

No. 8610

Supreme Court of Illinois

Wm. Clark

vs.

Hugh Lyons

71641  7

No 114

Nov. Term 1866

Clark

vs

Lyons

error to Union

Affirmed

8610

Phas before the Circuit Court within and for the County
of Union and State of Illinois on the ninth day of October
in the year of our Lord one thousand eight hundred and
fifty seven,

Be it remembered that heretofore, to wit, on the third
day of October in the year of our Lord one thousand eight
hundred and fifty six Hugh Lyons deposited in the Clerk's
Office of the Circuit Court aforesaid, the original papers
and pleadings in a certain Cause of Change of Venue from
the Circuit Court within and for the County of Wayne
and State of Illinois wherein the said Hugh Lyons is
plaintiff and William Clark defendant, together with
an authenticated transcript of the Journal or order book entries
made and rendered in said Cause by the Circuit Court in
and for said County of Wayne aforesaid and which original
papers pleadings and transcript are in the words and figures
following, to wit.

(Authenticated transcript.)

At a Circuit Court begun and held at the Court House
in Fairfield in and for the County of Wayne and State
of Illinois on Monday the 10th day of September 1855
Present the Hon. Wm. H. Parrish Judge by interchange
Be it remembered that heretofore, to wit, on the 15th day of
August 1855 Hugh Lyons filed in the Clerk's office of said
Court his bill of complaint against William Clark which
Bill is marked "A" and also on the 16th day of Aug. 56

1855 a Summons was issued to said Jm Clark which is marked "83"

And afterwards on the fifth day of the term of said Court the following order was made by said Court, to wit,
Hugh Lyons }
vs } 1 Bell in Chancery
William Clark }

At this day came the defendant and filed his demurrer to the Complainants bill which is overruled by the Court, and the said defendant ruled to answer further by the first day of December next, and by agreement of parties this cause is set for hearing at the next term of this Court to which term this cause is continued &c. and which demurrer of said defendant is marked ("84")

And afterwards, to wit, on the 1st day of December 1855 the said defendant filed his further answer which is marked "85"

And afterwards at the April Term of said Court in the year 1856 to wit on the second day of said Term the said Plaintiff by his attorney filed his replication to said defendants answer which is marked "86" and also on the same day the said plaintiff a notice to said defendant which is marked ("87")

And afterwards at the April Term of the said Court to wit, on the 28th day of April 1856 the said plaintiff filed depositions which are marked "88"

And afterwards on the day and year last aforesaid

the following order was made ³ by said Court

Hugh Lyons

vs

William Clark

In Chancery

Ordered that the complainant have leave to open depositions filed herein and that he have leave to amend his bill

And afterwards at the September of said term 1856

on ~~the~~ same day of the term the following order was made by said Court viz:

Hugh Lyons

vs

William Clark

In Chancery

The judge having ~~been~~ heretofore been counsel for the defendant in this cause and by agreement of the parties herein It is ordered that the venue herein be changed to the County of Union and it is further ordered that the clerk of this Court make out and transmit to the clerk of the Circuit Court of Union County a transcript of the proceedings and orders in this cause together with the original papers filed in this cause as the law directs

State of Illinois

Wayne County

I Joseph G Parkley, clerk of the Circuit Court in and for said County do hereby

certify that the foregoing is a true transcript of the order and proceedings in the above entitled cause of Hugh

Lyons vs William Clark and that the accompanying
papers marked A. B. C. D. E. F. & G. are all the
original papers filed in said cause

Given under my hand and the seal of said
Court at Fairfield this 29th day of Sept 1856

J. E. Parkly Clk

(Original Paper "A" filed in the Circuit Court in and
for the County of Wayne on the 15th day of August 1855 and is as follows, to wit.)
State of Illinois } Of the September Term of the
Wayne County } Wayne Circuit Court AD 1855-

Hugh Lyons }
vs } Bill for Specific Performance &c
William Clark }

Respectfully complaining sheweth unto
your Honor your Orator Hugh Lyons that sometime
in the year 1851 or 52 one Jefferson Sloan purchased
from one Treat a certain tract of land hereinafter des-
cribed and particularly mentioned in a certain penal
bond hereinafter set forth at & for the sum of 75[¢] fifty
dollars of which was at the time paid said Treat by
said Sloan the remainder was to be paid within a
time agreed on by said parties and that immediately on
the sale to & purchase by said Sloan he went out &
took possession thereof. That soon afterwards the said
Treat died not having made a title for said lands to
said Sloan and having the sum of 25[¢] due therefor.
Your Orator also sheweth that afterwards about the first
of March 1853 William Clark having purchased from

the estate of said Treat ^{5th} the debt due from said Sloan
(viz. \$50 & interest) to said estate and at the same time
having sold to said Sloan a Yoke of Oxen for \$50⁰⁰ It was
mutually agreed that the said Clark should take a
Conveyance of the lands hereinafter described to himself
to hold as security for the said sum of \$75 & owing as afore-
said by Sloan & accordingly the same was conveyed
to him. Your Orator further Sheweth that said sum
fell due on or about the 21st day of February 1854 and
that at about that time a bill for medical services
rendered by Dr Boygs for said Sloan amounting to
about \$25 was added to said sum of \$75 & interest
making about the sum of \$108. and that the amount
of twenty five per cent of said \$108. (viz 27) or thereabout
was added to said sum as interest for the forbearance
of said debt for one year from the 21st of February 1854
making about the making about the sum of \$135⁰⁰ and
that on or about the day last ~~fore~~ above specified
it was agreed that said Sloan should execute to said
Clark his note for said sum \$135⁰⁰ or thereabout due
one year from date as aforesaid and that said Clark
should execute his bond for a Deed to said Sloan for
said lands in payment of said money all of which
was done. Your Orator further Sheweth that immedi-
ately upon the completion of said agreement and the
execution and delivery by Sloan of the promissory
note aforesaid for the sum of money aforesaid

the said Clark made executed and delivered to said Sloan
a certain penal bond or writing obligation, whereby he
bound himself his heirs executors & administrators in the
sum of two hundred dollars to be well & truly paid to
said Sloan subject to the conditions therein set forth as
follows Viz: "That whereas the above bounded William
Clark has this day sold to the said Jefferson Sloan the
following tract of land situate in said County viz:
The North West quarter of the South East quarter of
Section five in Township two South of Range Seven
East for which the said Sloan has executed to said Clark
his promissory note for the sum of one hundred and
thirty five dollars and twenty seven cents, payable one
year after the date thereof. Now if said Sloan shall pay
off said note at maturity and the said Clark shall
thereupon convey said land to said Sloan then this
obligation to be void otherwise to remain in full force
and virtue. But if default be made in the payment
of said note as aforesaid at the time aforesaid then
this obligation and said agreement to sell said
land to be void and of no effect - All of which will more
fully appear by reference to said instrument a copy
of which is filed herewith and asked to be referred to
as a part of this your Orator bill & marked exhibit
Letter (A) -

Your Orator further Sheweth unto your honor that
said instrument on the day of its date (viz: the 21st

of Feby. 1854) having been delivered to said Sloan by said Clark
& the possession of the lands & premises therein specified
having been previously given up and surrendered to said Sloan
by said Treat according to the terms of said Contract
of sale with Treat & said Sloan thereupon having entered
into possession of the same as aforesaid proceeded with
the full knowledge and consent of said Clark and is
said Sloan and by virtue of the rights vested in him under said
contracts to make and did make large & valuable improve-
ments on said lands thereafter and did erect and build
dwelling houses out houses Stables Smoke houses Barns &c
and make large improvements by fencing in and breaking
up the land for tillage together with various other improve-
ments necessary to open and complete a farm for possession
use & occupancy and in so doing said Sloan expended
a great amount of his own money & labor of great value
to wit. of the value of two hundred dollars all after the said
purchase and possession taken as aforesaid - Given
Orator further sheweth that at or about the date of said
contract of sale and the execution of said parties of
said writing above spoken of the said Clark fearing that
the said Sloan would not be able to pay his note
(given & due as above specified) on the day of its maturity
(to wit. 21st Feby 1855) did propose to said Sloan that he
(Sloan) should give him a mortgage upon certain per-
sonal property of his (Sloan) the latter to secure the
payment of said money to become due for the land

8
sold as aforesaid and the said Sloan according to the
reasonable request of said Clark & being anxious to secure
the payment of said money did accordingly at or about
the time aforesaid execute and deliver to the said Clark
a chattel mortgage upon two Stags or oxen, one cow and
other property, to wit, ten Hogs of great value, to wit, of the
value of the sum to become due on said note all of which
was by said Sloan conveyed to said Clark for the better
security of the amount to become due for said land
and was in default of the payment of said money,
by said Sloan to be the absolute property of said Clark
for the purpose aforesaid which said Chattel mortgage
being in the possession of the said Clark your Orator
prays may be produced and made an exhibit in this
Cause whereby the fact aforesaid may be made more
fully to appear — Your Orator further sheweth unto your
honor that after the said Contracts for the sale of the said
lands and the taking possession thereof by said Sloan
and after the execution & delivery of the Chattel mortgage
aforesaid by Sloan to Clark, to wit some time on or about
the 15th day of March A.D. 1854 said Sloan sold the
lands premises improvements and appertinances to your
Orator at and for the price and sum of two hundred dollars
one hundred dollars of which was paid to said Sloan
by your Orator & the remainder was not to be paid by your
Orator until at or about the maturity of the note given
by Sloan to said Clark and in the event of said Sloan's

9.
failure to pay said money your orator was so to do, and
thereupon the said Sloan made and signed the following
assignment endorsed upon the back of the bond or
writing obligatory above spoken of, to wit: "For value
received Jefferson Sloan do hereby sell assign & trans-
fer unto Hugh Lyons the within bond and the land there-
in described and authorize him to receive in his own
name the due therefor Witness my hand and seal this
15th day of March A.D. 1854.

attest Edwin Beecher Jefferson Sloan
his mark
Your orator further sheweth that immediately upon and
after the sale and assignment to your orator by said
Sloan of said lands &c the said Sloan procured,
to put, and did put your orator in possession of the
premises & appurtenances mentioned in said bond together
with all the improvements made thereon by said Sloan
and all rights to said lands & premises belonging with
the bond itself by him assigned as aforesaid and that
so soon as your orator was there placed in possession
of the said lands appurtenances improvements & bond
your orator by virtue thereof proceeded to make and did
make large and valuable additional improvements
thereon and did in so doing expend a great amount of
money & labor of much value to wit of the value of two
hundred dollars without objection being made by said
Clark who well knew your orator had purchased the
same and your orator from the day of his purchase

10.
of said land from Sloan, up to the maturity of said note
still continued without objection from Clark in any way
as to improve said land all of which together with the money
paid to said Sloan & the improvements made by him & sold
to your Orator will be forfeited and lost by your Orator
unless your honor grants the relief hereinafter sought
& prayed - Your Orator further sheweth that at the time of
the maturity of the note given by Sloan to Clark as aforesaid
your Orator was and had been for some time sick & confined
to his room so that it was impossible for him without imminent
risk to his health & life to call upon said Clark and learn whe-
ther or not said Sloan had paid said note according to
the terms of said Sale to him, and in the event he had failed
to do, to pay it as your Orator afterwards offered to do, but
your Orator sheweth that he notified said Clark (by sending
word to him) of his ill health and that the money due by
said Sloan would be paid by your Orator if he would
call at your Orator and get it and your Orator re-
quested said Clark by messenger to come and receive the
same of your Orator on the maturity of said note. But the said
Clark thinking to benefit himself greatly by reason of the ill health
and debility of your Orator wholly neglected and refused
to call and receive the said money due on said note from your Orator
and upon the failure of said Sloan to pay the same he proceeded
to take and did take possession of the property & chattels mortgaged
by said Sloan to him and at the same time refused to make
execute or deliver to your Orator or to said Sloan any deed or

Conveyance whatever to or for said land & premises mentioned in said
 bond & ~~pretended~~ pretended & still pretends that by the terms of said
 Chattel Mortgage the property therein described is actually his own
 and that by reason of the failure of said Sloan & your Orator to
 make payment of said note on the day of his maturity the
 land also remained his and he was in no wise bound to either your
 Orator or Sloan for a debt thereto although he well knew
 that your Orator was ready and willing and but for his illness
 would have paid said sum or offered so to do on the day it was due
 though your Orator did not feel bound in law so to do. Your
 Orator further sheweth that immediately upon the convalescence
 of your Orator and as soon as he could possibly do so in safety
 to his health, to wit, on the first day of March A.D. 1885 and
 immediately after said Clark had taken possession of the property
 mortgaged to him by Sloan and only some days or less after
 the maturity of the note given by said Sloan to Clark, your
 Orator proceeded to tender and actually did offer to pay the
 whole amount of said note due said Clark for said land
 & owed medical bill and all interest which had accrued thereon
 in full. And your Orator tried to prevail upon said Clark to
 take & receive the same and execute a conveyance to your Orator for
 said land according to the terms of said bond and said assignment
 made therein but the said Clark wholly regardless of the rights
 of the rights of your Orator in the premises and seeking only
 advantage to himself, entirely, utterly & wholly failed neglected
 and refused to accede to the reasonable request of your
 Orator to receive said money & execute said bond and

12.
" All though he is in the possession of the said mortgaged
" & your orator in the possession of said lands & improvements
" made & purchased by your orator as aforesaid he the said
" Clark pretended & still pretends that your orator ~~is~~
" ~~and~~ hath not any right in the premises but that the same
" with all appurtenances and improvements are his own
" property free from all equities or rights of any one and that
" your orator has no right to a deed or conveyance therefor
" all of which pretences actings and doings are contrary to
" equity and good conscience & tend to the great & manifest
" prejudice of your orators rights - your orator further sheweth
" that from the time of the maturity of the note due to said
" Clark hitherto he hath been and still is ready & willing to pay
" said sum of money & all arrears of interest. And your
" orator had well hoped that said Clark would have admitted
" the justice of your orators claims - received the said money
" from said executor a deed to him for said land, but now
" so it is may it please your honor that the said Clark
" combining & confederating with divers evil disposed persons
" to your orator unknown but whose names when discovered
" he prays may be inserted in this bill, and they made defend-
" ants with apt words to charge them in order that they & he
" may oppress impoverish & wholly ruin your orator in the
" premises actually pretends and asserts, that so far from
" having any right or equity in the premises aforesaid your
" orator is actually a trespasser thereon and he even threatens
" that he will forcibly eject your orator from and out of

13.
the possession of the same and also out of the improvements
made & purchased by your orator and your orator charges
and avers the truth to be that said Belash well knowing the
matters and things by him above stated are true, further
pretends because the sum of one hundred and thirty five
dollars twenty seven cents was not paid on the said 21st
day of February 1855 by said Sloan all rights under said
sale have been forfeited and become void whereas your
orator avers and charges the truth to be that if any of his
rights ever were forfeited or avoided by reason of said non-
payment on said day (all of which your orator denies)
said forfeiture has been waived by said Belash, by his
having taken possession of the property (after default in
payment of said notes) mortgaged to him by said Sloan by
virtue of said mortgage, and your orator also charges
that if it ever was intended by said Sloan & Belash that said
contract should be null & void if said note were not paid
on the very day of maturity (which your orator denies) yet
by taking a mortgage for security of his debt - putting said
Sloan in possession of said premises allowing him to make
improvements thereon - allowing your orator to be put into poss-
ession thereof by Sloan and to make large improvements thereon
without objection - he has waived his right to claim a forfeit-
ure if it should take place thereafter - and not only so but
your orator charges that even if there had been a forfeiture
he has rendered it (by showing his disability & illness & his diligence
in making a tender of principal & interest) inoperative and of

no effect so that according to ^{14.} every rule of equity your orator
should be and is entitled as of right & justice to a deed for
said land. In tender consideration therefore of the premises
and for as much as your orator hath not any remedy
save in a Court of equity where matters of this kind are properly
cognizable - Your Orator prays that said William Clark may
be made a party defendant to this his bill and required to
answer the same, Charge by Charge allegation by allegation
paragraph by paragraph & sentence by sentence as particularly
as if specifically interrogated relative to each and every alleg-
ation or fact therein stated averred charged or shown accord-
ing to the best of his knowledge understanding & belief and
to this end your Orator further prays that the proper most
gracious writ of Subpoena in chancery may be issued against
said Clark requiring him under proper penalties to be and
appear before the honorable Circuit Court of said County of
Wayne at its September Term 1855 to be holden on the 16th at the
then and there to answer as aforesaid. So that upon a final
hearing of this cause your Orator also prays that your honor
will order adjudge and decree a specific performance
of said contracts of sale by directing and ordering said
defendant (within a reasonable time to be fixed by the
Court) to make execut^{on} and deliver to your orator on payment
of the lawful sum of money due said Clark for the same
a good and sufficient deed of conveyance of and to the
lands & premises in said bond described, or in default
thereof that a commissioner be appointed and empowered

15.
to carry into effect & execute the decree of this Court by so
doing had that therefore said defendant his heirs and assigns
be forever enjoined and restrained from claiming any interest
or right to or over upon or in said premises, together with
such other or additional relief in the premises as the facts
of the case may justify and as to your honor may appear
just and equitable & as in duty bound, your orator will ever
pray &c- I A Wayne Sol for Compt

(Exhibit "A" referred to in the bill and thereto attached)

Know all men by these presents that I William Clark
of Wayne County Illinois am held and firmly bound unto
Jefferson Sloan of said County in the penal sum of two
hundred dollars for the payment of which well and truly to
be made and performed I bind myself my heirs executors and
administrators jointly by these presents Witness my hand and
seal this 21st day of February A.D. 1854 The conditions of the
foregoing obligation is such that whereas the above bounden
William Clark has this day sold to the said Jefferson
Sloan the following tract of land situate in said County
viz. the North West quarter of the South East quarter of
Section five in township two South of Range Seven East
for which the said Sloan has executed to said Clark his
promissory note for the sum of one hundred and twenty
thirty five dollars and twenty seven cents payable one year
after the date hereof now if said Sloan shall pay off said
note at maturity and the said Clark shall thereupon
convey said land to said Sloan then this obligation

16.
to be void otherwise to remain in full force and virtue
unless if default be made in the payment of said note as
aforesaid at the time aforesaid then this obligation and
said agreement to sell said land to be void and of no
effect.

William Clark (Seal)

Which Exhibit "A" is endorsed on the back as follows.

For Value received Jefferson Sloan do hereby sell
assign and transfer unto Hugh Lyons the within bond
and the land therein described and authorize him to
receive in his own name the deed therefor

Witness my hand and seal this 15th day of March AD 1854

Attest

Jefferson ^{his} Sloan,
_{made}

Edwin Beecher

And on the 16th day of August AD 1855 the said
Complainant Hugh Lyons sued out of the Clerk's office of
the Circuit Court in and for the County of Wayne the following
Subpoena in Chancery (being original paper marked "13") to wit,
State of Illinois } the people of the State of Illinois
Wayne County } To the Sheriff of said County
Greeting

We command you that you summon William
Clark if to be found in your County personally to be
and appear before the Circuit Court of said County on
the first day of the next term thereof to be holden at
the Court house in Fairfield on the second Monday of
September next to answer to a certain bill of Complaint
filed in our said Circuit Court on the Chancery side

any relief as against this debt ¹⁸Therefore and for divers other
errors in said bill contained & appearing on the face thereof
this debt demurs and prays to be hence dismissed with
his Costs &c. Beecher & Meints & Hamilton attys for Debt

And Afterwards in the said Wayne County Circuit Court, to wit,
on the Fifth day of the Term of said Court began and held
at the Court House in Fairfield on Monday the 10th day of Septem-
ber 1855 the following order was made and entered of record in
said Court, to wit,

"Hough Lyons

" "

"William Clark

Bill in Chancery

At this day came the defendant and filed

his demurrer to the Complainants Bill which is overruled by
the Court and the said defendant ruled to answer
further by the first day of December next, and by agree-
ment of parties this cause is set for hearing at the next
term of this Court to which time this cause is continued
and which demurrer of said defendant is marked ($\frac{1}{2}$).

And afterwards, ~~to wit, on the 1st day of December 1855~~
the said William Clark filed in the office of the Clerk
of the said Wayne Circuit Court an Answer to the said Bill
in the Words and Figures following (being original paper marked
letter "D"), to wit,

The Answer of William Clark to the bill of Compl-
aint of Hough Lyons exhibited against him in the
Circuit Court of Wayne County, Illinois at the

September Term thereof ¹⁹ AD 1855 =

The said defendant saving and reserving the for answer
to so much of said Bill as he is advised it is necessary and
proper for him to answer unto says that true it is that about
the 21st day of February in the year 1854 he was the owner of
the land described in Complainants bill that the said Sloan
applied to this respondent to purchase the same and after
considerable negotiation between them and after repeated
solicitations importunities on the part of said Sloan this
defendant did agree to sell said land to said Sloan at
and for ~~the~~ sum of ~~one~~ one hundred and thirty
seven dollars and twenty seven cents to be paid in one
year from that time for which sum said Sloan then executed
his note to this respondent payable in one year, But this
respondent positively denies that he was anxious to sell
said lands, but on the contrary he for a long time ~~refused~~
~~refused~~ so to do, and it was only on the urgent solicitations
of Sloan that he finally consented to dispose of said land
Respondent admits that he executed a bond to Sloan
which he believes is correctly set forth in the exhibit filed
with Complainants bill that in said Bond it was expressly
agreed that if default should be made by said Sloan
in the payment of said note when the same became due
said bond and also said agreement to sell said land should
be void and of no effect that said stipulation inserted
in said bond was but carrying out the intention and original
Contract of said parties, both of whom understood at the

time that unless said note was paid when due said
Contract was to be utterly void - Respondent admits
that by the terms of their agreement said Sloan was to have
possession of said land - that he did so take possession
and that he and the said Lyons have since held possession
thereof - admits also that the following improvements were
made on said land after said agreement to sell viz. a
small Smoke House worth about \$8. was erected thereon
and if any other improvements were made thereon
either by said Sloan or said Lyons after the making of
said agreement and before the expiration of the year within
which said Sloan had to pay for said land it is unknown
to this respondent - Respondent avers that the use of said
property ~~that the use of said property~~ was worth to said Sloan
or Lyons a much larger sum than the value of the
improvements made thereon - Respondent admits that
said Sloan executed to respondent a mortgage upon
certain personal property to secure the payment of said note
that believing according to the terms of their agreement that
he was entitled to the same he took possession thereof
and also immediately notified said Sloan that the time
for the payment of said land had expired and he respon-
dent considered the agreement forfeited thereby that very
soon after learning that he had no right to retain
said mortgaged property he redelivered the same to
said Sloan and had never since had the possession
or control thereof - that at the time respondent took

possession of said mortgaged property it was against
 the consent of said Sloan he asserting that he had
 no right thereto. Respondent had heard that said
 Sloan had sold said land to Complainant but it was
 only rumor he never having heard either of said parties
 say any thing about it - admits that said Lyons took
 possession thereof but said Sloan & Lyons being brothers
 in law, respondent did not know or by from rumor
 from whether he was occupying as a tenant of Sloan or as
 purchaser. Respondent denies all knowledge of Complainants
 sickness or charged in said bill denies that he ever received
 any word from said Complainant of his sickness and of
 a request to go to said Complainants and get his money
 and insists, that if he had been so notified he was not
 either in law or equity bound to do so, in as much as the
 time in which said money was to have been paid had
 expired before any offer to pay was ever communicated to
 respondent, and also for the reason that respondent had no
 claim on said Complainant but only on said Sloan
 Avens that the first notice he had of any offer by Complainant
 to pay said sum was some time after said note became
 due when said Lyons pretended to tender some money
 to respondent, but whether it was the full amount of
 said note respondent did not know. Respondent admits
 its that he insisted at the time of said pretended tender
 & has always since the day said note fell due, that said
 agreement was forfeited and that neither said Sloan nor

" Every other Clanning under him had any interest in said
" lands by Virtue of said agreement, and believing so he has
" always refused to execute a deed therefor - Respondent
" positively denies all confederating or conspiring with any
" person or intention of defrauding said complainant as
" charged in his said Bill. Denies that he has waived the
" said forfeiture but that he has always insisted thereon
" Denies that the sickness of any one but Sloan to whom
" Respondent was bound would excuse a performance on
" the part of said Sloan, and as to all other allegations in
" said bill not specifically answered this respondent
" denies all knowledge and calls for proof having answered
" fully pray to be discharged hence with his reasonable
" costs in this behalf expended etc.

" Sworn to & subscribed before me } William Clark
" this 1st Decr 1855 }
" J G Barkley clk }

And afterwards, to wit, on the 28 day of April AD 1856 the
said Hugh Lyons filed in the office of the clerk of the said
Wayne County Circuit Court certain Depositions in the words
and figures following (being original paper marked letter
"G") to wit,

" State of Missouri } Wayne Circuit Court
" Wayne County }
" Hugh Lyons }
" } Bill in Chancery
" William Clark }

1. E A Beecher Esq atty for ²³ deft in above cause.

2. You are hereby notified that I will attend before Joseph
3. Barclay Esq Clerk of the Circuit Court of said County at his
4. office in Fairfield on Friday & Saturday the 25th & 26th
5. days of April 1856 between 9 ock A M & 4 ock P M of said
6. day for the purpose of taking the depositions of Jefferson
7. Sloan. Tetus Buffington, Samuel Gates & E. E. Carter
8. residents of said County to be read as evidence in the
9. above entitled cause pending in Chancery in said County
10. at which time and place you can attend if you think
11. proper and propound Cross interrogatories
12. Mch 29th 1856. Hugh Lyons

13. Compt for J A Kearney & Co

14. Which Notice is endorsed on the back thereof as follows
15. to wit, "Lyons vs Clark & Notice

16. To be returned to Joseph Barclay - Shiffs fees for my sd
17. returning 10- 60 Filed 4th April 1856- J G Barkley clk
18. I have served the within notice on E A Beecher Esq atty
19. for said Clark by delivering him a copy of the same
20. the 4th day of April 1856 A. Campbell shiff

21. The depositions of Tetus Buffington Samuel G. Gates
22. E. E. Carter and Jefferson Sloan of Wayne County and
23. State of Illinois Witnesses produced Sworn and examined
24. before Joseph G. Barkley Clerk of the Circuit Court in and
25. for the said County of Wayne and State aforesaid on the
26. twenty fifth day of April A D 1856 at the Court House in
27. Fairfield in said County of Wayne in presence of
28. [8-10-56]

1 notice to said Clark defective to be read as evidence on the
2 trial of a certain suit in Chancery now pending and
3 undetermined in the said Circuit Court, wherein Hugh
4 Lyons is plaintiff and William Clark is defendant
5 on the part and behalf of the said Complainant, the
6 said Jefferson Sloan being first introduced duly sworn
7 according to law deposes and saith in answer to the several
8 interrogatories propounded on the part of the said Complain-
9 ant as follows viz:

10 1st Are you acquainted with complainant Hugh Lyons
11 and defendant William Clark & if so and how long have
12 you known them each respectively?

13 Ansr. I have known the said Hugh Lyons for five years or
14 more and have known the said William Clark for ten
15 years or more.

16 2nd Do you or not know any thing relative to a certain
17 Contract of Sale of the North West qr of the South East
18 quarter of Section five in Township Two South of Range Seven
19 East made by said Clark, if so state whether the instrument
20 here shown is the same?

21 Ansr I believe the instrument to be the same, the
22 instrument here referred to is marked Exhibit "A" Filed
23 25 Apr 1856 J. G. Barkley clk. and appended to the depositions

24 3rd Was or was not this contract made with yourself
25 by Clark and assigned as appears on the reverse
26 thereof by you to complainant, and have you a
27 release from Lyons to you of all liability growing

out of said assignment? 25

Ans. The contract was made between myself and Clark and the assignment was made by me to the said Hugh Lyons, and I have a release from Hugh Lyons of all liability on said Contract said release here produced is marked Exhibit "VB" Filed 25th Apr 1856 J G Barkley Elk.

4th State whether or not you at the time of said purchase executed any note or other instrument for the purchase money & if so what and for what sum was the same given?

Ans. I gave a note to the said Clark, for, I think one hundred and thirty five dollars I also gave to the said Clark a mortgage on one yoke of Steers one Cow & some Hogs and one Wagon to secure the payment of said note.

5th Is the instrument here shown and read to you a copy as near as you recollect of said mortgage and its contents?

Ans. I think it is a copy of the mortgage that I give as near as I can recollect and whether the Wagon was named in the mortgage or not I do not recollect, but I offered to give the Wagon also. The copy here shown is marked Exhibit "VB" filed 25th Apr 1856 -

6th State who has had possession of the land in said Contract mentioned since the date of purchase by you and who holds the same at this time and all the circumstances attending the going into & taking

" possession of the said land ²⁶ from your first possession down
" to this time?

" Answer I purchased the land some four or five years ago
" from Titmore Treat for \$75.00 and took possession of
" the land at the same time. Treat afterwards died and
" ~~Wm~~ Wm Clark purchased a tract of land adjoining
" said tract and also purchased the claim due from
" me to the estate of Treat being some \$25.00 I had also
" bought a yoke of Steers of Clark for \$50.00. The deed
" by agreement was made to Clark instead of me from
" the estate of Treat and I took a bond from Clark
" for a deed to me when I should the balance due
" from me on said land and for the yoke of Steers.
" A short time before the payment from me to Clark
" became due an account due from me to Dr Boggs
" was added to Clarks account and also 25 per
" cent as interest was also added on the whole account
" which made the amount of the note and mortgage
" that I gave to Clark of some \$125.00 and for which
" I took his bond for a deed when the same was paid
" the bond here referred to is the one marked exhibit 3^d
" 7th In what manner have you held possession of
" said lands since the assignment to Lyons?
" Answer. Since the assignment by me to Lyons I have
" held the land as tenant under Lyons.
" 8th How long after the assignment by you to Lyons
" was it before Clark had notice of the said

" Assignment?

27.

" Ans^r I think it might ~~have been~~ be perhaps a
" month after the assignment when I told Clark myself
" that I had sold the land to Lyons & that I had
" assigned the bond to Lyons.

" Q^d What amount of improvement if any have you
" made on said land since you purchased the land
" from Isaac?

" Ans^r I have made one dwelling house worth \$25.00
" or more and one Smoke house worth about \$10.00 and
" fenced and broke some 8 or 10 acres the breaking and
" fencing of which is worth at least \$60.00.

" 10th How much of the improvement you spoke of ~~land~~
" have you made since your first contract with Mr
" Clark?

" Ans^r About three acres of land was taken in and
" both of the houses was made since I first made the
" contract with Clark

" 11th What amount was Lyons to give you for the
" land and how was it to be paid?

" Ans^r Lyons has paid me one hundred dollars and
" was to pay Clark for me \$100.00 on the note held on
" me.

" 12th State what you may know relative to Clark's
" taking possession of the property mentioned in the mortgage
" from you to Clark and whether he took possession of the
" property after or before the note became due?

Ans^r On Sunday evening some 3 or 4 days after the note
become due Clark came to my house and asked
me what the Hell me and Lyons had been doing
you have let that bond slip, you have let the
time run out I told him that bond had not
run out and asked him if he would take the
money He said no, he had no use for it, and was
coming to take the property, and accordingly did
come and take the Steers and Cow and also a
Calf & drove them away The Steers were worth \$50.00
and the Cow & Calf was worth about \$20.00
13th What was the Condition of Lyons at that
time as to his health?

Ans^r. Lyons was unwell and unable to attend
to business and not able to get ~~out~~ about the house
without the aid of crutches

14th How long after Clark took the Cattle
away before you notified him that his money was
ready at Lyons and for him to go and get it?

Ans^r I told Clark on the day that he took the
Cattle away, that Lyons had the money ready for
him, and the next day after Clark took the Cattle
away Clark came into Lyons's House, and Lyons
proposed to settle with him, and drew out some
money and began to count it, and Clark got
up and left the house, and then Lyons handed
the money to Titus Buffington to count, the

money was in Gold and Silver ^{29.}

15th How long had Lyons been sick at that time?

Ans. Lyons had been sick ^{for} a month or more.

Q^{rs} examined by the defendant

1st Was it before or after the last contract with
Clark that the house was built and was the fencing
& breaking done before ~~the~~ or after the last contract?

Ans. The building the house & fencing and breaking
the ground was all done before the last contract
with Clark except the Smoke house which was
built after the contract with Clark.

2nd What is the yearly rent of the said tract of
land worth?

Ans. I suppose it would be worth \$20.00

Re-examined

1st State what the rent of the premises were worth
in the year 1854?

Ans. It was worth perhaps four or five dollars

Re cross examined.

1st State how long ^{after} Clark took the cattle before he
returned them to you?

Ans. He never returned them, I went as often as
twice to Clark to get the Steers but Clark would
not give them up, afterwards I got a letter from
Dr Boggs to Clark and handed to Clark, he then
let me take the Steers, I afterwards went to Clark's
field and took the cow without leave and have

" never get to the leaf. ³⁰ And further the deponent saith not,

Jefferson ^{his} Sloan
mark

" I do hereby certify that the foregoing deposition of
" Jefferson Sloan was sworn to and signed by the
" deponent before me and in my presence and that the
" said deposition was taken by me on the 25th day of
" April 1856 at the Court House in Fairfield in the
" said County of Wayne between the hours of 9 o'clock
" in the morning and 4 o'clock in the evening
" of said day - Given under my hand and the seal
" of said Circuit Court at Fairfield this 25th
" day of April 1856. J. E. Barkley clk Circuit Court

" The said Titus Buffington being first duly sworn
" according to law deposition saith in answer to the
" several interrogatories propounded on the part of
" the said Complainant as follows viz:

" 1st Are you acquainted with the complainant
" & defendant in this cause?

" Ans^r I have known the complainant for two
" years and the defendant for about the same time

" Qnd State the condition as to health of Lyons
" about 1st day of March 1855.

" Ans^r. I saw Lyons on the first day of March 1855
" he was able to ride in his waggon but looked to
" be very feeble & weak and looked like if he might
" have had a very severe spell of sickness

" 3rd State what you may ~~now~~ know relative to

31.
" a tender by Lyons to Clark or an offer to pay a
" certain sum of money, State when it was, where it
" was on what account, and the amount and kind
" of money?

" Ansr. on the 1st day of March 1855 at the house of
" Mr Lyons at a sale Mr Lyons sent out Jeff
" Sloan to tell Mr Clark to come in the house he
" came in and Mr Lyons remarked to Clark that
" he wanted to pay him that money, and pulled out
" his pocket book in a position that he Clark could
" see it all, Clark remarked that it was to take and
" turned and walked out of the house, Lyons then
" handed me the Pocket Book and money and asked
" me to count it, I did so, and there was six twenty dollar
" Gold pieces, one ten dollar Gold piece, one five dollar
" Gold piece and two twenty five cent pieces all Amer-
" ican coin except one of the twenty five cent pieces.
" Lyons appeared at that time not to be in a condition
" to follow up Mr Clark to make any further tender
" on account of sickness.

" Titus Buffington
" I do here by certify that the above deposition
" of Titus Buffington was sworn to and signed
" by the deponent before me and in my presence and
" that the said deposition was taken by me on 25th
" day of April 1856 at the Court House in Fairfield
" in said County of Wayne, between the hours of 9.

" O'clock in the morning³² and 5 O'clock in the evening of
" said day Given under my hand and the seal of ^{said} the
"  Circuit Court at Fairfield this 24th Apr 1856

" J G Baskley Clk Circuit Court
" The said Samuel G. Gates being first duly sworn
" deposeth and saith in answer to the several interro-
" gatories propounded on the part of the said compl-
" aint as follows. viz:

" 1st State Are you acquainted with the complainant
" and defendant in this suit? and how long?

" Ans^r I have known Mr Lyons for nearly two years
" and know Mr Clark when I see him only

" 2nd State the condition as to health of Mr Lyons
" about the 1st of March 1855 and previously?

" Ans^r. Mr Lyons was for some three weeks before
" the 1st of March 1855 confined to his bed and not
" able to be out most of the time and on the day before
" the cattle was ~~take~~ drove off and the day after the
" sale at Lyons' he was unable to be out of his bed
" and on the day of sale he was unable to get out of
" the waggon without help.

" 3rd State what you know relative to a tender
" made by Lyons to Clark on the day of sale?

" Ans^r I have heard the statement Mr Bauffington
" before taken and I know his statement to be
" strictly correct as to the offer to pay and the count-
" ing and kind of money and other statements

made by Mr Buffington.^{33.}

Samuel G. Gates

I do hereby certify that the above deposition of Samuel G. Gates was sworn to and signed by the deponent before me and in my presence and the said deposition was taken by me on the 25th day of April 1856, at the Court House in Fairfield in said County of Wayne between the hours of 9 O'clock in the morning and 5 O'clock in the evening of said day.

Given under my hand and the seal of said Circuit Court at Fairfield this 26th day of April 1856. J. G. Barkley Clk Circuit Court.

The said Eletha E. Carter being first duly sworn deposes and swears in answer to the several interrogatories propounded on the part of the said complainant as follows viz:

1st. Are you acquainted with the complainant and defendant in this suit & also Jefferson Sloan & how long?

Ans^r. I have known Mr Lyons for about 20 months and Mr Clark for about the same time, and Mr Sloan for more than two years.

2nd. Were you present when the bond shown to Sloan to day whilst testifying and the mortgage a copy of which was also shown to Sloan, was given as also the note in said mortgage mentioned if so state all you may know about the matter?

39. " Ans^r. I was present when the note bond and mortgage
" was given and I believe the copy of the mortgage
" and the bond shown here to day is correct. The note
" was drawn for \$135.00 and I don't recollect of there
" being any odd cents in it. I understood the note to
" be given for a claim due to Clark and that 25
" per cent was added to the account and included
" in the note.

" 3rd State the conversation if any you heard between
" the parties at the time the mortgage was given?

" Ans^r. I heard Clark ask Sloan what he was going
" to do for the money he owed him and Sloan said
" he was going to borrow it of Dr Briggs at 33 $\frac{1}{3}$ per cent
" and Clark remarked that he was a fool for he would
" only charge him 25 per cent. then they went up to Mr
" Beecher's office to draw the mortgage & bond. Sloan
" then asked Clark if he would take as little as
" \$25.00 at a time on the note & mortgage and Clark
" said he would and Sloan called on me to witness
" that Clark had agreed to take \$25.00 at a time
" on said mortgage.

" 4th Was there any understanding between the parties
" at that time, that if the money was not all paid at
" the time the note became due that the bond
" was to fall back to Clark?

" Ans^r. I heard nothing to that effect.

Elisha E Carter

35. I do hereby certify that the above deposition of
Elisha E Carter was sworn to and signed by the
deponent before me and in my presence, and that
the said deposition was taken by me on the 25th
day of April 1856 at the Court House in Fairfield
in said County of Wayne between the hours of 9
A.M. & 6 P.M. of said day -

Given under my hand and the seal of said
Circuit Court at Fairfield this 24th April
1856. J. G. Barkley CLK Circuit Court

The exhibit referred to in the depositions marked "A" and
thereunto attached is in the words and figures following, to wit,

"Know all men by these presents that I William Clark of
the County of Wayne, Illinois am held and firmly bound
unto Jefferson Sloan of said County in the penal sum
of two hundred dollars for the payment of which well and
truly to be made and performed I bind myself my heirs
executors and administrators firmly by these presents.

Witness my hand and seal this 24th day of February 1859

The condition of the foregoing obligation is such that where
as the above bounden William Clark has this day sold
to the said Jefferson Sloan the following tract of land
situate in said County viz: The North West quarter of the
South East quarter of Section Five in Township Two South
of Range Seven East for which the said Sloan has executed
to said Clark his promissory note for the sum of one hundred
and thirty five Dollars and twenty seven cents payable one

36. Year after the date ~~the~~ hereof: Now if said Sloan shall pay
off said note at maturity, and the said Clark shall
thereupon convey said land to said Sloan then this
obligation to be void otherwise to remain in full force
and virtue. But if default be made in the payment of
said note as aforesaid at the time aforesaid then this
obligation and said agreement to sell said land to be
void and of no effect. William Clark (Seal)

The said exhibit 34th has on the reverse side the following
writing enclosed, to wit,

For value received I Jefferson Sloan, do hereby sell
assign and transfer unto Hough Lyons the within bond
and the land therein described and authorize him to
receive in his own name the deed therefor Witness my
hand and seal this 15th day of March A.D. 1854

Attest: Jefferson ^{his} Sloan (Seal)
mark

Edwin Beecher

The exhibit referred to in the deposition marked "B"
and thereto attached is ⁱⁿ the words and figures following, to wit,
I Hough Lyons to whom Jefferson Sloan assigned
a certain bond given by William Clark to said Sloan
for conveyance of land therein named bearing date the 21st
day of February 1854 & assigned by said Sloan on the
15th day of March 1854 to me, do hereby release all and
all manner of actions suits or libelities of all kinds and
discriptions accruing & accrued to me by said assignment
or any matter or thing growing out of the same or

relates thereto unto him. Henceby forever fully acquitting
him from all liability or responsibility by reason
thereof this April 25th 1856

Hugh Lyons (Seal)

The Exhibit referred to in the Deposition marked
"C" is the and thereto attached is in the words and figures
following, to wit,

This deed made this 21st day of February 1854 between
Jefferson Sloan of Wayne County Illinois of the first
part and William Clark of the same County and State
of the Second part Witnesseth that the said party of the
first part in consideration of \$135. 27 paid by said ~~party~~
second party has this day sold and conveyed unto the
~~said party of the~~ second party the following personal property
now in the possession of said party of the first part viz: One
yoke of Steers five years old past, one cow, Ten head of
Hogs. To have and to hold said property unto the said
second party his executors administrators and assigns
forever. The conditions of the foregoing Conveyance however
is such, that whereas the said Jefferson Sloan has this
day executed to said Clark a promissory note for one
hundred and thirty five dollars and twenty seven cents
payable one year after date Now if said Sloan shall
pay off said note at maturity then this conveyance
to be void otherwise to remain in full force and Virtue
and it is expressly provided by and between said
parties that said Sloan is to retain possession of the

" aforesaid property until the expiration of the one year
 " aforesaid, but if said Sloan shall attempt to
 " dispose of said property or shall fail to take proper
 " care thereof or if the same shall be taken by
 " virtue of any attachment or execution against
 " said Sloan, then said Clark is hereby authorized
 " to take immediate possession thereof and retain the
 " same until the expiration of said term aforesaid
 " and it is further provided that said Sloan shall
 " have the right to sell said property by paying the
 " proceeds thereof to said Clark on said note
 " In Witness whereof the said party of the first part
 " has hereunto set his hand and seal the day and
 " year first above written

" Attest Edwin Beecher } Jefferson Sloan (Seal)

" This mortgage was acknowledged before me
 " by Jefferson Sloan the mortgagor this 21st
 " day of February A.D. 1854.

" Isaac S. Warmoth J.P.

" State of Illinois }
 " County of Wayne } The foregoing is a correct copy
 " of the mortgage on Record in mortgage Book
 " A. Page 91. County Records 25th April 1856

" E.S. Jos G. Barkley Clk & Ex Off Recr.

And afterwards, to wit, on the 29th day of April A.D. 1856
 the said Hugh Lyons filed in the said Wayne County

Commut Court his Replication (being original paper
marked "E" referred to in the Record of said Commut Court last
aforesaid) which is in the words and figures following, to wit,

" State of Illinois

" County of Wayne } April Term 1856

" Lyons

" do

" Clerk }

Replication to answer of Defts

And the said Complainant Comes
and for Replication to the answer of said defend-
ant to Complainant's Bill says that the matters and
things in said answer alledged to: for as the same
denies the allegations in the Bill of said Compt,
are not true, but on the contrary thereof the
said Bill and the matters and things therein
contained are true in substance & in fact
wherefore complainant prays this Court
to hear the proofs thereof and that upon a
final hearing of this cause the relief in
said Bill prayed may be decreed & as in
duty bound well ever pray

H. Aprie, Atc.

And afterwards on the day last aforesaid in the
said Court last aforesaid the said Complainant
filed the following notice (being original paper
marked "F" referred to in the aforesaid Record)
to wit,

" Atty for William Clark deft in
 " Lyons vs Clark.

" (You are hereby notified that
 " at the trial of the cause wherein Hugh Lyons
 " is Compt & William Clark is deft, the deft
 " will be called upon to produce as evidence
 " a certain chattel mortgage & note given by
 " Jefferson Sloan to said Clark on or about
 " the 21st day of Febr'y 1854 and on failure
 " to produce the said instruments on trial
 " that secondary evidence of their contents
 " will be offered in evidence
 " Fairfield April 29th 1856.

" J St Wayne Sol for Compt.
 " I have this day delivered a copy of this to Col
 " Hicks 29th April 1856 - Wayne

" And afterwards, to wit, on the day and year last
 " aforesaid (named in the Record from said Wayne
 " County Circuit Court as being done on the 28th day of
 " April AD 1856) the following order was made in
 " the said cause, to wit,

" Hugh Lyons

" vs

" William Clark

} In Chancery

" Ordered that the complainant
 " have leave to open depositions filed herein

41. " and that he have leave to amend his
" bill

And afterwards at the September Term of
the said Wayne Circuit Court on the second day
of the term thereof the following order was made
by said court, to wit,

" Hugh Lyons
" m } In Chancery
" William Clark }

" Judge having heretofore been
" Counsel for the defendant in this cause and by agree-
" ment of the parties herein It is ordered that the
" Venue herein be changed to the county of Union
" and it is further ordered that the Clerk of this
" Court make and transmit to the Clerk of the
" Circuit Court of Union County a Transcript of the
" proceedings and orders in this cause together with
" the original papers filed in this cause as the law
" directs.

And afterwards, to wit, on the Eleventh day of October in
the year of our Lord one thousand eight hundred and
fifty six at the October Term of the Union Circuit Court
on the sixth day of the ^{said} Term of Court, the following decree
was made and entered of record in the said Court
in the said Cause.

2817-25
" Hugh Lyons
" m } Bill in chancery for specific performance
" William Clark }

42. This cause came on to be heard upon the bill, answer
Repetition exhibits and testimony on consideration
whereof it is ordered and decreed by the Court that the
said defendant William Clark within ninety days
shall convey the premises in the bill mentioned, to wit,
the North West quarter of the South East quarter of Section
Five in Township Two South of Range Seven (P) East
to the said Complainant Hugh Lyons in fee simple
with covenants of general Warranty upon the said
Complainant Hugh Lyons paying to the said defend-
ant William Clark the sum of one hundred and thirty
five dollars and twenty seven cents or depositing the
same with the Clerk of the Union Circuit Court within
the ninety days aforesaid and in default of the said
William Clark executing the said deed as aforesaid
within ten days after the payment of the said sum of
money as aforesaid that Thomas Helman of Forsyth
Union County Illinois make execute and deliver the
deed aforesaid conveying the premises aforesaid to the
said Complainant and that the said William
Clark pay the costs of this suit ~~in ten days~~ and
in default of such payment that execution issue
therefor as upon judgments at law.

And afterwards, to wit, on the month day of October
A.D. 1857. Thomas Helman Master in chancery in and for
said County of Union filed a Report in the said cause
which is in the words and figures following to wit,

43. " Hugh Lyons

Union Circuit Court October

Term AD 1857.

William Clark } Bill in Chancery for specific performance

To the Honorable William H Parrish

Judge of the Third Judicial Circuit Court and presiding

Judge of the Union County Circuit Court.

The undersigned Master in Chancery in and for said County of Union who having been appointed at the October Term AD 1856 of said Circuit Court in and by the final decree in the above entitled cause to convey the premises described in the said decree on condition that the said ~~complainant~~ complainant pay to the said defendant the sum of one hundred and thirty five dollars and twenty seven cents or deposit the same with the Clerk of said Court within ninety days and in case the said defendant does not execute a deed for the said premises within ten days after the payment of the sum of money to him the said defendant or depositing the same with the Clerk of said Court. By leave to report that the 27 day of

November AD 1856 the said Hugh Lyons complainant by W Watson Webb deposited with the Clerk of the said Union County Circuit Court the sum of money mentioned in the said decree of specific performance, and that on the day of AD 1857 being more than one hundred days after the date of said decree and more than ten days after the deposit with the Clerk

94. " If the said Court of said sum of money, did in
" pursuance of said decree make execute and
" deliver to the said Complainant a deed conveying
" to him the premises described in his bill and in the
" said decree

All which is Respectfully Submitted

Thos. Coleman Master in Chancery

and afterwards, to wit, on the day and year first aforesaid
to wit, the 9th day of October AD 1857. the following order
was made and entered of record in said Cause, to wit,

" Hugh Lyons

" " "

" William Clark

} Bell in Chancery for specific performance

" On this day came Thomas Coleman

" Master in Chancery and presented his report of the

" conveyance of the land mentioned in the Complainant's

" in pursuance of the decree made in this Cause at the

" October Term 1856 which was examined and approved

" and is allowed a fee of five dollars for making

" deed and report.

State of Illinois
County of Monro  I Thomas Heilman Clerk of the
Circuit Court within and for said County do hereby
Certify that the foregoing contains and is a true full
and perfect Transcript from the files and record as the
same appears in my Office of the aforesaid styled
Cause

In testimony whereof I have hereunto
subscribed my name and affixed the
Seal of said Court at office in Jonesboro
this 1st day of October AD 1888

Thomas Heilman Clerk

In the Supreme Court of the State of Illinois.

FIRST GRAND DIVISION, AT MOUNT VERNON.

NOVEMBER TERM, A. D., 1860.

WILLIAM CLARK,

vs.

HUGH LYONS.

} Error to Union.

This was a bill in chancery, filed by defendant in error vs. plaintiff in error.

- 4] The bill alleges that in 1851, J. Sloan purchased from one Treat, the land in dispute for \$75, of which \$50 was paid. That Sloan took possession of the land—that soon after Treat died, not having made a title to Sloan for said land and leaving \$25 due thereon; that about the 1st of March, 1853, Clark
- 5] purchased from the estate of Treat the debt of \$25, and interest, and having sold to Sloan a yoke of oxen for \$50, it was agreed that Clark should take a conveyance of the lands to himself as security for said sum of \$75, and the same was conveyed to him. That said debt was due about Feb. 21, 1854, and about that time a bill of Dr. Boggs of \$25 was added to said \$75 and interest, making about \$108, and that 25 per cent was added thereto as interest for one year from Feb. 21, 1854, making \$135, and on that day it was agreed that Sloan should execute to Clark his note for \$135, due one year from date, and Clark should execute a bond for a deed to Sloan for said lands on payment of said money, all of which papers were executed. The condition of said bond
- 6] provided “That if default be made in the payment of said note at the time aforesaid (when due) then this obligation and said agreement to sell said land, to be void and of no effect.”
- 7] Bill alleges that Sloan made large improvements on said lands by erecting
- 8] houses &c. That at the execution of said contract, Sloan executed to Clark a mortgage on some cattle &c. to secure the payment of said note, which property was, on default of the payment of said note, to be the absolute property of Clark. That about the 15th of March, 1854, Sloan sold the lands to Lyons for \$200, of which \$100 was paid to Sloan and the remainder was
- 9] not to be paid until at or about the maturity of the note given by Sloan. That Sloan assigned the bond of Clark to Lyons; that Lyons took possession of said lands, and made improvements, &c.; that at the time of the maturity of said note, complainant was sick and confined to his room, so that it was impossible for him to call on Clark to ascertain whether Sloan had paid said note. Alleges that Clark after the maturity of said note, took possession of said mortgaged property, “and at the same time refused to make to complainant or to Sloan a deed for said land,” and pretended that by the failure to make payment, the land was his. That on the 1st of March, 1855, *although he was not bound to pay the same*, he tendered the money to defendant; that Clark refused to receive it, pretending that the land was his own.
- 12] ant; that Clark refused to receive it, pretending that the land was his own.
- 14] Bill prays that the land be conveyed to Lyons.
- 15] Copy of bond set forth.
- 16] Assignment of bond to Lyons.

ANSWER OF DEFENDANT BELOW.

19] Admits that defendant sold land to complainant for \$137.27. Denies that he was anxious to do so, but says it was at the earnest solicitation of Sloan. That
20] said stipulation in the bond that it should be void was carrying out the original contract and intention of the parties, and was so understood by them. Says the only improvements made was a smoke-house worth \$8. Admits that Sloan executed a mortgage—that at the maturity of said note, believing he had a right to said mortgaged property, he took possession thereof—that afterwards, being advised he was mistaken,
21] he surrendered it to Sloan, and has never since had possession or control of it. He had heard Sloan had sold the land, but it was only rumor. Denies all knowledge of Lyons' sickness. Admits that he insisted at the time said note was due, and has always since, that said contract was forfeited. Denies all other allegations. Answer is sworn to.

25] J. SLOAN testified as follows: I first bought the land of Treat as stated in the
28] bill. Told Clark I had assigned to Lyons. Lyons paid me \$100, and was to pay Clark \$100. Three or four days after the note was due, Clark came to my house and asked me what we had let the bond run out for, and I asked him if he would take the money, and he said he would not, and was coming to take the property, and did
29] take the steers and cow and calf. Lyons was sick, and had been a month or more. All the improvements except smoke-house were made before last contract with Clark. I got the steers and cow back from Clark.

30] T. BUFFINGTON says: Saw Lyons on 1st day of March, 1855, was able to ride in his wagon, but looked very feeble. Lyons told Clark he wanted to pay him for that land, and took out his pocket book. Clark said it was too late, and went away. I counted the money—there was \$135.50.

32] GATES' testimony nearly same as Buffington's.

42] The Court decreed that Clark should, within ninety days, convey to Lyons said lands with covenants of general warranty, on Lyons paying or depositing with the Clerk \$135.27 within the said ninety days, and that defendant pay the cost.

The errors assigned are:

1. The Court erred in decreeing that plaintiff in error should convey the land in question to defendant.
2. The Court erred in deciding that plaintiff should make conveyance with covenants of general warranty.
3. The Court erred in deciding in favor of defendant in error and against plaintiff in error.

BRIEF FOR PLAINTIFF IN ERROR.

It is admitted by defendant that the contract in question was forfeited unless waived by Clark, or unless it is saved by the sickness of Lyons. We presume it is not seriously claimed that there was any waiver of the forfeiture. It may well be questioned whether the sickness of Sloan would save the forfeiture. He might have provided against such a contingency in making his contract. But with Lyons Clark had nothing to do. He was to him a stranger. How can the sickness of a stranger to the contract defeat the rights of the party to it? Besides Lyons shows by the bill that he was only owing \$100—not enough to pay the amount due to Clark; and this he expressly charges he was to pay to Sloan, and not to Clark. What then had his sickness to do with saving the forfeiture? If he had paid all he owed, it would not have prevented it.

But if it were possible that such case would save the forfeiture, still this decree is wrong in directing Clark to convey with covenants of general warranty. It is not shown what title he received from Treat, and he could not be required to make any different conveyance from what he received.

The decree allows Lyons ninety days in which to pay the money without interest. This also it is insisted was clearly erroneous.

For these reasons we think the decision of the Circuit Court was clearly erroneous.

E. BEECHER, *Attorney for Plaintiff.*

W. Clark

v,

H. Lyman,

Abstract.

State of Illinois,
SUPREME COURT,
First Grand Division.

SS

The People of the State of Illinois,

To the Sheriff of Wayne County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Union county, before the Judge thereof between

Hugh Syons plaintiff and

William Clark defendants it is said that manifest error hath intervened to the injury of said William Clark as we

are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Hugh Syons

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Hugh Syons notice together with this writ.

WITNESS, the Hon^{ble} John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this fifteenth day of August in the year of our Lord one thousand eight hundred and Sixty

Josh Johnston

Clerk of the Supreme Court.

SUPREME COURT.
First Grand Division.

William Clark

Plaintiff in Error,

 $\Delta \dot{S}_2$

Hugh Seyour

Defendant in Error.

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Sunt
Mudgen
Nobly

SCIRE FACIAS.

FILED.

Recd Payment of
Cash Bond
De & No Cals

There seems no doubt I mean, as some
of my friends do, 13-20-1860.
H. Rogers Stillman Esq.
3 - B. B. B. B. B.

In the Supreme Court of the State of Illinois.

FIRST GRAND DIVISION. AT MOUNT VERNON.

NOVEMBER TERM. A. D., 1860.

WILLIAM CLARK,

vs.

HUGH LYONS.

Error to Union.

This was a bill in chancery, filed by defendant in error vs. plaintiff in error.

- 4] The bill alleges that in 1851, J. Sloan purchased from one Treat, the land in dispute for \$75, of which \$50 was paid. That Sloan took possession of the land—that soon after Treat died, not having made a title to Sloan for said land and leaving \$25 due thereon; that about the 1st of March, 1853, Clark
- 5] purchased from the estate of Treat the debt of \$25, and interest, and having sold to Sloan a yoke of oxen for \$50, it was agreed that Clark should take a conveyance of the lands to himself as security for said sum of \$75, and the same was conveyed to him. That said debt was due about Feb. 21, 1854, and about that time a bill of Dr. Boggs of \$25 was added to said \$75 and interest, making about \$108, and that 25 per cent was added thereto as interest for one year from Feb. 21, 1854, making \$135, and on that day it was agreed that Sloan should execute to Clark his note for \$135, due one year from date, and Clark should execute a bond for a deed to Sloan for said lands on payment of said money, all of which papers were executed. The condition of said bond
- 6] provided “That if default be made in the payment of said note at the time aforesaid (when due) then this obligation and said agreement to sell said land, to be void and of no effect.”
- 7] Bill alleges that Sloan made large improvements on said lands by erecting
- 8] houses &c. That at the execution of said contract, Sloan executed to Clark a mortgage on some cattle &c. to secure the payment of said note, which property was, on default of the payment of said note, to be the absolute property of Clark. That about the 15th of March, 1854, Sloan sold the lands to Lyons for \$200, of which \$100 was paid to Sloan and the remainder was
- 9] not to be paid until at or about the maturity of the note given by Sloan. That Sloan assigned the bond of Clark to Lyons; that Lyons took possession of said lands, and made improvements, &c.; that at the time of the maturity of said note, complainant was sick and confined to his room, so that it was impossible for him to call on Clark to ascertain whether Sloan had paid said note. Alleges that Clark after the maturity of said note, took possession of said mortgaged property, “and at the same time refused to make to complainant or to Sloan a deed for said land,” and pretended that by the failure to make payment, the land was his. That on the 1st of March, 1855, *although he was not bound to pay the same*, he tendered the money to defendant; that Clark refused to receive it, pretending that the land was his own.
- 12] ant; that Clark refused to receive it, pretending that the land was his own.
- 14] Bill prays that the land be conveyed to Lyons.
- 15] Copy of bond set forth.
- 16] Assignment of bond to Lyons.

ANSWER OF DEFENDANT BELOW.

19] Admits that defendant sold land to complainant for \$137.27. Denies that he was anxious to do so, but says it was at the earnest solicitation of Sloan. That
20] said stipulation in the bond that it should be void was carrying out the original contract and intention of the parties, and was so understood by them. Says the only improvements made was a smoke-house worth \$8. Admits that Sloan executed a mortgage—that at the maturity of said note, believing he had a right to said mortgaged property, he took possession thereof—that afterwards, being advised he was mistaken,
21] he surrendered it to Sloan, and has never since had possession or control of it. He had heard Sloan had sold the land, but it was only rumor. Denies all knowledge of Lyons' sickness. Admits that he insisted at the time said note was due, and has always since, that said contract was forfeited. Denies all other allegations. Answer is sworn to.

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28] bill. Told Clark I had assigned to Lyons. Lyons paid me \$100, and was to pay Clark \$100. Three or four days after the note was due, Clark came to my house and asked me what we had let the bond run out for, and I asked him if he would take the money, and he said he would not, and was coming to take the property, and did
29] take the steers and cow and calf. Lyons was sick, and had been a month or more. All the improvements except smoke-house were made before last contract with Clark. I got the steers and cow back from Clark.

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32] GATES' testimony nearly same as Buffington's.

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2. The Court erred in deciding that plaintiff should make conveyance with covenants of general warranty.
3. The Court erred in deciding in favor of defendant in error and against plaintiff in error.

BRIEF FOR PLAINTIFF IN ERROR.

It is admitted by defendant that the contract in question was forfeited unless waived by Clark, or unless it is saved by the sickness of Lyons. We presume it is not seriously claimed that there was any waiver of the forfeiture. It may well be questioned whether the sickness of Sloan would save the forfeiture. He might have provided against such a contingency in making his contract. But with Lyons Clark had nothing to do. He was to him a stranger. How can the sickness of a stranger to the contract defeat the rights of the party to it? Besides Lyons shows by the bill that he was only owing \$100—not enough to pay the amount due to Clark; and this he expressly charges he was to pay to Sloan, and not to Clark. What then had his sickness to do with saving the forfeiture? If he had paid all he owed, it would not have prevented it.

But if it were possible that such case would save the forfeiture, still this decree is wrong in directing Clark to convey with covenants of general warranty. It is not shown what title he received from Treat, and he could not be required to make any different conveyance from what he received.

The decree allows Lyons ninety days in which to pay the money without interest. This also it is insisted was clearly erroneous.

For these reasons we think the decision of the Circuit Court was clearly erroneous.

E. BEECHER, *Attorney for Plaintiff.*

Russell & Wall, Printers, Guardian office, Mt. Vernon.

Wm Le Clerk

v.

No. Lyon

1860

Officer

8610

State of Illinois,
SUPREME COURT,
First Grand Division.

} ss

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Union Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Union county, before the Judge thereof between

Hugh Syons plaintiff and

William Clark defendants it is said manifest error hath intervened to the injury of the aforesaid William Clark

as we are informed by his complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay send to our Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at **Mount Vernon**, in the County of Jefferson, on the 1st Sunday after the 2^d Monday of November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this fifteenth day of August in the year of our Lord one thousand eight hundred and sixty

Noah Johnston

Clerk of the Supreme Court.

14

SUPREME COURT.

First Grand Division.

William Celant

Plaintiff in Error,

VS.

Hugh Lyons

Defendant in Error.

WRIT OF ERROR.

*Sealed & FILED August
15th 1860.*

A. Johnston Clk.

State of Illinois,
Supreme Court,
First Grand Division.

The People of the State of Illinois

Attorneys:

\$5.00

Received Mr. Vernon, November 18, 1860
of E. Beaman, Esq. Five Dollars in full
of printing Brief in case of Clark vs.
Lyons.

Russell & Wall.

Printers
Receipt

\$5.00