

12580

No. _____

Supreme Court of Illinois

McFadden

vs.

Fortier

71641  7

Pleas before the circuit court, within and for the county of Peoria and state of Illinois, on the 12th day of May AD 1857, to-wit:-

Be it remembered that heretofore to-wit:- on the fourteenth day of August AD 1854, there was issued from the clerks office of the Peoria county circuit court, in said state, a Scire facias, in words and figures following to-wit:-

State of Illinois

County of Peoria, To the Sheriff of Peoria County in the state of Illinois - Greeting:-

Whereas on the 14th day of August AD 1854, Bartholomew Fortier filed in the office of the circuit court of said county a precipe in substance as follows to-wit:

Bartholomew Fortier vs In the Peoria Circuit Court
Do September Term AD 1854

James McFadden

The clerk of said court will please issue writ of Scire facias to foreclose mortgage herewith filed in the above entitled cause, returnable to said term (signed) Manning & Merriman attorneys for plaintiffs. And whereas also on the same day was filed in said office a mortgage in substance as follows to-wit:

This Deed made this seventeenth day of April in the year of our Lord one thousand eight hundred and forty nine, Between James McFadden of Peoria in the county of Peoria and state of Illinois of the first part and Bartholomew Fortier of the county of St. Clair in the State aforesaid of the second part Witnesseth, That the said party of the first part for and in consideration of the sum of Five Thousand Dollars paid by the said party of the second part

14 the receipt of which is hereby acknowledged doth by these presents grant bargain and sell unto the said party of the second part his heirs and assigns a certain tract or parcel of land containing fifty four thousand eight hundred and ninety eight square feet and fourteen hundredths of a square foot surveyed and designated as covered by claims numbered One Eleven Forty one and Forty Two, in the South east fractional quarter of fractional section nine in Township eight north of Range eight east of the fourth principal in Illinois according to the survey approved 1 Sept 1840 by the Surveyor of the Public Lands in the state of Illinois and Missouri in which said lots are particularly described in a certain Patent from the President of the United States to the legal representatives of Francisco Melitte and their heirs, Dated the 28 day of August A.D. 1845.

To have and to hold the said premises as above described together with all and singular the hereditaments and appurtenances thereto belonging or in any wise appertaining to the said party of the second part, his heirs and assigns forever. And the said party of the first part for himself and his heirs executors and Administrators doth hereby covenant to and with the said party of the second part his heirs and assigns that he is well seized of the premises above conveyed as of a good and indefeasible estate in fee simple and hath good right to sell and convey the same in manner and form as aforesaid; that they 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 his heirs or assigns against the claim of all persons ^{whosoever} ~~whatsoever~~ he will forever warrant and defend Provided nevertheless that if the said party of the first part his heirs, executors or administrators shall well and truly pay to the said party of the second part his heirs, executors, admin-

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istrators or assigns the just and full sum of Five Thousand Dollars in manner specified as follows, that is to say, Six hundred dollars cash down, Four hundred dollars 1st of November 1849, and the residue in equal annual payments of one thousand dollars each as specified in certain promissory notes bearing even date herewith then this deed as also said certain notes bearing even date with this Indenture given by the said party of the first part to the said party of the second part conditioned to pay the said sum of money at the time aforesaid shall be void otherwise to remain in full force and virtue.

In testimony whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered
in presence of
A. J. Rugg

James McFaddin

Upon which mortgage is a certificate of Jacob Gale Clerk of the circuit court within and for the county of Peoria an officer authorized by law to take acknowledgements of deeds of the acknowledgments of the execution of said mortgage by said James McFaddin the maker thereof which certificate is in substance as follows to wit:

State of Illinois,

Peoria County, } ss I, Jacob Gale, clerk of the
circuit court within and for said county do
certify that on this day personally appeared before
me James McFaddin, whose name appears subscribed
to the foregoing deed of conveyance as having
executed the same and who is personally known
to me to be the real person who and in whose name
the acknowledgment is proposed to be made and
acknowledged the execution thereof as his voluntary
act and deed for the uses and purposes

therein expressed. Given under my hand and seal
of said court at Peoria this Seventeenth day
of April eighteen hundred and forty nine
(L.P.) Jacob Gale, Clerk

Which said mortgage was duly executed and re-
corded in the records office of Peoria county and the
whole of the money secured to be paid by the same has
become due and payable.

And the said plaintiff further avers that
the said promissory notes in the said mortgage
referred to are in substance as follows

\$1000 On the first day of November 1850 I promise
to pay Bartholomew Fortier one thousand dollars
with six per cent interest James McFadden
April 17, 1849.

\$1000 On the first day of November 1851 I promise
to pay Bartholomew Fortier, one thousand dollars
with six per cent interest. James McFadden
April 17, 1849.

\$1000 On the first day of November 1852, I promise to
pay Bartholomew Fortier, one thousand dollars
with six per cent interest James McFadden
April 17, 1849.

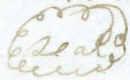
\$1000 On the first day of November 1853, I promise
to pay Bartholomew Fortier, one thousand dollars with six
per cent interest. James McFadden
April 17, 1849.

And for that whereas the said plaintiff avers
that the said defendant although often requested
so to do has not paid the said sums of mo-
ney mentioned in the said notes referred to in
said mortgage and secured to be paid by said mort-
gage with interest according to the tenor of said
notes or any part thereof or the accruing in-
terest thereon to the said plaintiff nor hath
any person paid the same or any part thereof
to the said plaintiff for the said defendant but
that the said sum of Five Thousand dollars, being

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the amount of the notes secured to be paid by said mortgage with interest thereon from maturity of said notes still remains due and unpaid.

You are therefore commanded to summons the said James McFadden if he be found in your county to be, and appears before the Circuit Court of Peoria County on the first day of the next term thereof to be holden at Peoria in and for said county on the second Monday of September next to show cause if any he has why judgment should not be rendered for such sum of money as may be found to be due by virtue of said mortgage and a special writ of *Fi Fi Facias* requiring the property mortgaged to be sold to satisfy such judgment.

Witness, Jacob Gale, Clerk of the said county
and the seal thereof at Peoria this 14th day of August
AD 1854



Jacob Gale, Clerk

Which said writ was returned to said clerks office, endorsed as follows:-

State of Illinois

Peoria County }

I hereby certify and return that I served the within writ by reading the same to the within named James McFadden this 15th day of August AD 1854.

L. B. Cornwall

Sheriff P. C. Ills.

And afterwards to-wit, on the eleventh day of December AD 1854, there was filed in the clerks office aforesaid a demurrer, in words and figures following to-wit:-

demurrer - Bartholomew Fortier }

vs

James McFadden }

In the circuit court of Peoria County.

Scifa to foreclose Mortgage.

And now comes the said dependant and says acts now because he says that the matters and things in the said plaintiffs *Scise facias* contained in *Maner & form* as the same are therein stated and set ^{forth} ~~out~~

are not sufficient in law for the said plaintiff to have and maintain his said action against the said defendant and that he is not bound in law to answer the same. & this he is ready to verify; wherefore he prays judgment &c

Purple & Sanger
for Deft.

Proceedings at a term of the circuit court begun and held at the court house in the city of Peoria in and for the county of Peoria in the state of Illinois on the first Monday of March in the year of our Lord one thousand eight hundred and fifty-five, it being the fifth day of said month. Present the Honorable Paslow Peters, judge of the sixteenth judicial circuit in the state of Illinois - David D. Irons, Sheriff. Obidye G. Johnson, State Attorney and Jacob Gale, clerk to-wit:-

Monday March 12th AD 1855.

Bartholomew Fortier

vs. Sci fa on mortgage.

James McFadden

^{judgment on} ^{demurrer} This day this cause came on to be heard on the demurrer of the defendant to the Scise facias herein, on ^{consideration} ~~consideration~~ whereof the court being fully advised in the premises are of opinion that the said Scise Facias and the matters therein contained are sufficient in law for the said Bartholomew Fortier to maintain this action.

And afterwards to-wit, on the twentieth day of November AD 1856, there was filed with the clerk aforesaid, the following Pleas, to-wit:-

^{Pleas} Bartholomew Fortier

vs

James McFadden

} In the circuit court of Peoria County.

Sci. fa. to foreclose mortgage.

1st And now comes the said defendant & says actis non because he says that the said supposed mortgage in said Scise facias mentioned and described is not his and and

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this he is ready to verify &c. Wherefore he prays judgment &c. Purple for Deft.

2^d And for further Plea in this behalf the said defendant says actis non because he says that he has paid the full amount of money and all the interest due upon said mortgage & the notes therein described previous to the commencement of this suit to wit on the first day of August AD 1854, at the County aforesaid and this he is ready to verify, wherefore he prays judgment &c. Purple for Deft.

3^d And for further plea in this behalf the said defendant says actis non because he says, that the said mortgage was, with said notes given to secure the payment of the purchase money for the land therein described, and that on the same day of the making and execution of said notes & mortgage to-wit, on the 17th day of April A. D. 1849, and as constituting a part and parcel of the same contract & as a consideration for the same, the said Bartholomew Fortier & Angelica his wife made executed and delivered to the defendant a deed for the said land in said mortgage described in substance as follows:-

"This Indenture made this Seventeenth day of April AD 1849 between Bartholomew Fortier and Angelica his wife of St. Clair county in the State of Illinois of the first part and James McFadden of Peoria in the County of Peoria and State aforesaid of the second part, Witnesseth that the said parties of the first part for and in consideration of the sum of Five thousand dollars to them paid and secured to be paid by the said party of the second part the receipt whereof is hereby acknowledged, have granted, bargained and sold and by these presents do grant, bargain, and sell unto the said party of the second part and to his heirs and assigns forever, in fee simple, the following described lots or tract of land, that is to say. The lots or lots contain=

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ing fifty four thousand eight hundred and ninety eight square feet, and fourteen hundredths of a square foot, surveyed and designated as covered by claims numbered one, eleven, forty one, and forty two in the south east fractional quarter of fractional section nine in township eight north of range eight east of the fourth principal meridian in Illinois, according to the survey approved 1 September 1840 by the surveyor of the public lands in the state of Illinois and Missouri; which said lots are particularly described in a certain patent from the President of the United States to the legal representatives of Francis Willite and their heirs, dated the 28th day of August AD 1845, to which for greater certainty reference is hereby made. To have and to hold the premises aforesaid to the said party of the second and to his heirs and assigns forever, and the said parties of the first part do for themselves and their heirs covenant and agree with the said party of the second part that the said Angelica wife of the said Bartholomew Fortier is the sole heir and legal representative of Francis Willite, mentioned and described in the patent aforesaid, and that they will warrant and defend the title to the said premises against all persons claiming the same from, by or through the said parties of the first part. Witness our hands and seals the day and year above written.

Witness - H. J. Rugg

Witnesses to the signature
of Mr. Fortier,

John Engelman

D. W. Hopkins

Andrew Grimes

Bartholomew ^{his} Fortier (Seal)

Angelica ^{her} ^{mark} Fortier (Seal)

And the said defendant avers that the said premises, in the said deed & and in the said mortgage described, are one and the same premises, and not other or dif-

percent. And the said defendant further avers, that at the time of the making and execution of the deed aforesaid ~~the said~~, the said Angelica wife of the said plaintiff was not the sole heir and legal representative of the said Francis Willette - And ^{that} as to the land purported to be conveyed by said deed she was not the heir nor legal representative of the said Willette, and that neither she nor the said plaintiff had at the time aforesaid any interest in or title to said real estate nor any part thereof, either in possession, remainder or reversion or otherwise howsoever, and this he is ready to verify, whereupon he prays judgment &c
 Puisse for Deft.

And afterwards to wit: on the 25th day of November AD 1856, there was filed with the clerk aforesaid, a "demurrer to pleas & replication to 2^d plea" in words and figures following to-wit:-

Bartholomew Fortier

Demurrer

James Mc Fadden

vs

} Peoria Circuit Court, Nov. 7. 1856

Plaintiff as to said 3^d plea says that the same is insufficient in law to bar plaintiffs action & that he is not bound to answer the same, & this he is ready to verify whereupon he prays judgment &c.
 Manning & Merriman

Replication

As to said second plea plaintiff says preclude now because he says that defendant did not pay & satisfy said money as in said plea specified & of this he puts himself upon the country &c.

Manning & Merriman
 for Pltff

Deft doth the like
 Puisse for Deft

Proceedings at a term of the circuit court begun and held at the court house in the city

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15 of Peoria in and for the county of Peoria in the state of Illinois, on the third Monday of November in the year of our Lord one thousand eight hundred and fifty-six - it being the seventh day of said month. Present - the Honorable Elisha N. Powell, judge of the sixteenth judicial circuit in the state of Illinois, David D. Frow, Sheriff and Enoch J. Sloan, clerk, to-wit:-

Thursday, November 27th 1856.

Bartholomew Fortier

vs An Mortgage

James Mc Fadden

Proceedings
on
demurrer

This cause came on to be heard on the demurrer of the plaintiff to the 3^d plea of the defendant, and the court being fully advised in the premises is of opinion that the said 3^d plea of the defendant is insufficient in law to bar this action, whereupon on motion of the defendant leave is given him to amend his said 3^d plea.

And on the day and date last above mentioned there was filed with the clerk aforesaid, "an Amendment to 3^d Plea" in words and figures following to wit:-

Bartholomew Fortier

vs

James Mc Fadden

In the Circuit Court of Peoria County.
Sci fa on Mortgage.

Amendment to 3^d Plea.

Amendment
to
3^d plea

And the said defendant further avers that at the time of making and executing the said deed in said plea mentioned, the said plaintiff falsely and fraudulently represented to the said defendant, that the said Angelica wife of the said plaintiff was the owner in fee simple of said land in said deed and mortgage described - and the defendant avers that said Angelica was not the owner in fee simple of said land nor any part thereof, neither had she at the time any interest in the same either in possession remainder or reversion, and that since the execution of

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said mortgage said defendant has purchased the legal title and acquired the possession of said land from the real owner of the same.

And afterwards to wit: on the 3^d day of December A.D. 1856, there was filed with the Clerk aforesaid, demurrer to 3^d amended plea, in words and figures following-to wit.

dem. to 3^d
amended plea
Bartholomew Foster }
vs } Peoria Circuit Court - Nov. 7. 1856.
James M. Fadden }

And plaintiff as to said third amended plea of said defendant says that the same is insufficient in law to bar or preclude plaintiff's said action & that he is ready to verify wherefore he prays judgment &c

Manning & Herriman
for plffs.

And at the term of said court last aforesaid mentioned, and on

Monday, December 8th A.D. 1856,
of said term, the following proceedings were had;
to-wit: -

Bartholomew Foster
vs
James M. Fadden
An Mortgage

This day came the plaintiff by Manning and Lindsey his attorneys and the defendant by Norman W. Purple his attorney, and the demurrer of the plaintiff to the 3^d plea of the defendant as amended coming on for hearing the court being fully advised in the premises sustained said demurrer and it is considered that the plaintiff be not barred from maintaining this action by any thing in said 3^d amended plea alleged. It is ordered by the court that a jury be empanelled to try the issues joined on the other pleas of the defendant; whereupon came a jury of twelve of good and

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the said court. Complaining shews unto your honor
your orator James McFadden of the city and county of
Peoria & State of Illinois; That on the 17th day of April AD 1849
your orator purchased from Bartholomew Fortier and Angelica
Fortier his wife the following described real estate, to wit
"The lot or lots containing fifty four thousand eight hun-
dred and ninety eight square feet, and fourteen hun-
dredths of a square foot, surveyed and designated as
covered by claims numbered one, eleven, forty one, and
forty two, in the south east fractional quarter of frac-
tional section nine, in township eight north of range
eight east of the fourth principal meridian in Illi-
nois according to the survey approved 1st September
1840 by the surveyor of the public land in the states
of Illinois and Missouri, which said lots are par-
ticularly described in a certain Patent from the United
States to the Legal Representatives of Francis ~~Willet~~
Willette and their heirs dated the 28th day of August
AD 1845 to which for greater certainty reference is
made, and that on the 17th day of April AD 1849
aforesaid the said Bartholomew Fortier and Angelica
his wife. Pretending falsely and fraudulently that she
the said Angelica was as to the land and lots be-
fore described the heir at law and Legal Repre-
sentative of one Francis Willette, hereinafter mentioned,
then and there by their deed of that date conveyed the
said premises to your orator; and then and there did
covenant and agree with your orator that the
said Angelica wife of the said Bartholomew For-
tier, was then and there at the time aforesaid, as
to the land and lots in said deed described the sole
heir and legal Representative of the said Francis
Willette, and that they would warrant and defend
the title to the said premises against all persons
claiming the same from by or through the said
parties of the first part, to wit the said Bartholo-
mew & Angelica Fortier; as by reference to the said
deed a copy whereof marked "A." is herewith filed
and made part of this Bill will fully appear-

And your orator further charges that on the same day of the making execution and delivery of the said deed, for the purpose of securing to the said Bartholomew Fortier the purchase money of the said property to the said James McFadden made and executed and delivered to the said Fortier his five promissory notes - one for \$400.00 due 1st November 1849, and four other promissory notes of \$1000.00 each payable to said Fortier severally on the first days of November A.D. 1850, 1851, 1852, and 1853, with six per cent interest on each from date, and then and there paid to said Fortier the sum of six hundred dollars in cash. And your orator then and there further to secure the purchase money of the said land made executed and delivered to the said Fortier his mortgage deed upon the same land so purchased by him the said James McFadden of the said Fortier & wife; for the sum of five thousand dollars the same being the purchase money of the said land as aforesaid which said mortgage deed is also herewith referred to, a copy thereof filed marked "B," and made part of this bill. -

And your orator further charges that on the 14th day of August A.D. 1854 the said Bartholomew Fortier commenced a suit against your orator in the circuit court of Peoria county by Scire facias to foreclose said mortgage, and that process was duly served on your orator, and a rule to plead in said cause has been taken and entered against him in said court. And said Fortier threatens to foreclose said mortgage, sell said premises and thus cloud & embarrass the title of your orator thereto, and turn your orator eventually out of possession and for that purpose and with that intention and design is still prosecuting said action in the said circuit court aforesaid.

And your orator further shows that the said Bartholomew Fortier and Angelica his wife at the

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time of the said sale and conveyance to your orator, falsely and either fraudulently or through mistake of facts and law, represented to your orator that the said Angelica was sole heir and legal representative of Francis Willette, the legal owner of and entitled to the said land or lots & claiming that the said Angelica as the daughter and heir aforesaid was entitled to said land under and by virtue of the act of Congress entitled "An act for the relief of the inhabitants of the Village of Peoria in the state of Illinois," approved May 15th 1820, and the act of Congress entitled "An act to confirm certain claims to lots in the Village of Peoria in the state of Illinois," approved March 3^d AD 1823, as by reference to said acts of Congress will fully appear; and also claiming that the said Angelica was entitled to said premises under a certain patent from the United States to the "Legal representatives of Francis Willette and their heirs," for said land and premises bearing date the 28th day of August AD 1845, as by reference to the said Patent a copy whereof is hereto attached and made part of this bill will fully appear. Said copy of said Patent is marked "H." And your orator further charges that at the time of said purchase by him of said land lots and premises the said Fortier and wife nor either of them were in possession of said premises, nor did they ever give your orator possession of said premises, nor did he ever (although he used every exertion to do so) acquire possession of said premises under the title thus acquired from the said Fortier and wife.

That at the time of said purchase said premises were held and occupied by various persons claiming title to said premises adversely to the title acquired by your orator from the said Fortier and wife under a Patent from the United

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States to one John L. Bogardus bearing date the fifth day of January A.D. 1838, A copy whereof marked "C" is hereto attached and made part of this bill, the original will be produced upon the hearing of this cause.

And your orator further charges that at the Term of the Peoria circuit court of Peoria County A.D. 1849 your orator commenced several actions of ejectment against various persons, who were settled upon and occupants of the said premises under the title held adversely as aforesaid to the title purchased by your orator as aforesaid.

In one of which ^{said} suits Charles Ballance became defendant & in one of them one Andrew Gray was also a defendant. And such proceedings were afterwards had in said causes in the said circuit Court that the said Plaintiff in the same recovered judgment for possession of the said portions of said premises occupied by the said Ballance and Gray, as by the records and proceedings in said causes remaining of record and on the files in said court which are herewith referred to and made part of this bill will more fully and at large appear. And your orator further charges that the said defendants in said suits removed the same into the Supreme Court of the state of Illinois, and such proceedings were afterwards had in said court that at the June term thereof A.D. 1851 the judgment of the said circuit court was reversed in the ~~said~~ Supreme Court, said Supreme court then and there deciding expressly that the said Fortier & wife at the time of their conveyance to your orator had no legal title to said land and premises; and that as to said land and premises, the said Angelica wife of the said Bartholomew Fortier was not the heir or legal representative of the said Francis Willette, as by the record and proceedings in said cause remaining of record in said Supreme in

Court which are herewith referred to and made
 part of this bill will more fully and at large
 appear. And the said complainant refers also
 to the reported decisions of the Supreme Court
 in the cases aforesaid reported in the Illinois Re-
 ports on pages 317 to page 326 inclusive, and
 makes the same part of this bill. And
 your orator is advised by counsel and believes
 the same to be true that according to the de-
 cision and opinions of the Supreme Court aforesaid,
 he derived no title whatever to said prem-
 ises by said conveyance to him aforesaid, neither had
 the said Fortier nor his said wife Angelica at the
 time of said conveyance to your orator aforesaid
 or since that time any interest in or title
 to said land or premises whatever. And your ora-
 tor expressly states and charges that he never
 has been able under his title derived from said
 Fortier & wife at any time either peaceably forcibly
 or by law to obtain possession of any portion of
 said premises so by him purchased of the said Bar-
 tholomew Fortier and Angelica his wife. And your
 orator further charges that since the decision of the
 Supreme Court aforesaid he has purchased in, the
 adverse titles to a portion of the said premises and
 taken possession of the same under said purchases
 and and is now under such purchases in actual pos-
 session of valuable portions of said premises upon
 which he has & has made large and valuable im-
 provements. And your orator charges that in jus-
 tice and equity he ought not to pay said mortgage
 money due upon the mortgage herein before men-
 tioned nor any part thereof, neither ought any
 decree or judgment to be ^{made or} entered against him
 foreclosing said mortgage upon said prem-
 ises but that the same ought to be wholly
 set aside annulled and held for naught.

And your orator further charges that he has
 already paid to the said Bartholomew Fortier upon

the purchase money contracted to be paid on said land the following sums of money to wit:-

\$400.00 being the first note mentioned in the mortgage \$200.00 July 21st 1851, \$60.00 June 25th 1852, \$150.00 November 18th 1852, \$50.00 June 5th 1854, \$50.00 July 5th 1854.

Your orator charges that the actings and doings of the said Foster and wife in attempting to foreclose said mortgage are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator. For as much then as your orator is remediless in the premises in law, and can only have address in Chancery he prays that the said Bartholomew Foster and Angelica Foster his wife may be made defendants to this bill, that they may answer the same and all the allegations therein contained, (but not on oath, the oath of the said parties being hereby waived) that an injunction may be issued enjoining and restraining the said Bartholomew Foster from proceeding with the said suit by Scire facias to foreclose said mortgage or any other suit to collect said mortgage money until the further order of the court in the premises. That upon ~~the~~ a final hearing of this cause the said court will decree that the said mortgage and the notes accompanying the same which are unpaid shall be delivered up to be cancelled and said mortgage annulled, set aside and wholly for nothing esteemed, that said defendants may by said decree be compelled to refund to your orator the money and interest paid by your orator towards the purchase money of the said land and that he may have such other and further relief in the premises as to justice and equity appertain. He prays also for the usual process of subpoena against the said defendants, and as in duty bound he will pray &c.

James McFadden

Purcell, Sanger & Pratt, Compts Solicitors.

State of Illinois
Peoria County

James Mc Fadden being duly sworn says the statements made by him in the foregoing bill of complaint so far as the same purport to have been made upon his own knowledge are true & that the residue of said statements are true to the best of his knowledge, information & belief, and further saith not

James Mc Fadden
Subscribed and sworn to }
before me this 14th March 1855 }

W H Purple, Notary Public }
Peoria City, Ills. }

Filed, March 23^d 1855,
Jacob Gale, clerk,

Exhibits

The United States of America - To all to whom these presents shall come greeting:

Whereas, there has been deposited in the General Land office a certificate numbered two of the Register and receiver of the land office at Edwardsville, Illinois, whereby it appears that in the report dated 10th November 1820 of Edward Coles, Register of the Land office of Edwardsville Illinois, the claim of Etienne Bernard is entered as number one - the claim of Louis Pilette in right of his wife Angelica the daughter of the late Francis Willette is entered as number Eleven. The claim of Felix Fontaine is entered as number forty one (the said numbers eleven & forty one according to the survey being for the same land and ~~are~~ ^{being} covering the south west part of claim number one) and the claim of Felix Fontaine is entered as number Forty-two (covering according to the survey the north east part of said claim number one) and whereas it further

Patented to Legal
Representatives of
Francis Willette

Exhibit "H"

21 appears from the certificates aforesaid that the said Francis Willette is the inhabitant or settler within the perview of the confirmatory act of Congress approved 3^d March 1823, entitled an act to confirm certain claims to lots in the village of Peoria in the state of Illinois and that it has appeared to the satisfaction of the said Register & Receiver that the said inhabitant or settler did not prior to the said act of the 3^d March 1823 receive a confirmation of claims or donation of any tract of land or village lot from the United States & that the legal representatives of the said Francis Willette in virtue of the confirmatory act aforesaid are entitled to a patent for a certain lot described as follows to-wit:-

The lot containing fifty four thousand and eight hundred and ninety eight square feet and fourteen hundredths of a square foot surveyed & designated as covered by said claims numbers one, Eleven, Forty-one & Forty-two in the south east fractional quarter of the fractional section nine in township eight north of range eight east of the fourth principal meridian Illinois according to the survey approved 1st September 1840 by the Surveyor of the public lands in the states of Illinois & Missouri and whereas in the confirmatory act aforesaid of the 3^d March 1823 it is provided that nothing in this act contained shall be so construed as to affect the right if any such there be of any other person or persons to the said lots or any part of them derived from the United States or any other source whatever &c. Now Know Ye, that in consideration of the premises and pursuant to the second section of the act aforesaid of the 3^d March 1823 there is granted by the United States to the legal representative

of the said Francis Willet and to their heirs the lot of Land above described subject to the proviso aforesaid. To have and to hold the said Lot of Land with the appurtenances unto the said Legal Representatives of Francis Willet and to their heirs and assigns forever subject to the proviso aforesaid. In Testimony Whereof I James K. Polk President of the United States have caused these Letters to be made Patent & the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the twenty eighth day of August in the year of our Lord one thousand eight hundred & forty five and of the Independence of the United States the Seventeenth

By the President James K. Polk

By J. Knox Walker Secy

L. H. Laughlin Recorder of the General Land Office

Recorded Vol 10 pages 50, 51 & 52.

Certificate }
No 13258 }

The United States of America To all to whom these presents shall come greeting

Whereas John L. Bogardus of New York County, New York has deposited in the general land office of the United States a Certificate of the Register of the Land Office at Quincy, whereby it appears that full payment has been made by the said John L. Bogardus according to the provisions of the act of Congress of the 24th of April 1820 Entitled an act making further provision for the sale of Public Lands for the Southeast Fractional quarter of Section Nine in Township eight North of range eight east in the district of lands subject to sale at Quincy Illinois containing twenty three acres & ninety three hundredths of an acre according to the official plat of the Survey of the said Lands returned to the general Land Office by the Surveyor General Which said tract has been purchased by the said John L. Bogardus.

Now Know ye that the United States of America in Consideration of the premises and in Conformity with the several acts of Congress in such case made and provided have

Exhibit A Patent to John L. Bogardus

given & granted & by these presents do give & grant unto the said John L. Bogardus & to his heirs the said track above described to have & to hold the same together with all the rights privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said John L. Bogardus & to his heirs & assigns forever Subject however to the rights of any & all persons claiming under the act of Congress of 3^d March 1823 entitled "an act to confirm certain claims to Lots in the Village of Peoria in the State of Illinois - In testimony Whereof J. Martin Van Buren President of the United States of America have caused these Letters to be made patent & the Seal of the General Land Office to be hereunto affixed:

Given under my hand at the City of Washington the fifth day of January in the year of our Lord one thousand eight hundred & thirty eight and of the independence of the United States the Sixty Second

By the President Martin Van Buren
By A. Vanburen - Sec'y
H. M. Garland, recorder of General Land Office
Recorded Vol 1 Page 149

State of Illinois }
Peoria County }

Recorders Office

February 26th 1844

J. Charles Kettelle Recorder in and for the County of Peoria do hereby certify that the annexed patent have this day been duly recorded in said office in Book C page 137 and that the same were filed for record in said office on the 26th day of February 1844. Given under my hand & private Seal (No official Seal being yet provided) this 26th day of Feb 1844.

Sigd Charles Kettelle
Recorder P.C.

This deed made this Seventeenth day of April in the year of our Lord one thousand eight hundred and forty nine between

Exhibit "B" Mortgage
James M. Fadden to Bartholomew Porter

James M. Fadden of Peoria in the County of Peoria and State of Illinois of the first part & Bartholomew Porter of the County of St. Clair in the State aforesaid of the second part, Witnesseth that the said party of the first part for and in consideration of the sum of Five thousand dollars paid by the said party of the second part the receipt of which is hereby acknowledged doth by these presents grant, Bargain & sell unto the said party of the second part his heirs & assigns a certain tract or parcel of land containing fifty four thousand eight hundred & ninety eight square feet & fourteen hundredths of a square foot surveyed & designated as covered by claims numbered one, eleven forty one & forty two in the South east Fractional quarter of Fractional Section nine in Township eight North of range eight East of the fourth principle Meridian in Illinois according to the survey approved 1st Sept 1840 by the Surveyor of public Lands in the States of Illinois & Missouri Which said Lots are particularly described in a certain patent from the President of the United States to the Legal Representatives of Francis Wileke & their heirs Dated the 28 day of August A.D. 1845. To have & to hold the said premises as above described together with all & singular the hereditaments & appurtenances appertaining to the said party of the second part his heirs & assigns Forever. And the said party of the first part for himself and his heirs executors & administrators doth hereby Covenant to & with the said party of the second part his heirs & assigns that he is Well seized of the premises above conveyed as of a good & indefeasible estate in fee Simple & hath good right to sell & convey the same in manner & form as aforesaid that they are free from all incumbrance and that the above bargained premises in the quiet & peaceful possession of the said party of the second part his heirs and assigns against the claims of all persons Whom soever He will forever warrant & defend - Provided nevertheless that if the said party of the first part his heirs executors & administrators shall well & truly pay to the said party of the second part his heirs executors administrators or assigns the just & full Summ of Five thousand Dollars in manner specified as follows that is to say six hundred dollars cash down Four hundred Dollars 1st of November 1849 and the remainder in equal & annual payments of one thousand Dollars each

25 as specified in certain promissory notes bearing even date herewith
then this deed as also said certain notes bearing even date with
this indenture given by the said party of the first part to the
said party of the second part conditioned to pay the said sums
of money at the time aforesaid shall be void otherwise to remain
in full force and virtue

In Testimony Whereof the said party of the first part hath
hereunto set his hand & seal the day & year first above written

Signed sealed & delivered in

Presence of
H. J. Rugg

James M^c Fadden

Upon which Mortgage is a Certificate of Jacob Gale, clerk of
the Circuit Court within and for the County of Peoria an officer
authorized by Law to take acknowledgements of Deeds of the
acknowledgement of the execution of said Mortgage by said
James M^c Fadden the maker thereof which Certificate is in
substance as follows to wit:

State of Illinois
Peoria County

J. Jacob Gale clerk of the Circuit Court
within and for said County do certify that on this day person-
ally approved before me James M^c Fadden whose name
appears subscribed to the foregoing deed of conveyance as
having executed the same and who is personally known to
me to be the real person who and in whose name the acknow-
ledgement is purposed to be made and acknowledged
the execution thereof as his voluntary act and deed for the
uses & purposes therein expressed

Given under my hand & seal of said Court at
Peoria this seventeenth day of April eighteen hundred &
forty nine

Jacob Gale Clerk

This indenture made this seventeenth day of

26

April A.D. 1849 between Bartholomew Fortier and Angelica his wife of St Clair County in the State of Illinois of the first part and James W. Fadden of Peoria in the County of Peoria & State aforesaid of the second part. Witnesseth that the said parties of the first part for and in consideration of the sum of five thousand dollars to them in hand paid and secured to be paid by the said party of the second part the receipt whereof is hereby acknowledged have granted Bargained and sold and by these presents do grant Bargain and sell unto the said party of the second part and to his heirs and assigns forever in fee simple the following described Lots or tract of Land that is to say the Lot or Lots Containing fifty four thousand eight hundred and ninety eight square feet and fourteen hundredths of a square foot surveyed and designated as covered by claims numbered one eleven Forty one & forty two in the South east Fractional Quarter of Fractional Section Nine in Township eight North of range eight east of the Fourth principle Meridian in Illinois according to the survey approved 1st Sept 1840 by the Surveyor of the public Lands in the States of Illinois and Missouri which said Lots are particularly described in a certain patent from the president of the United States to the Legal Representatives of Francis Willet & their heirs dated the 28th Day of August A.D. 1845 to which for greater certainty reference is hereby made

To have & to hold the said premises aforesaid to the said party of the second part and to his heirs & assigns forever And the said parties of the first part do for themselves & their heirs covenant and agree with the said party of the second part that the said Angelica Wife of the said Bartholomew Fortier is the sole heir & Legal representative of Francis Willet mentioned & described in the patent aforesaid and that they will Warrant and defend the title to the said premises against all persons claiming the same from by or through the said parties of the first part

Witness our hands & seals the day and year above written
 Bartholomew ^{his} Fortier
 Angelica ^{her} ^{mark} Fortier

Witness H. J. Rugg

Witness to the signature of

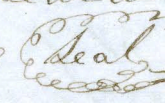
Mrs Fortier

Shew & Engelman

D. W. Hopkins

Andrew Grimes

State of Illinois St County this day appeared before the undersigned clerk of the Circuit Court of the County of St Clair Bartholomew Fortier & Angelica his wife who are persons known to me to be the persons whose names are subscribed to the foregoing deed as having executed the same and acknowledged that they had executed the same for the uses & purposes expressed and the said Angelica being of lawful age and by me separate & apart from her said husband examined and the contents of said deed having been fully made known and explained to her acknowledged that as her act and deed she had executed the same freely and voluntarily and without the compulsion or under influence of her said husband and that she does not wish to retract & also further acknowledged that she did voluntarily & truly and without the compulsion or under influence of her said husband execute said deed and relinquished her right of Dower in & to the premises aforesaid.

Witness my hand and official seal at Belville this Twentieth day of April A.D. 1849  Shew & Engelman
Filed March 23rd 1855

Jacob Gale, clerk

Answer

James M^r Fadden

vs

Bartholomew Fortier

Angelica Fortier

Peoria Circuit Court

May T. 1855

In Chancery

Your Respondents Bartholomew Fortier & Angelica Fortier saving & ~~reserving~~ ^{reserving} to themselves all manner of exception to the many errors & insufficiencies and the right to demur thereto in answer to said Bill or to so much thereof as is material for them to answer as they are advised

by Counsel admit that Complainant purchased from defendants certain real estate, which respondents suppose is properly described in said Bill, but for date & description they refer to the Deed as Executed and also admit that in said Deed Covenant & agree with said defendant that the said Angelica Wife of said Bartholomew was the sole heir & legal representative of Francis Willette mentioned & described in the Patent in said Deed mentioned, and that they would Warrant and defend the title to said premises against all persons claiming the same from by or through the said parties of the first part to wit respondents. Respondents however deny that they falsely and fraudulently pretended that she the said Angelica was as to the land and lots in said Bill described the heir at Law and legal representative of said Francis Willette but here repeat and ~~offer~~^{affirm} the Covenant in said Deed that she the said Angelica is the sole heir at Law and legal representative of Francis Willette - To whom or to whose legal representatives the Patent for said ground issued.

Respondents admit the execution of the Notes & Mortgage & payment of the \$600 in Cash for the purchase of said property as alleged in said Bill.

Respondents also admit the commencement of the suit for the foreclosure of said Mortgage & of his intention to prosecute the same to Judgment.

Respondents deny any false or fraudulent representations & say that they made no representations except what are contained in their Covenants as aforesaid.

Respondents admit that they were not in possession of said premises, at the time of said Sale to said Complainant and that the same were held and occupied by various persons among whom was Complainant who was in possession of a portion of said premises, and respondents in fact say that the premises so occupied by said Complainant is worth far more than the purchase money for the whole tract, and that the whole of the real estate described in said Conveyance was at the date of said Deed worth at least the sum of twenty five thousand Dollars.

Respondents further say they know nothing of the various suits mentioned in said Bill, nor can they conceive that this ~~case~~ form any defence to the payment of said purchase money as he the said Complainant well knew that he was buying property, which was claimed by other persons, and bought the same upon speculation, paying therefor not more than one fifth of the real value of said property and also for the purpose of settling the title to the portion of said property then in possession of Complainant

Respondents admit the payments as charged in said Bill amounting in all to \$510. and having fully answered your respondents pray to be hence dismissed with their costs.

Manning T Merriman
Sols for Defs

Order for Injunction

Friday March 23rd A.D. 1855

James McFadden

vs

For injunction &c

Bartholomew Fortier

Angelica Fortier

This day came the Complainant by Norman H. Purple his Solicitor and presented to the Court his Bill of Complaint in this cause and entered a motion for an injunction in the suit of Bartholomew Fortier vs James McFadden pending in this Court on the Common law side of the said Court, being a suit by Scire facias to foreclose a mortgage; whereupon it is ordered and decreed by the Court, that an injunction be issued according to the prayer of the said Bill upon the Complainant filing with the clerk of this Court a bond in the penalty of one thousand dollars with William Kellogg as security conditioned that the Complainant will pay the defendants whatsoever damages they or either of them may sustain by reason of the wrongful suing out of the said injunction

State of Illinois

Peoria County

The People of the State of Illinois, To
Bartholomew Fortier Greeting =

Whereas James Mc Fadden has lately exhibited his bill of
Complaint in the Circuit Court in and for the County of
Peoria and State aforesaid on the Chancery side thereof again-
st you the said Bartholomew Fortier and one Angelica
Fortier defendants: wherein among other things it is alleged
that you unjustly prosecute the said Complainant at
law touching the matters and things therein stated and
set forth by Suit by Scire Facias to foreclose a Mortgage
We therefore in consideration of the premises, do strictly en-
join and Command you the said Bartholomew Fortier that
you do absolutely and entirely desist from proceeding with the
said Suit by Scire Facias to foreclose Mortgage or any other
Suit to Collect said Mortgage Money until the further order
of the Court in the premises -

Hereof fail not under penalty of what the law directs
Witness Jacob Gale Clerk of our said Court
Seal and the Seal thereof at Peoria this 31st day
March A.D. 1855.

Jacob Gale Clerk

To the Sheriff of Peoria County to execute

The within named Bartholomew Fortier is not found in
my County
D.D. Irons Sheriff

Injunction Bond

Know all Men by these presents that We James Mc Fadden
and George W Finckley William Kellogg are held and firmly
bound unto Bartholomew Fortier and Angelica Fortier his
Wife in the Penal Sum of one thousand dollars lawful
money of the United States to which payment well and
truly to be made and done We bind ourselves our heirs
executors and administrators jointly and severally by

31 These presents, Witness our hands and seals this 23rd day of March A.D. 1855.

The Condition of this bond is this whereas the above named James M^c Fadden has applied to the circuit Court of Peoria County now in Session for an injunction to stay proceedings in a certain suit at Common law by Scire facias on a mortgage, pending in said Circuit Court of Peoria County wherein Bartholomew Fortier is Plaintiff and the said James M^c Fadden is Defendant which said injunction has been allowed by said Court. Now if the said James M^c Fadden shall prosecute his said suit in chancery with effect or on failure thereof shall pay to said Bartholomew Fortier and Angelica Fortier whatever damages, they or either of them may sustain by reason of the wrongful suing out of the said injunction then this bond shall be void otherwise in force

James M^c Fadden Seal
Geo W. Fiedlus Seal
W^m Kellogg Seal

Filed March 28th 1855

Jacob Gale clerk.

Wednesday, November 19th A.D. 1856

James Mc Fadden

vs

for injunction

Bartholomew Fortier

Angelica Fortier

This day came the Complainant by Norman H. Purple his solicitor and the defendants by Merriman, Lander & Lindsay their solicitors and this cause came on to be heard on the defendants motion to dissolve the injunction in this cause on Bill Exhibits. Answer and deposition on file which was argued by Counsel and the Court being fully advised in the premises its order and decree that the injunction hereinbefore granted stand dissolved that the Bill of Complaint herein stand dismissed with Costs and that the said defendants have and recover of the said James

32 Mc Fadden their costs in this behalf expended and that execution
issue therefor as on judgments at law whereupon the complainant
claimed an appeal herein to the Supreme Court of this State.

Saturday December 6th A.D. 1856.

Court met pursuant to adjournment, Present the same as on
Yesterday -

James Mc Fadden

vs For injunction &c

Bartholomew Fortier

Angelica Fortier

On the Motion of the Complainant for an appeal in
this cause to the Supreme Court, the Court allowed to the Complai-
- ant an appeal an appeal to the Supreme Court of this State
on his filing in the Office of the Clerk of this Court in twenty
days an appeal bond with George C. Mc Fadden as surety in
five hundred dollars payable to defendants and conditioned
according to law.

Appeal Bond

Know all men by these presents that We James Mc Fadden
and George C. Mc Fadden are held and firmly bound unto
Bartholomew Fortier and Angelica Fortier his wife in the
sum of Five hundred dollars lawful Money of the
United States to which payment well and truly to be made
and done We bind ourselves our heirs executors & adminis-
- trators and each of them jointly and Severally by these presents
Witness our hands and seals at Georgia this 6th day of
December A.D. 1856.

The Condition of this Bond is this: Whereas
on the 19th day of October A.D. 1856 at a term of the
Circuit Court then and there being holden in and for said
County, in a certain suit in Chancery wherein James
Mc Fadden was Complainant and Bartholomew Fortier
and Angelica Fortier were Defendants a certain decree
was made & entered dissolving the injunction and dismiss-
- ing the Complainants bill, from which said Decree the
Said Complainant then and there afterwards and during
the same Court to wit on the 6th Day of December A.D.

1856 prayed an appeal to the Supreme Court of the State of Illinois; which was then and there allowed. Now if the said Complainant shall prosecute his said appeal with effect and shall pay and satisfy whatever Judgment or decree may be rendered by the Supreme Court in the premises and shall also pay and satisfy all costs interest and damages which may accrue in case said decree shall be affirmed by said Supreme Court, then this bond shall be void, otherwise in force

James M^c Fadden

G. C. M^c Fadden



Dec 6, 1856.

Filed, December 8, 1856

Enoch P. Sloan, clerk.

State of Illinois

Peoria County

N. H. Purple being sworn says that the appeal Bond in the foregoing case of James M^c Fadden vs Bartholomew Fortier & Angelica his wife was filed in this Court on the 8th day of December A.D. 1856. and before the commencement of the trial of this cause

N. H. Purple

Sworn to before me

this 9th day of December

1856. Enoch P. Sloan, Clerk Circuit Court

Proceedings at a term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the third Monday of November in the Year of our Lord One thousand Eight hundred and fifty six, it being the Seventeenth day of said Month - Present the Honorable Elisha N. Powell, Judge of the Sixteenth Judicial Circuit in the State of Illinois - David D. Irons Sheriff & Enoch P. Sloan, clerk to wit:—

Wednesday, December 10th A.D. 1856.

Bartholomew Fortier

vs

On Mortgage

James M^c Fadden

This day came on to be heard the motion of the

defendant for a new trial; The Court being fully advised in the premises sustained said motion and ordered the verdict of the jury heretofore rendered in this cause set aside and that a new trial be had in this cause between the parties. On motion of the plaintiff leave is given to him to withdraw his demurrer as to the 1st plea of the defendant.

Replication to the 1st plea

Bartholomew Foster

Res

James Mc Fadden

And for replication to the plea
of said defendant firstly above pleaded The said Plaintiff
says preclude now because he says that the said Mortgage
in said Scire facias mentioned is the act and deed of
said defendant and this he prays may be inquired of by
the Country &c—

Manning & Merriman
for the pty

And deſt
doth tho like

Purple & Thrall
for debt

Filed December 10, 1856

Crook P Sloan clerk

Proceedings at a term of the Circuit Court began and held at the Court house in the City of Peoria in and for the County of Peoria and State of Illinois; on the first Monday of March in the Year of our Lord One Thousand eight hundred and fifty seven, it being the second day of said Month - Present the Honorable Elihu N. Powell, Judge of the Sixteenth judicial Circuit in the State of Illinois - Francis W. Smith Sheriff and Enoch P. Sloan clerk to wit: —

Monday, March 2^d A.D. 1857

Bartholomew Fortier

25

On Mortgage

James Mc Fadden

This day came the plaintiff by Lindsay & Merriman, their attorneys and the defendant by L. G. Pratt his attorney and it is ordered that a jury be empannelled to try

the issue joined in this cause, whereupon came a jury of twelve good and lawful men, to wit: - Burleigh Dunlap, James A. Sutherland, Mathew Brown, Richard Pinkney, James F. Murden, Milton Hasbrouck, James Haggard, H. O. Flegler, Samuel K. Murry, Austin H. Gordon, Joel P. Lane, Jacob Silzell, who were duly chosen, tried and sworn to well and truly try the issue in this cause, and a true verdict give according to evidence - The plaintiff by his attorneys moved the Court for leave to amend Scire facias. The Court being satisfied in the premises, ordered that the plaintiff have leave to amend said Scire facias, and that the jury empaneled in this cause be withdrawn, and that this cause be continued to next term, but at the costs of the plaintiff herein -

Proceedings in the Circuit Court, at a term thereof began and held at the Court house in the City of Peoria, in and for the County of Peoria and State of Illinois on the second Monday of May in the Year of our Lord, One thousand eight hundred and fifty seven, it being the eleventh day of said Month - Present, The Honorable Elisha N. Powell, Judge of the 16th Judicial Circuit in said State; Francis W. Smith, Sheriff and Enoch P. Sloan, Clerk, to wit: -

Tuesday, May 12, A.D. 1857.

Bartholomew Forster

vs

On Mortgage

James Mc Fadden

This day came the plaintiff by Manning & Lindsay his attorneys and the defendant by Purple & Pratt his attorneys; and by agreement leave is given to defendant to refile his pleas to plaintiffs amended declaration; and plaintiffs replications to defendants 1st & 2^d pleas and plaintiffs demurrers to defendants 3^d amended plea, are also refiled by agreement and leave of Court, and the Court being satisfied in the premises sustained said demurrer to said 3^d amended plea. The issues being joined, it is ordered by the Court that a jury be empaneled to try said issues whereupon came a jury of twelve good and lawful men to

wit: — Gideon B. Cutler, Job Smith, Edward L. Norton, John Ackley, William Gifford, Stewart Neill, Henry Hornbaker, Nathan Mannock, John Hines Jr, Geo Donaldson, Albert Clark & Robert Pinkerton who being duly chosen, tried and sworn, well and truly to try the issues joined in this Cause and true verdict give according to evidence, do say, We the jury find the issues for the plaintiff and find to be due said plaintiff on said Mortgage the sum of five thousand four hundred and three dollars and seventy one cents. Therefore it is Considered by The Court that The said Bartholomew Fortier have and recover of the said James Mc Fadden the sum of five thousand four hundred and three dollars and seventy one cents, the amount found to be due him as aforesaid, and also his costs and charges by him about his suit in this behalf expended, and that he have execution to sell the premises in said Mortgage described for the satisfaction of this judgment and the costs aforesaid. The said James Mc Fadden by his attorneys entered a motion for a new trial in this Cause, and the Court being satisfied in the premises overruled said motion.

Friday, May 22^d AD. 1857.

Bartholomew Fortier

vs

On Mortgage

James Mc Fadden

This day came the Defendant by Counsel his attorney and prayed an appeal to the Supreme Court of this state of Illinois, which is allowed on conditions that the said defendant will make his bond in the penal sum of ten thousand dollars with George C Mc Fadden as surety and file it with the papers in this cause in thirty days.

And thereupon the defendant filed in the Clerks office of said Court on the date last aforesaid his bill of exceptions in the above cause in the words & figures following to wit:

Bill of Exceptions

Bartholomew Fortier

vs

James Mc Fadden

In the Circuit Court of
Peoria County

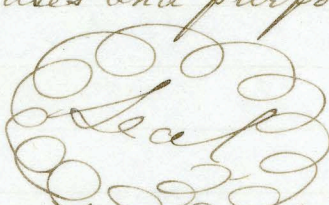
37
Be it remembered that on this day this cause came on to be heard upon the plaintiff's Demurer to the Defendant's Third Plea and the same was argued by Counsel, the Court upon Consideration sustained the Demurer to which the said Defendant then and there excepted.

And a Jury being empannelled the plaintiff offered in Evidence a Mortgage dated April 17 1849. which said Mortgage is as follows;—

This Deed, made this seventeenth day of April in the Year of our Lord One thousand eight hundred and forty nine Between James McFadden of Peoria in the County of Peoria and State of Illinois of the first part and Bartholomew Fortier of the County of St. Clair in the State aforesaid of the second part, Witnesseth, That the said party of the first part, for and in consideration of the sum of Five thousand dollars Dollars, paid by the said party of the second part, the receipt of which is hereby acknowledged, doth by these Presents Grant Bargain and Sell unto the said party of the second part, his heirs and assigns, a certain tract or parcel of land, containing Fifty four thousand Eight hundred and Ninety Eight square feet and fourteen hundredths of a square foot surveyed and designated as covered by claims numbered one Eleven Forty one and Forty two in the Southeast fractional quarter of fractional Section nine in Township Eight North of Range Eight east of the fourth Principal in Illinois according to the Survey approved 1 Sept 1846 by the Surveyor of the Public lands in the State of Illinois and Missouri which said lots are particularly described in a certain patent from the President of the United States to the legal representatives of Francis Wilett and their heirs Dated the 28th Day of August A.D. 1845. To have and to hold the said premises as above described, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, his heirs and assigns forever. And the said party of the first part for himself and his heirs, executors and administrators doth hereby covenant to and with the said party of the second part, his heirs and assigns, that he is well seized of the premises above conveyed, as of a good and indefeasible estate in Fee

Simple and hath good right to sell and convey the same in manner and form as aforesaid; that they are free from all incumbrance; and that the above bargained premises in the quiet and peaceful possession of the said party of the second part, his heirs or assigns, against the claim of all persons whomsoever, he will forever warrant and defend. Provided Nevertheless That, if the said party of the first part, his heirs, executors or 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 Five thousand Dollars in manner specified as follows that is to say six hundred dollars cash down Four hundred dollars 1st November 1849 and the residue in equal annual payments of one thousand dollars each as specified in certain promissory notes bearing even date herewith then this deed as also said certain Notes bearing even date with this indenture given by the said party of the first part to the said party of the second part, Conditioned to pay the said sum of money at the time aforesaid, shall be void otherwise to remain in full force and virtue. In Testimony whereof, the said party of the first part hath herein to set his hand and seal the day and year first above written.

Signed, sealed and delivered in presence of  James M. Fadden
H. S. Rugg

State of Illinois } I, Jacob Gale, clerk of the circuit Court
Peoria County } within and for said County, Do Certify, That
on this day personally appeared before me James M. Fadden
whose name appears subscribed to the foregoing deed of conveyance as having executed the same and who is personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made and acknowledged the execution thereof as his voluntary act and deed for the uses and purposes therein expressed. Given under my hand and seal of said Court at Peoria this
Seventeenth day of April Eighteen hundred
and forty nine.  Jacob Gale, clerk

State of Illinois
County of Peoria

Recorders Office
I Charles Kettelle Recorder of said
County do hereby certify the within Mortgage is duly

3.9 recorded in said Office in Book of Mortgages No 3 Pages 386
& 387 this 17 day of April AD 1849. Charles Kettelle RPL.

To which the said Defendant objected, the Court admitted
the Evidence and the Defendant then and there excepted

Plaintiff then offered 4 notes which are as follows;—

\$1000 On the first day of November 1850 I promise to pay
Bartholomew Fortier one thousand dollars with six per cent
interest

April 17th 1849. James Mc Fadden

\$1000 On the first day of November 1851 I promise to pay Bartholomew
Fortier one thousand Dollars with six per cent interest

April 17th 1849 James Mc Fadden

\$1000 On the first day of November 1852 I promise to pay Bartholomew
Fortier one thousand Dollars with six per cent interest

April 17th 1849 James Mc Fadden

\$1000 On the first day of November 1853 I promise to pay
Bartholomew Fortier one thousand dollars with six per cent
interest—

April 17th 1849 James Mc Fadden

Plaintiff admitted that the following payments had been
made on the Mortgage—

1851	July 20	\$ 200
1852	Jan 25	60
1853	Nov. 18	150
1854	Jan 5	50
1854	July 5	50
		510.00

The Plaintiff requested the Court to instruct the Jury as follows,
The rule of casting interest where payments have been
made in this case is that the payments shall be first applied
in payment of the interest—

If any payment exceed the interest then due, then

The payment is to be deducted from the amount of principal and interest then due, and the remainder is to constitute the principal on which interest is to be calculated until the next payment, and so on.

If the payment do not amount to the interest at the time of its being made then the principal as then due is to constitute the principal on which interest is to be calculated until the payment or payments exceed the amount of interest when the amount of the payments is to be deducted from the sum of the principal and interest as above stated and the remainder is to form the principal on which the interest is to be calculated - following these rules until the computation of interest is ended. If the payments ^{at any time} do not exceed the interest then due no interest is to be calculated upon the payments up to that time.

To which the Defendant objected, the Court gave said instruction and the Defendant then and there excepted.

The Jury found for the plaintiff and assessed the amount due on the mortgage at \$5403.71 Cents.

The Defendant Entered a Motion for a new trial which was overruled and the Defendant then & there excepted to the Opinion of the Court and requested the Court to sign & Seal this bill of exceptions which is done.

E. N. Powell

And afterwards to wit on the first day of June the defendant filed in the clerk's office of said court his appeal Bond in said cause in words & figures following to wit:

Appeal Bond Know all Men by these presents that we James M^c Fadden & George C^o M^c Fadden of Peoria Ills are held and bound unto Bartholomew Fortier in the Penal Sum. of Ten Thousand Dollars lawful Money of the United States to which payment well and truly to be made and done. We bind ourselves our heirs Executors and administrators and each of them jointly and severally by these presents.

Witness our hands and Seals this 1st day of June A.D. 1857.

The Condition of this bond is this Whereas at a circuit Court of Peoria County being holden in & for said County at May Term 1857 - to wit on the 12th day of May 1857,

Bartholomew Fortier recovered a Judgment against James M^c Fadden upon a Scire facias to foreclose a Mortgage for the Sum of Five thousand four hundred and three dollars and Seventy one Cents from which Judgment the said James M^c Fadden has prayed an appeal to the Supreme Court of the State of Illinois which has been allowed. Now if the said James M^c Fadden shall well and truly prosecute his said appeal and pay the Judgment aforesaid, interest Costs and Damages which the said Plaintiff may sustain in case the said Judgment shall be affirmed by the Supreme Court and shall pay all such damages as the Plaintiff aforesaid shall sustain in case the said Judgment shall be affirmed then this Bond shall be void, otherwise in force

James M^c Fadden
G. C. M^c Fadden

State of Illinois
Peoria County } I, Enoch P. Sloan Clerk of the Circuit Court of the County of Peoria, in the State of Illinois do hereby certify that the foregoing is a full and correct transcript of papers filed and of the proceedings of our said Court in a certain cause wherein Bartholomew Fortier is plaintiff and James M^c Fadden is defendant as the same remain on file and of Record in my office.

Given under my hand and seal of said Court at my office in Peoria this fifteenth day of April in the year one thousand eight hundred and fifty eight.

Enoch P. Sloan, Clerk

James McHadden

^{by}
Bartholomen Foster

- 1 ~~That~~ The said Plaintiff errors and says that in the record proceedings and in the rendition of judgment in this case manifest injury has intervened to the injury of the Plaintiff and for assignment of error shows the following
 - 1 The Court below Erred in overruling the demurres to the writ
 - 2 The Court Erred in sustaining the demurres to the third plea of the defendant below
 - 3 The Court Erred in not extending the demurres to the writ & declaration
 - 5 The Court admitted improper evidence on the part of the Plaintiff
 - 6 The Court gave improper instructions on the part of the Plffs
 - 7 The Court Erred in the rule laid down in computing interest
 - 9 The Court Erred in overruling motion for a new trial
 - 10 The verdict is against Law & Evidence & says that said fact may be reviewed set aside & over for a new trial wholly for new & entire

James McTear

Bartholomew Station

Sup Court

The Appellate
Court and says there is no error
in the said Record says that the
Judgment below ought to be sustained
Meaning there is
no appeal

Reasons for
new trial }

Bartholomew Fortier }
as } In the circuit court of Peoria county -
James McFadden } Sci fa on Mot.

Defendant enters a motion, to set aside the verdict and for a new trial for the following reasons: 1st Because the verdict is against law and evidence; 2^d Because the verdict is not responsive to the issue; 3^d Because there is a demurrer to the 1st plea which is undecided; 4th Because the court gave improper instructions to the jury at Pffs request; 5th Because the verdict is unwarranted in law, and the amount found by the jury unwarranted by the evidence; 6th Because the damages are excessive under the evidence.

Purple & Pratt for deft.

And afterwards to wit on the 9th day December A.D. 1856, there was filed with the clerk aforesaid, additional reasons for new trial, in words and figures following, to wit:-

Bartholomew Fortier }
as } In Circuit Court of Peoria County.
James McFadden }

198 \$15.83

James McHanna

by

Bartholoma Horton

Recd. April 26 1858
L. L. Leland
C. K.

5/10/58

Grove

Mc Haaden }
vs }
Fortier }

In the Supremo
Court

Sci Ita to fouclow Mortgage
A Aemura to the unit was filia and
overrulea,

- The defendiant filed 3 Pleas
1. That the Mortgage was not his
 2. Payment [In the 102 Pleas ~~the~~ repli
cations were filia]
 3. Fraud. A Aemura to the third

plea was sustainea, and A
was amenda 3 Plea see record pages 7, 8
+ 9. Amenda to 3 Plea see pages 10 + 11

A Aemura to the amenda plea
was sustainea

1. It is submittea that the plea is good
2. If the court consider the plea bad
yet the Aemura should have
been extenuea to the unit which is in
fact the Aclaration
1. Upon demura the court gives judg
ment against the party, commit
ting the first fault in pleading of
the defect is one of substance

See vs Becker 1 Demit 568
and cases there cited.

See also 4 Venice 65
Deans vs Wiley 3 Deam. 234
Mc Donnell vs Walker 13 Ill. 22
Thumans beget 1304. And cause them
Citea

3 The writ is defective

1. It does not run in the name of
of the People of the State of Illinois

5 Herman 100.

2 The instrument set out in the
writ is not sealed by Mc Haaden
and therefore no Mortgage

3. The writ is not signed by the clerk
of the Circuit Court. He describes
himself as clerk of the County

4 The writ does not purport
to be ~~sealed~~ sealed with the seal
of any Court only by the seal of
the County.

4. The Mortgage admitted in en-
dorse was ~~the~~ improperly admitted
It was sealed. While the instrument
set out in the writ is not sealed
For Mortgage see record page
38 & 39.

5 It is Submitted that the rule
laid down by the Circuit Court
as to the application of the payments
and as to the computing interest
is erroneous.

It is Submitted that
payments made should be ap-
plied to the payment of the prin-
cipal

Yours

Wm. P. G.

198

Mc Hadden

4

Horten

Appts.

Beys Brup &
Points

James Mc Fadden } In the Supreme
as } Court.
Bartholomew Fortier }

This was a *rei
ra facias*, to foreclose a mortgage.

A demurrer to the writ was overruled.

Mc Fadden then

files three pleas:

1. That the mortgage was not
his.
2. That Payment. (To the 1st.
pleas replications were filed)
3. *Trava*.

A demurrer was
sustained to the third plea, & it
was amended.

3 Plea see record pages 7, 8, & 9

Amendment to 3 plea see pages 10 & 11,

To this plea, ^{as amended} Fortier demur

red and the demurrer sustained Mc Fadden
dem ~~plea~~ to the ~~stora~~ by his plea

1. It is submitted that the plea was
good.

2. If the Court consider the plea
Bad yet the demurrer should have
been sustained to the ~~writ~~ writ which
is in fact the declaration.

- 1 Upon Demurrer the Court gives Judgment against the party, committing the first fault if the defect is one of substance.

Lipo vs Becker 1 Denio 568
and cases there cited

See also 4 Denio 65

Davis vs Wiley 3 Scam. 234

A demurrer to a rejoinder opens the whole record and will be carried back to the first substantial defect in the pleadings McDonald vs Miller 13 Illinois 22 Freeman's Digest 1304 & cases there cited

1. The writ is defective

It does not run in the name of the people of the State of Illinois
5 Helman 105.

2. The Mortgage set out in the writ is no mortgage because it is not sealed.

3. The writ is not signed by the clerk of the Circuit Court. He describes himself as being clerk of the County.

4. It does not purport to be sealed with the seal of any court. only the seal of the County. See Freeman's Digest 1356.

3. The Mortgage admitted in evidence was improperly admitted. It was sealed. While the instrument set out in the writ is not sealed. For Mortgage see record page 37, 38 & 39, There was a variance.

4 It is submitted that the rule laid down by the Circuit Court as to the application of the payments and as to the computing interest was and is erroneous.

It is submitted that all payments made should be applied to the payment of the principal

Thos
for Pp & Equ

Mc Haaden

¹⁴⁷
~~Brown~~ Fortier

198

Plaintiffs

Prize & Points

~~Disputed~~ 9

Filed Apl. 30. 1888.
L. Selan Ch.

James M. Hadlee
appellant

Bartholomew Porter
appellee

Appellee's Brief

The first objections to the writ of
Scire facias in this cause, are that
the writ does not run in the name
of the People &c., and that the Clerk
of said Court has not properly
described himself in the writ -

All these matters go to the form
of the writ, and advantage should
have been taken by motion to
quash the writ.

Appearance and pleading cures
all irregularities in process.

1 Summons 250

2 do 48-

Irregularities in process, as to the
form, cannot be raised by general
demurrer. A general demurrer only
goes to the substance of the writ
as a declaration, the writ being
the nature of a writ and declaration
any matter of substance that

in its avowments as a declaration
is insufficient cause be taken
advantage of by general
demurrer, but not very irregularly
in the process as a means of
getting the defendant into
Court —

It is admitted as a general
rule, that a general demurrer
may be carried back to the first
substantial error in pleading
but there are exceptions to this
Rule — that is, as in the case
at bar. The defendant first
interposed a demurrer which
was overruled, and then he
pleaded over. Upon a demurrer
to the plea, the demurrer cannot
in this instance be carried
back to the declaration. The
party has once had his demurrer
decided, and has elected to
plead over instead of obiding
thereby.

1 Saunders Pleading, 953 —

The next objection to the writ was that there was no seal to the copy of the mortgage set out in the writ—

The writ avers that the mortgage was duly executed and recorded, which is a sufficient averment in the writ—

The defense to the 3^d plea was properly sustained. The plea attempted to set up failure of consideration, which this court have repeatedly decided cannot be pleaded to a writ of Seigniorial to foreclose mortgages.
Hall vs Byrne & Scammon 140—
Mendenhall vs Marks & Scammon — 25—
Woodbury vs Mendenhall 14 MS. 213

The next point relied upon by appellant is Variance between the writ and mortgage, in this that the seal on the mortgage was not copied in the writ.

The Court will remember that the original mortgage was filed in the Case, and was the foundation upon which the writ issued, that the writ set forth the mortgage there on file in substance and not in habe verba. so that a variance of a matter not of substance was no variance.

The want of a seal in the copy was not a substantial variance, and certainly could not work any surprise, as the writ issued upon and referred to the mortgage on file in the Case.

A seal is not such a matter as can be copied, all that could be done in any event would be to state that there was a seal on the

original deed. and where the
will states that the deed was
properly executed, and that
the original mortgage was on
file, is sufficient without
stating ^{particularly} that there was ~~for~~ a seal
on the original -

[12580-44]

198-84

M^c Fadden
vs
Fortner

Filed May 5, 1888
J. Leland
clerk

appellee's
brief —

James Mc Hadden }
 vs } In Supreme
 Bartholomew Forties } Court

This was a *Scire Facias* to foreclose a mortgage.

A *Demurrer* to the writ was overruled.

Mc Hadden then files three pleas.

1. That the Mortgage was not his
2. Payment. To the 1st plea replication was filed
3. Fraud.

A *Demurrer* was sustained to the 3rd Plea and it was amended
 3rd Plea see record pages 7 8 & 9.

Amendment to 3rd plea see pages 10 & 11

To the Plea as amended Forties *Demurred* and the *Demurrer* was sustained.

1. It is submitted that the plea was good.
2. If the Court consider the plea bad yet the *Demurrer* should have been entered to the writ which is in fact the declaration.

1. Upon Demurrer the Court gives Judgment against the party committting the first fault if the defect is one of Substantive
Lipo vs Becker 1 Denio 568
and cites these cases
See also 4 Denio 65
Lanis vs Wiley 3 Scammon 234

A Demurrer to a rejoinder opens the whole record and will be carried back to the first Substantial defect in the pleading

McDonald vs Walker 13 Ill. 22
Greensman's Digest 1304 and
cites these Cases

The Unit is defective.

1. It does not run in the name of the people of the State of Illinois
5 Gilman 100,
2. The instrument set out in the unit is not sealed by McHadden and therefore no Mortgage
3. The Unit is not signed by the Clerk of the Circuit Court He ~~describes~~ describes himself as being Clerk of the County

4 The writ does not purport to be sealed with the seal of any Court or by the seal of the County

See Freeman's Digest 1356,

3. The Mortgage admitted in evidence was improperly admitted. It was sealed, While the instrument set out in the writ is not sealed.
For Mortgage see record page 38 & 39.

4. It is submitted that the rule laid down by the Circuit Court as to the application of the payment and as to the computing interest was and is erroneous.

It is submitted that payments made should be applied to the payment of the principal.

Yours
for P. J.

84
Mc Ladden
Horton 198.

Pepp's Proof
and ~~altered~~
Points

~~198~~ 198

James M. S. 11

William M. S.

198

12580

1858



Prepared