

12486

No. _____

Supreme Court of Illinois

Esmay

vs.

Negus, et al

71641  7

State of Illinois }
Henry County } S.S.

The people
of the State of Illinois to the Sheriff
Henry County Greeting

We command you to ~~summon~~

Isaac Esmy of to be found

Tanner B. Gorton in your county personally to be

seized & kept and appear before the Circuit

Court of said County on the first

Term day of the next term thereof to be

holden in the Court House in

Cambridge on the 1st Monday

in the month of October next to

answer certain Bill of Complaint

of filed in our said circuit court on

the Chancery side thereof against

him by Tanner B. Gorton

and Isaac Stagers -

And have you then and there this

writ and make return thereon in

what manner you see fit to the said

Witness My H. Bramm

Clerk of our said Court

and the seal thereof at

Cambridge this 22nd day of

August A.D. 1854

My H. Bramm
Clerk

Endorsement I cannot find the within named
Isaac Emery in my court
this 1st day of September A.D. 1854
Matthew B. Potter
Sheriff Henry County
Illinois

State of Illinois }
Rock Island County } SS Truman B
Gorton and Isaac Veyne of said
County being by me duly sworn
depose and say that Isaac
Emery is a resident of the
City and County of Albany
in the State of New York and
further say not
Truman B. Gorton
Isaac Veyne

Filed Aug 21
1854

W. H. Hammond
Clerk

State of Illinois }
County of Rock Island } SS - J. A. M. Loope
Clerk of the county court in and
for said county do hereby certify
that the foregoing affidavit was
sworn to and subscribed before me
this 21st day of August A.D. 1854
by the above named Isaac Veyne
& Truman B. Gorton

Witness my hand and Seal of said
Court this said 21st day of August 1854
J. A. M. Loope Clerk

Chancery Notice
Henry County Circuit Court }
October term 1854 }
State of Illinois }
County of Henry }
Finnian Blystone }
and Isaac Vey }
vs }

Isaac Emery } In chancery
affidant of the non residence of the
said Isaac Emery Respondent
in the above entitled cause having
been filed in the office of the clerk of
said circuit court notice is hereby
given to the said Isaac Emery that
Finnian Blystone and Isaac Vey as
have filed their bills in the office of
the clerk of said circuit court on the
21st day of August A.D. 1854 for specific
performance of a Land Contract

Now unless you the said Isaac
Emery be and appear before
the circuit court of Henry County
on the first day of the next term
thereof to be holden at Cambridge
in said county on the 4th Monday
of October 1854 and plead answer
or demurr to the said orators bill

the same and the matters and
things therein stated will be
taken as confessed and a decree
entered against you according to
the prayer of said bill

Barndole & Andrews
attorneys for plaintiff

Wm H Brannan Clerk

I Isaiah Hyatt Editor and
proprietor of the "Henry County
Sentinel" a weekly newspaper
printed & published in the County
of Henry in the State of Illinois,

Entered & signed
I do hereby Certify that the
Essey Chancery notice hereto attached
Filed ²⁴ Oct 24 1854 was published in said paper for
four successive weeks that the
date of the first publication was
August 24 AD 1854 and the date
of the last publication was
September 21 AD 1854

I S Hyatt

Editor and proprietor

Fees \$4⁵⁰ paid by complainant

Oct 24th 1854

Rock Island Sept 27
1854

Mr Braman

^{Issue & return of writ}
Sir You will please
issue subpoena to the Sheriff of
Rock Island Co in Illinois, B
p. ^{W. A. Braman} Esq. on the case of Isaac
V. ^{Filed Oct 3, 1854} Tappan & Truman B. Gorton versus
Isaac Esmay returnable to
your next term of court
Yours truly Tappan & Gorton
per T. B. Gorton

State of Illinois } In the Circuit Court
Henry County } S. S. of Henry County State
of Illinois October Term 1854

To the Honorable J. A. C. Wilkinson Judge
of the Sixth Judicial Circuit in
the State of Illinois - In Chancery

Humbly complaining sheweth unto
your Honor your Petors Truman B
Gorton and Isaac Tappan of the
County of Rock Island in the State
of Illinois that heretofore to wit

on the first day of May 1884 one
Franc Emery of the county of Albany
in the State of New York was seized
and possessed in fee of the following
Land situate and being in the
County of Henry in the State of
Illinois namely The North west
quarter of Section fourth Township
fifteen North One (1) East
14th P.M. - also the South
west quarter of Section Thirteen (13)
The North East quarter of Section
Twenty two (22) The North
East quarter of Section Twenty
three (23) ^{the North West quarter of Section} The North East
quarter of Section Twenty four (24)
the North west quarter of Section
Twenty four (24) The North West
quarter of Section Twenty six (26)
and the North West quarter of Section
Thirty five (35) all in Township
fifteen (15) North Range one (1)
East of the 14th P.M. also the
North West quarter of Section Twenty
nine (29) in Township Sixteen North
Range Two (2) East 14th P.M.
and is still seized and possessed
of the same and that on or

about the time last aforesaid your
Orators entered into negotiations with
the said Emory for the purchase
of all the Land aforesaid
and your Orators shew that after due
proposals were made by the said
parties respectively of and concerning
the purchase of the Land aforesaid
the said Emory on or about the
time aforesaid finally submitted
to your Orators his the said Emorys
written proposition or agreement
signed by the said Emory
a copy of which said agreement
is herewith filed and marked
"Exhibit A" and made part of
this bill of complaint in and
by which the said Emory agreed
to sell and convey to your Orators
the said several quarter sections
of Land aforesaid upon the
following terms & conditions
namely Your Orators to pay
the said Emory the last years
taxes on the said Land and
Twelve hundred and fifty dollars
down to the agent of the said Emory
N. Boston at Rock Island in

said State and execute notes for
thirty six hundred dollars payable
in one, two, and three years secured
by mortgage upon said premises
and both said notes and mortgage
to bear date the first day of May 1854
And your Orator further shew that
said Emery in and by his written
agreement or proposition aforesaid
agreed that in case your Orator
accepted the terms aforesaid he the
said Emery would forward to his
agent the said H. B. Osborn a deed
of warranty for your Orator of the following
form duly executed acknowledged
and ready for record which said
form of deed with the exception of
blank acknowledgements attached thereto
is in the words and figures following
to wit " This indenture made the
first day of May in the year of our Lord
one thousand Eight hundred and fifty
four between Isaac Emery and his
wife Eliza V Emery both of the city
of Albany New York State of the
first part and Isaac Noyes and
Norman B. Gorton both of Rock Island
Illinois of the second part Witnesseth

that the said parties of the first part
for and in consideration of the
sum of four thousand Eight
hundred and fifty dollars lawful
money of the United States of America
to them in hand paid by the said
parties of the second part the receipt
whereof is hereby confessed and acknow-
ledged have granted, aliened,
remised released enfeoffed and
confirmed and by these presents do
grant alien remise release enfeoff
and confirm unto the said parties
of the second part and to their heirs
and assigns forever all

here described the 10 quarter sections
containing 1616 $\frac{6}{10}$ acres of land
Together with all and singular the
hereditaments and appurtenances thereto
belonging or in any wise appertaining
and the reverses and reversions
remainder and remainders rents
issues and profits thereof and all
the Estate right title interest
claim and demand whatsoever
of the said party of the first part
either in Law or Equity of in and
to the above granted premises with

the said hereditaments and
appurtenances To have and to
hold the above mentioned and
described premises with the appurtenan-
ces and every part and parcel thereof
to the said parties of the second part
their heirs and assigns forever
and the said Isaac Esmy for
himself his heirs, Executors, and
administrators, doth covenant
grant bargain purchase and
agree to, and with the said parties
of the second part their heirs and
assigns to warrant and never
to defend the above granted
and every part and parcel thereof
now being in the quiet and peaceable
possession of the said parties of the
second part against the said parties
of the first part their heirs, Executors,
administrators, and assigns, and
against all and every other person
or persons claiming or to claim the
said premises or any part thereof

In witness whereof the
said parties of the first part have
herewith set their hands or seals
the day and year first above written
Sealed & delivered
In presence of

And your Orators shew that the foregoing proposals or terms of sale of the Land aforesaid to your orators were submitted to them by the said Emory in and by a letter written and signed by said Emory addressed to Messrs B Osborne of Rock Island aforesaid who was then the agent of said Emory in respect to said Land, and that as soon as the same were by said Osborne exhibited and made known to your Orators. Your Orators signified their acceptance and approval of said terms of sale and their readiness to comply with the terms thereof all which was immediately thereafter ^{by said Osborne} communicated to said Emory and your orators also at or about the same time made known to said Emory their acceptance of his terms of sale for the Land aforesaid.

And your Orators further shew that immediately after the said terms of the said Emory for the sale of the said Land became known to your Orators - Your Orators not only accepted the same as aforesaid but they also paid to said Osborne

agent of said Esmeray agreeable to the directions of said Esmeray the amount of taxes which had been paid on said Land, the last year, namely the year 1853 which taxes amounted to the sum of Sixty two dollars and seventy nine cents and also offered to pay and tendered to said Osborn agent of said Esmeray to receive the same the sum of Twelve hundred and fifty dollars as and for a payment towards said Land.

And your orators further shew that immediately after the payment of said sum of Sixty two dollars and seventy nine cents and the tender of said sum of Twelve hundred and fifty dollars as herein before mentioned the said Osborn at the solicitation of your orators and your orators also addressed a letter to said Esmeray at his post office address requesting of said Esmeray to forward a deed according to his proposition and agreement herein before specified but the said Esmeray has ever hitherto neglected and refused

to furnish such deed to your orators
or in any wise comply with and
perform his said agreement in
respect to the conveyance of said
Lands to your orators

And your Orators shew that
they are now and ever have been
ready on their part to execute
notes for said sum of Thirty six
hundred dollars payable in one
two and three years made payable
to whomever said Esmeray might
direct and execute a mortgage
for the security thereof upon said
Lands so soon as said Esmeray
should by deed convey to them
the sum aforesaid

And your orators shew that
relying upon the said written
proposition or agreement of the
said Esmeray and believing that
he would in good faith carry
into effect and perform the same
your orators at great expense and
sacrifice raised the said several
sums of money so paid and tendered
as aforesaid and since then have
kept on hand the said sum of

Twelve hundred and fifty dollars ready to pay the said Emory if he would receive the same in part consideration of the conveyance by him of the Lands aforesaid to your orators according to his said agreement and your orators now upon the filing of this bill of Complaint deposit with the clerk of said Court the said sum of Twelve hundred and fifty dollars for the said Emory in part consideration of his conveyance of said Lands to your orators and bring the same here into Court subject to the order of His Honor the Chancellor and Judge thereof.

And your Orators shew to your Honor that they on their part have fully complied and are ready to comply with all things demanded upon them to perform in respect to the written proposition or agreement of the said Emory hereinbefore stated and set forth and insist that the said Emory ought in equity and good conscience specifically to perform his said agreement and convey to your orators the lands aforesaid.

upon the conditions and terms set forth in said agreement

But now so it may please your Honor the said Esmay, conspiring and confederating with divers persons unknown to join with him when discovered your Orators pray may be made parties defendants to this bill of complaint & utterly refuses to perform his said agreements and pretends that he is under no obligation to do so or to pay to your Orators any damages for the breach thereof in his part all which acts and doings of said Esmay are contrary to Equity and good conscience and tend to manifest injury of your Orators

Wherefore inasmuch as your Orators are without remedy except in a court of Equity where matters of this sort are cognizable and releivable

Your Orators pray that the said Esmay may be made party defendant to this bill of complaint and make full answer to the same (his oath thereto being hereby expressly waived) and that upon the hearing of this cause that the said Esmay be

decreed specifically to perform with
your orator, his said agreement
and convey to your orator, the
Said premises with all the
privileges and appurtenances
upon the terms and in the manner
set forth in the agreement of said
Emery and that if need be that
a commissioner be appointed by
this honorable court to do on the
premises under the decree of this court
what the said Emery might in
Equity to do And that your Honor
grant to your orator, such other such
further relief as to Equity and
good conscience may appear therein

that the usual process of Subpoena
be granted in this cause
Directed &c and Commanding &c
and as in duty bound your orator,
will ever pray

Thosmas Blyden

Isaac Keyes

By Beardsley & Andrews
their Solicitors -

Endorsed Bill in Chancery

T Blyden & Isaac Keyes v. Isaac Emery

Plany, Cir, Ct, Oct Term 1854

Beardsley & Andrews
for complain

2484-9
Ind Aug 21, 1854
W. H. Haman

Albany 1854

"Exhibit A" Michl Boston

Filed Aug 21, 1854

Dear Sir I have 10 grs

William and
children

in all 1616 ⁶¹/₁₀₀ acrs at \$3 per ac
will be \$4850 Now it is full three
mors since we tuthed about \$3 per ac
and 6 mors since they offered \$3 per
part and the interest would have
amounted to \$100 - in the mean time
and the taxes have also come against
it since and besides they want
1.2.3 yrs at 6 percent for ³/₄ instead
of 1 & 2 yrs for ²/₃ which makes a
difference of considerable to me
and therefore I will make it as follows
viz They must pay you the last
years taxes which you have paid
about 60¢ and \$1250 down bal of
3600 in 1.2 & 3 years with 6 per cent
and you can retain \$50 for your com
and send me the \$1200 cash and the
mortgage and notes as above for the
\$3600 - This I think will be ^{no} more
than fair as you will see that the
balance of interest is much against
me I suppose your commission
are about 1 percent this is what I
have paid in Ohio and in Illinois

I have sold several pieces but paid
nothing as I bargained with the
parties themselves. If this will
answer write me immediately and
I will send you the Warranty deed
and all the papers be dated
1 May 1854. I do not like to be
too close but I am convinced
that the land will bring \$5 per acre
within 2 years from this time.
I will do my best to get Bulkeley to
sell his 2 qrs at same price
Yours with Respect

Grace Esmeray
P.S. If they wish I will try & get
McGuffey to sell his also but they
must pay for mine the last years taxes
and \$450 besides (125¢ down bal in 1,
2 & 3 years 6 p cent) P.E.

Accompanying the above is the form of
deed copied in the bill of complaint and
written thereon is the following trust

Wm W. B. Seers.

If they will answer write
immediately and I will send you
a deed like the above all property made

out and executed acknowledged and
ready for record dated May 1, 1854 and
the mortgage and notes to bear same
date of course you will see that they
are properly made out and go on
record with the deed

Yours &c. J. P. Esmeray

At a term of the circuit court begun
and held in Cambridge in the county of
Hennepin and state of Illinois on the fourth
Monday in the month of October in the
year of our Lord one thousand eight hundred
and fifty four in chambers sitting

present Hon. Geo. D. Wilkerson Judge
M. B. Potter Sheriff
Wm. A. Brainerd clerk

Truman B. Gorton	}	Bills to compel specific performance
& Isaac Rogers		
vs Isaac Esmeray		

At this day came the
plaintiffs in this cause by Beardsley and
Andrews their attorneys and it appearing
to the court that affidavit of the non
residence of the said defendant had been

duly filed with the papers in the Clerk's office. And it also appearing to the Court that notice had been given to said defendant by publication in the Henry County Dial a weekly newspaper published in Cambridge in the County of Henry and State of Illinois according to the form of the statute in such case made and provided - the proof of which is herewith filed and the said Isaac Esmeray the defendant in this cause having been three times solemnly called came not but made default.

It is therefore ordered, adjudged and decreed by the court that the allegations and charges in the said bill contained be taken for confessed and bill set for separate hearing before Ben Graham Master in Chancery. Leave given complainant by the court to withdraw the tender money and retain the same until further order of the court and it is further ordered by the court that this cause stand continued to the next term for report of Master.

Henry Circuit Court
April Term A.D. 1855

Gorton & Noyes Plffs

vs

Isaac Esmay Deft

Subpoena for W.B. Osborn

Serving 25¢

Mileage & return 15 40¢

Filed this 17 day of March 1855

W.A. Barnard clerk

Served on the within named W.B. Osborn by
reading the same to him this 9th day of March
A.D. 1855 -

T.B. Gorton Sheriff of
Rock Island County Ill.

The people of the state of Illinois

To the Sheriff of Rock Island County greeting

We command you to summon Isaac B. Osborn
to appear before our circuit court on the first day
of the term thereof to be held at Cambridge within
and for the said County of Henry on the first Monday
of April then and there in our said court to testify
and give evidence in behalf of the Plaintiff
in a certain cause to be heard and tried
wherein Truman B. Gorton & Isaac Noyes are
Plffs and Isaac Esmay is defendant
Hereof fail not and make due return

of your doings hereon

Witness W H Hammond clerk of said Circuit Court and this seal of

thereof at Cambridge this 3rd day of March A D 1855

W H Hammond clerk

by W L Dubrynpfle Deputy

Filed Mch 3, 1855

W H Hammond clerk

Rock Island Feb 28, 1855

The clerk of the Circuit Court of Henry County will please issue subpoena for Thomas B Gorton & Isaac Kays, versus Isaac Emery to the Sheriff of Rock Island County Illinois returnable to the next term of Circuit Court of said Henry County

Beardsley & Audenbury

Sol for Kays & Gorton

Thomas B Gorton

& Isaac Kays

Complainants

vs

Isaac Emery Defendants

Testimony taken before Master in Chancery
fees \$6⁵⁰ paid

The undersigned Master in Chancery in and for said court of Henry to whom was referred the above cause by said court for the purpose of taking testimony therein and reporting the same to the Court respectfully reports that on this the third day of April A.D. 1855 Master B. Osborne appeared before me and being by me first duly sworn deposed and hath in answer to the following interrogatories viz

Inter First What is your name, place of residence and occupation

answer My name is James B. Osborne. I reside in the City of Rock Island State of Illinois & my occupation is Land Agent

Inter Second Are you acquainted with the parties Complainants & defendants in this cause or either of them — If so how long have you known them or either of them

answer I am acquainted with all of them & have known them several years

Inter Third Where do the said parties reside

answer E. may the defendant reside at Albany in the State of New York the Complainants are residents of the City of Rock Island State of Illinois

Inter Fourth Are you acquainted with the Land

described in said Complainants bill
and who was the owner thereof previous
to and on the first day of May A.D. 1854

Answer I am acquainted with them and they
were owned on those dates by Isaac
Esmay the Defendant

Inter Fifth In what capacity were you acting in
respect to said Lands in or about the
first day of May A.D. 1854 and for
whom and by whose authority were
you acting

Answer I was acting as agent for the sale of
said Lands and the payment of taxes
for Isaac Esmay the Defendant my
agency in respect to the sale of said
Lands was to find a purchaser or
purchasers for them

Inter Sixth Have any propositions in writing
or otherwise ever been made by the
defendant Esmay through you as his
agent to any person or persons for the
sale of said Real Estate If so to
whom and when

Answer The defendant Esmay has for a
number of years desired me verbally
and by letter to find a purchaser
or purchasers for his said Lands -
at his request I called upon him at

his home in Albany on or about the
first day of Feby 1854 when he
instructed me to find a purchaser for
the whole of his Land in Henry County
State of Illinois at three dollars per acre
as an inducement to me to procure
purchasers he proposed to invest a half
of the proceeds of said Land in my
real Estate in the city of Rich Island

I communicated to the Complainant
the Defendants desire to sell said Land
with the terms as I understood them
from him - The complainant made
a proposition to said Defendant through
me as his agent for the purchase of
said Land described in said Bill
which he the defendant refused to accept
afterwards and in the year A.D. 1854
the said defendant made a proposition
in writing through me to said
Complainant to sell said Land
described in said bill which
proposition I submitted on or about
the first day of May A.D. 1854 to
said Complainant

Enter Swaths Look at paper herewith shown to you
marked "Exhibit D" State whether
the same is the original of which

"Exhibit A" filed in this cause is the copy and is the signature thereto a genuine signature of the defendant to this cause. Also state whether "Exhibit Q" contains the proposition for the sale of said Land from the defendant to the said complainants referred to by you in your last answer. answer I have examined the paper shown me and marked "Exhibit Q" and I find it to be the original of which Exhibit A is the copy the signature to the said Exhibit Q I know to be the genuine signature of the defendant as I have frequently seen him write. The paper marked Exhibit Q contains the proposition for the sale of said land to the complainants as referred to in my last answer.

Inter Eighth When did you receive the same and how did you receive it and what accompanied it. state fully

answer In the first part of May 1854 I received it by mail addressed to me accompanied by a blank deed partially filled which the defendant sent as a form which he would execute if it was satisfactory containing

certain directions to me a copy of which
Blank Deed and memorandum or
directions is incorporated in the
Complainants bill

Inter Ninth Look at a Paper herewith shown you and
marked Exhibit P and state whether
that be the same as referred to in your
last answer

Answer It is the same

Inter Tenth At the time of the communicating
made to the complainants of the proposition
contained in Exhibit Q did you show
them said exhibit and accompanying
instrument of which you have already
testified

Answer I did

Inter Eleventh Did the said complainants accede
to the terms so proposed in Exhibit Q

Answer They did immediately upon said
proposition being communicated by
me to them

Inter Twelfth Did the said complainants comply with
the terms so proposed by said Defendant
if so state particularly how they complied
therewith

Answer They paid me Sixty two ⁷⁴/₁₀₀ dollar pastures
of 1853 and as required by the Defendant
They further tendered me the payment

the sum of Twelve hundred and fifty dollars being the amount required as the first payment upon the land and expended themselves ready at any time when I should require it to execute the notes and mortgage in accordance with the terms of the defendants proposition

Inter Thirteenth Look at Paper marked Exhibit 2 and herewith shown to you state whether the sum is the receipt for taxes agoing paid by complainants to you as testified by you in your last answer

answer It is the same

Inter Fourteenth Why did you not receive the tender heretofore testified of by you
answer Because I did not wish to send the money before the seed was received and being unwilling to keep the money on my hands men played and knowing that the complainants would keep their tender good

Inter Fifteenth Have the said notes and mortgage ever been executed by said complainants, If not, why

answer They have not Not having received the seed from the defendant I have

never required of said complainants
to execute the mortgage and notes
Inter Sixteenth Upon the acceptance by the
Complainants of the terms proposed by
said defendant what steps did you take
as regards notifying said defendant
of said acceptance and when

Answer I notified the defendant by letter of the
acceptance of his terms by the Complainants
on or about the month day of May 1854
and requested him to forward a deed
as he proposed

Inter Seventeenth Do you know if said defendant
received your letter containing said
notification of said acceptance

Answer I know that he did because he wrote me
afterwards a letter acknowledging the
receipt of my letter of notification of
acceptance

Inter Eighteenth In the answer of said defendant
to your letter as testified in your last
answer what reasons if any were given
for not complying with the terms proposed
by him and accepted by said Complainants

Answer I consider that the principal reason assigned
by him for not fulfilling his contract with
the complainants was that the contemplated
construction of the Warren and Rockford

Rail Road had enhanced the value
of the said lands sold to said
complainants

Further Nineteenth Do you know of the defendants ever
having owned any other lands in
the said county of Henry other than
those described in said Complainant's
bill

Answer I do not I was not the agent in
respect to any other lands for the
defendant situated in said Henry
county state of Illinois or elsewhere
except the tracts in said
Complainant's bill described

Witness B B Osborn

State of Illinois }

Henry County } I hereby certify that
on this third day of April A.D. 1855
appeared before me B B Osborn who
being by me first duly sworn
testified to the facts in the foregoing deposition
to which his name is attached the said
deposition was sworn to and
subscribed by said Osborn before me
I further certify that the exhibits
C, P, & Q are the exhibits referred to in
said deposition and I herewith
return to the court as a part

of this deposition -

Given under my hand and
Seal this third day of April
A D 1855

Ben Graham ES
Master in Chancery

W Boston, Commencing receipt for
\$1250 April 13, 1855 -

Filed April 9, 1856

W L Dabrymple Clerk

Received April 13, 1855 of Truman B
Gorton & Isaac Egan, the sum of
Twelve hundred and fifty dollars,
being amount paid under a certain
decree of the Circuit Court in & for the
Emity of Henry the State of Illinois
made in a certain cause therein
determined at its April term A D 1855
on the chancery side thereof wherein
said T B Gorton & I Egan, were
complainants, & Isaac
Egan was defendant and
being the payment to be made down
under said decree -

\$1250 Marcus B. Olson
Commissioner

State of Illinois } ss Circuit Court for
Henry County } said county
April Term A.D. 1855

In Chancery

Torrence Blythe & Isaac Esmy

vs
Isaac Esmy

} Bill for specific
} Performance

And now come the said Torrence Blythe
and Isaac Esmy ^{complainants} in the above entitled
cause by Benjamin & Andrews their
Solicitors and in their motion this
cause now comes on to be heard upon
the bill of complaint herein and
upon the testimony taken and reported
under the order of this court by Benjamin
Master in Chancery in and for said County
and it appearing to the court that due
notice of the pendency of the bill of
Complaint herein has been given
according to law by publication
in the "Henry County Sentinel" a weekly
newspaper printed and published in
said county of Henry and the said
Isaac Esmy defendant in the
said cause having been three times
whenever called came not but made
default It is therefore ordered

adjudged & decided by the Court that the
allegations and charges in the said bill
of Complaint contained be taken
per confesso. And it appearing to
the Court from the testimony taken and
reported by the said master as aforesaid
that the allegations and charges in said
Complaints bill are true and
particularly that in the year A.D. 1834
the said defendant submitted to the said
complainants by (the said defendants)
written proposition signed by the said
defendant in the sale and conveyance
to said complainants of certain Real
Estate in the said bill of Complaints
herein mentioned and which is described
as follows to wit The North West quarter
of section four (4) in Township fifteen (15)
North one (1) East 4th P.M. also the South
West quarter of section Thirteen (13) the
North East quarter of section Twenty
two (22) the North East quarter of section
Twenty three (23) the North West quarter
of section Twenty three (23) the North
West quarter of section Twenty four (24)
the North East quarter of section Twenty
four (24) the North West quarter of section
Twenty six (26) and the North West

quarter of section Thirty five (35) all
in Township Sixteen (16) North
Range one (1) East 4th P. M.
also the North West quarter of section
Twenty nine (29) in Township Sixteen
(16) North Range Two (2) East 4th
P. M., all situate in the county of Henry
in the state of Illinois

And it appearing to the Court
that in and by the terms of the said
proposition of the said defendant
he the said defendant agreed
to sell and convey to said
complainants the said several
quarter sections of Land upon the
following terms and conditions
viz said Complainants to pay
to Marcus Bosborn the agent of said
defendant the last years taxes upon
the said Land twelve hundred and
fifty dollars down and to execute notes
for thirty six hundred (\$3600) dollars
payable in one two & three years with
six per cent interest secured by mortgage
upon said premises and both said
notes and mortgage to bear date the
first day of May A.D. 1854 and it further
appearing to the court that the said

defendant or and by his written proposition
aforesaid agreed that in case the said
complainants accepted the terms aforesaid
he the said defendant would forward to
his agent the said M B Osborn for
said complainants a deed of Warrant
of the form in the said bill of complaint
contained and is further appearing
to the Court that immediately after the
said term of the said defendant was
submitted and made known to the
said complainants they the said
complainants accepted the same
unconditionally and in accordance
therewith they immediately paid to
said Osborn agent for defendant
as aforesaid the amount of Taxes, which
had been paid on the said lands the
last year namely, the year 1853 which
taxes and costs amounted to the sum of
sixty two ⁹⁹dollars and seventy nine cents
and took the receipt of the said Osborn
as said ~~Osborn~~ ^{agent} ~~agent~~ ^{therefor}
and also offered to pay and tendered
to said Osborn agent of defendant to
receive the same the sum of twelve
hundred and fifty dollars, as and
for a payment towards said land

and also engaged themselves, ready and
willing to execute notes and mortgage
in and to the direction of the said Osborn
as and as aforesaid to the said defendants
whenever he the said Osborn might
require them to do so and have been ever
since ready and willing so to do
and it further appearing to the Court that
immediately after the acceptance by the
Complainants of the said proposition
for the sale and conveyance of said
land and the payment of the said
sum of Sixty two dollars and seventy
nine cents as aforesaid and the tender
of the ^{sum of} Twelve hundred and fifty
dollars as before mentioned herein
the said Osborn notified the said
defendant of the acceptance of his
(defendant's) proposition for the sale
of said land by said Complainants
(which notification it appears to the
Court was received by the said
defendant) and requested the
said defendant to forward a
deed according to his said proposition
as aforesaid
And it further appearing to the
Court that the said defendant

hath hitherto wholly neglected and absolutely refused to comply with his contract herein and is further appearing to the Court (the same being a matter of record herein) that the said complainants upon the filing of their bill of complaint herein did bring into Court the said sum of Twelve hundred and fifty dollars, subject to the order of the Court and the same having been by leave of Court withdrawn by complainants and is now here again brought into Court.

It is then ordered, adjudged and decreed by the Court that the allegations and charges in the said bill of complaint set forth are true.

It is further ordered, adjudged and decreed by the Court that the said contract and agreement for the sale of the said land by the Defendant be specifically performed.

It is further ordered, adjudged and decreed by the Court that upon the payment by the said complainants of the sum of twelve hundred and fifty dollars to Marcus Boston agent,

aforsaid the said Osborn (who is hereby
appointed a Commissioner to carry
out this decree) shall execute
seal and deliver ready for record
to the said complainants a Warranty
deed of like form as that contained
in the bill of complaint herein
conveying all the interest title
and estate of the said defendant
in and to the said Real Estate
described herein to said complainants
It is further ordered and adjudged
and decreed by the Court that
upon the execution and delivery
of said deed to complainants by
said Osborn they the said
complainants shall execute their
notes to said defendant for the sum
of \$360/ Thirty six hundred Dollars
payable in one two and three years
with interest at six per cent and
also execute a mortgage upon the
said Land to secure the said notes
and deliver the same to the said
Osborn It is further ordered
that upon the payment of the said
sum of Twelve hundred and fifty
dollars as aforesaid and upon the

execution and delivery of the notes
and mortgage as aforesaid that the
title to the said real estate shall
become vested in the said complainants.
It is further ordered that the said
commissioner make report of his proceedings
under this decree to this court
at its next term and that the
costs of this proceeding be paid by
the said defendant and that
the said Osborn commissioner as
aforesaid retain out of the first
moneys received by him under
this decree the costs of this suit
and the sum of fifty dollars which
is allowed him by the court for
his services as commissioner in
executing this decree and that
he pay the balance of the money
to be by him received as aforesaid
to the said defendant.

Dra O Wilkinson

A term of the circuit court began
and held in Cambridge on the first
Monday in the month of April in
the year of our Lord one thousand

eight hundred and fifty five in
Chancery sitting the following
proceedings were heard
between Henry Brad Wilkins^{vs}
Thos Faver^{vs} per Shuff
Thos Braman clerk

April 2, 1855

Thomas Braman

Isaac Vigney } Bill to enforce
vs } Specific performance
Isaac Esmaiz }

At this day this cause
coming on to be heard and appearing
to the court from the testimony taken
and reported by the said, was the
assessors said that the allegations
and charges in said complaint
bill are true and particularly that
in the year AD 1854 the said defendant
submitted to said complaint
his (the said defendant) written
proposition signed by the said defendant
for the sale and conveyance to the
said complaint of certain
real estate in the said bill of complaint
herein mentioned and which is
described as follows to wit The forth

west quarter of Section four (4) in Township
(15) fifteen north Range One (1) East
of the 4th P. M. also the South West
quarter of Section thirteen (13) the
North East quarter of section twenty
two (22) the North East quarter
of section twenty three (23) the
Northwest quarter of section Twenty
three (23) the North west quarter of
Section Twenty four (24) the North
East quarter of section Twenty four
(24) the North west quarter of section
Twenty six (26) - and the North west
quarter of section Thirty five (35)
all in Township ~~Sixteen~~ (16)
North Range One (1) East
of the 4th P. M. - also the
Northwest quarter of section
twenty nine (29) in Township
Sixteen (16) North Range Two (2)
East of the 4th P. M. all situated
in the County of Henry State of Illinois
And it appearing to the Court
that in and by the terms of the said
proposition of the said defendants
the said defendants agreed
to sell and convey to said
complainants the said several

quarter sections of land upon the
following terms and conditions
viz Said Complainants to pay to
Maurice B Osborn the agent of the
said defendant the last years
taxes upon the said land
Twelve hundred and fifty dollars
down and to execute notes for
Thirty six hundred dollars
payable in the two & three years
with six percent interest secured
by mortgage upon said premises and
both said notes and mortgage to bear
date the first day of May A.D. 1854 And
it further appearing to the court that
the said defendant in and by his
attorney prothonotary aforesaid agreed that
in case the said complainants
accepted the terms aforesaid he the said
defendant would forward to his agent
the said Maurice B Osborn for said
complainants a deed of warranty of
the form the said bill of complaint
contained and it further appearing
to the court that immediately after
the said terms of the said defendant
were submitted and made known to the
said complainants they the said

complainants accepted the same unconditionally and in accordance therewith they immediately paid to said Osborn agent for defendant as aforesaid the amount of taxes which had been paid on said lands the last year namely the year 1853 which taxes and costs amounted to the sum of sixty two dollars and seventy nine cents and took the receipt of the said Osborn as said agent therefor and also offered to pay and tendered to said Osborn agent of defendant to receive the same the sum of twelve hundred and fifty dollars as and for a purchase money toward said land and also expressed themselves ready and willing to execute notes and a mortgage under the direction of the said ~~defendant~~ Osborn agent as aforesaid to the said defendant whenever the said Osborn might require them to do so and have been ever since ready and willing so to do — And it further appearing to the court that immediately after the acceptance by the complainants of the said proposition for the sale

and conveyance of the said land and
the payment of the said sum of sixty
two dollars and seventy nine cents as
aforesaid and the tender of the said sum
of twelve hundred and fifty dollars
as before mentioned herein. The said
Orbon notified the said defendant
of the acceptance of his (defendant's)
proposition for the sale of said land
by the said complainant (of which notification
it appears to the court was received by the
said defendant) and requested the
said defendant to forward a deed
according to his said proposition as
aforesaid. And it further
appearing to the court that the said
defendant hath hitherto wholly
neglected and absolutely refused
to comply with his contract herein
and it further appearing to the court
(the same being a matter of record herein)
that the said complainant upon the
filing of their bill of complaint herein
did bring into court the said sum of
twelve hundred and fifty dollars subject
to the order of the court and the same
~~having~~ been by leave withdrawn by
complainant and is now again brought
into court. It is therefore ordered

adjudged and decreed by the court that the allegations and charges in the said bill of complaint set are true. It is further ordered adjudged and decreed by the Court that the said contract and agreement for the sale of the said land by the defendant be specially performed.

It is further ordered adjudged and decreed by the court that upon the payment by the said complainants of the sum of twelve hundred and fifty dollars to Henry B. Osborn agent of aforesaid the said Osborn (who is hereby appointed a commissioner to carry out said decree) shall execute seal and deliver ready for record to the said complainants a warranty deed of like form as that contained in the bill of complaint herein conveying all the interest title and estate of the said defendant in and to the said real estate described herein to said complainants.

It is further ordered adjudged and decreed by the court that upon the execution and delivery of said deed to said complainants by said Osborn they the said complainants

shall execute their notes to said defendant
for the sum of thirty six hundred dollars
payable in one two and three years with
interest at six percent and also execute
a mortgage upon the said land to secure
the said notes and deliver the same
to the said Osborn

It is also further ordered that upon
the payment of the said sum of twelve
hundred and fifty dollars as aforesaid
and upon the execution and delivery
of the said deed for said land as
aforesaid and upon the execution
and delivery of the notes and mortgage
as aforesaid that the title to the said
Real Estate shall become vested in
the said complainants

It is further ordered that the said
commissioner make report of his
proceedings under this decree to this
court at its next term and the costs of
this proceeding to be paid by the said
defendant and that the said Osborn
as commissioner as aforesaid retain out
of the first monies received by him under
this decree the costs of this suit and the sum
of fifty dollars which is allowed him
under this decree by the court for his
services as commissioner in executing

this decree and that he pay the balance
of the moneys to be by him received as
aforesaid to the said defendant

Lin O. Wilkinson

Henry County Circuit Court } In Chancery
Isaac Emory } Sept Term 1855
advs }
Nehemiah & Horton }

And now comes the said
defendant by Hoyme and Miller his
solicitors and moves upon the petition
and answer filed hereunto that the
decree entered in said cause be set
aside and that he be permitted to
defend there.

Hoyme and Miller
defendants solicitors

under Henry County Circuit Court

Isaac Emory advs Nehemiah & Horton

Motion to set aside decree

Filed Sep 3, 1855 W. H. Brannan clerk

Hoyme & Miller defts solicitors

Nehemiah & Horton } Henry County Circuit Court
& Isaac Kays } Sept Term 1855
vs } In Chancery
Isaac Emory }

It is hereby agreed by and

between the parties to this suit that in case
the court shall sustain defendants
motion to set aside the decree herein and
reopen the cause that the decree to be
entered shall further stipulate that
the complainants may have twenty
days in which to ~~file their replication~~
except or reply to defendants answer and
in case they file their replication to said
answer that the same shall stand for
hearing and either party may on giving
reasonable notice to the solicitor for the
other party take testimony in the case
before Geo W Pleasant, Esq at the city
of Rock Island to be read in the
hearing of said cause

Ed Wilkinson solicitor for Compts

Hoynes & Miller depts Solicitor

Endorsed by Noyes & Gorton

up
Isaac Esmeray

agreement

filed Sep 3, 1855

Wm H. Hammond clerk

over

Henry County Circuit Court

In Chancery

Franc Esmay,
advs

Thomas B. Foster & Francis V. Rogers

To the Honorable J. Nelson
Senior Judge of the Henry County
Circuit Court

Your petitioner Francis Esmay
would Respectfully shew unto your
honor that he is defendant in the
above entitled cause that the same
was commenced for the purpose of
compelling your petitioner to convey
certain real estate to said complainants
described in the bill of complaint filed
in said cause and that as your
petitioner is informed a final decree
therein was entered against your petitioner
at the April Term of the said court
last past in pursuance of the prayer
of said bill, Your petitioner would
further state that he is not a resident
of the state of Illinois but was at the
time of the commencement of said
suit and hath since continued to be
a resident of the state of New York and
that he has never been summoned
or in any manner been notified to

appear to defend said action but that
the proceedings therein were had and the
final decree entered without the knowledge
of your Petitioner and without his
having appeared in said suit by his
Solicitor or otherwise. Your Petitioner
would further state that he has a
good and meritorious defense to said
action as he verily believes and he prays
therefore that he may be permitted to
be heard touching the matter of
such decree and to file his answer to
the complainant's Bill of Complaint
dated Albany Aug 15. 1855 Isaac Esmay

State of New York }
Albany City and County } ss Isaac Esmay being
duly sworn deposes and says that
he has read the foregoing petition and that
the same is true except as to matters
therein stated as in his information
and belief and that as to those matters
he believes it to be true.

Sworn to before me this, Isaac Esmay
fifteenth day of August 1855
W. D. Scheraga Commissioner of Deeds

State of New York }
City and County of Albany Clerk's Office } ss
I Robert Harper Clerk of the said

city and county and of the County of
Record, therein whereby certify that W. L.
Moran, whose name is subscribed to the
jurat of the annexed affidavit was on
the day of the date thereof a Commissioner
of Deeds in and for the city of Albany
duly authorized to administer oaths
for general purposes and that I
am well acquainted with the hand
writing of the said Commissioner and
verily believe that the signature to the
said jurat is genuine.

In testimony whereof I have hereunto
set my hand and affixed my official
Seal this 15th Day of August 1855

R. Halper clerk

and Isaac Esmer

vs
Freeman B. Gorton & Isaac Esmer

In chancery
Filed Sep 3, 1855 W. H. Braman clerk

In chancery Henry County New York
of the September term 4th 1855

The answer of Isaac Esmer defendant
to the bill of complaint of Freeman B.
Gorton and Isaac Esmer Complainants

This defendant mir and at all times planning
and reserving to himself all advantages and
benefit of exception to the Errors and
imperfections in the said bill of complaint
of said complainants answer thereto
or to so much thereof as he is advised it
is material for him to make answer to
answering admits that at the time of
the filing of the said bill of complaint
he was seized and possessed in fee of the
following described Lands situate in the
county of Henry aforesaid to wit the North
West quarter of Section 1, Town 15 North R 1 E
of 4th P.M. also the South west quarter of
Sec 13 the North East quarter of Sec 22 the
North East quarter of Sec 23 the North west quarter
of Sec 23 the North East and the North west
quarters of Sec 24 the North west quarter of
Sec 26 and the North west quarter of Sec 35
all in Town 16 North Range 1 East of 4th P.M.
and also the North west quarter of Section 9
in Township 16 North Range 2 East
and that he is still seized and possessed
of the same and he admits that with
a view to purchase said lands from this
defendant the said complainants through
M B Osborn commenced negotiating
therefor with this defendant shortly
prior to the first of May A.D. 1854

And this defendant admits that shortly
subsequent thereto he addressed to M B
Osborn to be submitted to said complainants
the terms upon which he would be willing
to sell said lands to said complainants
but he denies that he therein agreed to
sell and convey to said complainants
the said quarter sections of land aforesaid
upon the terms and conditions stated
in said bill of complaint to wit: that
the said complainants should pay to the
said M B Osborn as agent for this defendant
the taxes thereon for the year 1853 or the years
previous to the said first day of May and
Twelve hundred and fifty dollars or more
to M B Osborn as agent as aforesaid and
Rock Island and Execute note for thirty six
hundred dollars secured by a mortgage on
said premises as stated and charged
in said Bill of complaint. But this
Defendant says that the negotiations for
the purchase of said lands so far as the
same proceeded was conducted and
carried on by the said M B Osborn on
the part of said complainants and
their proposition to purchase said lands
was made ^{to this defendant} by and through said M B
Osborn and this defendant in reply
thereto stated the terms upon which he

would be willing to sell and convey said land
to said complainants which terms were
as follows to wit that the said complainants
should pay all taxes which had accrued
on said land, further you promise to the
said first day of May and twelve hundred
and fifty dollars in cash and the balance
to wit the sum of thirty six hundred dollars
in equal payments over two and three years
with interest thereon at the rate of six per
cent per annum secured by the promissory
notes of said complainants with a
mortgage of said land duly executed
by said complainants to the defendant,
the said Osborn to retain but fifty dollars
of said twelve hundred and fifty dollars
for all commissions to be paid by this
Defendant and to send this Defendant
the remainder of said cash payment to wit
the full sum of twelve hundred dollars
together with the notes and mortgage
given as aforesaid. And this Defendant
states and expressly charges that it was
understood by him and distinctly made
a part of said proposition for the sale of
said land that he should receive the
sum of Twelve hundred dollars out of the first
or cash payments for said land and
that he should not be required to pay

more than the sum of Fifty dollars for
conveying or his proportion of the cost
to be paid for negotiating the sale and
purchase of said Land, in case the same
should be consummated. And it was
upon this express condition among others
that this defendant agreed to convey said
premises as herein before mentioned to
said complainants.

This defendant further answering
admits that in case said terms herein
before stated were acceded to by said
complainants in consummation of said
sale and as a part of said proposition he
agreed to execute to said complainants a
warranty deed of said land of the form set
forth in said bill of complaint and containing
the covenants of warranty as therein stated and this
defendant at the same time transmitted to
said Osborn in the proposition or terms for the sale
of said Land, herein before stated and as a
part thereof the form of such deed duly
filled up with the exception of the description
of the premises to be conveyed for the purpose
of answering said complainants of the extent
of the covenants and assurances, he was willing
to execute should his terms in other respects
be acceded to. And this defendant admits
that the said Osborn was then and had

for some time prior thereto been the agent of this
Defendant in respect to said Land, but this
Defendant says that such agency was
confined to the payment for this
Defendant of such taxes as might from time
to time be levied or assessed thereon and
to the receiving and transmitting for the
consideration and determination of
this Defendant any proposals which might
be made to him for the purchase thereof
and this Defendant is not a disinterested man, does
he know whether the proposition and terms
for the sale of said premises to said Com-
plainants communicated to said Osborn
by this Defendant as aforesaid was submitted
to said complainants but he denies that
the said complainants assented to or
accepted said proposition or terms or that
the said Osborn ever communicated to this
Defendant their acceptance thereof as
stated and charged in said bill of
Complaint or that the said complainants
at or about the same time made known
to this Defendant their acceptance of said
terms & proposition as is therein stated
and charged. But this Defendant
says that the said Osborn at the instance
and on behalf of said complainants
in reply to his communication made

reaffirmed and containing his terms and
proposition for the sale of said land by letter
addressed to this Defendant and bearing
date the 9th day of May A.D. 1884 declined
to receive the said sum of Fifty dollars
in satisfaction of all commissions to be paid
by this Defendant or to send to this Defendant
the sum of twelve Hundred Dollars out of the
first payment to be made by said Complainants
and also at their instance and in their
behalf declined to accept or receive a Deed
of said Land of the form submitted by
this Defendant and containing the covenants
therein set forth but sent to this Defendant
to be executed by him and Eliza V. Esmy
his wife a form of conveyance materially
different therefrom and containing notably
other and materially different but also
additional covenants to be executed by this
Defendant and also by the wife of this Defendant
and the said Osborne the said stated that
the said notes and mortgage given to secure
the balance of said purchase money would
be made payable at the Rock Island Bank
at Rock Island instead of at Albany in
the state of New York where this Defendant
was then and is now residing all of which
was wholly unauthorized by this Defendant
and a direct and material departure from

the proposition and terms submitted by
him as aforesaid. And the defendant
thereupon and as soon as said letter was
received by him communicated to said
Osborn by letter his unwillingness to change
or alter in any respect the terms and
propositions for the sale of said Land to
said complainants as originally submitted
by him or to comply with the terms
and conditions communicated to him
by said Osborn on the part of said Com-
plainants; and at the same time advised
the said Osborn that he should discontinue
and proceed no further on the negotiation
with said complainants and that his
proposition for the sale of said Land to
said complainants was withdrawn.

This defendant further answering
says he does not know and therefore denies
that said complainants paid to said
Osborn the amount of Taxes which had been
paid on said Land for the year 1853 or that
they offered to pay and tendered to said
Osborn the sum of Twelve Hundred dollars
or any payment towards said Land
as stated and charged on said Bill of Complaint
and he desires that the said Osborn by letter
requested this defendant to forward a deed of
said Land according to his proposition for

a sale of the same to said complainants as is therein stated. But he admits that he received a letter from T. Blorton one of said Complainants bearing date on the 15th day of June A.D. 1854 requesting this defendant to convey said Lands to said complainants or either of them which was the only letter received by this Defendant from said Complainants or either of them respecting said Lands but this Defendant says that said letter was written after said complainants were advised by said Osborn that this Defendant had refused to comply with the terms and conditions communicated to him by said Osborn on the part and in behalf of said Complainants and had withdrawn his proposition for the sale of said Lands to said Complainants.

This Defendant further answering says that he has no knowledge information or belief as to whether said complainants have been ready to execute promissory notes for payment of said sum of thirty six hundred dollars and a mortgage for the security thereof as charged in said Bill of Complaint or whether said Complainants have ever in fact raised or kept or have any sum of money to pay to this Defendant for said Lands as therein stated. But this Defendant says that he has never made any

Contract or agreement with said Complainants
for the sale to them of these Lands nor has he
ever made or caused to be submitted to them
or either of them any proposition for the
sale of said Lands except as herein before
stated which not having been acceded
to was withdrawn by this Defendant
as herein before stated

And this Defendant humbly
submits and insists that he ought not to
be compelled to convey said Lands to said
Complainants And he denies all
confederacy and conspiracy charged
against him in the said Bill of Complaint

Without that that any other
matter or thing in the said Bill of
Complaint contained and not
herein and hereby well and
sufficiently answered unto Confessed
and avoided traversed or denied is true
to his knowledge or belief - all which
matters and things this Defendant
is ready to over prove and maintain
as this Honorable Court shall direct
and prays to be hence dismissed with his
costs and charges in this behalf most
wrongfully sustained

Isaac Emsay

State of New York

Albany County } SS

Isaac Esmay being
duly sworn deposes and says that
he has read the foregoing answer and
that the same is true except as to the
matters therein stated on his information
and belief and that as to these matters
he believes it to be true

Sworn to before me this 15th day of August 1855

day of August 1855

Isaac Esmay

W. S. Morange Clerk of said County

State of New York

City and County of Albany Clerk's Office

I Robert Harper clerk of the said
city and county and of the courts of record therein do
hereby Certify that W. S. Morange whose name
is subscribed to the jurat of the annexed
affidavit was at the day of the date thereof
a commission of deeds made for the city of
Albany duly authorized to administer oaths
for general purposes; and that I am well
acquainted with the hand writing of the said
commissioner and verily believe that the
signature to the said jurat is genuine

In testimony whereof I have hereunto

Set my hand and affixed my official
seal this 15th day of August 1855

R. Harper clerk

undum Henry Co Circuit Court

Inaac Emay adrs Vaynes & Gorton
In Chancery

answer

Filed Sep 3 - 1855 W. H. Brinnant clerk
Hoyne & Miller defdts Soley

Truman B Gorton &
Inaac Vaynes Complainants }
vs } In Chancery
Inaac Emay defdt }

Now at this day
came the complainants by J. C. Wilkinson
their solicitor and the defendant by Hoyne
& Miller his solicitors and the complainants
now file the report of Chauncy B Osborne the
Special Commissioner appointed at the
last term of this court to execute the
decree entered herein at said term
and the complainants thereupon enter
their motion for an approval and
confirmation of the report of the said
Commissioner and the defendant by
his solicitors now come and move the
court upon petition and answer now
here presented and filed to set aside
the decree entered herein at the last
term and to allow the said Defendant

to be heard touching the matters complained
of in said writ and the said motions
now being heard by the court and duly
considered it is ordered and decreed
by the court that the complainant's
motion be overruled and the defendant's
motion be sustained and that the
decree entered herein at the last term
be set aside and the said cause be
opened for a rehearing and that
defendant pay the costs herein up
to this date

JW Drury

and now by agreement of the parties by
their solicitors herein filed It is ordered
by the court that the complainant have
Twenty days in which to make a reply
to defendant's answer and in case
the complainant shall file their repli-
cation to said answer the same
shall stand for hearing and either party
may or giving reasonable notice to the
solicitor for the other party take testimony
in the case before Geo W Pleasant Hay
(Commuter mutually agreed upon) at
his office in the city of Rich. Land to be
read in evidence at the hearing of
this cause

JW Drury

endowed Porter & Briggs }
vs } Decree on motions
Esmay }
Filed Sept. 1855 Wm H Braman clerk
Hoyne & Miller Chicago

At a term of the circuit court begun and
held in Cambridge in the county of Henry
and State of Illinois on the first Monday
in the month of September in the year
of our Lord one thousand Eight hundred
and fifty five in Chancery sitting the
following proceedings were had
present J Wilson Drury Judge
Thos F Savenper Sheriff
Wm H Braman clerk

Thomas Porter }
& Isaac Briggs } Bill to enforce contract
vs } Cont for rep of
Isaac Esmay } Commissioner

At this day came
the complainants by Wilkins
their solicitor and the Defendant
by Miller his solicitor and this cause
being now called up to be heard
motion is made by defendant
counsel to set aside the decree of former
term and also to file their petition and

and answer to said complainant bill
and the court being fully advised as to
the matters and things therein alleged
and set forth ordered that said motion
of defendant be sustained
whereupon the Complainant by
his counsel enters a motion to
have the report of the Commissioner
approved and confirmed which
motion on deliberation was
overruled by the court and
ordered by the court that this
cause stand continued to
next term

The replication of Truman B. Gorton and
Isaac Steyns complainants to the answer
of Isaac E. Emery defendant

These replicants saving and
reserving to themselves all and all manner
of advantage of exception to the manifold
insufficiencies of the said answer
replication thereunto said that they will
aver and prove their said bill to be true
certain and sufficient in the law
to be answered unto - and that the said
answer of the said defendant is untrue
untrue and insufficient to be replied unto

by these replicants without this, that any
other matter or thing whatsoever in this said
answer contained material or effectual
with the Law to be replied unto, confessed
and avoided, traversed or denied, or true
all which matters and things these
replicants are and will be ready to
aver and prove, at this Honorable Court
shall direct, and pray as in and
by their said bill they have already
prayed. Truman Burton
Francis Veyne

By Beardsley & Andrews
Complimentary Solicitors

Endued Gorton & Keyes vs Francis Emery
replication

Filed Oct 24, 1885

The deposition of Marcus B. Osborn a
witness produced sworn and examined
before Tracy Wilson clerk of the Circuit
Court of the County of Rich Island and
State of Illinois on the 28th twenty eighth
day of November A.D. 1885 at his office in
the city of Rich Island to be used in
evidence in the hearing of a certain cause
now depending in the Circuit Court

of Henry County in said State of Illinois
in Chancery sitting wherein Truman
Borton and Isaac Keyes are
Complainants and Isaac Emery's
Defendants on the part of said complain-
ants

present the said complainants by
Jerome P. Bunsley Esq. their solicitor
and the said defendants by H. G.
Miller Esq. his solicitor

The said Marcus B. Osborne being
duly sworn deposes and says in answer
to the following interrogatories as follows

Int 1st What is your name, age, and residence.
Ans my name is Marcus B. Osborne - my age is
fifty two years and my residence the city
of New England State of Illinois

Int 2^d are you acquainted with the parties complainant
and defendant herein or any of them and
how long have you known them or any of them

Ans I am acquainted with all the parties
I believe - I have known the complainant
Isaac Keyes for ten years - the complainant
Truman Borton for five years or more
and the defendant since the year 1844

Int 3rd In the month of May 1854 were you the

agent of said defendant in respect to
certain lands owned by him situated
in Henry County Illinois. If you say you
state how long you had been such agent

Ans I was his agent at that time in respect
to his lands in said County and had
been for several years

Ques 4 Previous to said month of May had
you been requested by said defendant
to make sale of said land and find
a purchaser therefor

Question objected to by Defts Counsel
Ans I had

Ques 5 please state what directions said defendant
previous to said time gave you in
respect to said land

Ans He had instructed me generally to sell
his lands at three dollars per acre, I had
expressed to him my opinion that said
lands would not bring over that price and
he expressed his willingness to have
them sold for that price

Ques 6 Did you have such instructions from said
defendant in respect to the sale of said
land in writing or verbally previous to
said month of May

Ans I had verbally I think the early part

of February 1854 and I think also in
writing afterwards

Ques 7 State what land the said Defendant owned
or claimed to own in said Henry County
in respect to which you were his agent
Ans The quarter sections of land described
as follows

The North West quarter of Sec 4 T. 15 N. R. 1. E. 4th P. 4

" South West " " 13

" North East " " 22

" North East " " 23

" North West " " 23

" North East " " 24

" North West " " 24

" North West " " 24 and

" North West " " 35 all in

Township 16 North Range 1 East of 4th P. 4
also the North West quarter of Sec 29 in Township 16
North Range 2 East of the 4th P. 4

Ques 8 Did you as agent for said Defendant ever
have any negotiations with said Complainant
for the sale to them of said Land

Ans Yes I did

Ques 9 State fully the nature and extent of such negotiations
Ans I think about 6 months previous to May
1854 I forwarded complainant offer

to the defendant at Albany & Albany by
letter of three dollars per acre for two of his
quarter sections and for another quarter
lying between them and supposed to be
in his case - I think his reply made
by letter was that one of the tracts was
not his but he would endeavor to quit
while waiting for his further reply I
went to New York that was in January
1854. I there received a letter from said
defendant requesting me to call and
see him before I returned west without
fail, I called to see him at Albany. He
then instructed me verbally to sell all his
Land in said Henry County if I could
get three dollars per acre for them and
if I could do so engaged to invest a
portion of the proceeds in my Rock Island
City lots - I communicated to said
complainant immediately on my
return home by the middle of Feb'y
I think the willing ness of Mr Emory to
sell his ten quarter sections at the price
per acre that they had offered for his
this quarter. I requested complainant
to examine these lands, they did so
and offered to take them at the price
named. I think he gave you the down and
the remainder in one two and three years

I communicated this offer to the Defendant by letter some time previous to May or March or April. I should think in April 1854. In his reply ^{which was} by letter he did not accept the proposition in the precise form in which it was made but did accept it so far as the price and the times of payment were concerned but required them in addition to pay about the sum of sixty dollars taxes which I ask; agents had paid on the meantime that sum being for the taxes assessed for the year 1853 and due the first of December of that year. I exhibited this letter of the Defendant to the Complainants and also communicated to them the additional terms required by him. The complainants agreed to the terms and expressed themselves ready to pay the money on receipt of the deed. They paid this amount of taxes being sixty two dollars and twenty nine cents for which I gave a receipt - all of this I communicated to the Defendant by letter in due course of mail dated May 9, 1854. The taxes were not paid by complainants at that date but as soon after as I could get

the amounts

(The Defendant, caused objects to every part of the above answer where deponent speaks in reference to the contents of letters or written communications as having passed between Defendant and himself or the contents of any writings executed by the witness or by the defendant)

Q^y 10 Look at the paper marked "Compliments Exhibit O" attached to this deposition. Examine it and state whether that is the reply of said Defendant to your letter communicating to said defendant the offer of said compliments for the purchase of said ten quarter sections of land mentioned in Compliments bill of complaint.

A^y It is —

Q^y 11th Look at the paper marked "Compliments exhibit P" examine it and state whether this exhibit as it now appears was sent to you by said Defendant in the same envelope and at the same time with the paper marked "Compliments Exhibit O".

A^y I feel confident it was.

Q. 12 Are you acquainted with the hand writing of the
said defendant and have you ever seen him write
Ans I am and have ~~often~~ seen him write

Q. 13 State in whose hand writing are the ^{said} Exhibits
marked "O" and "P" above referred to

Ans In the hand writing of the defendant

Q. 14 At the time you communicated to said
complainants the modified proposition of
said defendant mentioned in Exhibits
"O" and "P" and at the time you showed
said exhibits to them did said
complainants request you to inform
said defendant of their (the complainants)
acceptance of such modified proposition
(objected to by Defd's Counsel)

Ans They did so request me

Q. 15 Did you in compliance with such
request of said complainants immediately
so inform said defendant of said
acceptance and if so how

Ans I did Immediately by letter which
was sent by due course of mail and in
it requested him to send a deed
(the above answer so far as it relates
to the contents of the letter therein referred

to by the witness objected to.)

Ques 16 At the same time you exhibited to Complainants Exhibit "Q" did you also show them Exhibit "P" and inform them that said Exhibits were part and parcel of the same letter or communication

Ans Yes I did

Ques 17 When did you receive from said Defendant the said Exhibits "Q" and "P" and how did you receive them

Ans I should say it was between the first and Ninth of May 1854 and by mail

Ques 18 Look at the paper marked Exhibit "L" attached to this deposition and state whether that paper was signed by you as agent for said Defendant and whether the sum of money specified in said Exhibit was received by you from said complainants at the date thereof as and for the taxes due on said ~~land~~ due therein December, 1853

Ans It was signed by me as his agent and the sum of money mentioned therein was received at that date for the taxes and for my charge for the agency in paying the taxes I think five dollars of that sum was for my fees as agent

Ques 19 At the time said complainant signified to you their acceptance of the proposition of said defendant for the sale of said lands, did they tender or deposit with you or in any wise place to your credit the sum of money required by such proposition to be paid down

(Objected to by Defs Counsel)

Ans I think not, I did not understand that any amount was to be paid down until the deed was forwarded to me by the defendant

Ques 20 Did you receive any reply from said defendant in response to your letter advising him of the acceptance by complainant of his (defendants) last or modified proposition for the sale of said lands and if so when

Ans I did receive a reply declining to forward a deed and giving his reasons for so doing. I think it was a considerable time after it should have been received by due course of mail and that he stated in it that he was absent from home when my letter arrived and that he answered it as soon as he returned.

Q. 21 Did the said complainants ever tender to you, agent of said Defendant the amount of the sum required by said Defendant to be paid down according to the terms of his said proposition as specified in Exhibit "C" If you answer you state when and the amount of such tender

A. They did make the tender the amount of it was Twelve hundred and fifty dollars as they said I did not count it for I refused it - I cannot answer as to the time positively, I should think it was in the month of May 1854 and probably in the latter part of it near the last of the month I am quite as a loss as to the time when it was done

Q. 22 Was such tender made before or after said defendant declined to convey to complainants the land mentioned in their bill of complaint

A. My first impression to day was that I refused it because the defendant had declined to forward the deed but the more I think of it the more I am inclined to believe it was before I was notified that the Defendant so refused

Q^u 23 Since the last interrogatory was propounded to you have you examined a letter or paper marked "complaints Exhibit R" attached to this deposition and if so can you now state whether said tender was made before or after you received said exhibit "R"

Aⁿ I have examined said Exhibit R and am satisfied that said tender was made before I received said exhibit R and said Exhibit R is in the handwriting of the Defendant

To the following Cross Interrogatories the witness answers respectively as follows

Q^u 1 Have you been examined before as a witness in this case if so when where and before whom

Aⁿ I have been examined before as a witness in this case. It was before Ben Graham Master in chancery during the early part of April last at Cambridge in Henry County

Q^u 2 In your answer to the fifth direct interrogatory propounded to you at that occasion asking you in what capacity you were acting in respect to said lands or about the first

of May 1854 and for whom and by
whose authority you were acting - did you
not state that you were acting as agent for the
sale of said lands and the payment of
taxes for Isaac Esmay, the defendant and
that your object in respect to the sale
of said lands was to find a purchaser
or purchasers for them.

Ans. I did.

Int 3^d In your answer to the 1st direct interrogatory
propounded to you on that occasion, did you
not allude to an interview you had with Mr
Esmay at Albany in February 1854 and
was ~~it~~ not that the same interview to which
you have alluded in your present
examination.

Ans. I did allude to ~~that~~ that interview and it
was the same interview.

Int 4 Did you not then in your answer to such question
state that Mr Esmay desired you on that
occasion to find a purchaser or purchasers
for his said lands.

Ans. I did so state.

Int 5 Did you in your answer to that interrogatory
or to any other interrogatory propounded
to you on that occasion state or pretend

that Mr Esnary had ever authorized you to sell his lands in Henry County at three dollars per acre or at any other price prior to May 1st 1854

Ans No I do not think that in my answer on that occasion I pretended to any power to sell his lands strictly speaking

Ques 6 Did you not then describe your authority as being limited to finding a purchaser or purchasers for said lands and transmitting propositions for the purchase of the same to Mr Esnary for his acceptance or refusal

Ans Yes I suppose it might be so understood

Ques 7 Has any thing occurred to you since that time to change your views respecting the extent of your authority over said lands

Ans I don't know that my answer on that occasion conveyed the full extent of my view of my authority over said lands, I don't know that any thing has occurred since to change my views on that subject I considered then and do now that I had authority over his lands derived from special instructions

(The Defendant objects to all that part of the answer giving his present views of the extent of his authority as not responsive to the question)

Ques 8 Has anything occurred to you since that time to change your then view respecting the extent of your authority over said lands

Ans I cannot say strictly that anything has occurred since that time to change my then view on that subject

Ques 9 Previous to May 1. 1854 was not your authority to act for Mr Esmay in effecting any sale of said lands limited to finding a purchaser or purchasers for them and transmitting and transmitting propositions for the purchase of them to Mr Esmay for his acceptance or refusal

Ans I consider that Mr Esmay had authorized me to do more than simply to find a purchaser and transmit propositions to him

Ques 10 In your answer to the fourth direct Interrogatory you stated that you communicated to the defendant the acceptance by the complainants of his proposition for the sale of said Lands by letter dated May 4th 1854 Is the letter now shown to you marked "Defendants Exhibit A" the letter to which you refer

Ans It is
Defendants here offered Exhibit A - as
Evidence

Qut 11 Did you in that occasion, close to defendant
the paper marked "Defendants Exhibit B" as
the deed which the complainants desired
to have executed to their conveying the
land in question

(Objected to by complainants because
it assumes that complainants desired a
particular form of deed for defendant to
execute whereas it is not proven that they
expressed any desire in relation thereto)

Ans I think it is the same paper which I
enclosed with the letter, I suppose if they
had not desired it I should not have sent
it I cannot swear that the complainants
previously requested me to send that
particular instrument or form of instrument
but it is the form in common use here and
I presumed of course that it would be
satisfactory to them

Qut 12 Were you doing business as Land Broker at Rock
Island during the year 1854

Ans I suppose it amounted to a land brokerage
but I used the term Land Agent
in all my cards and circulars,

Qut 13 Was the deed you sent to McEwan with your
letter of 9th May 1854 to be executed by him
the one which complainants were waiting

for before they paid the first payment
Ans No I don't think it was, I suppose they
would have received a deed like that
which Mr Esmaey proposed to execute
to them

Defendant objects to latter part of the
above answer stating what the witness
supposes)

Qut 14 Did you send this paper number
("Defendants Exhibit B") for Mr Esmaey
and wife to execute to convey the lands
in question to the complainants

Ans Yes Sir I did

Qut 15 Is there any circumstance by which
you can fix the time in your mind
when the complainants tendered you
the twelve hundred and fifty dollars
herein before spoken of by you

Ans There is by which I can fix the time
as nearly as I have given it in my
former reply

Qut 16 What is it

Ans One is the date of Mr Esmaey's letter
number Complainants Exhibit R, is
some three weeks later than the date
of my notice of their acceptance by

the letter of the 9th of May 1854 - The complainants were a little impatient at the delay of the paper coming and were in frequently calling on me just to know if it had been received. My recollection however is not so distinct as to fix the time to a day.

Q¹⁷ Where was the tender made
Ans In my office

Q¹⁸ How long was the tender made after the taxes were paid to you

Ans I should say a few days, not exceeding a week.

On the Re Examination by Complainants counsel the same in response to the following Interrogatories respectively as follows

Q¹ at the time when you first exhibited to complainants the Exhibits marked A & B, did they object to or acquiesce in the form of deed thus submitted to them
objected to by Defendants

Ans I believe they never objected to the form of the deed

Qut 2 Did complainants ever to your knowledge
desire or request any other or different
form of deed than the one submitted
to you by said Defendant and marked
"Exhibit P"

objected to by Defendant
Ans I think they preferred the form with which
they were familiar here at home but they
did not refuse the other

Qut 3 at the time you as agent for said
defendant was negotiating with said
complainants for the sale of all of
defendants lands in said Henry County
and particularly those described in
the bill of complaint had you received
special and written instructions from
said defendant in respect to making
sale thereof

objected to by Defendant
Ans I had if I understood the question
I suppose the letter under which I
acted came before the negotiation closed

Qut 4 In reply to the last preceding
interrogatory you say you suppose
while the negotiations were going on
you had the letter of Defendant under
which you acted - please state now

if you ever knew and fully recollect
whether or not you had in your hands
and possession the letter of defendant
marked Exhibit O when you submitted
the last proposition of said defendant
to complainants in respect to the sale
of said land.

Ans I don't hesitate to say that I had
such letter in my hands and possession

Qut 5 Were such special instructions referred to
by you contained in the letter of said
defendant marked complainants
Exhibit O and made part of this
deposition

Ans yes they were

Qut 6 Can you state positively whether
the complainants made the tender
to you before or after they paid you
the taxes on said land

Ans I would not like to state positively
my impression is that it was a
few days after

Qut 7 What reason did you give to said complainants
for refusing to accept the tender
objected to by defendant

Ans I think the principal reason I gave them

was that I was not willing to lose the interest on the money as the agent of Mr Emory and that Emory might expect interest

Put 8 Did your agency in regard to said land continue through the month of May 1854 and afterwards

Ans I consider that it did, it was not revoked by Mr Emory recollecting his letter to me I can say positively that it did

Put 9 at or about what time did you receive the letter marked exhibit K and did you receive it by the course of mail

Ans It came to Rock Island by the course of mail in the first or second week of June 1854 at which time I received it I think

Put 10 at or about what time did you receive the letter of Defendant marked Exhibit Q - and how

Ans My recollection is that I received it after the first and before the month of May 1854 I received it by mail
Marcus B Osborn

The foregoing deposition Subscribed

and sworn to before me this 28th day
of November 1855

(L.S.) attest Frazee Wilson Clerk Circuit
Court in and for the County of Rock
Island State of Illinois and the
seal of said hereto affixed
Frazee Wilson Clerk

fees for taking deposition \$5

Endorse Deposition of M B Osborn
Vigney & Gorton vs E. May

Albany 1857
M B Osborn

Sense I have 10 grain all
1616⁶ acres at \$3 per acre will be \$48.50
now it is full 3 m so since we talked about
\$3 per acre and 6 m so since they offered
\$3 for part and the interest would have
amounted to \$100 in the mean time and
the taxes have also come against it since
and besides they want 1.2 & 3 yrs at 6 per
for $\frac{3}{4}$ interest of 1 & 2 yrs for $\frac{2}{3}$ which makes
a difference of considerable to me and therefore
I will make it as follows viz they must
pay you the last years taxes which
you have paid about 60\$ and \$1250 down

bal of \$3600 in 1.2 & 3 years with ^{per cent} 6 per cent and
 you can retain \$50 for your commission and
 send me the \$1200 cash and the mortgage
 and notes as above for the \$3600 this I
 think will be no more than fair as you
 will see that the bal of interest is much
 against me I suppose your Comd
 are about 1 per cent this is what I have
 paid in Ohio and in Illinois I have sold
 several pieces but paid nothing as I
 bargained with the parties themselves
 If this will answer write me immediately
 and I will send you the Warranty deed
 and all the papers be dated May 1
 1854 I do not like to be too close but
 I am assured that the land will
 bring \$5 per acre within 2 yrs from
 this time I will do my best to get
 Bulkley to sell his 2 qrs at same price
 yours with respect Isaac Emery
 P.S. If they wish I will try and get
 Bulkley to sell his also but they must
 pay for mine the last years taxes & \$450
 besides (\$1200 down bal 1.2 & 3 yrs 6 per cent) P.E.

This induction made the first day of May
 in the year of our Lord one thousand eight
 hundred and fifty four between Isaac Emery
 and his wife Eiza V Emery ^{both} of the City of

alberry & New York State of the first part
and Isaac Keyes and Truman Blythe
both of Rock Island Illinois of the second
part Witnesseth That the said parties of the
first part for and in consideration
of the sum of four thousand Eight hundred
and fifty dollars Lawful money of the
United States of America to them in hand
paid by the said parties of the second
part the receipt whereof is hereby confessed
and acknowledged have granted allowed
renewed released conveyed and confirmed
and by their presents do grant alien
renew release convey and confirm unto
the said parties of the second part and to
their heirs and assigns forever all

here describe the 10 quarter section
Containing 1616 ⁶¹/₁₀₀ ac. of Land

Together with all and singular the
hereditaments and appurtenances
thereunto belonging or in any wise
appertaining and the reversion and remainder
and remainder rent issues and
profits thereof and all the state right
title interest claim and demand
whatevever of the said part of the first
part either in law or Equity of or and to
the above granted premises with the said
hereditaments and appurtenances,

Compendium Exhibit B

To have and to hold the above mentioned
and described premises with the appurtenances
and every part and parcel thereof to the
said parties of the second part their heirs
and assigns forever. And the said
Said Esquire for himself his heirs
executors and administrators doth
covenant grant bargain promise and
agree to and with the said parties of
the second part their heirs and assigns
to warrant and forever to defend the
above granted premises and every part
and parcel thereof now being in the
quiet and peaceable possession of the
said parties of the second part against
the said parties of the first part their heirs
executors administrators and assigns
and against all and every other person
or persons claiming or to claim the said
premises or any part thereof.

In witness whereof the said parties
of the first part have hereunto set their hands
and seals the day and year above written
Scaled & Delivered in presence of }

here follow 2 blank forms of acknowledgment

Mr. H. B. O. Searns If this will answer
write immediately and I will send you

on a deed like the above all properly
made out and executed acknowledged
and ready for record dated May 1, 1854 and
the mortgage and notes to bear same date
of course you will see that they are
properly made out and given record
with the deed you & I Esmay

Recd Rock Island May 24 Ad 1854
from Cheper Chas and Gorton
Sixty two 1/4 dollars being amount
of taxes and agency paid by J
Esmay on Henry County Land, which
amount is received as full payment
for land sold by J Esmy to
said negus & Gorton

\$62 29/100

W B Osborn

agreed
J Esmy

Albany 24 May 1854
W B Osborn

Dear Sir

Yours of 9th May came to
hand while I was out in Ohio and
Indiana I went out to deliver deeds
of Land previously sold and although
my agents were honest and sincere in
advising me to sell yet I see they were

mistake - a farm I sold for \$2500 I could just as well have had \$4500 for and 160 acres I sold for \$700 easily worth \$1600 So I am inclined to think you are also mistaken for you wrote me that the Warsaw & Rockford road would not affect my land but an acquaintance of mine who has just been out there says it will help my land very much and that land like mine are selling in Henry County from 5 to 15 per acre and as I cannot get a clear understanding with you about selling therefore I have come to the conclusion not to sell until Paul my wife come out and see the land and the country and learn better what it is worth, you speak of Washington Cochle of Peoria I do not know him have never heard of him to my knowledge - I wish you would send me your circular so that I may know what your commissions are and as we cannot exactly agree otherwise I must throw the matter up for the present a mortgage payable in Rock Island would never do as I have always had them made payable in Albany last fall you wrote me that you had sold 3 qr sections You must have known that one of the pieces did not belong to me.

and before you said anything about
taking the 2 grs I had had several
applicants and now the whole matter
has been delayed so long that I am
not so much pinched for money as
I was, I was then building a house and
was very short and \$1200 cash would
have helped me very much but as the
matter has been delayed until I have
been compelled to borrow the funds to
complete the house therefore I am not
at this time under any obligation or
necessity to sell \$1200 the first of May
would have been better to me than
\$2000 now when we come out I will
write you beforehand and let you know
about the time we will be at your
place and I want you to send me the
tax title deed also the marriage deed
they must be recorded long before this
and you may draw on me for your
bill tapes &c and much oblige
yours with respect Isaac Emery

Land agency
Isaac Emery Esq. Rock Island May 9. 1874
Albany New York
Dear Sir yours favor of

Dependent to each other.

date is at hand and I have found
McKean, and Mylinton and talked the
matter over with them. They feel that
they have not made the delay in the
first sale of these quarters. And have
been always prepared to pay as agreed.
They also think that the taxes of 1853
they have nothing to do with as they were
assessed a year ago on the 1st May and
the assessment of 1854 is begun which
is all they ought to meet but in consideration
of the extension of time & they will accept
the proposal and are ready to pay
the first payment as soon as the bill
arrives, and I furnish them proof of
the genuineness of the title & In regard
to my Commission, I must say that I
have never had so small commissions
as 1 per cent from any one even in the
largest sales, but I am willing to
be governed by the rules of our mutual
friend Washington Cottle Esq of Peoria
which I presume will be satisfactory to
you. I must go to Cambridge or employ
some one there to furnish me abstracts
of title from the records as they will
hold me responsible for the correctness
of the title. In haste yours
W B Osborn

P.S. I shall take note and mortgage
correctly making them payable at Rock
Island Bank - my son is a partner
in business with me and our letters
hereafter will be signed M Boston & Co

We send form of deed such as
we use in this state filled up in differ-
very little from your form. M Boston

This indenture made and entered into
this first day of May in the year of our Lord
one thousand eight hundred and fifty
four between Isaac Esmeray and
Elyse Vesmery of the City of Albany and
State of New York of the first part And
Isaac Vespy and Thomas B. Horton
both of the city and county of Rock Island
and State of Illinois of the second part
Witnesseth that the said party of the
first part found in consideration
of the sum of Four thousand eight hundred
and fifty dollars, paid by the said party
of the second part the receipt of which is
hereby acknowledged do by these presents
grant bargain and sell unto the said
party of the second part their heirs and
assigns those certain tracts or parcels
of land situated in the county of Henry
and State of Illinois and described

Dependence Exhibit B

as follows to wit The south west quarter
of section Thirteen (13) The North East quarter
of section Twenty two (22) The North East quarter
and the North west quarter of section Twenty three (23)
The North East quarter and the North west quarter
of section Twenty four (24) The North west quarter
of section Twenty six (26) and the North west
quarter of section Thirty five all in Township
Sixteen (16) North Range one (1) East of the 4th
P. M. Also the North west quarter of section
four (4) in Township fifteen (15) North of Range
one (1) East of the 4th P. M. also the North west
quarter of section twenty nine (29) in Township
Sixteen (16) North Range Two (2) East of the
4th P. M. containing sixteen hundred and
sixteen $\frac{1}{2}$ acres (161 $\frac{1}{2}$ acres) — Together
with all and singular hereditaments and
appurtenances thereto belonging or in
any wise appertaining To have and to
hold the said premises as above described
with the appurtenances unto the said party
of the second part their heirs and assigns
Forever And the said party of the first
part for themselves and heirs executors and
administrators as hereby Covenant to and
with the said party of the second part their
heirs and assigns that they are well seized
of the premises above conveyed as of a good
and indefeasible estate in Fee Simple

and have good right to sell and convey
the same in manner and form aforesaid
that the said premises are free from
all incumbrance and that the above
bargained premises in the quiet and
peaceable possession of the said party
of the second part their heirs and assigns
against the claim of all persons
whomsoever they will forever maintain
and defend

In Testimony whereof the said Isaac
Emery and Eliza V Emery have
hereunto set their hands and seals
the day and year first above written
signed sealed and delivered
in presence of

EE

EE

here follows a Blank acknowledgment

These exhibits in an envelope which is
endorsed thus - Rogers & Gorton

or

Isaac Emery

Exhibits referred to in deposition of M. B. Boston

This indenture made and entered into this
thirteenth day of April in the year of our Lord one
thousand eight hundred and fifty five Between

Truman B. Gorton & Isaac Rogers of the city and
county of Kew-Belmont in the state of Illinois
party of the first part and Isaac Esmyer of the
city of Albany in the state of New York party of
the second part. Witnesseth that the said party
of the first part for and in consideration of the
sum of thirty six hundred dollars paid by the
said party of the second part the receipt of which
is hereby acknowledged do by their presents
grant bargain and sell unto the said party
of the second part his heirs and assigns those
certain tract or parcel of land situated in
the county of Henry in the state of Illinois and
described as follows to wit - The North west
quarter of section four (4) in Township Fifteen
(15) North Range One (1) East of the 4th P. M.,
also the south west quarter of section Thirteen (13)
The North East quarter of section Twenty two (22)
The North East quarter of section Twenty three (23)
The North West quarter of section Twenty four (24)
The North West quarter of section Twenty six (26)
& the North west quarter of section Thirty five (35)
all in Township sixteen (16) North Range
One (1) East 4th P. M. also the North west
quarter of section Twenty nine (29) in Township
(16) N. R. 2 E 4th P. M. - Together with all
and singular the hereditaments and
appurtenances thereto belonging or in
any wise appertaining, To have and to hold

the said premises as above described with
the appurtenances unto the said party of
the second part his heirs and assigns forever
and the said party of the first part for them-
selves and heirs executors and administrators
do hereby covenant to and with the said
party of the second part his heirs and
assigns that they are well seized of the
premises above conveyed as of a good and
indefeasible estate in Fee simple and has
good right to sell and convey the same
in manner and form as aforesaid that
the said premises are free from all mortgage
and that the above bargained premises in
the quiet and peaceable possession of the said
party of the second part his heirs and assigns
against the claim of all persons whomsoever
he will forever warrant and defend
provided nevertheless that if the said Truman
Borton & Isaac Regier party of the first part
their heirs executors administrators shall
well and truly pay to the said party of the
second part his heirs executors administrators
or assigns the just and full sum of thirty six
hundred dollars in manner following to wit
\$1200 one year from date with interest at the rate
of 6 per cent \$1200 two years from date with int at the rate of 6 per cent
annum \$1200 three years from date with int at the rate of 6 per cent per annum
according to the tenor of three several promissory

given unto herewith executed by the said
party of the first part and made payable
to the said Isaac Emery under that then
and from hence forth their Parents and every
thing therein contained shall be null and
void

In testimony whereof the said
ha herunto set hand and seal the
day and year first above written

Signed sealed and
delivered in presence of }
Jr Coner }
Signed T Blynter ES
Isaac Vign ES

State of Illinois } ss I Joseph Coner
Rock Island County } clerk of the County
court in and for said County do certify that
on this day appeared before me T Blynter
& Isaac Vign whose names appear signed to the
foregoing deed of conveyance and who are
personally known to me to be the identical
persons whose names are subscribed to said deed
as having or having executed the same and
acknowledged that they had executed the same
as their voluntary act and deed for the uses
and purposes therein expressed

Given under my hand and seal of said
court this 14th day of April Eight hundred
and fifty five
Jr Coner clerk

Endorsed Blynter & Vign Mntg to Isaac Emery Copy
[12486-51]

copy

This indenture made and entered into
this thirteenth day of April in the year of
our Lord one thousand eight hundred and
fifty five between Henry B. Osborn of the
City and County of Rock Island in the State
of Illinois's party of the first part and Truman
Blyden & Isaac Kays of the said City
County and State party of the second part
Witnesseth That whereas at the April Term
of the Circuit Court and for the County of Henry
in said State of Illinois in the year of our Lord
one thousand eight hundred & fifty five in a
certain cause therein pending on the Chancery
side thereof wherein Truman Blyden and
Isaac Kays were complainants and Isaac
Emery was defendant, a decree was made &
entered in said cause which said decree is
in the words and figures following to wit
State of Illinois } Circuit Court and for said County
Henry County } April Term A.D. 1855

In Chancery

Truman Blyden & Isaac Kays

vs
Isaac Emery

Bill for specific performance

and now come the said Truman Blyden
& Isaac Kays complainants in the above
intituled cause by Beardsley & Medows their
solicitors and in their motion the cause

now comes in to be heard upon the bill
of complaint herein and upon the testimony
taken and reported under the order of this
court by Ben Graham Master in Chancery
in and for said county and at appearing
to the court that due notice of the pendency
of the Bill of complaint herein has been
given according to law by publication
in the Henry County Eagle a weekly
newspaper printed and published in
said county of Henry and the said Isaac
Esmy defendants on the said cause
having been three times solemnly called
came not but made default. It is
therefore ordered adjudged and decreed
by the circuit court that the allegations
and charges in the said bill contained
be taken per confesso and it appearing
to the court from the testimony taken
and reported by the said Master
as aforesaid. that the allegations and
charges in said complaint are
true and particularly that in the
year A.D. 1854 the said defendant
submitted to the said complaint
his (the said defendant's) written proposition
signed by the defendant for the sale
and conveyance to said complainant
of certain Real Estate in the said bill

of complaint herein mentioned and which
is described as follows to wit: The North
west quarter section four (4) in Township
fifteen (15) North Range One East 4th P.M.
also the southwest quarter of section 13
Thirteen - the North East quarter Sec 22
Twenty two the North East quarter Sec 23
Twenty three the North west quarter Sec 23
Twenty three the North west quarter Sec 24
Twenty four the North East quarter Sec 24
Twenty four the North West quarter Sec 24
Twenty six and North West quarter Sec 35
Twenty five all in Township Sixteen 16
North Range One East 4th P.M.
also the North west quarter Sec 29 Twenty
nine in Township Sixteen North Range
Two East 4th P.M. all situated in
the county of Henry in the state of Illinois
And it appearing to the court that in
and by the terms of the said proposition
of the said defendant be the said
defendant agreed to sell and convey to
said complainants the said several
quarter sections of land upon the
following terms and conditions viz
said complainants to pay to Samuel B
Osborn the agent of the said defendant
the last years taxes upon the said land
twelve hundred and fifty dollars down

and to execute notes for Thirty six hundred
dollar payable in one two and three
years with 6 per cent secured by mortgage
upon the premises and both said notes
and mortgage to bear date May 1. 1854
and it ~~is~~ further appearing to the court
that the said Defendants in and by
his written proposition aforesaid
agreed that in case the said complainants
accepted the terms aforesaid he the
said Defendant would furnish to
his agent the said Osborn BTLB on
for said complainants a deed of warranty
of the form on the said bill of complaint
contained and it further appearing to
the court that immediately after the
said terms of the said defendant were
submitted and made known to said
complainants they the said
complainants accepted the same
unconditionally and in accordance
whereunto they immediately paid to the
said Osborn agent for defendant as
aforesaid the amount of taxes which
had been paid on said land the past
year namely the year 1853 which
taxes and costs amounted to the sum
of sixty two dollar and seventy nine cents
and took the receipts of the said Osborn

as said agent therefor and also offered
to pay and tendered to said Osborne agent
of defendant to receive the same the sum
of Twelve hundred and fifty dollars
as and for a payment towards said land
and also expressed themselves ^{and willing} ready
to execute notes and mortgage under
the direction of said Osborne agent as
aforesaid to the said defendant whenever
he the said Osborne might require them
so to do and have been ready and willing
ever since so to do and it further
appearing to the court that immediately
after the acceptance by the complainants
of the said proposition for the sale and
conveyance of said land and the payment
of said sum of Sixty two ⁷⁹/₁₀₀ dollars as
aforesaid and the tender of the said
sum of twelve hundred and fifty dollars
as before mentioned herein the said Osborne
notified the said defendants of the
acceptance of his (defendants) proposition
for the sale of said land by the said
Complainants (which notification it appears
to the court was received by the said defendants)
and requested the said defendant
to furnish a deed according to this
said proposition as aforesaid and it
further appearing to the court that the

said defendant hath wholly hitherto
neglected and absolutely refused to
comply with his contract herein and it
further appearing to the court (the same
being a matter of record herein) that the
said complainants upon the filing of
their bill of complaint herein did bring
into court the said sum of twelve hundred
and fifty dollars, subject to the order of the
court and the same having been by leave
of court withdrawn by complainants
and is now again brought into court.

It is therefore ordered adjudged and
decided by the court that the allegations
and charges in the said bill of complaint
set forth are true; It is further ordered
adjudged and decided by the court that the
said contract and agreement for the sale
of the said land by the defendant be
specifically performed.

It is further ordered adjudged and decided
by the court that upon the payment by the
said complainants of the sum of
Twelve hundred and fifty dollars
to Moncrie B Osborn agent as aforesaid
and the said Osborn (who is hereby
appointed as commissioner to carry
out this decree) shall execute seal
and deliver ready for record to the said

complainants a warranty deed of like form as that contained in the bill of complaint herein conveying all the interest title and estate of the said defendant in and to the said Real Estate described herein to said complainants

It is further ordered adjudged and decreed by the court that upon the execution and delivery of said deed to said complainants by said or born they the said complainants shall execute their notes to said defendant for the sum of thirty six hundred dollars payable in one two and three years with interest at six per cent and also to execute a mortgage upon the said land to secure the said notes and deliver the same to the said or born

It is further ordered that upon the payment of the said sum of twelve hundred and fifty dollars as a fee said and upon the execution and delivery of the said deed for said land as aforesaid and upon the execution and delivery of the notes and mortgage as aforesaid that the title to the said real estate shall become vested in the said complainants It is further

ordered that the said commissioner
make report of his proceedings under this
decree to this court at its next term
and that the costs of this proceeding
be paid by the said defendant
and that the said Osborn as commissioner
as aforesaid retain out of the first
monies received by him under
this decree the costs of this suit
and the sum of fifty dollars
which is allowed him by the Court
for his services as commissioner
in executing this decree and that
he pay the balance of the monies
to be by him received as aforesaid
to the said defendant

Wm A. Wilkinson

Now know all men by these presents
that I Marcus B. Osborn agent
and commissioner as aforesaid
in pursuance of the said decree
and by virtue thereof and in
consideration of the premises
do by these presents grant
alien remise release enfeoff
and confirm unto the said
Thomas B. Lynton and Grace
Hegus party of the second part

the following described real estate
in the said order or decree mentioned
and described as follows to wit
The North west quarter of Section
Number four (4) in Township No
fifteen North and in Range
No One East of the 4th P. M.
also the South west quarter of sec
No Thirteen (13) The North East
quarter of sec Twenty Two (22) the
North East quarter of section Twenty three
(23) The North west quarter of Section
Twenty three (23) The North west quarter
of Section Twenty four (24) the North
East quarter of Section twenty four (24)
the North West quarter of section Twenty
six (26) and the North West quarter
of section thirty five (35) all in
Township Sixteen 16 North
Range One (1) East of the 4th
P. M. situate lying and
being in the County of Henry
and State of Illinois also the
North west quarter of Section Twenty
nine (29) in Township Sixteen 16
North and in Range Two 2 East
of the 4th P. M. situate in said
County of Henry in said State

Together with all and singular the
hereditaments and appurtenances
thereto belonging in any wise,
appertaining and the reversion
and reversions remainder and
remainders rents issues and
profits thereof and all the estate
right title and interest claim
and demand whatsoever of the
said Isaac Essey either in
Law or Equity of in and to
the above granted premises
To have and to hold the above
mentioned and described
premises with the appurtenances
and every part and parcel
thereof to the said party of the
second part their heirs and
assigns forever And the
said Maury B Osborn agent
and Commissioner as aforesaid in
the further carrying out of said
decree doth covenant grant
promise and agree for himself
his heirs executors and administrators
to and with the said party of the
second part their heirs and assigns
to warrant and forever to defend
the above granted premises and

every part and parcel thereof now
being in the quiet and peaceable
possession of the said party of the
second part against the said
party of the first part his heirs
executors administrators and
assigns and against all and
every person and persons claiming
or to claim the said premises
or any part thereof

The covenants herein are not
intended as personal covenants by
the said Osborn but made merely
for the purpose of carrying into
effect the said decree

In Witness whereof the said
party of the first part has hereunto
set his hand and seal this day
and year first above written
Witness my hand Marcus Boston
Commissioner

State of Illinois }
Rock Island County } ss }

I Joseph Ernest Clark,
of the county court and judicial
county do hereby certify that on
this day appeared before me Mary

Robert whose name appears subscribed
to the foregoing deed as commissioner
personally known to me to be the
identical person who executed the
same and acknowledged that he
executed the same as said
commissioner for the uses and
purposes therein expressed
given under my hand and
the seal this thirtieth day of
April A.D. 1855

ESJ

Jas. Corbet clerk

copy

\$1200

One year after date we or
either of us promise to pay Isaac
Esmaij or order Twelve hundred
dollars with interest at the rate of
Six percent for value received
Rich Island April 13, 1855

signed J. Blynter
Isaac Esmaij

copy

\$1200

Two years after date we
or either of us promise to pay to
Isaac Esmaij or order Twelve

hundred dollars with interest at
the rate of six percent per annum
for value received
Rock Island April 13, 1857

Signed T Blyntun
Isaac C. Rogers

Copy

\$1200

Three years after date we
either of us promise to pay Isaac
Esmy over and Twelve hundred
dollars with interest at six percent
per annum for value received
Rock Island April 13, 1855

Signed T Blyntun
Isaac Esmy
Esmy

Thomas Blyntun
& Isaac Rogers

Complainants

State of Illinois
Henry County

vs
Isaac Esmy
defendant

In Chancery

To the Honorable Judge of the Sixth
Judicial Circuit Court in said State
The undersigned who

was appointed a commissioner by
the court to carry into effect a
certain decree made and entered
at the last April term of the
Circuit court in and for said
county of Henry in a certain cause
therein pending on the chancery
side thereof wherein the said Franklin
Blynter and Isaac Emy were
complainants and Isaac Emy
was defendant would respectfully
report to the court that the said
complainants have paid to the
undersigned the sum of Twelve
hundred and fifty dollars and upon
the payment of said sum as aforesaid
the undersigned as commissioner
as aforesaid in accordance with
the directions of said decree has
executed and delivered ready for
record a Warranty deed of the form
in this bill herein contained to the
said complainants conveying to
them all the right title and
interest of the said defendant
in the real estate in the said decree
described, said deed bearing date
April 13, 1855 a copy of which said
deed is herewith returned and made

a part of this report

The undersigned would further report that in accordance with the terms of said decree the said complainants upon the execution and delivery of said deed as aforesaid executed to the said defendant and delivered the same to the undersigned their joint and several promissory notes for the sum of Twenty six hundred dollars payable as follows viz one note for twelve hundred dollars payable one year from date with interest at the rate of six percent per annum one note for twelve hundred dollars payable Two years from date with interest at the rate of six percent per annum one note for Twelve hundred dollars payable in three years from date with interest at the rate of six percent per annum and also the said complainants executed to the said defendant and delivered the same to the undersigned a mortgage upon the said real estate to secure the payment of the said notes

said notes and mortgage bearing
date the thirteenth day of April
A D 1855 a copy of which said
notes and mortgage are herewith
returned and made a part of this
report The undersigned
commissioner would further
report that out of the monies
received by him as aforesaid
he has paid to the clerk of the
court out of said county the
sum of fifty three dollars and
twenty five cents being amount
of costs of this suit - has retained
the amount of fifty dollars out of the
said monies received as aforesaid
for his services as commissioner
under this decree and now holds
the balance the sum of eleven hundred
and fifty six dollars and twenty five
cents and also said notes and
mortgage for the said defendant
and subject to his order

April 30, 1855 respectfully

Submitted

Marion B. Osborne
Commissioner

Endorsed by John & Myers by Isaac Emery
Report of Commissioner Filed April 9, 1856 W. L. Dabrymple
Clerk

A term of the circuit court begun
and held at the courthouse in Cambridge
in the county of Henry in the State
of Illinois on the first Monday in the
month of April in the year of our
Lord one thousand eight hundred
and fifty six in Chancery sitting
the following proceedings were had
present Honorable J. W. Saunders Judge
Thos. H. Greenup Sheriff
Wm. L. Calrymble clerk

Thursday April 10, 1856
Duman B. Burton }
vs Isaac Knight, In Chancery
Isaac Knight }
vs Isaac Knight } For specific performance

At this day came the said
complainants by their solicitor
Wilkinson and the said defendant
by Miller his attorney and this
cause being called up for a
hearing is argued at length by
the counsel of both parties and
the court after having heard
the complainants plea and
the defendants answer take

the matter under advisement and
order that the decree shall be entered
as of this term giving either party the
privilege and right to file bill of
exceptions within thirty days
from filing said decree

A term of the circuit court begun
and held at the court house in
Cambridge in the county of Henry
and State of Illinois on the first Monday
in the month of September in the
Year of our Lord One thousand eight
hundred and fifty six in Chancery
sitting the following proceedings
were had to wit
present Honorable J. Wilson Judge

Thos F. Davenport sheriff

Mrs L. Salrymple clerk

Wednesday Sept 3, 1856

Truman B. Gorton

Isaac Steyer

vs

Isaac Emery

In Chancery

for conveyance

at this day came

the said complainants by Wolke and Pleasant, their solicitors, and the said defendant by Miller by attorney and this cause now coming on to be heard and the court being fully advised in the premises and in regard to the matter, and things set forth in the said complainants bill and exhibits filed thereunto also the answer of the said defendant to said complainants bill and the exhibits filed thereunto and the court having heard said cause orders that a decree be entered for said complainants in words and figures following to wit
This is a bill filed by complainants to enforce a contract alleged to have been made between them and defendant for the sale by defendant to them of several tracts of land in Henry county. The contract relied upon is a letter from defendant to Mr B. Osborn his agent proposing to sell the lands to complainants on certain terms and which proposition was accepted by complainants as they allege and is the basis of this suit and

forms the contract sought to be enforced. There can be no question at this day but that a proposition by letter for the sale of Land, accepted by the other party by parol or by letter will make a good contract and one which will be enforced in Equity on the ^{agreement} ~~agreement~~ ^{same} this was admitted to be the Law by the counsel for defendant But it was contended that in this case there was no contract as the minds of the parties had not met - Presum- by the letter relied upon in this case that previous negotiations had been going on between the parties (through defendant's agent) for the purchase of these lands. The defendant resides in Albany State of New York The complainant in Rock Island Illinois

In 1854 (or thereabouts) the defendant writes to Mr B Osborn his agent his proposition for the sale of the Land, and the terms are "They must pay me the last year's Taxes which you have paid about 60\$ and \$1250 down balance of \$3600 in three years."

"8 3 years with six per cent interest"

This is the proposition to be made by the agent to the complainants for the sale of the Land, and this proposition if accepted forms the contract. I think on this proposition there was a meeting of the minds of the parties and that the contract was completed between them. I regard the proposition for the sale of the Land as entire from the above quotation from the letter of defendants.

It is true that he afterwards proceeds to say to his agent "you can retain \$50 for your commission" but I regard this as another proposition to another party and no part of the proposition to be made to complainants to be acted on by them that is either to be accepted or rejected.

They could neither accept nor reject this last proposition because it was not made to them.

If the party accepts the proposition made to him the

contract is complete

I must regard the letter as containing two propositions, one to the complainants for the sale of the land, and the other to defendant agent for the amount of his commission, but he does not make the second as a qualification to the first nor does he make the acceptance of the first dependant upon the acceptance of the last. The first proposition is absolute and when accepted completes the contract between the parties to this suit. It must be recollected that the letter in this case was addressed to the defendant agent and not to the complainants and that Osborn was the agent of defendant. I think is fully proved by the testimony of Mr. Osborn and this agency is clearly recognized by defendant in his letter, so much so that if Osborn made this parol agency had contracted to sell the land that his contract would be recognized and enforced in a Court of Equity.

I have examined the other points made by defendants counsel and do not consider them well taken

The difference in the deeds is not so material that a court of Equity would interfere and set aside the entire contract because of a technical difference in the terms of the deed when the deed proposed by complainants places a greater obligation on the defendant than he proposed to assume by the deed he sent

As to the place of payment of the money to become due I think the defendant cannot object for the reason that it was not specified in the proposition where the money should be made payable and again the Defendant by his agent accepted the note and mortgage as payable at Rock Island without objection. If objection had been made at the time the difficulty at this point may have been removed but the details were made by defendants agent and the defendant is bound by them

so long as the agent keeps within
his authority and in this case
the agent is within his authority
because the same letter requests
him to take the notes and mortgage
and send them to him (the defendant)
but gives the agent no direction
or instruction as to the place
where the notes and mortgage
shall be made payable

I think a specific performance
must be decreed

Let the decree be prepared in
accordance with the terms of the
contract

J. W. Drury

Beque & Gutten v. Emery
Decision

Filed Sep 3, 1854

W. D. Balguy
clerk

Know all men by these Presents
that we Isaac Emery of the
city of Albany and state of New York
and Henry G. Miller of the
city of Chicago and state of
Illinois are husband and wife

boned into Truman Blyden
and Isaac Steyer of the State of
Illinois in the penal sum of Three
hundred dollars good and
lawful money of the United
States of America for the payment
of which sum well and truly to
be made we do hereby bind ourselves
on being ~~executors~~ and administrators
jointly by these presents

Sealed with our seals and dated
this Twenty fourth day of
September A.D. 1886
Whereupon the above named Truman
Blyden and Isaac Steyer
commenced suit in the Henry
county circuit court in the State
of Illinois against the above
named Isaac Emery on the
chancery side of said court
to compel the specific performance
by the said Emery of a contract
for the conveyance of Lands in
Henry County aforesaid alleged
to have been made by and between
the said Isaac Emery and
the said Blyden & Steyer in which
suit a final judgment and

decree was rendered and made
at the September term of said
court of 1886 in favor of the
said Negus and Martin Complainers
from which judgment and decree an
appeal was prayed at the time
of the rendition thereof on behalf
of the said Isaac Emery.

Now therefore the condition of the
above obligation is such that if the
said Isaac Emery shall duly
prosecute said appeal in the
Supreme Court of the State of
Illinois and shall well and
truly pay the amount of such
judgment and all costs, interest
and damages in case such judgment
and decree shall be affirmed
then the above obligation to be
void otherwise to remain in
full force and virtue.

Signed sealed & acknowledged

In presence of

R. G. Hilton att. Isaac Emery

Isaac Emery
Is

R. F. Ayer

Henry G. Miller
H. G.

State of New York
City and County of Albany SS

on this twenty seventh day of
September A.D. 1856 before me
the undersigned Robert Hiltner
of the City of Albany N.Y. State
a Commissioner duly appointed
by the Governor of the State of
Illinois to take the acknowledgment
of Deeds &c to be used or recorded
in said State of Illinois personally
came Isaac Canning to me
known to be one of the above
named obligors and the same
person described in the foregoing
Instrument of writing and to be the
real person who subscribed and
executed the same and acknowledged
the same to be his free act and deed
and for the uses and purposes therein
expressed

In witness whereof I have hereunto
set my hand and affixed my official
seal on the day and year aforesaid at
the place above written

R. Hiltner (L.S.)

Commissioner for Illinois
at City of Albany New York

Filed Oct 2, 1856 W. L. Deady
clerk

State of Illinois }
County of Henry } ss J. T. Wiley Jr. Clerk
of the Circuit Court for said County
in the State aforesaid do hereby cer-
tify that the annexed instrument is
a true copy of the Records and the
papers ^{on file} in the case of Frederick B
Gorton and Isaac Negus vs Isaac
Esmaiz in my office



Witness my hand and
the Seal of our Court this
tenth day of January AD 1894

J. T. Wiley Jr.
Clerk

State of Illinois

Supreme Court

April Term AD 1857

Isaac Esmy appellant

vs.

Isaac B. Norton &

Isaac Negus appellees

And afterwards
to wit at on the twenty second day of April
AD 1857 at this said said term of said Court,
comes the said Isaac Esmy by Henry
Miller his solicitor and says that in
the records and proceedings of said
Court etc. in the matter of the same
entitled Esmy vs. Norton & Negus
Norton is manifest error & in this writ
that by the said writ of error it appears
that the same general was returned
and made in favor of the said appellees
complainants in said Court. and in said
record's book of Henry County, and
against the said appellant. whereas the
affendant in said case in said Court
won by the favor of the Court the
said judgment, ^{and award} ought to have been
given for the said Esmy in favor of
the said Isaac Esmy appellant &
annulling the said writ of error
given to the said appellees
and the said Isaac Esmy says

It is the payment can be made
for the errors of the main and for the
errors of the main in the main and for the
main. It may be referred annulled
and ~~disputed~~ ^{disputed} ~~but~~ ^{but} for nothing more
than the main & restored to all things
which is better lost by occasion of the
main payment, so can

Hagen & M. W.

Deals for affidavit

¹⁵⁸
Supreme Court of Ill

Isaac C. May
Appellant

"
Isaac Sigus &
Thurman B. Horton
Appellees

"
Trans of Records

Filed April 23, 1893
L. Leland
Clerk

"
Hoyne Miller & Sons
for Appellant

SUPREME COURT OF THE STATE OF ILLINOIS, }
ABSTRACT OF RECORDS IN CIRCUIT COURT OF HENRY COUNTY. }

{ ISAAC ESMAY,
Appellant.

{ ISAAC NEGUS and
TRUMAN B. GORTON
Appellees.

This is an action commenced on the chancery side of ~~said~~ court by ~~the~~
~~above named~~ Isaac Negus and Truman B. Gorton against ~~the above named~~
Isaac Esmay, to compel the said Esmay to execute a contract on agreement
for the conveyance of real estate situate in the county of Henry, in the state
of Illinois, alleged to have been made by and between the said Esmay and
the said Negus and Gorton. ~~The summons was issued returnable to the Oc-~~
~~tober term of said court, A. D. 1854. The defendant in the suit, Esmay, was~~
~~a non-resident, and jurisdiction was acquired by publication, in pursuance of~~
~~the 8th section of the chancery act.~~

The complainants in the courts below in their bill of complaint allege
substantially that on the first day of May, A. D. 1854, the defendant Esmay
was seized of certain lands, describing them and being about 1616 ⁶¹/₁₀₀ acres of
land situate in Henry County, aforesaid, and that about that time the complain-
ants thereon entered into a negotiation with said Esmay for the purchase of all of
said lands, and that after divers propositions the said Esmay, on or about the
time aforesaid, submitted to said complainants his written proposition in

agreement, set forth in an exhibit attached to said bill of complaint, which is in the words and figures following, to-wit:

ALBANY, ———, 1854.

MR. M. B. OSBORN:—

Dear Sir:—I have 10 qrs., in all 1616 $\frac{61}{100}$ acres, at \$3 per acre will be \$4,850. Now, it is full three years since we talked about \$3 per acre, and six months since they offered \$3 for parts, and the interest would have amounted to \$100 in the meantime, and the taxes have also come against it since, besides they want 1, 2 and 3 years at 6 per cent for $\frac{3}{4}$ instead of 1 and 2 years for $\frac{2}{3}$, which makes a difference of a considerable to me. And, therefore, I will make it as follows, viz: They must pay you the last years taxes which you have paid, about \$60, and \$1250 down, balance of \$3600 in 1, 2 and 3 years, with six per cent. interest, and you can retain \$50 for your commission, and send me \$1200 cash and the mortgage and notes for the \$3600. This, I think, will be no more than fair, as you will see that the balance of interest is much against me. I suppose your commissions are about one per cent. This is what I have paid in Ohio and in Illinois. I have sold several pieces but paid nothing, as I have bargained with the parties themselves. If this will answer, write me immediately, and I will send you the warranty deed, and let all the papers be dated May 1, 1854. I do not like to be too close, but I am convinced that the land will bring five dollars per acre within two years from this time. I will do my best to get Bulkley to sell his two quarters at same price.

Yours with respect,

ISAAC ESMAY.

P. S. If they wish, I will try and get Mr. Griffin to sell his also. But they must pay for mine the last years taxes and \$4800 besides, \$1200 down, balance in 1, 2 and 3 years, 6 per cent. interest.

I. E.

And it is further alleged in said bill of complaint, that in case the complainants accepted said proposition the said Esmay agreed that he would forward to his agent, the said Osborn, a deed of warranty for said complainants, of the following form, duly executed and acknowledged and ready for record, which said form of deed, and with the exception of the blank acknowledgement attached thereto, is set forth in said bill of complaint, and is in the words and figures following, to-wit:

"This Indenture, made the first day of May in the year of our Lord one thousand eight hundred and fifty-four, between Isaac Esmay and his wife, Eliza V. Esmay, both of the city of Albany, New York state, of the first part, and Isaac Negus and Truman B. Gorton, both of Rock Island, Illinois, of the second part, witnesseth that the said parties of the first part for and in consideration of the sum of four thousand eight hundred and fifty dollars, lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, aliened, remised, released, enfeoffed and confirmed, and by these presents do grant, alien, remise, release, enfeoff and confirm unto the said parties of the second part and to their heirs and assigns forever all—(here describe 10 quarter sections containing 1616 sixty one one-hundredth acres of land,)—together with all and singular the hereditaments and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the party of the first part, either in law or equity, of, in and to the above granted premises with the said hereditaments and appurtenances, to have and to hold the above mentioned and described premises with the appurtenances and every part and parcel thereof to the said parties of the second part, their heirs and assigns forever. And the said Isaac Esmay, for

himself, his heirs, executors and administrators, doth covenant, grant, bargain, promise and agree to and with the said parties of the second part, their heirs and assigns, to warrant and defend the above granted, and every part and parcel thereof now being in the quiet and peaceable possession of the said parties of the second part against the said parties of the first part, their heirs, executors, administrators and assigns, and against all and every other person or persons claiming or to claim said premises or any part thereof; in witness whereof the said parties of the first part have hereto set their hands and seals, the day and year first above mentioned.

Sealed and delivered in presence of—

The bill further alleges that the foregoing proposal or terms of sale were submitted to them in and by a letter written by said Esmay, to said Osborn, his agent, in respect to said lands, and that as soon as the same were made known and exhibited to them by said Osborn, they signified their acceptance, and approved of said terms of sale, and their readiness to comply with the terms thereof, all of which was immediately communicated by said Osborn to said Esmay, and that complainants at about the same time made known to said Esmay their acceptance of his terms for the sale of said lands, and that they also paid to said Osborn the amount of taxes which had been paid on said lands to the last year, amounting to \$62 79, and also offered to pay, and tendered to said Osborn the sum of \$1250, for a payment towards said lands. They further allege that immediately after the payment of the taxes and the tender of said sum of \$1250, the said Osborn, at the solicitation of complainants, and the said complainants, addressed a letter to said Esmay, requesting him to forward a deed according to his proposition, but that the said Esmay has refused to forward such deed, or in any manner to comply with or perform his said agreements. They further allege that they have ever been ready and

willing to execute notes for said sum of \$3600, payable in 1, 2 and 3 years,—made payable to whomsoever said Esmay might direct, and to execute a mortgage for the security thereof upon said lands, so soon as said Esmay should by deed convey said lands to them. They further allege, that they have, at great expense, raised the several sums of money so paid and tendered, and the bill concludes with the usual prayer for relief.

The defendant not appearing, his default was taken at the October term of the court. The bill was taken as confessed, and the case was referred to Benjamin Graham, master in chancery, to take proofs. Leave given to complainants to withdraw the money tendered, and retain the same until the further order of the court, and the case was continued to the next term for the report of the master. At the next, the March term of the court, the master filed his reports of the evidences taken in the cause. At the next term of said court a decree was entered in favor of the complainants, and against the defendant, Osborn, in pursuance of the prayer contained in the bill of complaint, and Marcus B. Osborn was appointed commissioner to execute a deed of conveyance, of said lands to said complainants, and to report his proceedings in the matter at the term of said court, and fifty dollars were allowed to him for his services in executing the decree, and subsequently, at the September term of said court the defendant, by his solicitors, filed his petition in said cause, together with his answer to bill of complaint, and both petition and answers are verified by the oath of the defendant.

The defendant in his petition states substantially that he, the defendant, is not a resident of the State of Illinois, but was at the time of the commencement of the suit, and has continued to be since that time, a resident of the State of New York; that he had never been summoned or notified to appear

to defendant's action, and that the proceedings were had therein, and the decree entered without his knowledge; that he had a good and substantial defence to said action, and concludes with a prayer that he may be permitted to be heard touching the matter of the decree, and to file his answer to the bill of complaints. The answer of the defendant which was filed with the petition, admits that the defendants, at the time of the filing of the bill of complaint was seized of the lands therein described; admits that with a view to purchase said premises, complainants commenced negotiations with defendant, through M. B. Osborn, their agent, shortly prior to May 1, 1854, and that shortly subsequent thereto he addressed to said Osborn a note in writing, to be submitted to said complainants, containing the terms upon which he would be willing to sell the land to the complainants; that the terms were that the complainants should pay all taxes which had accrued on said lands for the year previous to the first day of May, aforesaid, and twelve hundred and fifty dollars in cash, and the balance, thirty-six hundred dollars, in equal payments in one, two and three years, with interest thereon at the rate of six per cent per annum, secured by the promissory notes of said complainants, with a mortgage of said lands, duly executed by said complainants, to said defendant, the said Osborn to retain fifty dollars of said twelve hundred and fifty; for all commissions to be paid by said defendant, and to send to the defendant the remainder of the sum of twelve hundred and fifty dollars, and the defendant in his answer insists that it was understood by him, and made a part of said proposition that he should receive the sum of twelve hundred dollars of the first cash payment for said lands, and that he should not be required to pay more than fifty dollars for commissions, and that it was upon that express condition, among others, that the defendant agreed to convey the lands to the complainants. The answer further admits that if these terms were acceded

to, the defendant agreed to convey the lands in question, by executing a deed of the form set forth in the bill of complaints, and containing the covenant therein set forth, and that the defendant transmitted in the proposition of the terms of sale, and as a part thereof, the form of such deed duly filled up with the exception of the description of the premises, for the purpose of advising the complainants of the extent of the covenants and assurances, he was willing to execute, should his terms in other respects be acceded to; that the said Osborn was then and for some time prior thereto the agent of the defendant, in respect to said lands, but that such agency was confined to the payment of taxes thereon, and for the receiving and transmitting, for the consideration and determination of this defendant, any proposals which might be made for the purchase thereof. The answer denies that the complainants acceded to or accepted said proposition or terms, or that the said Osborn ever communicated to the defendant their acceptance thereof, as stated and charged in said bill of complaints, or that the complainants then made known to the defendant their acceptance of said terms, but says that Osborn, at the instance, and in behalf of said complainants, in reply to defendants communication, made aforesaid, containing his terms for the sale and proposition for the sale of said lands, by letter, bearing date May 9th, A. D. 1854, declined to receive the said sum of fifty dollars, in satisfaction of all commissions, to be paid by the defendant, or to send to the defendant the sum of twelve hundred dollars out of the first payment to be made by said complainants, and also to receive in their behalf a deed of said lands, of the form submitted by this defendant, and containing the covenants therein set forth, but sent to the defendant to be executed by him and his wife, Eliza V. Esmay, a form of conveyance materially different therefrom, and containing not only other and materially different but also additional covenants, to be executed by the defendant, and the said Eliza V. his wife; and the said Osborn therein stated that the notes and mort

gage given to secure the balance of said purchase money, would be made payable at the Rock Island Bank, in Rock Island, instead of Albany, in the State of New York, where the said defendant then, and at the time of filing his answer was residing, all of which was unauthorized by the defendant, and a material departure from the terms and proposition submitted by him as aforesaid, and that the defendant, as soon as this letter was received by him informed said Osborn of his unwillingness to change or alter, in any respect, the terms and proposition for the sale of said lands to said complainants, as originally submitted by him, or to comply with the terms and conditions communicated to him by said Osborn, on the part of said complainants, and at the same time advised the said Osborn that he should discontinue, and proceed no farther with the negotiation with said complainants, and that his proposition for the sale of said lands to said complainants was withdrawn. The answer admits that the defendant received a letter from T. B. Gordon or of complainants, bearing date June 15, 1854, requesting the defendant to convey said lands to the complainants, and that this was the only letter received from the complainants, or either of them, respecting said lands, and that this letter was written after the defendant had refused to comply with the terms and conditions communicated to him by said Osborn, on the part and in behalf of said complainants, and after he had withdrawn his proposition for the sale of the lands to the complainants. Upon this petition and answer the defendant below moved that the cause be opened for a re-hearing. This motion was allowed, and the defendant was permitted to file his answer, which was accordingly filed, and the complainants filed a general replication thereto, and the case was continued to the next term of said court.

Subsequently, and on the 28th day of November, by the agreement of

the parties, the deposition of Marcus B. Osborn was taken before the clerk of the circuit court of Rock Island county; who stated, substantially, that in the month of May, 1854, he was agent for the defendant in respect to lands owned by him in Henry county, Illinois, and had been for several years; that previous to May first the defendant had instructed witness generally to sell all his lands at \$3 per acre, and that witness had expressed to him his opinion that the lands would not bring over that price, and that defendant had expressed his willingness to have them sold for that price.

In answer to the question asked by complainants' counsel:—Did you as agent for said defendant ever have any negotiations with the complainants for the sale of said lands? witness says: I did. And in answer to question by same counsel: "State fully the nature and extent of such negotiations," he says: I think about six months previously to May, 1854, I forwarded complainants offer to the defendant, at Albany, N. Y., by letter, of three dollars per acre for two of his quarter sections, and for another quarter lying between them, supposed to be in his care. I think his reply by letter was that one of the tracts was not his, but he would endeavor to get it. While waiting for further reply, I went to New York—that was in January, 1854—I called to see him in Albany. He then instructed me generally to sell all his lands in Henry county, if I could get \$3 per acre for them, and if I could do so, engaged to invest a portion of the proceeds in my Rock Island city lots. I communicated to said complainants immediately on my return, by the middle of February, I think, the willingness of Mr. Esmay to sell his ten quarter sections at the price per acre they had offered for his two quarters. I requested the complainants to examine these lands—they did so, and offered to take them at the price named, I think one-fourth down and the remainder in one, two and three years.

I communicated this offer to defendant some time previous to May, I think in March or April—I should think in April. In his reply which was by letter, he did not accept the proposition in the precise form in which it was made, but did accept it so far as the price and times of payment are concerned, but required them, in addition, to pay about the sum of sixty dollars taxes, which I as his agent had paid in the mean time—that sum being for the taxes assessed for the year 1853, and due the first of December of that year. I exhibited this letter to the complainants and also communicated to them the additional terms required by the defendant. The complainants agreed to the taxes and expressed themselves ready to pay the money on receipt of the deed. They paid the amount of the taxes, being sixty-two dollars and seventy-nine cents, for which I gave a receipt. I communicated this to defendant by letter, dated May 9th.

The paper shown to me marked Exhibit "O," is the reply of the defendant to my letter communicating to him complainants offer for the land.

The paper marked Exhibit "O," and referred to by witness, is in the words and figures following:

ALBANY, ———, 1854.

MR. M. B. OSBORN:—

Dear Sir: I have 10 qurs., in all 1616 $\frac{61}{100}$ acres, at \$3 per acre will be \$4850. Now it is full three months since we talked about \$3 per acre, and six months since they offered \$3 for part, and the interest would have amounted to \$100 in the mean time, and the taxes have also come against it since, and besides they want 1, 2 and 3 years at six per cent, for $\frac{3}{4}$ instead of

1 and 2 years for $\frac{2}{3}$, which makes a difference of a considerable to me. And, therefore, I will make it as follows: They must pay you the last years taxes which you have paid, about \$60, and \$1250 down, balance of \$3600 in 1, 2 and 3 years, with six per cent. interest, and you can retain \$50 for your commissions, and send me the \$1200 cash and the mortgage and notes as above for the \$3600. This, I think, will be no more than fair, as you see the balance of interest is against me. I suppose your commissions are about one per cent. This is what I have paid in Ohio and in Illinois. I have sold several pieces but paid nothing, as I have bargained with the parties themselves. If this will answer, write me immediately, and I will send you the warranty deed, and let all the papers be dated May 1, 1854. I do not like to be too close, but I am convinced the land will bring \$5 per acre within two years from this time. I will do my best to get Bulkley to sell his 2 quarters at same price

Yours with respect,

ISAAC ESMAY.

P. S. If they wish, I will try and get Mr. Griffin to sell his also. But they must pay for mine the last years taxes and \$4850 besides, (\$1250 down bal. 1, 2 and 3 years, 6 per cent.) I. E.

Witness further states that there was sent to him at the same time, in the same envelope the following papers, marked "Exhibit P," which is a blank form for a deed, and being the same papers set forth in complainants bill of

complaint. It also contained two blank forms of acknowledgements, and upon it was the following endorsement, in the handwriting of the defendant :

MR. M. B. O.

Dear Sir—If this will answer write immediately, and I will send you a deed like the above, all properly made out and executed, acknowledged, and ready for record, dated May 1, 1854, and the mortgage and notes to bear the same date. Of course you will see they are properly made out, and go on record with the deed.

Yours, &c.,

I. E.

Witness states these Exhibits "O and P" are in the hand writing of the defendant. The following question is here asked the witness by complainants' counsel :

" At the time you communicated to said complainants the modified proposition of said defendant, contained in Exhibits "O and P," and at the time you showed said Exhibits to them, did said complainants request you to inform said defendant of their, said complainants, acceptance of such modified propositions?"

The witness answers they did so request me, and that in compliance with such request, he, the witness, informed said defendant by letter, of their acceptance, which was sent by due course of mail, and in it requested him to send a deed. The witness further stated that at the same time he handed to complainants Exhibit "O," he handed to them Exhibit "P," and informed said complainants that said Exhibit was part and parcel of the same letter or com-

munication, Witness states that Exhibit "Q," which is in the words and figures following :

" Rec'd, Rock Island, May 24, A. D., 1854, from Messrs. Negus & Gorton sixty-two $\frac{79}{100}$ dollars, being amount of taxes and agency paid by I. Esmay on Henry County lands, which amount is received as part payment for lands sold by I. Esmay to said Negus and Gorton.

\$62 79

M. B. OSBORN,

Agent for I. Esmay."

was signed by witness as agent, and the sum of money mentioned therein was received at that date for the taxes and for the witness' charges for the agency in paying the taxes. That at the time complainants accepted said proposition, they did not deposit with him or place to his credit, in any manner, the amount of money to be paid down, as witness did not think any money was to be paid until the deed was forwarded to him by the defendant; that subsequently he received a reply from the defendant, declining to forward a deed, and giving his reasons for so doing; that subsequently, and in the latter end of May, witness thinks the complainants tendered the witness the amount of money that was to be paid down; thinks it was before he was notified that the defendant had declined to forward the deed; that it was witness' first impression to-day that he refused to receipt it because the defendant had declined to forward the deed, but the more he thinks of it the more he thinks the tender was made before he was notified that the defendant so refused.

Witness states that Exhibit "R," here shown to him, is in the handwriting

of the defendant, and was the letter he received from the defendant declining to send the deed. The Exhibit is in the words and figures following :

ALBANY, 24 May, 1854.

MR. M. B. OSBORN—

Dear Sir—Yours of 9th May came to hand while I was out in Ohio and Indiana. I went out to deliver deeds of lands previously sold, and although my agents were honest and sincere in advising me to sell, yet I see they were mistaken. A farm I sold for \$2500, I could just as well have \$4500 for, and 160 acres I sold for \$700, is easily worth \$1600, so I am also inclined to think you are also mistaken, for you wrote me that the Warsaw and Richmond road would not affect my lands, but an acquaintance of mine who has just been out there says it will help my lands very much, and that lands like mine are selling in Henry County from \$5 to \$15 per acre, and as I cannot get a clear understanding with you about selling, therefore I have come to the conclusion not to sell until I and my wife come out and see the lands and the country, and learn better what it is worth. You speak of Washington Cockle, of Peoria, I do not know him, have never heard of him, to my knowledge. I wish you would send me your circular, so that I may know what your commissions are, and as we cannot exactly agree otherwise, I must throw the matter up for the present. A mortgage, payable in Rock Island, would never do, as I have always had them made payable in Albany. Last fall you wrote me that you had sold 3 qr sections. You must have known that one of the pieces did not belong to me, and before you said anything about taking the 2 qrs. I had several applicants, and now the whole matter has been delayed so long that I am not so much pushed for money as I was. I was then building a house and was very short, and \$1200 cash would have helped me very much, but as

the matter has been delayed until I have been compelled to borrow the funds to complete the house, therefore, I am not at this time under any obligation or necessity to sell. \$1200 the first of May would have been better to me than \$2000 now. When we come out I will write you beforehand, and let you know about the time we will be at your place, and I want you to send me the tax title deeds, also the Marvin deed. They must be recorded long before this, and you may draw on me for your bill, taxes, &c., and much oblige,

Yours, with Respect,

ISAAC ESMAY.

Being cross-examined witness stated as follows :

I have before been examined as a witness in this case; it was before Benjamin Graham, Master in Chancery, some time in April last, at Cambridge, Henry County; I stated in answer to the fifth Interrogatory, propounded to me on that occasion, that I was acting as agent for the sale of said lands, and payment of taxes for Isaac Esmay, and that my agency in respect to the sale of said lands, was to find a purchaser or purchasers for them; when on that occasion I spoke of my interview with Mr. Esmay, in February, 1854; I stated that Mr. Eamay, advised me on that occasion, to find a purchaser or purchasers for his said lands; I do not think on that occasion that I pretended to any power to sell his lands, strictly speaking; I cannot say strictly that anything has occurred since that time to change my then views on that subject. The letter now shown to me marked defendant's "Exhibit A," is the letter dated May 9th, I sent to defendant advising him of the acceptance by complainants of

his proposition for the sale of these lands; the letter marked "Exhibit A." offered in evidence, is in the words and figures following:

LAND AGENCY,
ROCK ISLAND, MAY 9th, 1854. }

ISAAC ESMAY, ESQ., ALBANY, NEW YORK:—

Dear Sir—Your favor of the 1st date is at hand, and I have found Mr. Negus and Mr. Gorton, and talked the matter over with them. They feel that they have not made the delay in the first sale of these quarters, and have been always prepared to pay as agreed. They also think that the taxes of 1853 they have nothing to do with, as they were assessed a year ago on the 1st of May, and the assessment of 1854 is begun, which is all they ought to meet, but in consideration of the extension of time, &c., they will accept the proposal, and are ready to pay the first payment as soon as the deed arrives, and I furnish the proof of the genuineness of the titles, &c. In regard to my commissions, I must say that I have never had so small commissions as 1 per cent from any one, even on the largest sales, but I am willing to be governed by the rules of our mutual friend, Washington Cockle, Esq., of Peoria, which, I presume, will be satisfactory to you. I must go to Cambridge, or employ some one there to furnish me abstracts of title from the records, as they will hold me responsible for the correctness of the title.

In haste, yours,

M. B. OSBORN

P. S. I shall take notes and mortgage correctly, making them payable at Rock Island Bank. My son is associated in business with me, and our letters hereafter will be signed M. B. Osborn & Co.

We send form of deed, such as we use in this State. Filled up it differs very little from your forms. M. B. OSBORN & Co.

In answer to the question, "Did you, on that occasion, enclose to defendant the paper marked "defendant's Exhibit B," as the deed which the complainants desired to have executed to them, conveying the lands in question?"

The witness says I think it is the same paper which I enclosed with the letter. I suppose if they had not desired it I should not have sent it. I cannot swear that the complainants personally requested me to send that particular instrument, or form of instrument, but it is the form in common use here, and I presumed of course, it would be satisfactory to them. I sent the paper marked "Exhibit B," for Mr. Esmay and wife to execute, to convey the lands in question to complainants.

The paper, "Exhibit B," here offered, and afterwards read in evidence is in the words and figures following :

"This indenture, made and entered into this first day of May, in the year of our Lord one thousand, eight hundred and fifty-four, between Isaac Esmay, and Eliza V. Esmay, of the city of Albany and State of New York, of the first part, and Isaac Negus and Truman B. Gorton, both of the city and county of Rock Island, and State of Illinois, of the second part, Witnesseth that the said party of the first part, for, and in consideration of the sum of four thousand eight hundred and fifty dollars, paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents, grant, bargain and sell, unto the said party of the second part, their heirs and assigns, those certain tracts or parcels of land situated in the county of Henry, and

State of Illinois, and described as follows, to wit : the south west quarter of section thirteen (13), the north-east quarter of section twenty-two (22), the north-east quarter and the north-west quarter of section twenty-three (23) the north-east quarter and the north-west quarter of section twenty-four (24), the north-west quarter of section twenty-six (26), and the north-west quarter, of section thirty-five, all in township sixteen (16), north range one (1) east, of the 4th P. M. Also the north-west quarter of section four (4), in township fifteen (15), north of range one (1), east of the 4th P. M.. Also the north-west quarter of section twenty-nine (29), in township sixteen (16) north range two (2), east of the 4th P. M., containing sixteen hundred and sixteen $\frac{61}{100}$ acres (1616 $\frac{61}{100}$ acres), together with all and singular hereditaments and appurtenance thereunto belonging, or in any wise appertaining, to have and to hold the said premises, as above described, with the appurtenances, unto the said party of the second part, their heirs and assigns, forever, and the said party of the first part, for themselves and heirs, executors and administrators, do hereby covenant to and with the said party of the second part, their heirs and assigns, that they are well seized of the premises above conveyed, as of a good and indefeasable estate, in fee simple, and have good right to sell and convey the same in manner and form aforesaid, that the said premises are free from all incumbrances, and that the above bargained premises, in the quiet and peaceable possession of the said party of the second part, their heirs and assigns, against the claim of all persons whomsoever, they will forever warrant and defend.

In testimony whereof, the said Isaac Esmay and Eliza V. Esmay have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and delivered in presence of

{ SEAL. }

{ SEAL. }

And the said witness further testified as follows: There is a circumstance by which I can fix the date of the tender. One is the date of Mr. Esmay's letter to me, marked "Complainant's Exhibit R," is some three weeks later than the date of my notice of their acceptance, by the letter of the 9th of May, 1854. The complainants were a little impatient at the delay of the paper coming on, and were in frequently calling on me for it, to know if it had been received. My recollection, however, is not so distinct as to fix the time to a day.

Being re-examined, he says :

I believe the complainants never objected to the form of the deed; I think they preferred the form with which they were familiar here, at home, but they did not refuse the other. I don't hesitate to say that I had the letter of defendant marked "Exhibit O," when I submitted the last proposition of defendant's to said complainants. I think the reason I gave for refusing the tender was that I was not willing to lose the interest on the money, as Mr. Esmay's agent, and that Mr. Esmay might expect the interest.

And afterwards, at the April term of said court, the said cause came on to be heard, and the evidence aforesaid being read to the court, the same was argued at length by the respective counsel for complainants and defendant, and being submitted to the court, the said court, thereupon, at the next ensuing term, ordered a decree to be made therein in favor of said complainants, and against said defendant, which said decree was accordingly made, and is contained in the record of said cause, from which final decision and decree, the said defendant prayed an appeal to the Supreme Court, and caused the same to be duly perfected.

HOYNE, MILLER & LEWIS,

Solicitors for Defendant.

186
C. May
Negus Et al

Filed Apr 28. 1857
L. Delant
Clerk

State of Illinois } In the Circuit
Henry County } Court of said
County at the September Term
 thereof A.D. 1856 —

Frederick B. Gorton &

Isaac Myers
Complainants

Isaac Esmy
as
Defendant

} In Shewing,

}

And now come the
said Complainants, in the above
entitled cause by L. L. Beardsley
their Solicitor and the said
Defendant by Hays & Miller
his Solicitor, and the said cause
coming on to be heard upon the
Bill Answer Replication and
Interimony and Exhibits filed here-
in, after argument of the Solicitors
of said parties Complainant
and Defendants respectively; On
consideration whereof the Court
do find that the Equity of the case
is with the said Complainants
and that the Contract in their
said Bill mentioned between
the said Complainants and the
said Defendant, ought to be
specifically performed, and it

appearing to the Court that the
taxes assessed on said land upon
the covenants set forth and specified
in the Complainants said Bill
have been duly repaid to said
Defendant according to the terms
of the Contract in said Bill stated,
and that the sum of twelve hun-
dred and fifty dollars was duly
tendered by said Complainants
to the said Defendant as alleged
in said Bill, and that said sum
was upon the filing of said Bill
brought into Court and by said
Complainants deposited with the
Clerk thereof for the benefit and
use of said Defendant, subject
to the order of said Court;
and it appearing to the Court
that since the pendency of this
suit there has become due from
said Complainants to said Defendant
by the terms of the Contract set
forth in said Bill, the sum of
twenty four hundred dollars
together with interest thereon at
the rate of six per cent per annum
from the 1st day of May A.D. 1854 —

and that the further sum of twelve hundred dollars and interest thereon at the rate of six per cent from said first day of May A.D. 1854, will, by the terms of the contract set forth in said Bill, become due from said Complainant, to said Deft. on the first day of May A.D. 1857 - And it further appearing to said Court that the contract between said Complainant & said Defendant, set forth in said Bill of Complaint has been and is, by the proofs testimony and exhibits filed herein, fully and satisfactorily established and proven,

It is therefore ordered adjudged and decreed that the said Deft. specifically perform the contract with said Complt. set forth in Complt. said Bill, and that he comply by due with covenants of Warranty and living to said Complainant, agreeable to the form of due set forth in Complaint said Bill,

the following lands situate and
being in Henry County in the State
of Illinois; to wit: the North west
quarter of Section four (4) in
Township fifteen (15) North, Range
One (1) East 4th P.M. - the South
west quarter of Section thirteen
the North East quarter of Section
twenty ~~two~~ (22) - the North East
quarter of Section twenty three
(23) - the North west quarter
of Section twenty three (23) - the
North East quarter of Section
twenty four (24) - the North
west quarter of Section twenty
four (24) - the North west quarter
of Section twenty six (26) and
the North west quarter of
Section thirty five (35) all in
Township sixteen North, Range
One East 4th P.M. - also the North
west quarter of Section twenty
nine (29) in Township sixteen
(16) North, Range Two (2) East
4th P.M., and that said Dept do
so convey as aforesaid the lands
aforesaid to said Complainants
within ninety days after the date

of this decree, and that upon
the delivery of such due to said
Complainants, they the said Com-
plainants pay to said Defendant
the sum of twenty four hundred
dollars (\$2400.) with interest thereon
at the rate of six per cent from
the first day of May A.D. 1854.
And that thereupon said Com-
plainants make execute & deliver
to said Defendant their promissory
note for the sum of twelve hun-
dred dollars payable to said Deft
on the first day of May A.D. 1857 with
interest on said sum of twelve
hundred dollars to be computed
at the rate of six per cent per
annum from the first day of
May A.D. 1854, and that also
thereupon the said Complainants
make execute & deliver to said
Deft their due of mortgage upon
the land & premises to them to
said Defendant the due payment
of said promissory note.

And it is further ordered
adjudged and decreed that in
the event that said Defendant

shall fail neglect or refuse
to comply with the requirements
and mandate of this decree, and
shall neglect or refuse to make
execute and deliver to said Comptroller
a deed of said land as above
directed, then the Clerk of the
Circuit Court in & for said
County of Perry, for the time
being, is hereby appointed a
commissioner to make and
execute & deliver to said Com-
plainant, a deed, in form as
nearly as may be corresponding
to the form of deed set forth
in Complainant's said Bill,
of the land herebefore des-
cribed, and which deed when
so executed and delivered by
said Commissioner shall be
taken here and deemed to convey
to said Complainant all the
right title and interest of said
deft in and to the land aforesaid,
and the said depts shall there-
upon execute a note & mortgage
to said depts of the tenor and
description above set forth

to secure the payment of said
sum of twelve hundred dollars
and interest thereon & payable
within the time above limited,
and the said Complainants
shall also upon the delivery of
such due to them by said Com-
missioner pay to said Commis-
sioner for the use of said Sept
said sum of twenty four
hundred dollars with interest
at six per cent from said
first day of May A.D. 1854
and that said Commissioner
make report of his doings in
the premises to this court -
And it is further ordered adjudged
and decreed that said Sept
pay the costs herein - Done in
open court this 3^d day of
Sept A.D. 1856 -

I W Dwyer Judge
6th Federal Circuit
Illinois -

In the cause entitled within it is
agreed that the within demur shall
be considered as part of the record
in said cause and that the party
appellant herein took his appeal in
due form and season

J. I. Hawley Sol
for Gaston & Myers
Hoge Trustee
for appellee.

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Copy of demur
Herman B. Gaston
& Isaac Myers

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Lease Esmay
v. v. v.
Filed Sept 3 1856
in New County
Cir Court -

Filed April 29. 1857
J. Seland
Clerk

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Isaac Esmy
vs

Isaac Negus et al

1857

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X