

13688

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

# Supreme Court of Illinois

Granger

---

vs.

Born et al

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STATE OF ILLINOIS,

83

SUPREME COURT,

Third Grand Division.

No. 91.

1862

Granger  
to  
Barr

13688

In the Supreme Court of Illinois

In Chancery

April Term A.D. 1862

Elihu Granger  
v.  
Balthasar Bonn  
et al.

Error to Cook Co.

It is hereby stipulated  
and agreed that the above cause  
may be dismissed at the costs  
of the Plaintiff. April 3<sup>rd</sup> 1862  
excepting attorney fees or any costs defen-  
dants may make

A. H. Lincoln *Comptroller*  
Juliator

We are not attorneys for Plaintiff in Error in  
this cause. We prepared the abstract at the  
request of Mr. Lincoln's *Plt's* attorney

Burnham & Martin  
3 apr 1862

91  
Gauger or Born etc

Styl. to Dismiss.

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Fils Appl. 4. 1862.  
L. Island  
Ch.

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Cook - Greeting:

Because, In the record and proceedings, as also in the rendition of the <sup>verdict</sup> judgments of a plea which was in the Circuit Courts of Cook County, before the Judge thereof, between

Elihu Granger Complainant

~~plaintiff~~, and Balthazar Bour & John Gray

defendant-s., it is said manifest error hath intervened, to the injury of the aforesaid Granger

as we are informed by his complainant's \_\_\_\_\_ and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25<sup>th</sup> day of June in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Island  
Clerk of the Supreme Court.

*Elihu Granger*

No.

vs.

*Balthazar Born  
& John Gray*

WRIT OF ERROR.

FILED

*June 25* A. D. 186*1*

*L. Deland*

*Clerk.*

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Second Monday, (being the eight day) of October in the year of our Lord one thousand eight hundred and Sixty and of the Independence of the said United States the eighty-fifth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois. }

Carlos Haven States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm. Church Clerk.

Be it remembered that heretofore, to wit, on the 28<sup>th</sup> day of May A. D. 1859 Elisha Granger, Complainant, by E. Martin his solicitor, filed in the Court aforesaid his certain Bill of Complaint against Balthazar Born, <sup>Defendants</sup> together with an order of the Judge of said Court endorsed thereon, in the words and figures following, to wit.

In Chancery

To the Honorable George Manierre, Judge of the Circuit Court of Cook County in Chancery sitting,

Humly complaining sheweth unto your Honor, your Orator Elisha Granger of the City of <sup>Chicago</sup> in the County of Cook in the State of Illinois;

That your Orator is now and before and since the twentieth day of October 1854 was and has continued to be seized of an absolute Estate of Inheritance in

fee simple in possession of and in all those several lots or pieces, or parcels of Land or Ground situate and being in the City of Chicago in said County of Cook and known and described as sub lots six and seven and ten feet of the North side of sub lot eight of lot number five in Block four in the Original Town of Chicago being on the corner of Wells and New North Water Street, and being so seized did on or immediately before said 20<sup>th</sup> day of October A. D. 1854 agree with one William Scott to lease to him said premises for five years at the rent and upon the terms hereinafter more particularly mentioned on condition that said William Scott should build thereon and attach thereto the messuages or tenements and appurtenances herein after more particularly mentioned, and that the same should be and remain on and as part of the freehold of said lots and of your Orator, his heirs and assigns unless said William Scott should perform all the covenants of said Lease. But if he should perform all such covenants then, at the expiration of said term he might remove the same. That in pursuance of and in accordance with said now stating agreement your Orator did by an Indenture of Lease bearing date the 20<sup>th</sup> day of October 1854 and made between your Orator of the first part and said William Scott of the second part, demise unto said William Scott said premises for the term of five years from the first day of January 1855 subject to the covenants therein contained on the part of said William Scott for payment to your Orator as rent for the said demised premises of one thousand Dollars per

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annum payable after the first half year quarterly  
in advance and also for the prompt payment and  
discharge by said second party thereof of all ordinary  
taxes and assessments, including also plank side  
walk assessments if any, levied after the date of  
said Lease, with a provision therein contained  
that if the rent or any part thereof or unpaid on the  
day of payment, or if default should be made in  
performance of any of said Lessee's covenants, it  
should be lawful for your Orator, at his election  
to declare said term ended and to re-enter the same,  
and with a covenant on the Lessee's part in case  
your Orator should elect to determine said term  
as aforesaid, to surrender and deliver up the quiet  
and peaceable possession of said premises to your  
Orator immediately upon the determination of said  
term as aforesaid, and with a further provision  
that said party of the second part if he kept  
and performed the covenants in said now stating  
lease contained on his part, might at the  
expiration of said term of five years remove  
from said demised premises any buildings which  
he should have put or erected thereupon as by the  
said Lease, reference being thereunto had and a  
copy whereof is hereto annexed marked "Exhibit  
A" and which your Orator pray may be read  
and deemed and taken as a part of this his  
Bill of Complaint, will more fully and at large appear

That in pursuance of and in accordance with the terms and provisions of said stated agreement and lease said William Scott entered into possession of said lots and premises and did in the year 1854-5 build and erect thereon a certain messuage or tenement with the buildings, out-houses and appurtenances thereunto belonging and which is now called and known as the Scott House,

That afterwards, on or about the 9th day of November A.D. 1857 said William Scott by way of chattle mortgage did assign his said term and lease in said premises with the said messuage or tenement and appurtenances thereon or thereto belonging unto one Parthazer Born, and that afterwards and on or about the fall of the year A.D. 1858 entered into possession of said demised premises as the assignee of said lease so made to said William Scott as aforesaid, and afterwards, on or about the 10th day of December 1858 by an indenture of lease of that date under his said Hereditaments and premises with the messuage or tenement and appurtenances by the description of "all those premises situate, lying and being in the City of Chicago in the County of Cook and in the State of Illinois known and described as follows, to wit: The House No. 22 North Wells Street, being the

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North East corner of North Wells and Charter Street and known as the Scott House, unto one William Knight from the 15<sup>th</sup> day of the date of now stating lease until the first day of May 1859 with the proviso longer from that date by having the rent fixed by two disinterested appraisers on the first day of May 1859, as by the said lease reference being thereunto had and a copy of which is hereto annexed and marked "Exhibit B" will more fully and at large appear.

And your Orator further sheweth unto your Honor.

That the ordinary state and county taxes for the year 1857 upon said demised premises were not paid by said William Scott, or otherwise in fulfillment of the said stated covenant in said stated lease in that behalf contained.

But that on the contrary the said Scott and said Born his assignee did on the \_\_\_\_\_ day of \_\_\_\_\_ 1858 permit the same to be sold and that the same were accordingly sold for said taxes and the same monies were deemed by them from said sale.

That the ordinary city taxes for the year 1858 upon said demised premises were not paid, by said Balhazy Born or otherwise in accordance with said stated covenant in said stated

lease contained, But that on the contrary  
he said Born did on the day of  
1859 permit the same premises to be  
sold and the same were accordingly sold  
for said taxes and the same were re-  
main undressed by him from said  
sale,

That on the first day of April 1859 the  
sum of \$500. & upwards was due from said  
William Scott & Balthazar Born to your  
Orator for the rent of said demised premises  
and the same being then due and  
unpaid your Orator did by virtue of  
said stated provision of said stated  
lease that to declare and did then  
and there declare said term ended  
by reason of the non-payment of said  
rent and the default as aforesaid,  
in the performance of said covenant  
for the payment of said taxes and  
did then and there enter and take  
the actual possession to himself of  
said described lots, lands and pre-  
mises with the messuage,  
tenement and appurtenances  
erected and being thereon as  
aforesaid,

That said message or tenement or building with the appurtenances so built and erected by said William Scott as aforesaid are affixed in and form part of the Freehold of your Orator and are affixed and attached to certain other buildings of your Orator also part and parcel of his Freehold and that the same cannot now be moved without great permanent and irreparable injury to the Freehold of your Orator.

And your Orator further sheweth unto your Honor That at the time of the determination of said term as aforesaid said buildings so erected by said William Scott as aforesaid had by reason of neglect and waste by said tenants thereof become dilapidated and were very much out of repair and in a great measure untenable and that since that time your Orator has expended a large sum of money being upwards of seven hundred and fifty dollars in and about the necessary repairs, renovation and incidental improvements to said building and he will necessarily expend the further sum of two hundred and fifty dollars thereon before the same will be in a good and tenable condition.

That the pecuniary damages, outlay, losses and injuries to your Orator in consequence of said breaches of said covenants and comprising the non-payment of taxes and rent and the sums so expended and to be necessarily expended in the repair and renovation of said property amount in the whole to the sum of twenty five hundred dollars.

And your Orator further sheweth unto your Honor, That on the fifth day of May Instant on the complaint of said Balthazar Born, that said William Wright wilfully and without force held over the house No 22 North Wells Street, being the North East corner of North Water and North Wells Street and known as the Scott House in the City of Chicago in the County of Cook in the State of Illinois and which are part of the aforesaid premises, a Justice's summons, a copy of which is hereto annexed marked Exhibit C. (As follows)

" State of Illinois }  
 " Cook County }<sup>ss</sup>

The People of the State of Illinois to the Sheriff or any Constable of said County, Greeting:

Whereas Balthazar Born has made complaint on oath to the undersigned, a Justice of the Peace in and for the said County, that William Wright wilfully and without force holds over the possession of the following described premises: The house Number twenty two (22) North Wells Street, being the North East corner of North Water and North Wells Street and known as the Scott House with the kitchen annexed to No 24 North Wells Street with all the fixtures and Bar utensils which are in said building in the City of Chicago in the County of Cook and State of Illinois, and forcibly detains the same from the said Balthazar Born he being the person entitled to the possession thereof.

(Exhibit C)

We therefore command you to summon the said William Wright to appear before me, at my office in

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South Chicago on the 12<sup>th</sup> day of May A. D. 1859 at 1 o'clock  
P. M. to answer the said complaint

Given under my hand and seal at South Chicago this 8<sup>th</sup>  
day of May A. D. 1859

Lewis H. Davis (seal)

Justice of the Peace

was issued and served upon said William Wright and  
such proceedings were thereupon had that said Balthazar  
Born did recover before said Justice a judgment of  
Forcible detainer of said premises against said William  
Wright and also for restitution of said premises to him and  
that the like proceedings were also commenced about the same  
time by said Balthazar Born against Larry Lynch for the  
forcible detainer of certain other portions of said premises  
but on which no judgment has as yet been obtained.

That said Balthazar Born has not any further or  
other right to the possession of said demised premises  
or any part thereof than such as can be made or claimed  
through or under said lease to said William Scott and  
that by reason of the determination thereof in manner  
aforesaid he has not now any right or authority what-  
soever to the possession thereof or of any part thereof.

But your Orator fears that said B. Born will obtain  
restitution or possession of said demised premises  
or some part thereof under or by virtue of said stated  
or some of them or some other <sup>or some other similar proceedings</sup>  
Forcible detainer Proceedings unless he be restrained  
by the Order and Injunction of this Honorable Court.

That the said Balthazar Born has also issued

out of the Superior Court of Chicago two several writs of Replevin and delivered the same to the Sheriff of Cook County to be executed for the purpose of taking moving off said premises and Replevying to said B. Born the said messuage or tenement buildings and appurtenances so erected and built by said William Scott as aforesaid. And your Orator fears that said Balthasar Born will proceed by said Sheriff to take & hold possession of said buildings and erections and move the same from off said premises unless he be in the like manner restrained.

And your Orator further sheweth unto your Honor that he has frequently requested said Balthasar Born to abandon said proceedings and to leave your Orator in the quiet possession and enjoyment of said premises. But now so it is may it please your Honor said Balthasar Born confederating with divers persons, at present to your Orator unknown whose names when discovered he craves leave to insert herein with apt words to charge them as parties Defendants hereto, absolutely refuses to comply with these his reasonable requests, all which actings, doings and refusals are contrary to equity and good conscience and tend to the manifest wrong and injury of your Orator in the premises. In consideration whereof and forasmuch as your Orator can only have adequate relief in a Court of Equity where matters of this nature are properly cognizable and relievable. To the end therefore that the said Balthasar

Born may without oath which by virtue of the provision of the Statute in that case made and provided is hereby expressly waived, full, true, direct and perfect answer make to all and singular the matters and things hereinbefore stated and contained and that as fully and particularly as if the same were here repeated and he specifically interrogated thereto. And that if this Honorable Court shall be of opinion that said message or tenement building and appurtenances so erected by said William Scott as aforesaid are not the property of your Orator as part and parcel of his said Feehold or otherwise that then and in that case an account may be had and taken under the direction of this Honorable Court of all the losses, rents, lasses and amounts due him in respect of said stated lease and of the monies expended by him in and upon said buildings as aforesaid, and of all his pecuniary losses, costs, damages or expenses in any manner incident thereto, and that a just compensation may be found and awarded to him for and in respect of the same. And that said Balthazar Born his executors and administrators may be decreed to pay and discharge such compensation to your Orator. And that the said Balthazar Born, his servants and Agents and all persons claiming or to claim under or in trust for him and all Sheriffs, Attornies, officers and others acting for him or in his behalf, or at his suit, may by the Injunction

of this Honorable Court be restrained from taking or holding and from attempting to take or hold possession in any manner howsoever of said demised premises or any part thereof, or of the buildings, houses, erections or improvements thereon, or of any part thereof; And also from moving, or attempting to move said buildings, or any part thereof in any manner howsoever, and also from interfering in any manner howsoever with the full, quiet and peaceable enjoyment by your Orator of said demised premises and every part thereof, and of all and every the said messuage or tenement buildings, houses and improvements thereon until the hearing of this cause or until the further order of this Court. And that if this Court shall be of opinion that said messuage and tenement House Buildings and improvements are the property of your Orator as part and parcel of his said Freehold or otherwise; that then and in that case the said Injunction may at the hearing be made perpetual or that your Orator may have such further or other relief in the premises as the nature of the circumstances of the case may require and to your Honor shall seem meet

May it please your Honor

to grant unto your Orator not only the writ of Injunction to be issued out of and under the seal of this Honorable Court, restraining said Balthazar Born, his servants and agents and all persons claiming or to claim under or in trust for him and all Sheriffs, Attornies, Constables, officers and others acting for him or in his behalf, or at his suit from taking or holding and from attempting to take or hold possession in any manner howsoever of said demised premises or any part thereof or of the buildings, Houses, Erections, or Improvements thereon, or of any part thereof,

And also from moving and attempting to move said Buildings or any part thereof in any manner howsoever,

And also from interfering in any manner howsoever with the full, quiet and peaceable enjoyment by your Orator of said Demised premises and every part thereof.

And of all and every said message or Tenement Buildings, Houses and Improvements thereon until the hearing of this cause, or until the further order of this Court, but also the writ of Summons to be directed to the said Balthazar Born thereby commanding him on a certain

day, to be therein named and under a certain penalty to be therein limited, personally to be and appear before your Honor in this Honorable Court, and then and there full true, direct and perfect answer make to all and singular the matters and things here inbefore contained, And further to stand to, perform and abide by such further or other order, direction or decree in the premises as to your Honor shall seem meet

And your Orator &c.

(C. Granger)

State of Illinois }  
Cook County }<sup>ss</sup>

On this 28<sup>th</sup> day  
of May A. D. 1859 before me the  
undersigned William L. Church

Clerk of the Circuit Court of Cook County, personally  
appeared Elisha Grainger, the above named complain-  
ant and being first duly sworn did make oath and  
say that he has read the foregoing Bill of Complaint  
and knows the contents thereof and that the same  
are true in substance and in fact.

Subscribed and Sworn } E. Grainger  
on this 28th day of May 1859 }  
Wm L Church Clerk }

Let the writ of injunction issue in conformity  
with the prayer of the above and foregoing Bill  
of Complaint, the complainant filing a bond in  
the penalty of one thousand dollars with a good  
and sufficient surety

George Manierre Judge  
To the Clerk of the Circuit } 7th Judicial Circuit Illinois  
Court of Cook County }

### Exhibit A.

This Indenture made this ~~twentieth~~ 20th day of  
October in the year of our Lord one thousand eight  
hundred and fifty four, Between Elisha  
Grainger of Chicago of the first part, and William  
Scott of the same place of the second part,  
Witnesseth that the said party of the first part  
for and in consideration of the covenants and agreements  
hereinafter mentioned, to be kept and performed

By the said party of the second part, his executor,  
administrators and assigns, has demised and  
leased to the said party of the second part, all  
those premises situate, lying and being in the  
City of Chicago, in the County of Cook, and in the State  
of Illinois, known and described, as follows, to wit: Sub-  
lots six and seven and ten feet of the north side of  
sub-lot eight of Lot No. five, in Block Four old town  
of Chicago being on the corner of Wells & New North Water Streets  
about fifty two feet on Wells Street and seventy feet to a  
ten feet alley on new north water Street. To have and  
to hold the said above described premises with the appurte-  
nances, unto the said party of the second part his executor,  
administrators and assigns, from the first day of January  
in the year of our Lord one thousand eight hundred and  
fifty five, for and during, and until the first day of January in  
the year eighteen hundred and sixty being a five year term,  
and with the right to immediate possession & use prior to 1<sup>st</sup> Jan<sup>y</sup>  
next without additional charge, and the said party of  
the second part in consideration of the leasing of the premises  
aforesaid, by the said party of the first part to the said party of  
the second part, does covenant and agree with the party of  
the first part, his heirs, executor, administrators and assigns  
to pay the said party of the first part, his executor, administrator,  
and assigns to pay the said party of the first part as rent for said demised  
premises the sum of one thousand dollar per annum as follows, the  
sum of two hundred and fifty dollars down and two hundred  
and fifty dollars before the first day of January next

(1855) which will be in full of the first half year's rent, and afterwards the sum of two hundred and fifty dollars quarterly yearly in advance, the third payment being due on the first day of July next (1855) And further the said party of the second part his heirs and assigns are also to pay & promptly discharge all ordinary taxes and assessments, including also plank side walk assessment if any which may be levied or assessed on said premises during said term and after this date.

And the said party of the second part further covenants with the said party of the first part that at the expiration of the time in this lease mentioned or at any earlier termination of this lease, if any be, will yield up the said demised premises to the said party of the first part in as good condition as when the same was entered upon by the said party of the second part, loss by fire or inevitable accident excepted. It is further agreed by the said party of the second part that neither he nor his legal representatives will underlet said premises or any part thereof or assign this lease without the written assent of the said party of the first part, first had and obtained thereto, except to parties who will and shall be subject to and assume the obligations of the said party of the second part under this lease, and who will and shall conduct the business transacted by them in said premises as well and respectably as the said party of the second part shall have done.

It is Expressly Understood and Agreed, by and between the parties aforesaid, that if the rent above

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reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants or agreements herein contained, to be kept by the said party of the second part, his executors, administrators and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney or assign, at his election to declare said term ended and into the said premises, or any part thereof, either with or without process of law to re-enter; and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again to re-possess and enjoy, as in his first and former estate, and to distress for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution and distress by law or not, and the said party of the second part, in that case, hereby agree to waive all legal rights which he may have to hold or retain any such property under any exemption laws now in force in this State, or in any other way. Meaning and intending hereby to give the said party of the first part, his heirs, executors, administrators or assigns, a valid and first lien upon any and all goods, chattels or other property belonging to the said party of the second part, as security for <sup>the</sup> payment of said rent in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, his heirs, executors, administrators or assigns

as aforesaid, or in any other way, the said party of the second part his executors, administrators and assigns, do hereby covenant and agree to surrender and deliver up said above described premises and property peaceably to said party of the first part, his heirs, executors, administrators or assigns immediately upon the determination of said term as aforesaid, and if he shall remain in possession of the same three days after notice of such default, or after the termination of this lease in any of the ways above named he shall be deemed guilty of a forcible detainer of said premises, under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise with or without process of law, as above stated,

The said party of the second part, if he keeps and performs the covenants above contained on his part, may at the expiration of said term of five years remove from the demised premises any buildings which he shall have erected or put thereon,

In testimony whereof the said parties have hereunto set their hands and seals the day and year first above written

In presence of                      E. Granger (Seal)  
D. W. Burnham                      H. Scott (Seal)

Exhibit B.

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This Indenture made this sixteenth day of December in the year of our Lord one Thousand Eight Hundred and Fifty eight between Balthazar Born of the City of Chicago County of Cook and State of Illinois of the first part, and William Knight of the same place of the second part Witnesseth That the said party of the first part for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, His executors, administrators and assigns, has devised and leased to the said party of the second part all those premises situate lying and being in the City of Chicago in the County of Cook and in the State of Illinois, known and described as follows, to wit, the house No 221 North Wells Street, being the north east corner of North Wells Street <sup>and Water</sup> and known as the Scott House with the kitchen being annexed on No 24, North Wells Street with all the fixtures and bar utensils which are in said building and specified in the Schedule A annexed hereto containing 4 pages, to be used as a hotel ~~building~~ and boarding house only and for no other purposes. The party of the second part accepts the house and furniture in the state as they are now with the exception that any leakage which is now in the roof or may accrue hereafter, that such be fixed by the party of the first part, but that reasonable time be given to the party of the first part for such repairs and that no

claims of damage by the party of second part can be claimed in lieu of such leakage.

To Have and to Hold the said above described premises, with the appurtenances, unto the said party of the second part, his executors, administrators and assigns, from to-day One Thousand Eight Hundred and Fifty eight for and during and until the first day of May 1859, with the privilege of two years longer from that date by having the rent fixed by two disinterested appraisers on the first day of May 1859.

And the said party of the second part, in consideration of the leasing of the premises aforesaid, <sup>the said party of the first part to</sup> by the said party of the second part, does covenant and agree with the party of the first part, his heirs, executors, administrators and assigns, to pay the said party of the first part, as rent for said demised premises, the sum of Four hundred dollars, payable as follows, One hundred dollars before entering said premises, 100 on the first of February, 100 on the first of March, 100 on the first of April 1859.

And the said party of the second part further covenants with the said party of the first part, that said second party has received said demised premises in good order and condition, and that at the expiration of the time in this lease mentioned or sooner determination by forfeiture, he will yield up the said premises to the said party of the first part, in as good condition as when the same were entered upon by the said party of the second part, loss by fire, or inevitable accident, or ordinary wear excepted, and also will keep said premises

in good repair during this lease, at his own expense.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part first had and obtained thereto.

And the said William Wright, his executors, administrators and assigns, agree further to pay, (additional to the rents above specified,) all water rents levied or charged on said premises, for and during the time for which the lease is granted, and save the said premises and the said party of the first part harmless therefrom, and that he will keep said premises in a clean and healthy condition, in accordance with the Ordinances of the City, and directions of the Sewerage Commissioners.

It is Expressly Understood and Agreed, by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants or agreements herein contained, to be kept by the said party of the second part, his executors, administrators or assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney or assigns, at his election to declare said term ended, and into the said premises, or any part thereof, either with or without process of law, to re-enter; and the said party of the

second part, or any other person or persons occupying, in or upon the same, to expel, remove and put out, using such force as may be necessary in so doing, and the said premises again to re-passess and enjoy, as in his <sup>first and</sup> former estate, and to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution and distress by law or not, and the said party of the second part, in that case, <sup>herely</sup> agree to waive all legal rights which he may have to hold or retain any such property under any exemption laws now in force in this State, or in any other way. Meaning and intending hereby to give the said party of the first part, his heirs, executors, administrators or assigns, a valid and first lien upon any and all goods, chattels or other property belonging to the said party of the second part, as security for the payment of said rent in manner aforesaid, anything hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, his heirs, executors, administrators or assigns, as aforesaid, or in any other way, the said party of the second part, his executors, administrators and assigns, do hereby covenant and agree to surrender and deliver up said above described premises and property peaceably to said party of the first part, his heirs, executors, administrators or assigns, immediately upon the determination of said term as aforesaid, and if he shall remain in possession of the same three days after notice of such default, or after the termina.

tion of this lease, in any of the ways above named, he shall be deemed guilty of a forcible detainer of said premises, under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law as above stated.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

Witness the hands and seals of the parties aforesaid

Signed	B. Born	(seal)
Signed	William Wright	(seal)
Nathan Eisendrath		

Whereupon on the day and year aforesaid, the People's certain writs of Injunction and Summons were issued out of the Court aforesaid and under the seal thereof directed to the Sheriff of Cook County to execute and clothe in the words and figures following to wit:

State of Illinois  
County of Cook

The People of the State of Illinois do Bathuzar

Born and to your servants and agents and all persons claiming or to claim under, or in trust for you and to all sheriffs, constables <sup>officers</sup> and others acting for you or in your behalf or at your suit, and to each and every of them. Goetting:

Whereas it hath been represented to the Honorable George Manierre Judge of the seventh Judicial Circuit of the State of Illinois and sole presiding Judge of the Circuit Court of Cook County in said Circuit and State aforesaid on behalf of Elisha Grauger, Complainant, in his certain bill of Complaint exhibited before said Judge and filed in said Court against you the said Parthazar Born & John Gray to be relieved touching the matters therein complained of.

In which said bill it is stated among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in the said bill and that your acting and doings in the premises are contrary to equity and good conscience and the said Judge having

under his hand endorsed upon said bill an order that a writ of Injunction issue out of said Court according to the prayer of said bill. We therefore in consideration thereof, and of the particular matters in said bill set forth do strictly command you the said Barthazar Born and John Gray and the persons before mentioned, and each and every of you that you do absolutely desist and refrain from taking or holding, and from attempting to take or hold possession in any manner howsoever of those several lots, or pieces, or parcels of

land situate in the City of Chicago in the County of Cook and known and described as sub-lots six and seven and ten feet of the north side of sub-lot eight of lot number five in Block four in the original town of Chicago, or any part thereof, or of the buildings, houses, erection or improvements thereon, or of any part thereof, and also from moving and attempting to move said building or any part thereof in any manner howsoever, and also from interfering in any manner howsoever with the full quiet and peaceable enjoyment by said Elisha Granger of said described lands or lots and every part thereof, and of all and every said messuages or tenement buildings, houses and improvements thereon until the hearing of this cause, or until this Honorable Court, in Chancery sitting shall make other order to the contrary.

Hereof fail not under the penalty of what the law directs.

To the Coroner of said County to execute, and return in due form of law.

Witness William L. Church, Clerk of said Circuit Court, and the seal thereof, at Chicago in said County this 28<sup>th</sup> day of May AD 1859

Seal

W L Church Clerk

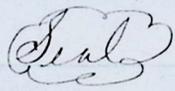
State of Illinois }  
County of Cook } ss

The People of the State of Illinois, to the Coroner of said County, Greeting:

The command you that you summon  
 Bathazar Born if he shall be found in your  
 County, personally to be and appear before the  
 Circuit Court of Cook County, on the <sup>first</sup> ~~third~~ day  
 of the next term thereof to be holden at the Court  
 House in Chicago in said County of Cook on the  
 3<sup>d</sup> Monday of June inst. to answer unto Elisha  
 Granger in his certain bill of Complaint in the  
 said Court, on the Chancery side thereof.

And have you then and there this writ, with  
 an endorsement thereon, in what manner you  
 shall have executed the same.

Witness William L. Church, Clerk of our  
 said Court, and the seal thereof, at Chicago aforesaid,  
 this 13<sup>th</sup> day of June A.D. 1859

 W. L. Church Clerk

And afterwards, to wit: on the 13<sup>th</sup> day  
 of June in the year last aforesaid, said  
 writs were returned into the Court aforesaid  
 by said Sheriff endorsed as follows - "Served  
 this writ on the within named by delivering  
 a copy thereof to Bathazar Born & John  
 Gray the 28<sup>th</sup> day of May 1859 - Dec. - 2 serves  
 1.00 - 2 copies - 1.00 - mileage .20 - Return .10 = \$2.30  
 Rec<sup>d</sup> by J. Wm James, Coroner - Served this writ on the within named  
 Bathazar Born by delivering a copy thereof to him the 13<sup>th</sup> day of June  
 1859. Dec. Service, 50 Copy, 50 Mile, 10 Return, 10 = \$1.20. Rec<sup>d</sup> by J. Wm James, Coroner,

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And afterwards, to wit, on the 20<sup>th</sup> day of June in the year last aforesaid, the said Defendant filed in the Court aforesaid his Answer to said Complainant's Bill of Complaint in the words & figures following, to wit,

In the Circuit Court of Cook County  
of the June Term A. D. 1859

In Chancery

The Answer of Balthazar Born one of the Defendants to the Bill of Complaint of Eliza Granger Complainant

This Defendant now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to answering saith

That he is informed and believes that the said Complainant was on the 20<sup>th</sup> day of October A. D. 1854 and before and hitherto since hath been seized in fee simple of those pieces or parcels of land situate in City of Chicago known as sub lots six and seven and ten feet off of the North side of sub lot eight of lot No five in Block four in the original town of Chicago, being on the corner of Wells and North Water Streets.

That he hath no personal knowledge

whether the said Complainant on or about the 20<sup>th</sup> day of October A. D. 1854 or at any other time did agree with William Scott to lease him said premises for five years on condition that said Scott should build thereon and attach thereto the messuage Tenements or Buildings described in said Bill of Complaint or any buildings whatever and that the same should be and remain on and as a part of the Freehold of said lots, but he is informed and believes no such agreement was ever made between said parties, and on the contrary avers and charges that when the agreement for the lease between said Granger was made there was nothing said about buildings being erected or put thereon and that said Scott put the buildings on with a view to their removal and that the lease between said Granger and Born was signed by Scott without his reading it or having it read to him on the faith of Granger's honesty and that it contained other and different conditions than those agreed upon.

This Defendant further answering says that he admits said Complainant did by an Indenture of Lease dated the 20<sup>th</sup> day of October A. D. 1854 demise to said William Scott, the said premises for a period of five years from the 1<sup>st</sup> day of January 1855 for the yearly rent of One Thousand dollars payable quarterly in advance after the first half year together with all taxes and assessments including also plank sidewalk assessments if any levied after the date of such lease and this defendant that the copy of said lease annexed to the Bill of Complaint and marked Exhibit A. is a true copy of such lease and

This defendant refers to the same as containing the covenants and conditions thereof and prays to be excused from setting them out in detail - protesting however and declaring that the same is false and fraudulent and that the covenants are other and different from those agreed upon and that lease was void from the beginning, of which however this Defendant had no knowledge until after the filing of the Bill herein.

This Defendant admits that said Scott entered upon said premises under said lease and did build and erect the buildings &c. described in said Complainants as therein charged upon said premises.

This Defendant further answering admits that said William Scott did on the 9<sup>th</sup> day of November 1857, make, execute, acknowledge and deliver to this defendant a chattel mortgage of the buildings and appurtenances known as the Scott House being on the corner of said premises and also the lease aforesaid, a copy of which mortgage is hereto attached and marked Exhibit "A" and is prayed to be taken as part of this answer and that <sup>Scott</sup> said delivered to and deposited said lease with this defendant as security for the sum mentioned in said chattel mortgage, the same being for money loaned.

But this defendant <sup>utterly denies</sup> ~~furth answers~~ that said lease was assigned to him by said Scott and on the contrary thereof avers that said lease was not then nor hath it ever been in fact assigned by said Scott to this defendant.

And this defendant further answering says that the House No 22 North Wells Street being next North and

adjoining said Scott House and being the one occupied by Larry Lynch and being on said premises was not included in said Mortgage but that the same was sold as the property of William Scott on an Execution issued out of this Court in favor of Dodge & Dodge and against said Scott and this defendant as his surety on or about the day of November A. D. 1858 and that Frank Flettinger became the purchaser thereof from whom this defendant bought the same near the last of November 1858

And this defendant further answering denies that he entered into the possession of said premises in the fall of 1858 as the assignee of said lease, or that he entered at any time as such assignee. But on the contrary thereof avers and charges the fact to be that he took possession of the said Scott House and appurtenances under and by virtue of said chattel mortgage and did expose and sell them and the furniture in said chattel mortgage described by virtue thereof at Public auction on the 4th day of November 1858 to one Frank Flettinger for the sum of about \$ 1425<sup>00</sup> which sum less the costs and expenses he endorsed on said Mortgage and the note of said Scott which Mortgage was given to secure and said lease was passed over by this defendant to said Flettinger unassigned as this defendant had received it from said Scott and that afterwards and near the last of November 1858 said Flettinger reconveyed said buildings to this defendant and handed back said lease and

this said Flettinger also sold to this defendant at same time the House No 22 aforesaid which he, said Flettinger purchased at Sheriff's sale.

And this defendant further answering says that after having purchased said buildings tenements outhouses and furniture aforesaid from said Flettinger and being advised and believing that he had acquired no legal interest in and to said lease and that he might and would in law be regarded as a trespasser on the premises of said Complainant went several different times in company with Frank Flettinger to the said Complainant and desired to know upon what terms said Complainant would give him a lease of said premises stating to him at the same time that unless this defendant could get a lease from him the said Complainant on living or reasonable terms he would be obliged to remove the buildings &c. from said premises, that said Complainant at the last conversation had in reference thereto replied he would give him a lease but that there was or would be due and unpaid on the said lease from him to Scott, on the first day of January 1859 the sum of \$290. and if this defendant would pay him the said Complainant the sum of \$2500. so due and owing by said Scott on said lease he, Complainant would give this defendant a lease of the premises for one year from the 1<sup>st</sup> day of January 1839 with the privilege of one or two years at the yearly rent of \$800 and taxes on grounds not to exceed sixteen dollars per annum. said rent to be paid monthly in advance but if said Boren

400 22

could not do it said Granger would not enforce it to the end of the month, that this defendant then and there objected to paying said Complainant Scott's indebtedness but said Complainant <sup>refused</sup> any other terms, and this defendant then and there in consideration of the expense of removing said buildings and the injury that would necessarily result therefrom and because meantime he hoped to sell the same to some person acceded to said Complainant's proposition, and it was then and there in fact agreed by and between said Complainant and this defendant that the said Granger would make execute and deliver to this defendant a lease of said premises for the period of one year from the 1<sup>st</sup> day of January 1859 with the privilege of one or two years longer in consideration of this defendant paying said Granger the yearly rent of eight hundred dollars therefor with ground tax not to exceed sixteen dollars per year said rent to be paid monthly in advance but collection thereof not to be enforced in any way to the end of the month, and also upon the further consideration that this defendant should execute and deliver (he not then having money to pay cash) to said Granger a judgment note for two hundred and fifty dollars with Frank Flettinger as surety payable in thirty days, and it was further then and there agreed as said Granger was busy that he would within a few days, or three or four days prepare and execute a lease as aforesaid or in accordance with aforesaid agreement, for this defendant, and that he would also prepare a judgment note for this defendant and

said Flettinger to sign and would bring or send both of them around to this defendant. This conversation took place according to best of this defendant's recollection some few days after the 1<sup>st</sup> day of December A. D. 1858

And this defendant further answering says that one of the sons of said Complainant (but whose christian name he does not know) died on the next day, or within a few days and on or about the 9<sup>th</sup> day of December 1858 bring said Judgment Note to said defendant to execute, and when said defendant objected as he did then and there object to signing said Note without the lease the said son told this defendant that his father the said Complainant said it was time enough to execute the lease or that he had not time to do it, that it would do any time by the first of January or words to that effect. And this Defendant being a German and not perfectly acquainted with the English language nor with the proper way of doing business and relying on said Complainant's agreement which he knew he could prove and which he supposed was as good as though in writing and also on the representations of said Granger's son so made did then and there sign said Judgment Note and delivered it to said Granger's son telling him that he would find Flettinger at his shop, or house, and the said Complainant's son then took said Note to said Flettinger to obtain his signature stating to said Flettinger that this defendant had received the lease according to agreement, and said Flettinger relying

on the said representation so made by Complainant's son then and there signed said Judgment Note as he had agreed to do and delivered the same to the said son of Complainant.

And the said Defendant further answering says that in consideration of the aforesaid agreement with said Complainant so partially executed and performed by him the said Defendant he did on the 16<sup>th</sup> day of December 1858 make, execute and deliver to one William Wright a lease of said premises, a copy of which lease marked "B" is attached to Complainant's Bill and that Wright entered under said lease as the tenant of this Defendant, and Defendant utterly denies that said lease was executed and delivered by this Defendant to said Wright as assignee of the said Scott lease as is alleged in said Bill of Complaint.

And this Defendant further answering says that he did at divers times pay said Complainant on said Judgment Note something like one hundred and fifty dollars and that said Complainant did on the day of February A. D. 1859 enter up a judgment thereon in the Cook County Court of Common Pleas for the balance thereon amounting to the sum of \$136.28 including \$20 attorney's fees and caused execution to be issued thereon, and that this defendant shortly after paid the said execution and costs.

And this Defendant further answering says that some time in January 1859 and shortly after said

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Judgment Note became due he met said Complainant on the Street near the Scott House in company with Frank Hettinger and policeman George Leander and said Complainant wished payment of the Note and said he was hard up and wanted the Rent also, and this Defendant reminded him the Rent could not yet be enforced according to the agreement, and this Defendant at same time told him that Wright was owing him for rent and that he the said Complainant might collect the rent from Wright till he was paid up Note and Rent, to which this Defendant understood the said Complainant to assent and then the company went to the Scott House and this Defendant directed said Wright to pay the rent to Granger, at same time asking said Wright if he had any money to pay, to which he replied he had not then but would have that night when Defendant told him to pay it to said Granger and said Granger then and there signified his consent to the arrangements remarking that being hard up he must have some money, and Defendant further answering says that he has been informed by said Wright and said Granger that the said Granger did thereafter receive from said Wright in pursuance of said arrangement Eighty Dollars.

And said Defendant further answering says that the said Granger and said Wright thereafter and before the first of April A. D. 1859 but without this Defendant then knowing it entered into collusion to defraud

this Defendant of his buildings and rights in the premises and that the said Wright about that time as part of the plan to said Granger without first surrendering possession of said premises to this Defendant and neglected in compliance with said arrangement and by the connivance of said Granger to pay the rents to him said Granger and that said Defendant was not aware of said things or that said Granger was not receiving the rent promptly from said Wright until about the (4) fourth April A. D. 1859

And this Defendant supposing as he had the right to do that in pursuance of said arrangement the said Granger was receiving his rent and learning or hearing nothing from the said Granger to the contrary gave himself no concern about it until about the date last aforesaid when he at once made arrangements with N. Eisendrath to pay the rent due as per said agreement for lease and caused said Eisendrath on or about the sixth day of April A. D. 1859 to make a tender of Two hundred and sixty one dollars which together with \$80<sup>00</sup> he received from Wright made \$340<sup>00</sup> for Rent interests and costs up to April 1<sup>st</sup> 1859 which said Granger refused to accept repudiating the existence of any such agreements and declaring his intention of holding this Defendant on the Scott ~~Lease~~ Lease and demanding \$589, or thereabout for Rent, taxes and costs.

And this Defendant further answering says said Complainant ever after the execution of said

Judgment Note neglected and refused to give to this Defendant the lease so agreed upon, sometimes putting this Defendant off by telling him it was all right <sup>or</sup> ~~all~~ words to that effect and at others entirely repudiating the agreement and finally refusing to admit there ever was any such agreement.

And this Defendant further answering says he has no knowledge whether said premises were sold for the years of 1857 and 1858 or either of said years and has no belief in relation thereto, and in any event this Defendant cannot be made liable therefor.

And this Defendant further answering denies that there was due from him and Scott to said Complainant on the 1<sup>st</sup> day of April 1858 or 1859 the sum of \$500 for rent or that any other sum was due from them jointly to said Complainant. And this Defendant says that the amount as aforesaid tendered by Eisendrath and the amount of at least Eighty dollars received from Wright was more in amount than could possibly be due on said agreement for a lease on said 1<sup>st</sup> day of April 1859

And this Defendant further answering says that he never heard Granger intimate or say that he intended to hold him on the Scott lease until the time or about the time of the tender made as aforesaid by Eisendrath and that he had no knowledge that Granger had pretended to declare a forfeiture against him on the Scott lease on the 1<sup>st</sup> day of April 1859 or that he claimed to have then taken possession of the premises and did not learn that he then claimed

to have taken possession until some time afterwards.

And Defendant further answering says that he denies said Granger did on the 1<sup>st</sup> day of April 1859 enter into and take possession of said buildings and premises unless the facts that said Wright & Lynch the tenants of this Defendant attorned to the said Granger and acknowledged him their landlord without first surrendering possession to this Defendant constitutes an entry. And this Defendant further answering saith on information and belief since then obtained that the said Granger did by menaces, threats, bribes or inducements or other fraudulent means prevail on said Wright & Lynch to repudiate the relation of landlord and tenant existing between them and this defendant and to acknowledge themselves tenants of him the said Granger.

And this Defendant further answering denies the said buildings &c. are annexed to and form part of the freehold or that they are attached or affixed to certain other buildings of said Granger. And further answering utterly denies they cannot be removed without irreparable injury to the freehold. But on the contrary thereof avers and charges the fact to be that said lots were vacant and unimproved when leased by Scott and that said buildings were erected and put upon said premises on blocks set upon planks laid on the top of the ground with a view of their removal and that they are in no wise affixed to the freehold and that their removal would leave said

premises in as equally a good condition as when they were put thereon. And Defendant further answering says that the improvements mentioned by said Granger in his Bill as having been made are of little or no value and were not needed for the enjoyment of said premises and were made and said Granger is still continuing to make them with a view as this defendant verily believes to claim Equitable relief in this Court and with a view of embarrassing this Defendant and to bolster up his rights under what he claims as a forfeiture. And that the same are not made or making with bona fide intentions

And this Defendant further answering denies that said Buildings were untenable and dilapidated as charged by said Complainant but avers they were in ordinary and tenable condition and were little if any out of repair. And this Defendant denies that said Complainant has expended \$750 on said premises for necessary improvements or any thing like it or that there is need of spending \$250 or any other sum as alleged by him said Complainant; and denies he has suffered any damage except by his own want of good faith.

And Defendant further answering says that said premises were forced upon him to secure himself partially for money advanced to Scott and that he offered to let said Complainant have them at much less than they cost him but said Granger as he now believes offered him a totally inadequate price for them, to wit, Fourteen

hundred dollars with the view of forcing this Defendant into some such position as he now occupies when he supposed this Defendant would yield.

Defendant further answering denies that he has no other or further rights in premises than under and through Scott Lease and avers that whatever rights he has or has had in the premises were and are those acquired under and by virtue of the aforesaid agreement for a lease, and that if by any construction of the law he ever was assignee of the Scott Lease under and <sup>by</sup> virtue of the said chattel mortgage the said agreement operated in law as a surrender of said Scott Lease.

Defendant further answering says that that part of Complainant's Bill in reference to the Forcible Detainer suits against Wright & Lynch is true except that said Granger did not state in his said Bill that said Wright had appealed his suit to this Court before he applied for Injunction. And as this Defendant is informed and believes said appeal was taken at the instigation of said Granger and with the understanding it should not cost the said Wright any thing in any event and that said appeal was for Granger's benefit and not for said Wrights. And this Defendant on said information and belief denies that said Granger feared that this Defendant would proceed by the Sheriff to take possession of said premises as Complainant alleges in his Bill by virtue of Judgment in Detainer suit.

And this Defendant <sup>answering,</sup> denies said Complainant requested this Defendant to abandon proceedings

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and leave him in quiet and peaceable possession of the premises aforesaid.

Defendant further answering admits that he caused two writs of Replevin to be issued out of the Superior Court of Chicago and handed same to Sheriff of Cook County and was about to replevy and move the said Buildings as alleged in Bill. And Defendant avers that he had as he is informed and believes the legal right so to do in consequence of the said Granger repudiating his agreement for a lease as aforesaid and under the circumstances detailed in this Defendants answer and because the Scott Lease was null and void in and from the beginning.

And this Defendant further answering says that in order to avoid litigation, trouble and expense and notwithstanding said Granger repudiated his agreement for a lease this Defendant offered to pay said Granger his rent up to 1<sup>st</sup> of April 1859 or even to 1<sup>st</sup> of May 1859 and to pay the costs of proceedings by Distress for Rent which he believes to have been illegally sued out, this was about the 6<sup>th</sup> day of April 1859. But said Granger refused any compromise claiming to hold this Defendant as assignee of the Scott lease and to hold him for taxes and assessments due before Scott went out of possession and before the sale of the chattel mortgage aforesaid.

And this Defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said Bill charged, without this

That there is any other matter cause or thing in the said Complainant's Bill contained material or necessary for this Defendant to make answer unto and not here in and hereby well and sufficiently answered, confessed and avoided or denied, is true to the knowledge or belief of this Defendant. All which matters and things he is ready and willing to aver, maintain and prove as this Honorable Court shall direct and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained

S. A. Irwin, Sol.

B. Born

State of Illinois }  
Cook County }<sup>ss</sup>

Balthasar Born first being duly sworn on oath deposes and says that all the matters and things which are set forth in the foregoing answer as from the information of others, he believes to be true and that all the several other matters and things therein set forth are true in substance and fact.

Sworn and subscribed before me this 20<sup>th</sup> day of June A. D. 1859 }  
W<sup>m</sup> L. Church }

B. Born

Schedule A.

The House commonly known as the Scott House situate on the corner of North Water and Wells Streets in City of Chicago County of Cook and State of Illinois and being on sub lots Six and Seven and ten feet off of the North part of Sub lot Eight of lot Five in Block Four Old town of Chicago County and State of aforesaid. Also a Lease of said premises from E. Granger to said Scott expiring January 1<sup>st</sup> A. D. 1860 and Dated October 20<sup>th</sup> A. D. 1854

Also all furniture in said Scott House being all the necessary furniture of every kind necessary to a good Hotel and which consists of beds bedsteads and all necessary chamber furniture.

Also all the necessary ~~furniture~~ Dining Room and Kitchen furniture consisting of Tables, chairs, Mirrors, stoves, Glass and china ware and crockery and cutlery. Also all linens of every kind - Also all Bar-room furniture and fixtures. Also all the stoves in the said House. Also all the parlor furniture Carpets in said House, meaning and intending to include in this Schedule all the furniture Goods and chattels now being in said Scott House as fully as if the same were specifically <sup>mentioned</sup> and herein named and set forth.

Dated November 9<sup>th</sup> A. D. 1857

"A"

This Indenture, Made this Ninth day of November in the year of our Lord One Thousand Eight Hundred and Seven, Between William Scott of City of Chicago, County of Cook and State of Illinois party of the first part, and Balthazar Born of same place party of the second part; Witnesseth, that the said party of the first part, for and in consideration of the sum of Twelve Hundred and fifty Dollars, in hand paid, the receipt whereof is hereby acknowledged, does hereby grant, sell, convey and confirm unto the said party of the second part . . . heirs and assigns, all and singular the following described Goods and Chattels, to wit: all those Goods, Chattels, Furniture &c. described in Schedule "A" hereto attached and made part of this Mortgage. Together with all and singular the appurtenances thereunto belonging or in any wise appertaining, To Have and to Hold the same unto Balthazar Born, his heirs, executors, administrators and assigns, to his and their sole use forever. And the said William Scott for himself, heirs, executors and administrators does covenant and agree with the said Balthazar Born his heirs, executors, administrators and assigns that he is lawfully possessed of the said goods and chattels of his own property; that the same are free from all incumbrances, and that he will, and his heirs, executors and administrators shall warrant and defend the same unto the said party of the second part, his heirs, executors, administrators and assigns, against the lawful claims and demands of all persons. Provided, Nevertheless, That if the said William Scott

his heirs, executors, administrators or assigns, shall well and truly pay or cause to be paid unto the said Balthazar Born his heirs, executors, administrators or assigns, a certain Promissory Note bearing even date herewith for Twelve Hundred and fifty Dollars with interest made by said Scott to said Born then and from thenceforth, these presents and every thing therein contained, shall cease and be null and void.

And Provided, Also, that it shall be lawful for the said William Scott, his heirs, executors and administrators to retain possession of the said granted property, and at his own expense to keep and to use, and enjoy the same until the ninth day of November A. D. 1858 or his heirs, executors, administrators or assigns, shall make Default in the payment of said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore contained, or unless the said Balthazar Born shall fear diminution, removal or waste for want of proper care, or if the said party of the first part shall sell or assign, or attempt to sell or assign said goods and chattels, or any part thereof, or if any writ issued from any Court shall be levied on any part of the above described goods and chattels — that then, and in any of the aforesaid cases, all of said Note both principal and interest shall become due and payable, and the said party of the second part, his heirs, executors, administrators and assigns, agents or attorneys, or any of them may elect, thereupon to take possession of the said property, and for that purpose may pursue the same or any part

thereof, wherever it may be found, and also, may enter ~~into~~ any of the premises of the said party of the first part, with or without force or process of law, wherever the said goods and chattels may be or be supposed to be, and search for the same, and, if found, to take possession of and remove, and sell and dispose of said property or any part thereof, at public auction, to the highest bidder, after giving ten days notice, of the time, place and terms of sale, together with a description of the property to be sold, either by publication in some newspaper, in the City of Chicago or by similar notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash, or on credit, as the said Balthasar Born, his heirs, executors, administrators or assigns, agents or attorneys, or any of them may elect, and out of the money arising from such sale, to retain, first, all costs and charges for pursuing, searching, taking, removing, keeping, storing, advertising and selling of such property, goods, chattels and effects, and all prior liens, together with the amount due and unpaid upon said Note or any of them either in principal or interest, rendering the overplus of the money arising from such sale (if any there shall be) unto William Scott aforesaid or his legal representatives.

Witness my hand and seal the day and year first above written.

Signed Sealed  
and Delivered in  
presence of

William Scott (seal)

And afterwards, to wit, on the 13<sup>th</sup> day of July in the year last aforesaid said Complainant by his Solicitor filed in the Court aforesaid in said Cause his exceptions in writing to the answer of the said defendant, in the words and figures following, to wit,

In Chancery

In the Circuit Court of Cook County

Eliezer Granger

vs

Balthazar Born

July Term A. D. 1859

Exceptions to the answer of Defendants for insufficiency on the following grounds

1<sup>st</sup> Said answer does not sufficiently admit or deny that the agreement between Granger and Scott in the Bill of Complaint in the above entitled cause particularly mentioned provided that the house and buildings in said Bill described should remain as part of the Freehold of Complainant unless said Scott should perform all the covenants of the then intended Lease. But if he should perform all such covenants then at the expiration of the intended Term he might remove the same.

2<sup>nd</sup> That said answer does not sufficiently admit or deny that said William Scott entered into possession of the Lots and Lands in said Bill of Complaint particularly described in pursuance of and in accordance with the terms and provisions of said agreement.

3<sup>rd</sup> That said answer does not sufficiently admit or deny that the taxes for the year 1857 in said Bill of Complaint mentioned were not paid by said Scott or otherwise in fulfilment of the covenants of said Lease in that

behalf contained, nor that the same were in the year 1858 permitted to be sold for said taxes, nor that the same <sup>now</sup> remain unredeemed by said Scott or the Defendant from said sale.

4<sup>th</sup> That said answer does not sufficiently admit or deny that the ordinary City Taxes for the year 1858 on said Demised premises were not paid by said Defendant or otherwise in violation of said stated covenants, nor that Defendant did in the year 1859 permit the same to be sold for such taxes, nor that the same now remain unredeemed by him from such sale.

5<sup>th</sup> That said answer does not sufficiently deny, That on the first day of April A. D. 1859 the sum of five hundred dollars was due from him and said Scott for rent in respect of said demised premises.

6<sup>th</sup> That said answer does not sufficiently admit or deny That on said first day of April A. D. 1859 the Complainant did elect to declare said Term ended by reason of the non-payment of rent and the default in the performance of the covenants in said Lease for the payment of said Taxes.

7<sup>th</sup> That said answer does not sufficiently admit or deny That the other Buildings of Complainant in said Bill of Complaint mentioned are part and parcel of his Freehold there, nor that the same cannot be moved without permanent injury to his Freehold there.

8<sup>th</sup> That said answer does not sufficiently admit or deny that Complainant has expended \$750<sup>00</sup> for necessary repairs renovation and incidental improvements of the said Buildings in said Bill mentioned.

9<sup>th</sup> That said answer does not sufficiently admit or deny

That the pecuniary damage, outlay, losses and injury to Complainant in consequences of the breaches of said covenants in said Bill of Complaint mentioned and comprising the non-payment of Taxes and Rents and the sums expended and to be necessarily expended in the repair and renovation of the Property in said Bill of Complaint described amount in the whole to \$2,500  
 10<sup>th</sup> That said answer is otherwise uncertain, evasive and insufficient.

Edward Martin

Compts. Sol.

And afterwards, to wit, at the July Term of said Court, to wit, on the 13<sup>th</sup> day of the Month and year last aforesaid the following proceedings among others, were had and entered of record therein in said cause, to wit,

386                      vs                      Elisha Granger  
 Balthazar Born  
 and John Gray                      } Bill

This day come the said parties by their respective Solicitors, and on Motion it is ordered that the exceptions taken by said Complainant to the answer of the said Defendant Born to said Bill of Complaint filed herein be, and they hereby are referred to L. C. Paine Esq. Master in Chancery of Cook County to hear and consider of the same, and that the said Master report his opinion thereon to this Court with all convenient speed.

And afterwards, to wit, at the October Term of said Court, to wit, on the 4th day of November in the year last aforesaid the following among other proceedings were had and entered of record in said Court, to wit,

Elihu Granger  
vs.  
Balthazar Born  
and John Gray } Bill

On Motion of S. A. Trevin of Counsel for said Defendants, no objection being made thereto, It is Ordered that the Defendant have leave to file a Cross Bill of Complaint in said Cause which is accordingly done: Where upon Motion it is further Ordered that the Complainant be, and he is hereby ruled to answer said Cross Bill within one week and that Defendants have leave to withdraw the same from the files of said Cause for inspection.

And thereupon on the same day and year last aforesaid said Defendant Born by his Solicitors filed his certain Cross Bill in said Cause, in the words and figures following to wit,

In the Circuit Court of Cook County  
State of Illinois }  
Cook County }<sup>00</sup> In Chancery

To the Hon. George Manierre Judge  
of the said Circuit Court of Cook County in Chancery  
sitting,

Humblly complaining your Orator Balthazar

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Born of said County sheweth unto your Honor

That one Elisha Granger of said County did on the 28<sup>th</sup> day of May A. D. 1859 file on the Chancery side of said Circuit Court his Bill of Complaint against your Orator as defendant and did <sup>in</sup> and by said Bill allege and set forth that he the said Granger was on the date aforesaid and before and since the 20<sup>th</sup> day of October <sup>A. D.</sup> 1854 and hath continued to be seized in fee simple of certain lots or pieces of land situate in the City of Chicago and County and State aforesaid and more particularly described in his said Bill of Complaint and that being so ~~being~~ he the said Granger did on or before said 20<sup>th</sup> day of October A. D. 1854 agree with one William Scott to lease him said premises for five years upon the covenants and conditions therein more particularly set forth. And that the said Granger in pursuance with said agreements did by an Indenture of lease bearing date October 20<sup>th</sup> 1854 demise unto said William Scott the said premises for the period of five years from the first day of January 1855 subject to the covenants and conditions therein contained on the part of said William Scott for payment to your Orator as rent for the said demised premises of one thousand dollars per annum payable after the first half year quarterly in advance and also for the prompt discharge by said Scott of all ordinary taxes and assessments including also plank side walk assessments if any levied after date of the lease aforesaid with a provision therein contained that if the rent or any part thereof should be behind or unpaid on the day of payment or if default should be made in performance

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of any of said lessees covenants it should be lawful for said Granger at his election to declare said term ended and to re-enter the same and with a covenant on the lessees' part in the case the said Granger should elect to determine said Term as aforesaid to surrender and deliver up the quiet and peaceable possession of said premises to him the said Granger immediately upon the determination of said term as aforesaid and with a further provision that said Scott if he kept and performed the covenants in said lease contained on his part might at the expiration of said term of five years remove from said demised premises any buildings which he the said Scott should have put or erected thereupon. And the said Bill of said Granger further states that in pursuance of said agreement and lease said Scott entered into possession of said premises and did in the years 1854-5 build and erect thereon certain Buildings &c. known as the Scott House, and that since said Scott did by way of chattel mortgage on or about the 3<sup>rd</sup> day of November 1857 assign the said lease to your Creator Balthazar Born and that your Creator Born entered into possession thereof in the fall of 1858 and did on or about the 16<sup>th</sup> day of December 1858 by indenture of lease underlet said premises to one William Wright from the date last aforesaid until May first 1859 with the privilege of two years longer on the condition therein stated.

And said Granger in his said Bill further alleges that the said premises were sold for the ordinary State and County Taxes of 1857 and that Scott and Born

permit the premises to remain unredeemed therefrom and that the ordinary City taxes for 1858 upon said premises were not paid and that the premises were sold therefor and remain unredeemed. That on the first day of April 1859 the sum of \$500 and upwards was due from said William Scott and Balthazar Barn to him the said Granger for rent of said premises and that the same being due and unpaid he the said Granger elected to declare said lease ended and because of the non-payment of said rent and of the said taxes did then and there enter and take actual possession of said premises with the buildings &c. That the said buildings so built on said premises by Scott are affixed in and form part of his the said Granger's Freehold and cannot be removed without irreparable injury to the Freehold, that at the time he the said Granger took possession as aforesaid the buildings were untenable and out of repair that he has spent in necessary repairs upwards of \$750<sup>00</sup>/<sub>100</sub> and that \$250 more is necessary to be spent thereon &c. that he the said Granger has sustained damage for repairs and by reason of non-payment of taxes and rents &c. twenty five hundred dollars. That your Orator on the 3<sup>rd</sup> day of May A. D. 1859 commenced an action of detainer against said William Wright for wilfully and without force holding over after the determination of his lease aforesaid and that your Orator recovered judgment against said Wright for the possession of said premises. And that your Orator had commenced like proceedings against Larry Lynch for the forcible detainer of certain other portions of said premises

that said Born who has no other right in or to said premises than Born acquired under said assignment - that said Granger fears your Orator will by virtue of said detainer proceedings get possession of said premises or a portion of them unless restrained by said Court. And that said Born has caused to be issued out of the Superior Court of Chicago two several writs of replevin and delivered same to Sheriff of Cook County to be executed and that he said Granger fears that your Orator will with said Sheriff take possession of said buildings by virtue of said writs and move them off unless he is restrained - that he the said Granger being remediless at common law and having remedy only in Equity commenced said proceedings. - He the said Granger therefore prays said Court that if the said Circuit Court should be of opinion that said Buildings &c. so erected by said William Scott are not the property of him the said Granger as part and parcel of his Freehold or otherwise, that then and in that case an account may be had and taken under the direction of said Court, of all the rents, taxes and covenants due him in respect of said lease from said Granger to said Scott and of the moneys expended by him Granger in and upon said buildings as aforesaid and of all his pecuniary losses, costs and damages or expenses in any manner incident thereto and that a just compensation may be found and awarded to him for and in respect of the same and said Born (your Orator) his executors and administrators may be decreed to pay and discharge such compensation to him the said Granger. And that said Born, his servants and agents and all persons claim

ing or to claim under or in trust for him, and all Sheriffs, attorneys, constables and officers and others acting for him or in his behalf or at his suit may by the injunction of said Circuit Court be restrained from taking possession of said premises or buildings and also from moving or attempting to remove said buildings or any part thereof or in any manner interfering with said Granger in the peaceable, full and quiet enjoyment of said premises and buildings and improvements until the hearing of his the said Granger's cause or Bill. And that if said Circuit Court shall be of opinion that said buildings and improvements are the property of the said Granger as part and parcel of his Freehold or otherwise that then in that case the said injunction may be made perpetual and that the said Granger may have such other and further relief as the nature of the case may require. And further praying an Injunction to restrain your Orator or any person under him or through him from taking, holding and from attempting to take and hold said premises, buildings or any part thereof or from moving or attempting to move said buildings or any part thereof or from interfering in any manner with the quiet and peaceable enjoyment by said Granger of said premises and buildings or any part thereof.

And your Orator also shews your Honor that he did on the 20<sup>th</sup> day of June A. D. 1859 file a full and complete answer to the said Bill of said Complainant Elisha Granger and that the said Granger by his Solicitor did on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 1859 file his exceptions to the said answer of your Orator and did

on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 1859 cause by an order of said Circuit Court the said exceptions and answer to be referred to L. C. Paine Trustee Master in Chancery to report upon the same and that the said Master hath not as yet reported thereon and that the said cause of the said Granger against your Orator remains and now is in that position.

And your Orator further shews your Honor that he is advised by counsel that it is necessary for him in order to obtain the requisite relief herein to set up by a cross Bill such affirmations, allegations and matters as he relies upon.

Your Orator further shews your Honor that if the lease from said Elisha Granger William Scott bearing date the 20<sup>th</sup> day of October A. D. 1854 is a valid instrument in law and not void from the beginning for fraud and the assignment thereof as set forth in said Granger's Bill by way of chattel mortgage from said Scott to your Orator is also valid in law that the said lease hath in fact been superseded and made of none effect by the hereinafter stated agreement made and entered into between the said Granger and your Orator.

Your Orator further shews your Honor that the said Elisha Granger and your Orator did on or about the \_\_\_\_\_ day of December A. D. 1858 make a verbal agreement substantially as follows, to wit, The said Granger agreed with your Orator that your Orator should have a lease of said premises described in said lease from said Granger to said Scott from the first day of January A. D. 1859 for the period of one year with

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the privilege of two years longer if your Orator should desire the same for the yearly rent of eight hundred <sup>dollars</sup> per year and ground taxes not to exceed fifteen or sixteen dollars per annum, the rent payable monthly in advance, but in case your Orator was unable to pay promptly said Granger was not to enforce the collection thereof until the end of the month and it was also then and there agreed by and between the said Granger and your Orator and as part of the consideration for giving and granting said lease by said Granger to said Barn at said rent that said Barn should execute and deliver to him the said Granger his Judgment Note for the sum of two hundred and fifty dollars without interest payable in thirty days being for the balance of back rent and taxes due from said Scott on said premises until January first 1859 except forty dollars which said Granger agreed to collect of said Scott and that as said Granger was then busy and engaged it was also agreed between them that said Granger would prepare and execute said lease and would also prepare said Judgment Note and bring both to your Orator the next day or within a few days and that then your Orator would execute said Judgment Note and procure Francis Hettinger to execute the same as surety and would then deliver the same to said Granger and the said Granger would then deliver said lease to your Orator.

And your Orator further shews your Honor that a few days after said agreement was made as aforesaid to wit, on or about the 9<sup>th</sup> day of December A. D. 1858 the said Granger sent the said Judgment Note for \$250<sup>00</sup> by his son to your Orator to execute but did not bring said lease

but your Orator was assured by the said son of the said Granger and on his behalf that the said Granger did not then have time to prepare the said lease but would do so before the 1<sup>st</sup> of January A. D. 1859 and deliver it to your Orator. And upon the strength and faith of said representations your Orator executed said Judgment Note and procured the said Hettinger also to execute and deliver it to the son and agent of the said Granger.

And your Orator further shews your Honor that the lease of said premises made by him to William Wright dated on or about December 16<sup>th</sup> A. D. 1858 was made in consequence of and upon the strength and faith of the aforesaid agreement to lease made with the said Granger and not as supposed in said Granger's Bill as assignee of the Scott lease aforesaid.

And your Orator further shews your Honor that that portion of the Buildings, to wit, House N<sup>o</sup> 24 North Wells Street in the City of Chicago for which he brought an action of Detainer against Larry Lynch as detailed in said Granger's Bill was acquired by your Orator by virtue of a purchase from one Francis Hettinger who bought the same in the month of November 1858 at Sheriff's sale on an execution issued from this Court in favor of Dodge and Dodge against said William Scott and your Orator as the surety of said Scott and that he did not acquire it as assignee of said Scott; that said last building is on the premises described in said Granger's Bill and that the same was leased to said Larry Lynch upon the faith of the agreement aforesaid.

And your Orator further shews your Honor that he had no intimation or knowledge that said Granger intended to hold him as assignee of the said Scott Lease but on the contrary thereof your Orator avers and charges that said Granger promised from time to time to execute the lease aforesaid in pursuance of the agreement therefor as aforesaid.

And your Orator further shews your Honor that he had no intimation or knowledge that the said Granger had or claimed to have declared a forfeiture of the Scott lease aforesaid and to have entered into and taken possession thereof until about the first day of May <sup>A.D.</sup> 1859 - the time when he was about to proceed to recover possession of said premises from said Wright and Lynch notwithstanding your Orator lived in the City of Chicago and within a few blocks of said premises, and also of the said Granger.

And your Orator further shews your Honor that the said Granger after he had knowledge of the sale of the premises in his said Bill of Complaint described on which said Buildings are situate for the taxes of 1857 and 1858 as by him set forth in his said Bill and also after he had elected to declare the term of the Scott Lease ended and had taken possession of the premises aforesaid as described in said lease as he claims, to wit, after the first day of April A.D. 1859 he the said Granger actually took and received from your Orator large sums of money to wit, about two hundred dollars as and for the rent of said premises.

And your Orator further shews your Honor

that he has fully paid the said Judgment Note of \$250<sup>00</sup> given as aforesaid in consideration of said agreement to lease to the said Granger and has also paid on said agreement to lease the further sum of about from one hundred and fifty to two hundred dollars and that no demand for the rent accruing under said agreement has been made by said Granger.

And your Orator further shews your Honor that the said Granger by some means to your Orator unknown induced and procured the said Wright and Lynch tenants of your Orator to atone to himself the said Granger and to deny and repudiate the relation of Landlord and Tenant subsisting between them and your Orator and that since then, to wit, about the first of April A. D. 1859 the said tenants and those holding of and under them have refused to pay any rent to your Orator.

And your Orator further shews your Honor that the said Elisha Granger did on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 1859 commence proceedings in the Superior Court of Chicago by distress \_\_\_\_\_ the aforesaid Scott lease against the personal property of your Orator to satisfy the quarter's rent that would have been due by virtue of said lease for the quarter ending April 1<sup>st</sup> 1859 had not the same been abrogated by the agreement aforesaid and that the same is still pending in said Court and that the said Granger threatens to prosecute the same unless restrained by order of this Court.

And your Orator further shews your Honor

that the said buildings put and erected by said Scott upon the premises described in said Granger's bill cost your Orator a large sum of money advanced and paid to said Scott and for his use and at his request, to wit, about the sum of eighteen hundred dollars and which is and are the only valuable security that your Orator hath to be reimbursed and repaid therefore, the said Scott being wholly insolvent, and that said buildings are not let into the soil nor are they fixtures, nor would any injury result to the soil by their removal.

To the end therefore that the said Elisha Granger may without oath which by virtue of the provisions of the statute in such case made and provided is hereby expressly waived, full, true, direct and perfect answer make to all and singular the matters and things hereinbefore stated and contained and that as fully and particularly as if here repeated and he specifically interrogated thereto and that the said Granger be decreed to prepare and execute a lease of the premises described in said Scott lease in accordance with the terms and conditions of the aforecited verbal agreement to lease, made and entered into between him and your Orator within a time to be set by this Honorable Court, and that said Granger be required within the same time to deliver up possession of said premises to your Orator, and that said Granger be decreed to account for the reasonable rents of said premises from the time he took possession of the same to wit, April first 1859 and that if said rents exceed the balance of rent due by your Orator to the said Granger under and

by virtue of the aforesaid agreement to lease that said Granger  
 be decreed to pay the same to your Orator but if the rents due  
 by your Orator under the agreement to lease, to said Granger  
 exceeds that due by him since he took possession of the premises  
 that then your Orator be decreed to pay such balance to the  
 said Granger upon his executing the lease aforesaid. And  
 that at the end of said lease and upon the payment of the  
 rent reserved by said lease that the said Barni be authorized  
 to remove the said buildings put and erected upon the  
 premises described in the Scott's lease, by the said Scott but  
 with as little delay as practicable. But if the Court be of the  
 opinion that it is impracticable at this time to decree the  
 execution of the lease aforesaid that then in that case the  
 said Court may direct an account to be taken under the  
 direction of the said Court of the rents of said premises  
 since their occupation by said Granger and of the amount  
 of moneys paid by your Orator to the said Granger or  
 on his account for rent or otherwise of said premises  
 and also the value of the buildings put and erected  
 upon said premises by said Scott and owned by your  
 Orator when said Granger took possession thereof as  
 aforesaid and also of the amount equitably due by  
 your Orator to said Granger for rent or otherwise of  
 said premises until the taking possession <sup>there</sup> of as afore  
 said by said Granger, and that the amount if any  
 found due said Granger be deducted from the  
 amount found due from said Granger to your Orator  
 and that said Granger be decreed to pay the balance if

any to your Orator, or that your Orator shall have such other and further relief in the premises as the nature of the case may require and to Equity may seem meet.

May it please your Honor to grant unto your Orator the People's Writ of Injunction issuing out of and under the seal of this Court directed to said Elisha Granger, his counsellors, Attorneys, Solicitors and Agents commanding them and each of them absolutely to desist and refrain from prosecuting his the said Granger's proceedings by Distress in the Superior Court of Chicago as aforesaid against your Orator. May it please your Honor to grant unto your Orator the People's Writ of Summons issuing out of and under the seal of this Court to be directed to the said Elisha Granger Commanding him by a certain day to be and appear in said Court then and there to abide the premises and further to stand to and abide by such order and decree therein as shall be agreeable to Equity and good conscience. And your Orator shall ever pray &c.

W. B. McAllister &  
S. A. Farin Sols. for Comp }

B. Born.

State of Illinois }  
Cook County }<sup>ss</sup>

On this third day of November A. D. 1859 personally appeared Balthazar Born and made oath that he has heard the above Bill by him subscribed, read and knows the contents and that the same

is true of his own knowledge except as to the matters which are therein stated to be on information and belief of the Complainant and as to those matters the deponent believes it to be true

Subscribed and sworn

B. Born

before me this 3 day of  
November A. D. 1859

W<sup>m</sup> L. Church Clk

And afterwards, to wit, on the 30<sup>th</sup> day of November in the year last aforesaid the said Defendant in said Cross-Bill by his Solicitor filed in said Court his answer to said Cross-Bill in words and figures following to wit,

In Chancery

In the Circuit Court of Cook County  
November Term A. D. 1859

The several answers of Elisha Granger to the Cross Bill of Balthazar Born.

This Defendant now and all times reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, imperfections and insufficiencies in the said Cross Bill contained for answer thereunto or to such part and parts as this Defendant is advised is or are material for him to make answer unto he this Defendant answering saith That he denies that the answer in said Bill mentioned was a full and com

plete answer to the original Bill of this Defendant, and he denies that he and the Complainant did in the month of December 1858 or at any other time make any verbal agreement substantially as stated in said Cross-Bill in relation to a lease at the rent of \$800. And this Defendant insists that the only parol agreement between himself and said Complainant was that he should make said Complainant a new lease of said premises for two years with the rent payable monthly in advance on condition that said Complainant would accept and execute the same and with the express understanding between them that if the Complainant refused to accept and execute the same they were to continue to hold under the original lease to Scott in said original Bill mentioned. And this Defendant avers that in pursuance of said last stated agreement he caused a lease to be prepared of said premises upon the terms of the same agreement and on or about the ninth day of December 1859 caused the same lease to be tendered to said Complainant and that thereupon said Complainant refused to accept or execute the same and declared that he was satisfied with the original lease as it stood. And this Defendant further answering says that he denies that said Judgment Note for \$250 in said Bill of Complaint mentioned was given as the consideration of any agreement for any lease whatsoever. And this Defendant avers that the same was given to secure monies before then due from said Complainant as assignee of said Scott to this Defendant for rent of said Premises and ~~xxxx~~ payable in advance on the first of November 1858 being the three months rent due by the terms of said original lease from November 1<sup>st</sup>

1858 to January 1<sup>st</sup> 1859. And this Defendant denies that said note or any part thereof was given for taxes. And this Defendant admits that on or about December 9<sup>th</sup> 1858 he did send said note to said Complainant to be executed, and insists that he did by this same messenger send said lease for acceptance and execution by said Complainant and that said Complainant did then and there refuse to accept or execute the same and insisted that the original lease was the only one he wanted as aforesaid. And this Defendant further answering saith that he does not know nor has he been informed save by said Bill of Complaint nor can he state what were Complainant's motives or grounds of faith in giving said lease to said Wright but this Defendant insists that the only right or title he had to lease said premises was as assignee under the original Scott lease. And this Defendant further answering says that he has been informed and believes that the alleged purchase of the House N<sup>o</sup> 24 North Wells Street by said Flettinger was in fact made by or for said Complainant but in the name of Flettinger, and that at the time of said purchase said Complainant had full notice of the terms and provisions of said lease and that said Buildings were a security to this Defendant for rent and taxes, and also that said Flettinger had then the same notice. And this Defendant insists that said Complainant well knew that the Defendant intended to hold him under said original lease as assignee and that in that capacity and none other he paid this Defendant some of the rent and frequently promised to pay him

more thereof for said premises previous to April 1859. And  
 this Defendant insists that said Complainant had full no-  
 tice on or about the 1<sup>st</sup> April 1859, that this Defendant claimed  
 the forfeiture of said original lease for the causes in said  
 original Bill set forth. And this Defendant denies that he  
 took of Complainant two hundred dollars or any other  
 sum for rent of said premises accruing after April 1<sup>st</sup> 1859  
 he admits that some money was paid him after that time  
 but insists that it was upon said stated note or for arrears  
 of rent due prior to said April 1<sup>st</sup> 1858. This Defendant  
 admits the payment of said note but denies that the same  
 or any other money was paid on said alleged agreement  
 or any other agreement, or any other consideration except  
 said original Scott lease. And this Defendant denies  
 that he induced or procured said Wright or Lynch to  
 alone to him and avers that upon the forfeiture of said  
 lease he re-entered and took possession of said premises  
 and afterwards let the same to said Wright and Lynch  
 as he lawfully might and this Defendant admits that  
 he has brought an action of Distress against said Com-  
 plainant for arrears of rent of said premises to April  
 A. D. 1859. And he insists that during all that time  
 said premises were in the possession of said Complain-  
 ant and that said rent was due and in arrear at the  
 time when said action was commenced. That the  
 amount of said rent remains to be ascertained in  
 said action and that there is not any just cause either  
 at Law or in Equity why the said action should not be



to the manifold insufficiencies of the said Answer for  
 Replikation thereto saith, That he will aver and prove  
 his said Bill to be true, certain and sufficient in the law  
 to be answered unto, and that said Answer of the said  
 Defendant is uncertain, untrue and insufficient to be  
 replied to by this Repliant, without this that any other  
 matter or thing whatsoever in the said answer contained  
 material or effectual in the law to be replied unto, confessed  
 and avoided, traversed or denied is true; all which  
 matters and things this Repliant is and will be ready  
 to aver and prove as this Honorable Court shall direct  
 and prays as in and by his said Cross-Bill he hath  
 already prayed

Balthazar Born

By his Solicitors

W. R. Wallister & J. A. Irwin

And afterwards, to wit, at the November Term of said  
 Court, to wit, on the 12<sup>th</sup> day of December in the year last  
 aforesaid, the following proceedings, among others were  
 had and entered of record therein in said cause to wit,

Elihu Granger

vs

Balthazar Born

& John Gray

Bill & Cross Bill

Upon hearing Edward Martin, of  
 Counsel for Complainant in the Original Bill and  
 J. A. Irwin Counsel for Defendant on the same Bill

and by their consent and by the consent and at the request of their respective clients, parties in this cause, it is ordered that all matters in difference in this cause, as well on the Original as the Cross Bill, be referred to the award, order, <sup>final order</sup> arbitrament and determination of Richard P. Swift, James H. Rees and Thomas Church under and in pursuance of the Statute in that case made and provided.

And afterwards to wit, on the 30<sup>th</sup> day of March A.D. 1866, the Arbitrators heretofore appointed in said cause filed in said Court the Report of their Award with a certified copy of the order appointing them such Arbitrators and their oaths attached, which said oaths and award are in the words and figures following, to wit,

Elihu Granger vs. Balthazar Born & John Gray	}	In the Circuit Court of Cook County In Chancery Bill & Cross Bill
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State of Illinois }  
 Cook County }<sup>do</sup>

Richard P. Swift, James H. Rees & Thomas Church, arbitrators named in the within order, do severally depose and say, that they & each of them will faithfully & fairly hear, examine and determine the cause in said order submitted to them according to the principles of Equity & Justice and will make a just & true award according to the best of their understanding

Subscribed & sworn to  
before me this 2<sup>nd</sup> day of  
February A. D. 1860  
W<sup>m</sup> L. Church

Richard P. Swift  
James H. Pees  
Thos Church

Elihu Granger } In Chancery, In Circuit Court of Cook  
vs. } County, Illinois  
Balthazar Born } Award of Arbitrators appointed by said  
& John Gray } Court of matters arising on Bill & Cross-Bill

The undersigned Richard P. Swift, James  
H. Pees and Thomas Church, Arbitrators appointed by  
the Circuit Court of Cook County, Illinois, pursuant  
to the certified Copy of said order hereto attached, after  
having taken the oath hereto attached and endorsed  
on the back of said certified Copy of order of reference;  
did proceed in one of the Court Rooms of the Superior  
Court of Chicago and in the Supervisor's Room of  
Cook County from time to time at the convenience  
of the parties to hear the evidence in and determine  
the matters embraced in said order of submission —  
the said parties Complainant and Defendant being at  
all times and on all ~~all~~ occasions by their respective  
counsel present,

We the said Arbitrators named in said order  
of Submission, having heard all the evidence and argu-  
ments of Counsel and considered all the matters em-  
braced in said submission do hereby certify, award  
and determine that the said Complainant Elihu

Granger is justly indebted to the said Defendant Balthasar Born for and on account of the matters embraced in said Bill and Cross Bill in the sum of One thousand nine hundred and sixty two dollars and fifty <sup>four</sup> cents. And that the same be paid with interest thereon in four months from the date hereof.

That in default of the payment of said sum and interest within said time, that all and singular the buildings of every kind on said land specified in said Bill and Cross Bill, to wit, Sub lots six and seven and ten feet off the North side of Sub lot eight of lot number five in Block four in the original Town of Chicago be and the same are and shall be liable for the payment of said sum of \$1962.54 and interest. And said Defendant, Born has and shall retain a valid lien on said buildings for the payment of said sum and interest.

That in default of the payment by said Granger to said Born of said sum of \$1962.54 and interest within said specified time then and in that event the said buildings on said land shall each and every of them be sold by the Master in Chancery of said Court to the highest bidder for cash on thirty days notice in one of the daily papers of the City of Chicago, the purchaser having the right to remove the same. That said Master shall report to said Circuit Court whatever sum (if any) said buildings on such sale shall fall short of producing said sum of \$1962.54 and interest at the time of such sale. And for such deficit (if any) said Born shall have execution as at law against said Elihu Granger.

That whatever sum (if any) shall be realized by said Master on the sale of said buildings over and above said sum of \$1962.54 and interests and costs shall be paid into Court for the use and benefit of the said Granger.

That the said Granger and the said Barn shall be liable for and pay the one half of all of the costs accrued in said suit in Chancery including costs of arbitration in which said order of submission is made, and each to pay one half of all costs in any and all other suits (if any) pending between them that are or may be embraced in the submission herein made.

We also find John Gray one of the Defendants is but a nominal party to the Record and in no way interested in these proceedings.

In Witness whereof the undersigned Arbitrators having furnished and without delay delivered each of said parties a copy in writing of this our award do hereby subscribe our names and set our seals this 26<sup>th</sup> day of March A. D. 1860

James H. Rees (seal)

R. P. Swift (seal)

Thos. Church (seal)

Arbitrators pray to be allowed for fees as follows

- being for fifteen days each
- R. P. Swift - - - - \$ 50<sup>00</sup>/<sub>100</sub>
- James H. Rees - - - - \$ 50<sup>00</sup>/<sub>100</sub>
- Thomas Church - - - - \$ 50<sup>00</sup>/<sub>100</sub>

And afterwards, to wit, at the April Term of said Court, to wit, on the 12<sup>th</sup> day of April in the year last aforesaid, the following proceedings, among others in said Court were had and entered of record therein in said cause, to wit,

Elihu Granger  
586 vs } Bill  
Balthazar Born }  
& John Gray }

On Motion of Drummond of counsel for Complainant, no objection being made thereto, it is ordered that the time for Complainant to file his Exceptions to the Report of the Arbitrators of said Cause be extended till Monday Morning next, and the same hereby is extended accordingly.

And afterwards, to wit, on the 16<sup>th</sup> day of April in the year last aforesaid, the said Complainant by his Solicitors filed in the Court aforesaid, in said cause his Exceptions in writing to the award of the Arbitrators in the words and figures following, to wit,

Elihu Granger } Book Co. Cir. Court in Chancery  
vs } 1860 April Term of said Court.  
Balthazar Born }  
& John Gray }

Exceptions taken by the Complainant to the Report of James H. Pees, Richard R. Swift and Thomas Church Referees heretofore appointed by Order of this Court made in this cause and bearing

date of March 26<sup>th</sup> 1866.

- 1 For that the said Referees have failed and neglected to report the evidence taken by them on the said reference or any part thereof.
- 2 For that the said Referees by their said Report do not make a final award of all the matters in controversy between the respective parties to this suit as submitted to them by the order of Submission, the Award is not final nor does it pretend to be.
- 3 For that the said Referees did not find by their Award and Report whether there was any rent due to Granger and if so how much
- 4 For that the said Referee did not find by their Award whether Granger had a right to forfeit the Original Lease and the facts therewith.
- 5 For that the said Referees by their Award do not make a final settlement of all the matters in Controversy both in Law and Equity which were submitted to them by the respective parties hereto and pending between the said Granger and said Born.
- 6 For that the said Referees by their Award do not pass upon or in any manner decide as to the matters stated in the Defendant Born's Cross Bill herein but leave the same unadjusted by their Report and Award.
- 7 For that the said Arbitrators by their Award do not find whether there was a new Lease of the premises referred to in Complainant's Bill, from Granger to Born and if so whether the same was a valid contract

in Law.

- 8 For that the said Arbitrators by their award do not make a final settlement of the suits at law between the parties hereto but leave the same wholly to inference by the Court who is to pronounce judgment on the finding of said Referees. When by the terms of Submission they should find the facts specifically both as to the law and chancery suits submitted to them.
- 9 For that the said Arbitrators have not decided the subject matter submitted to them by the terms and conditions of the Rule of Court referring said matters in difference to the said Arbitrators.
- 10 For that the said Arbitrators have exceeded the authority conferred upon them in determining that Granger should take and pay for the buildings erected upon his City Lots by Scott or others, the same not having been submitted to them for to determine, therefore they exceed their authority in determining matters that were not submitted to them.
- 11 For that the award is vague uncertain and inconclusive in other respects.
- 12 For that the Submission calls for an award of and concerning the premises and therefore all the matters contained in each Bill should have been specifically considered and determined

Drummond Garner & Linder  
Sols. for Granger

And afterwards, to wit, at the September term of said Court, to wit, on the 13<sup>th</sup> day of September in the year last

aforesaid, the following proceedings among others were had and entered of record therein in said cause, to wit,

586	vs	}	Bill
		}	
			Balthazar Born & John Gray

On motion of S. A. Irwin of counsel for said Defendants, and for cause shown, it is ordered that said Complainant be and he hereby is ruled to show cause, if any he has, by Monday morning next why he should not file a new Injunction Bond in said cause.

And afterwards, to wit, at the same term of said Court last aforesaid, to wit, on the 22<sup>nd</sup> day of September in the year last aforesaid the following proceedings, among others, in said Court, were had and entered of record therein in said cause, to wit,

586	vs	}	Bill
		}	
			Balthazar Born & John Gray

This day again come the said parties by their Solicitors, and the Court having heard the causes assigned by the Complainant why he should not be ruled to file a new Injunction Bond in said cause, and having carefully considered the premises and being now fully advised therein, doth order that the said Complainant be, and he is hereby ruled to file a new Injunction

tion Bond in said cause by the first day of the next term of this Court in the penal sum of One thousand dollars with good and sufficient security thereto to be approved by the Clerk of this Court and conditions for the payment of all costs and damages which the Defendant Born may have or shall sustain by reason of the wrongfully issuing of said Injunction in case the same shall be dissolved by the Court.

And afterwards, to wit, on the 9<sup>th</sup> day of October in the year last aforesaid the said Complainant filed in the Court aforesaid in said cause his certain additional Injunction Bond therein in the words and figures following to wit,

Know all men by these presents, That we Elisha Granger, Ephraim Ward and Elias Shipman are jointly and severally held and firmly bound unto Balthazar Born of the City Chicago in the County of Cook and State of Illinois in the penal sum of One thousand Dollars for the payment whereof to the said Balthazar Born or his certain Attorney or Attornies, executors, administrators or assigns well and truly to be made we do hereby bind ourselves and heirs, executors and administrators for ever firmly by these presents sealed with our seals and dated this Ninth day of October A. D. 1866

Whereas by a Writ of Injunction of the Circuit Court of Cook County dated May 28<sup>th</sup> A. D. 1859 in a certain cause there pending wherein said Granger was Complainant and said Born was Defendant the said Born was enjoined as therein mentioned and the same Writ of Injunction

was issued upon an Injunction Bond in the sum of five hundred dollars with Charles Walker as security. And whereas by an order of said Court in said cause made on the twenty second day of September A. D. 1860, it was among other things ordered that said Elisha Granger should file in said Court in said cause a new Injunction Bond to the tenor and effect hereinbefore and hereinafter set forth, which Bond should be in lieu and in substitution of said recited Bond for five hundred dollars. Now in obedience to the said recited order, the condition of the above written Bond or obligation is such that if the said Elisha Granger, his heirs, executors, administrators or assigns shall pay all costs and damages which said Defendant Bond may have or shall sustain by reason of the wrongful issuing of said Injunction in case the same shall be dissolved then the above written Bond or obligation shall be void and of no effect or else to be and remain in full force and virtue.

Taken and approved

before me on this 9<sup>th</sup> day of October 1860

W<sup>m</sup> L. Church Clerk

E. Granger (seal)

Elias Shipman (seal)

Ephraim Ward (seal)

And afterwards, to wit, on the 15<sup>th</sup> day of October in the year last aforesaid said Complainant, by his said Solicitor filed in the Court aforesaid, in said cause certain additional exceptions to the award filed therein in the words and figures following to wit,

Granger vs. Born

Points made on Motion to confirm award and for Judgment.

The Court had no Jurisdiction to order a reference under the Statute.

The Statute does not authorize a Decree to be entered on a Statutory award in Chancery.

The Award is uncertain.

It is based upon a Question not embraced in the Submission namely the Property of Granger in the Buildings — it is outside of the Submission.

It fails to pass upon all the matters in difference.

It is not mutual for while it aids Born it gives no certain and conclusive protection to Granger.

It is not final.

And afterwards, to wit, at the October Term of said Court, to wit, on the 20<sup>th</sup> day of October in the year last aforesaid the following proceedings, among others, were had and entered of record therein in said cause, to wit,

Elihu Granger	} In the Circuit Court of Cook County In Chancery
vs	
Balthazar Born	
vs John Gray	

On a former day came the Arbitrator heretofore appointed by an order in this cause and filed their award herein in writing, in the words and figures following, to wit,

Elihu Granger  
vs

Balthazar Born  
& John Gray

In Chancery, In the Circuit Court of  
Cook County, Illinois  
Award of Arbitrators appointed by  
said Court of matters arising on  
Bill and Cross Bill

The undersigned Richard B. Swift, James H. Pies and Thomas Church Arbitrators, appointed by the Circuit Court of Cook County, Illinois, pursuant to the certified copy of said order hereto attached. After having taken the oath hereto attached and endorsed on the back of said certified copy of order of reference, did proceed in one of the Court Rooms of the Superior Court of Chicago and in the Supervisor's Room of Cook County from time to time at the convenience of the parties to hear the evidence in and determine the matters embraced in said order of submission the said parties Complainant and Defendant being at all times and on all occasions, by their respective counsel present.

We the said Arbitrators named in said order of Submission having heard all the evidence and the arguments of counsel and considered all the matters embraced in said submission do hereby certify, award and determine that the said Complainant Elihu Granger is justly indebted to the said Defendant Balthazar Born for and on account of the matters embraced in said Bill and Cross-Bill in the sum of One thousand and nine hundred and sixty two Dollars and fifty four cents. And that the same be paid with interest thereon in four

months from the date hereof. That in default of the payment of said sum and interest within said time that all and singular the buildings of every kind on said land specified in said Bill and Cross-Bill, to wit, Sub lots six and seven and ten feet off the North side of Sub lot eight of Lot number five in Block four in the Original Town of Chicago be and the same are and shall be liable for the payment of said sum of \$1962.54 and interest. And said defendant Born has and shall retain a valid lien on said buildings for the payment of said sum and interest.

That in default of the payment by said Granger to said Born of said sum of \$1962.54 and interest within said specified time, then and in that event the said building on said lands shall each and every of them be sold by the Master in Chancery of said Court to the highest bidder for cash on thirty days notice in one of the daily papers of the City of Chicago, the purchasers having the right to remove the same. That said Master shall report to said Circuit Court whatever sum (if any) said buildings on such sale shall fall short of producing said sum of \$1962.54 and interest at the time of such sale and for such deficit (if any) said Born shall have execution as at law against the said Elihu Granger.

That whatever sum (if any) shall be realized by said Master on the sale of said buildings over and above said sum of \$1962.54 and interest, and costs shall be paid into Court for the use and benefit of said Granger.

That the said Granger and the said Born shall each be liable for and pay one half of all of the costs accrued in said suit in Chancery including costs of arbitration in which said order of submission is made and each to pay one half of all costs in any and all other suits (if any) pending between them that are or may be embraced in the submission herein made. We also find John Gray one of the Defendants is but a nominal party to the Record and in no way interested in these proceedings.

In Witness whereof the undersigned Arbitrators having furnished and without delay delivered each of said parties a copy in writing of this our award do hereby subscribe our names and set our seals this 26<sup>th</sup> day of March 1860

	James H. Pees (seal)
Arbitrators pray	R. K. Swift (seal)
to be allowed for fees	Thos. Church (seal)
for fifteen days each	

And now on this day come the said Defendant Born by Irwin & Brackett his Solicitors, and moves the Court for a confirmation of said award and for an order or decree making the said award a rule of Court and directing the execution thereof in the same manner and with like force and effect as if the same had been made and entered by the consideration and judgment of this Court as a final decree in this cause. And thereupon the said Complainant by Martin and Linden

his Solicitors asks that the exceptions filed by him in writing to said award and to a confirmation thereof be considered and determined by the Court before the granting of the said defendants motion to confirm said award and make the same a rule with like force and effect as a Judgment or decree of this Court. And this cause being now set down for a final hearing upon said motions respectively, and the Court having heard the counsel of the respective parties concerning the same and being fully advised of said award and of and concerning the Complainant's said exceptions thereto, doth consider, order and adjudge that the said exceptions to said award and each and every of them be and the same are hereby overruled; to which decision of the Court the said Complainant excepts and said exception is caused to be entered of record.

And the said Court being fully advised of and concerning the motion of said Defendants Born for a confirmation of said award, doth order, consider and adjudge that the said award so made by the said arbitrators be, and the same hereby is in all things confirmed. And the said award is hereby made a rule of this Court with the like force and effect of a decree in this cause touching the rights and interests of the parties. And that the same be executed in the same manner as if the same had been entered by the Judgment and consideration of this Court as a final determination of the matters and things alleged and set forth in the Bill and Cross-Bill filed in this cause by the

parties respectively.

And for the purpose of carrying said Award into effect, it is further considered and decreed, that the said Complainant pay into this Court for the use of the said Defendants Born the sum of One thousand nine hundred and sixty two  $\frac{3}{4}$  Dollars so awarded to be paid <sup>to him</sup> by said Arbitrators on or before the first day of the next November term of this Court together with interest thereon at the rate of six per cent from the 26<sup>th</sup> day of March A. D. 1860 the day upon which said award was published and declared, together with one half of the costs of this suit occasioned by the filing of the Bill and Cross-Bill and the reference to said Arbitrators to be taxed, and that in default of such payment by said Complainant, the Master in Chancery of Cook County proceed to advertise and sell the buildings described in said award, following and observing in making such sale the terms and requirements of said award.

And that the purchaser or purchasers of said buildings be authorized to remove the same, and that said Master after deducting his ordinary and usual commissions on Master's sales and the costs of sale shall pay the amount due Born under said Award into this Court for his use. That whatever sum said buildings may sell for on such sale over and above said amount due under this decree and interest commissions and cost shall be paid into Court by said Master for the use of said Granger. And that said Master report to this Court whatever sum (if any) said

buildings on such sale shall fall short of producing said sum interests and costs, so found due by said Award, and for such deficit, if any, said Born shall have execution <sup>against said Granger</sup> as at law, And to which end a further order based upon such report may be entered and for that purpose the Clerk is directed to continue this cause upon the Docket.

And for the purpose of carrying said award into effect it is further considered and decreed that said Born pay into this Court by the first day of December next one half of the costs of this suit occasioned by the filing of the Bill and Cross-Bill and the reference to said Arbitrators and in default thereof execution issue therefor as at law.

And the said Granger and the said Born respectively pay one half of all the costs to be taxed in the suits between them embraced in the Submn. prior to said Arbitrators, pursuant to said Award.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of Original writs, Bill, Cross-Bill, Answers, Replikation, Bond, oaths & award of Referee and proceedings had and entered of record in a certain cause now pending in said Court on the Chancery side thereof, wherein Elisha Grauger is Complainant and Batthazar Born and John Gray are Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Seventh day of December A. D. 1860

Wm L Church Clerk.

Due for Record \$20<sup>00</sup> Paid by E. Grauger

I think this decree was right  
and must refuse a supersedeas.

J. B. Lewis

Elmer Granger

vs

Balthazar Bom  
& John Gray

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Transcript of  
Record

Filed June 25 1861

L. Leland  
clerk