity must do equity - "The Bill  
"must be dismissed because the plff did not tender  
"the borrowed money and interest." 1 John Chy. R. 439.  
So even and prove it to be. 4 beam. R. 267

1 John C. R. 439.  
4 beam. 267.



Third Point. The court erred in not requiring the Defts. in error to pay the \$405 with interest thereon till paid from the making of said Decree the 5<sup>th</sup> June 1852. if they were entitled to any decree.

Fourthly. The court erred in decreeing the plff in error to pay his own costs - and should have decreed the whole costs against Defts in error under the circumstances of the case if they were entitled to any decree whatever.

5<sup>th</sup> ~~Point~~ - The court erred in giving the Defts in error 90 days to pay the money in - "The decree on a bill to redeem, should be that they pay the money forthwith." 4 John C. R. 75-6.  
17 Ves. R. 417.

That the Defts in error being residuary devisees of Edwards and not entitled to the estate till the debts of ~~Edwards~~ were first paid according to the Will. They should have paid or offered to pay the plffs claim before filing bill.

6

That plff should have been allowed for his improvements something like a just compensation under the circumstances.

In 2 Will. 327



Life F. Miller }  
vs. } Error to Cook.  
Amory Thomas & al }

It appears by the pleadings & proofs in this case - that H. Brown held a note \$300 against said Edwards & two other persons deceased - no charge of insolvency of the makers or that Brown was seeking to secure the payment thereof.

On Jan 8. 1843 it was agreed by Brown & Edwards, that said Edwards should sell & convey by deed 160 acs in question in payment of the note - and Edwards to have the privilege to repurchase & pay Brown therefor \$195. with interest at 12 per cent by 1 Nov. 1843, and if payment was not made punctually the agreement for repurchase to be void. The evidence show they clearly agreed it should be a sale & not a mortgage for Brown refused to have it Mortgage or any thing of that nature. The papers were made in accordance with that understanding - it should be a conditional sale to become absolute on failure to pay the money. The note was given up & cancelled - deed made absolute. Brown gave obligation to deed back if money was paid by 1 Nov. 1843 otherwise it should be forfeited & said

Edwards deed in Sept. 1843. Money was never paid by Edwards or any one for him or tendered to Brown or to Miller. That Brown sold & conveyed the land to plff in error Nov. 6. 1843 for \$250. cash paid in hand.

That in October 1844 Edwards Executors told plff in error - we come to redeem the land - plff in error says I will see Counsel & let you know whether it best for me to let you have it. In February 1845 plff in error tendered to the Executors his deed for the land and demanded the money. They refused to pay it & take the deed - giving them till noon the next day to pay it - but they did not so would pay it - one of them said he would keep it for his own use as the estate owed him. Plff in May 1845 inclosed the land by a fence - it being vacant wild land & his improvements made thereon was valued at from \$385. to \$400. The Deft in error & Exrs saw him making such improvements did not object to it, after they were made & after the land raised in value to wit, 6<sup>th</sup> Sept. 1846 the Deft in error filed their bill.



alleging that the deed by Edwards to Brown was a mortgage - that the Ex<sup>or</sup> tendered the money to redeem - all which plff in error & Brown denied it was a mortgage & avowed it to be a conditional sale - not complied with - & denied all tender of money & prove no tender was made & show by proof the parties intended it should be a conditional sale - plff alleges he was a bona fide purchaser without notice of the mortgage alleged & admitted he was informed it was a conditional sale & thought under that belief.

Such are the chief facts in the case - On which the Court below June 5. 1852 decreed the deed to be a mortgage & that Miller convey on payment of \$405 - the sum being for principal & interest to June 5. 1852 - & gave defts in error three months to pay it in without interest being required to be paid in the mean time - requiring plff in error to pay his own costs.

The Plff in error among other error says that the court erred in making said decree & in every part & branch thereof -

First Point. That the transaction was a Conditional sale & not a mortgage. & the court erred in not so deciding & dismissing the bill. 2 Edward N. 138 in point  
6 Paige 480 confirmed it.  
1 Call 280-6. "

Second Point. The Decree is erroneous because 1<sup>st</sup> The defts in error did not prove a tender before suit brought. 2<sup>d</sup> because they did not even <sup>show</sup> they were ready & willing to pay whatever should be found due to Plff in error. & 3<sup>d</sup> because defts were misadvised & only admitted to the estate after payment of the debts of the deceased <sup>as</sup> by the will appears.

18 John R. 560. 570. in point  
1 John C. R. 288. 439.  
4 Decem. R. 267.  
2 Barb. C. P. 199.



Third Point. The court erred in not requiring  
the Defts in error to pay interest on the  
\$405 till paid.

4 Fourthly. The court erred in decreeing that the  
Plff in error should pay his own costs.

3 Mod. 255.  
2 Barb. C. P. 199.  
4 Paige 58. 526.

5. Fifth Point. The court erred in ~~not~~ giving to  
the Defts ninety days to pay the \$405.

~~2 Barb. C. P. 199 (v.)~~  
~~4 Paige C. P. 58.~~  
~~and on the 1st~~ after they refused to pay the  
money & take their deed.

4 John C. R. 75-6  
17 Ves. 417.

6<sup>th</sup> Point - The court erred in not giving  
to the plff. in error the value of his improve-  
ments by him made after they had refused  
to pay the money & take his title deed off end.

2 Barb. C. P. 199 (v.)  
4 Paige N. 58.

For these and other errors in the <sup>Record</sup> Decree & proceeding  
the Plff in error prays that said Decree  
may be reversed with costs &c.

Morris & Chickering  
for Plffs in error



Wm. Y. Thomas, Esq.

Abstract & brief.

Frid June 25<sup>th</sup> 1853.

L. Ireland Alk.

By J. H. Ireland Depy.



# 1<sup>st</sup> Point -

That the transaction was a conditional sale and not a mortgage - and that the Court erred in not dismissing the bill.

2 Edw. R. 138.

6 Paige 480.

1 Call 280-6.

In 2 Edwards R. (N.Y.) 138 will be found a case in point - precisely such as this, except the proof here shows more clearly the case to be a conditional sale. The Vice Chancellor says "When the debt forming the consideration of the deed is extinguished at the time by agreement, 'the grantor having the privilege of repossessing or not at his election' (as in this case) 'there it must be deemed a sale upon condition'" &c

This opinion affirmed by the Chancellor in 6 Paige R. 480.

The cases all show, that when it appears to be the clear intent of the parties to make it a sale upon condition so it must be deemed & taken.

See 1 Call R. 280-6.

# 2<sup>d</sup> Point -

18 John R. 524. 560.

1 John C. R. 439. 288.

4 Stam. 267.

2 Barb. C. Pra. 199.

The decree is erroneous - because it should have been for plaintiff in error - The defendants failing to prove a tender before suit - & because they did not over & prove payment of the debts of the deceased to entitle them the estate - as they are mere residuary devisees after payment of debts - and the Court decreeing the land to them is error: especially when the facts show the deed was offered to Edw who said they had used the money to pay debts & had none to pay out to plaintiff in error. 1 John C. R. 439. 1 John C. R. 288. 4 Stam. R. 267. 18 John R. 560 in point - S.C. of Erroring if necessary to tender it is equally so to prove it as alleged = p. 570 per Woodward &c.

3<sup>d</sup> Point - The Court erred in not requiring defendants in error to pay interest on the \$405. till paid from said decree. Making a loss of more than ten dollars to the plaintiff in error.

2064-67

Witherell vs Collins -

3 Mod. 255

2 Barb. Ch. Pra. 199.

4 Paige 526. 582.

4<sup>th</sup> Point. The Court erred in decreeing <sup>any of the</sup> costs against plaintiff in error under the circumstances.



5<sup>th</sup> Point

4 J.C.R. 75-6.  
17 Ws. R. 417.

The court erred in giving Defts in error ninety days to pay the \$405. "That decrees <sup>on bills</sup> to redeem should be, that they pay the money forthwith."

4 J.C.R. 75-6.  
17 Ws. R. 417.

6<sup>th</sup> Point.

2 Barb. C. Pr. 199. (U.)  
4 Paige C. R. 58.

The court erred in not giving to the plff in error the whole or part of the value of the improvements by him made on the land in question. to wit - \$385. or \$400. as proved in this case. under the circumstances.

For these and other errors in the decree & proceedings the Plff in error prays that the decree may be reversed with costs &c.

Morris & Chickering for  
plff in error -

77.  
Lepus F. Miller

Ver.

Amey Thomas Vol

Abstract & Brief

Filed June 25<sup>th</sup> 1853.  
d. Leland Clk.  
By J. H. Leland Secy.



Leffe F. Miller

vs.

Amey Thomas & al

} Error to Cook.

It appears by the pleadings and proofs in this case, that H. Brown held a note of \$300 against Samuel Edwards and two other persons which was due and unpaid. No allegation that all or either of the makers were insolvent or unable to pay it - or that Brown wanted the payment thereof secured by any other security -

It was agreed by Edwards & Brown, that Edwards should & did on the 8<sup>th</sup> of June 1843 sell and convey by absolute deed the land in question to Brown, <sup>for \$195.00</sup> taking back from Brown his obligation to sell and convey to said Edwards the same land on or before the first day of November 1843, on payment of said sum of \$195.00 with 12 per. cent per. annum. if punctually paid by that time - if not then said obligation to be forfeited & void.

It appears by the evidence, while negotiations were going, that Brown refused to take a mortgage or any thing of that nature, for the note. but that he would purchase the land & give the note in payment thereof - and give Edwards the privilege of repurchasing the same back on the first day of November 1843, and if the money was not paid by that time the contract to repurchase to be void - and Brown title become absolute. That Edwards agreed that it should be so - and the note should be given up in payment of the land - and the papers were accordingly made upon that understanding; and duly exchanged by the parties - Edwards taking up the note - & Brown the deed - Brown giving his obligation to convey to Edwards the land, if the money was paid by the 1 Nov. 1843 - otherwise to be void.

Edwards died in September 1843. Neither he, nor his residuary devisees, the Defts in error, paid or offered to pay to Brown the \$195.00 with its interest on or before the first Nov. 1843, or at any time before the filing of the Bill in this cause. but it appears from the Answers of Brown & plffs in Error - That Brown sold and conveyed the land to Miller, plff in error, for \$250 - on the 6<sup>th</sup> day of November 1843. That in October 1844 Edwards Executors called on Miller & said "we have come to redeem the land" - Miller says let me have time to see my counsel whether it is best for me to receive the money & give up the land & I will let you know. No money was tendered



or offend to Miller - who soon after, rather than have a  
suit offend his deed of release & quit claim to the  
Executors & demanders of them the money - giving them till  
noon the next day to pay it - which they did not do & there  
have offend to do. Miller afterwards in May 1845  
inclosed the land by a fence - broke up a part of it - the  
land being vacant & unimproved at the time - Miller made  
improvements thereon worth from \$385. to \$400. after this  
was done which the Defts in error saw him do without objection  
they filed their bill <sup>to</sup> September 1846 in McHenry county  
where the land lay. The land in this time became  
much more valuable - the Government lands in the same  
time near the same being all taken up & sold at \$1.25 per  
acre. By the Will of Edwards, the Defts in error should  
have the net and residue of his real & personal estate  
after the payment of his debts & funeral expenses.  
There was no averment in the bill of any such payment  
and by their own showing, <sup>& the proofs</sup> neither they or the Executors  
paid or offend to pay the \$195. and interest to Brown  
or Miller.

The Defts below, Brown & Miller, expressly deny  
that said deed was a Mortgage or intended to have any such  
effect - but aver it was a conditional sale only; and the  
the money not being paid at the time Brown's title became  
absolute. They deny any tender of the money  
was made. Miller alleges he was a bona fide purchaser with-  
out notice that the transaction was a Mortgage - but was informed  
that it was a conditional sale, which became absolute on non  
payment &c.

Such are the chief facts in the case: on  
which the Court below (June 5<sup>th</sup> 1852) declared it to be  
a Mortgage and that the said Miller should convey to Exors  
in trust for Defts in error the land on payment of \$405.  
which was principal & interest to June 5. 1852 - and gave  
them till 5<sup>th</sup> Sept to pay the same without interest in that  
time. And one error of record is that the decree & every  
part & branch thereof is erroneous & should have been ~~for~~  
in error.