

No. 13942

# Supreme Court of Illinois

Prettyman

vs.

Goodrich, Willard & Co., et al

71641  7

STATE OF ILLINOIS, } SECOND GRAND DIVISION.  
 SUPREME COURT. } JANUARY TERM, A. D. 1860.

BENJAMIN S. PRETTYMAN

vs.

JAMES G. GOODRICH,  
 PETER H. WILLARD,  
 ALBERT A. CHILD,  
 SAMUEL W. FULLER,  
 SABIN D. PUTERBAUGH.

*In Chancery. Bill for Injunction, and  
 Error to Tazewell.*

Page 2 The complainant in his bill shows that, on the 8th day of December, 1858, one William Trent was the legal and equitable owner of sundry lands in Mason and Tazewell counties, in the state of Illinois, a part of which are described in exhibit A; and that he, on that day, sold to complainant, for a good and valuable consideration, all the land he then owned in said counties, including the land described in exhibit A; which exhibit purports to be a deed of trust, dated April 24th, 1857, and duly acknowledged by Trent, and recorded that day in Mason county, and afterwards acknowledged by the wife of Trent in Tazewell county. and there recorded June 10th, 1857. And complainant charges that the instrument described as exhibit A, as to the lands described in it, in Mason county, was by defendants made in fraud of Trent, and obtained from Trent through false representations of one of defendants for the benefit of all; and as to the land described in the deed as being in Tazewell county, Trent never made or executed such deed; and that the whole instrument, in every part thereof, is false, fraudulent and void. And complainant charges that, notwithstanding the facts are as above alleged, yet the defendants, Goodrich, Willard & Co., by Fuller & Puterbaugh, their attorneys, have proceeded to advertise all the property for sale, as they pretend, by virtue of the deed of trust marked A, and also as subsequently altered by them again, as shown by exhibit B.

Complainant charges that, in relation to the execution of said pretended deed of trust under which the said advertisement is pretended to have been made, the facts are, that said Wm. Trent, on the 24th day of April, 1857, was indebted to defendants, Goodrich, Willard & Co., in the sum of \$20,000, and executed his note to them for that amount payable June 30, 1857; and to secure the note, he and his wife executed an instrument, as a mortgage on sundry lands in Mason county, Trent signing and acknowledging it on the 24th of April, and his wife afterwards on the 10th of June—a copy, as executed by them, is marked G, and filed as part of this bill; and avers that when executed by Trent, Fuller, one of the defendants, was present, and avers that Fuller was then, and had long been, Trent's constant counselor and attorney in all his business; that Trent confided in him, and could not read or write, and was compelled to depend on others for information of what was contained in the instrument produced for his signature: that Trent directed Fuller to prepare a mortgage, in ordinary form, upon the land described in Mason county in exhibit G, to secure said debt, and on no other tracts or lots of land whatever; and Fuller represented the same to said Trent as being in effect but an ordinary mortgage, with the ordinary equity of redemption to said Trent. And complainant charges that the deed of trust above named, marked A, then contained no lands in Tazewell county, and none but what are described in the exhibit marked G, and was so read and represented by defendants. And complainant charges that afterwards, and on the 10th of June, 1857, the defendants, Goodrich, Willard & Co., and Fuller, colloguing and combining together to wrong and defraud said Trent and wife out of divers large tracts of land, and after obtaining the deed of trust on sundry Mason county lands as described in exhibit G, by the means aforesaid, fraudulently altered and inserted into said deed of trust, marked G aforesaid, without the knowledge,

order or consent of said Trent or his wife, and in their absence, or caused the same to be done, all of the tracts and lots of land situated in Tazewell county, and all as contained in exhibit A and not in exhibit G, being about 880 acres; and charges that defendants also on July 23, 1857, further to defraud said Trent and wife, inserted, without leave or knowledge of Trent and wife, other lots of land, and caused the deed of trust to be then again recorded as though duly executed and acknowledged by Trent and wife; and exhibit B shows the deed as thus then altered and recorded. And complainant charges that the deed, by reason of said interlineations and insertions and alterations so fraudulently done, is absolutely void. And complainant avers that the lots so inserted were valuable and improved, and the lands worth 8,000 dollars; and charges that the lands originally designed to be mortgaged, and lying in Mason county, are fully worth the whole debt designed to be secured; and avers that Trent has paid all but about \$13,000; and charges that although Trent designed to secure the debt of defendants on Mason county lands by mortgage, and directed Fuller to so prepare it, and believing it to be such in effect, executed it, yet the defendants now all insist that it is a valid deed of trust, with full power to sell all the lands now contained in it, and to release and sell all the right of Trent and wife and her right of dower, and all their equity of redemption, and right of your orator as their assignee of said lands, and all the equity of redemption of your orator in all of said lands, and forever bar the same; and that pursuant to said purpose, and pretending by virtue of said deed of trust, they have advertised for sale all the lands contained in exhibit A, those in Mason county to be sold January 13th, 1859, and those in Tazewell to be sold January 31, 1859.

And complainant charges that the deed of trust under which the sale is proposed to be made is not the deed of Trent and wife; and that the advertisements are made, the sales are proposed to be made of all the lands not in the exhibit G aforesaid, and which were so fraudulently inserted in the deed to injure and wrong the said Trent and his wife, and to injure your orator as assignee in his purchase of the same; and charges that, as to all lands in Tazewell county, the deed is void for want of execution, and for such alteration, which Trent and wife never made or authorized to be done, and never knew of until long after the same had been done; and for which the same is void in every part.

And charges that, by reason of the action of defendants in attempting to sell said lands, although the deed is void, yet it tends to embarrass and throw a cloud over the title of your orator thereto, and injure the value thereof; and charges that defendants, at the time they so fraudulently inserted the said lands in the said deed, designed thereby to put it out of the power of Trent, by clouding the title, to sell any part, or redeem the same by paying off the note. And charges that the alteration of the instrument, and insertion of tracts of land not originally therein, was a forgery of the deed of Trent and wife, and is absolutely void. And complainant charges that defendants, for the purpose of injuring him and throwing a cloud over the title of said lands so sold and assigned to him, and although they know the same is void in every part for the reasons aforesaid, are proceeding to sell the whole of the lands, which, if done, will, by clouding the title thereto, greatly injure and wrong your orator; all of which being contrary to equity and good conscience. Complainant avers that he bought subject to a deed of trust of Trent to L. M. Green on part of the same land, and to the lien of divers judgments against Trent for about \$8,000; and avers that he paid a full and valuable con-

sideration therefor, and charges that unless defendants are restrained by the court, they will sell and convey the land by such void and pretended authority to innocent purchasers, to the serious injury if not total loss of your orator of his land and all recourse on defendants for the same.

15 And as complainant is remediless except in a court of equity, to the end thereof, prays process against each of the defendants to next term, and several answers to all charges and allegations; but expressly waives the answer under oath; and that on a hearing, the defendants may be enjoined from advertising and selling the land in the deed of trust named, and all parts of it perpetually, and that all pretence of claim of defendants under said deed of trust may be set aside as fraudulent and void, and for such other and further decree, &c.

17 Is exhibit A, being the deed of trust as altered by defendants, and the alteration being all after the word "also" in the middle of page 18 to the 18 foot of the page, which defendants interlined.

24 Is exhibit B, like exhibit A, with the additional interlineation by defendants of two lots at foot of description of lands in the deed.

32&36 Are exhibits E and F being advertisements for sale by defendants.

38 Is exhibit G, being the deed of trust as originally executed by Trent, and recorded in Mason county before defendants altered or interlined it with other lands.

45 Injunction was awarded and defendants restrained from selling any of  
52 said land in Mason or Tazewell counties, and process was duly served, and defendants appealed at the February term, 1859.

Answer of  
defendants.

61 The defendants all severally, substantially answering, say, that they know nothing of Prettyman's purchase for a valuable consideration, and believe that, if so at all, it was to defraud them, and believe complainant and Trent are colluding to defraud Trent's creditors; and aver that it is false that exhibit A referred to was obtained by fraud and false representation; and that it is false that as to the land and lots in Tazewell county, Trent never made or executed such deed, and that it is void; admit the debt as stated, and admit the execution of the mortgage or deed of trust, exhibit G, by Trent at the time and for the purpose charged, and that it contains the powers of sale, &c., as charged, and the acknowledgment and recording as stated, and that Fuller alone was present, and that Fuller was then and had been long the counsel of Trent in his employ. Know nothing of Trent's reliance on him, and admit that Trent and wife can neither read or write. Aver that Fuller was employed by G., W. & Co. to get from Trent a deed of trust on all the lands Trent had, if he could get it; and that in procuring the deed of Trent, Fuller proceeded strictly in accordance with their (G., W. & Co.'s) direction. Deny that it was prepared in any way different from what Trent thought it to be, or that Trent directed it to be prepared otherwise. Aver they often advertised the land for sale, and that Trent offered to put in other lands in the deed of trust,  
64 in consideration of the extension given him; and admit that when first  
65

- executed by Trent, the deed of trust contained only the land in Mason county, (as shown in exhibit G); and that it is false that Fuller read the same to Trent as a mortgage, and call for proof, and deny that the lands that were afterwards inserted in the deed were inserted fraudulently or without the consent or knowledge of Trent, and all combinations to injure, and state that on the 10th of June, 1857, defendants, Fuller and Willard, went to Trent's house to procure further security for the debt from Trent to G., W. & Co, and that Trent procured his wife's signature and acknowledgment to the deed of trust, and directed defendants to examine his title in Tazewell county, and directed Fuller to insert in said deed of trust all the lands Trent then owned in Tazewell county, and directed them to get all the land they could find, and to insert all the lands described in sundry deeds then in the hands of defendant Puterbaugh; and that on defendants Fuller and Willard's return to Pekin, Fuller directed defendant Puterbaugh to write the description of the lands inserted in the deed of trust in Tazewell county in the deed, and Puterbaugh did so; but deny that they were fraudulently inserted; aver that Fuller & Puterbaugh were practicing as attorneys in partnership, and that the land inserted was inserted by the express order of Trent; and deny that any lots in Spring Lake were fraudulently inserted, and aver that Trent repeatedly called on defendants Fuller & Puterbaugh to
- 68 release sundry lots in Tazewell county, and have others inserted instead, which was done by defendants Fuller & Puterbaugh. Admit the lands in Tazewell county to be
- 69 worth \$8,000, but deny that the land in Mason county is worth the debt to G., W. & Co. Aver that it will take all of the lands to secure the debt from Trent to defendants, insist that the instrument is a deed of trust on all the land contained in it, and admit that they were about to sell the land under it at the times and places charged; and insist they had a right to do so. And they charge that the allegation
- 70 that the deed of trust under which they proposed to sell is not the deed of Trent and wife is a falsehood; and they deny that they have done anything to wrong the complainant, but aver that complainant designs to wrong defendants, and deny that Trent never authorized them to insert the land in Tazewell county in the deed or mortgage, or that he did not know it was done until long after it was done and recorded; and deny that the deed is void in any particular, and aver it is the kind of
- 71 instrument Trent and wife understood it to be. Deny that they propose to injure complainant or throw a cloud over his title, or that they know the deed of trust to be fraudulent and void, and that, with such knowledge, they are advertising the same is false. They deny that by fraudulently inserting the lands in the deed of trust as it was executed, they embarrassed the sale or clouded the title so that the sale of the same was injured, and deny that they have embarrassed Trent, and aver that, instead of \$13,000 being due, there is as much as \$20,000 still due them from Trent. They
- 72 deny all design to injure Trent by inserting the Tazewell county lands, or that the insertion was a forgery, or that the instrument is void; and aver that Trent has repeatedly asked respondents to postpone the sale, and offered to put in yet other lands, and talked with the defendants about their power of sale without foreclosure, and of the land in Tazewell county being in the deed of trust, and of their power to sell on shorter notice, and have offered to release any land Trent might sell, if sold at a reasonable price and defendants got the proceeds; all of which was known to Trent and complainant; and offered in payment of the debt of Trent to them to release all the land; and aver that Trent, in addition to agreeing to give more lands in the deed of trust, offered to give defendants a valuable farm in lieu of the many favors they had shown him; which they declined receiving. Deny all personal knowledge of a sale from Trent to complainant, and aver, if any such there was, it was done to injure defendants and other creditors.
- 76 Defendants admit that they were about to sell all the land named in the deed of trust is true, and unless restrained they intend to do so; and aver the instrument is a deed of trust with power to do so, and Trent knew it; and defendants Fuller & Puterbaugh disclaim all interest in the matter in controversy, except as attorneys for

G., W. & Co. And all of respondents insist that the bill is without equity, and pray the benefit of a demurer thereto, in the consideration of the cause.

111 To which answers complainant filed a general replication, and the cause was continued to take testimony.

114 And at the June term of the court, 1859, defendants moved the court to dissolve the injunction—

1st. Because there is no equity in bill.

2d. Because the answers deny all the material allegations in the bill.

Testimony of  
Plaintiff.

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Complainant then offered in evidence William Trent, and he was examined as to his interest by the defendants, and testified that he had no interest in the result of the suit; that he sold the land to Prettyman for between \$13,000 and \$14,000, part paid at the time and part to be paid, and he is to have no benefit, directly or indirectly, in case of a recovery in this suit. Don't recollect commencing a suit in my name for the lands; recollect a conversation with Fuller at Spring Lake before Pollard & Randolph to secure a debt to Munn, Gill & Co., and was at Havana in April, 1857, at circuit court. Defendant Fuller was then my attorney; I cannot read or write. I there gave Fuller security for the debt to G., W. & Co., and acknowledged it before Ritter. I took down my deeds and told Fuller I wanted to make G., W. & Co. safe; and Fuller then drew the writing and called it a trust deed, and read it over; but the idea he gave me was that it could be redeemed the same as a mortgage, and he held that idea to me all the time, and I never executed a trust deed then with the provisions this contains. Ritter, before whom I acknowledged it, came the same evening, and told me there was some doubt about it being the same as a mortgage. It was not read when it was acknowledged before Ritter. Some time about a month afterward, Fuller and Willard came to Spring Lake to get my wife's acknowledgment. Before they came and after my return from Havana, I told my wife I had given a mortgage on some Mason county land, and she would have to acknowledge the deed. When they came, I knew what they came for. I called in Esq. Daniels, and they all came into the house. They were there but a short time, and I don't think the deed was read over. Daniels took my wife's acknowledgment to it then, but never afterwards to my knowledge.

I did not then acknowledge it. There were no lands or lots in Tazewell county in the deed when I acknowledged it at Havana, or when my wife acknowledged it at Spring Lake. *That is right, just done as straight as a shingle.* At the time they were at Spring Lake I had bought a tract of land in Mason county, and I offered to let them put it in at the time; but they did not do it to my knowledge, and no acknowledgment was taken of it. I told them that if they feared there was not land enough in it, I would put in more, but they were to be in Mason county. I did not order them at any time to put in any Tazewell county lands, and I don't recollect any talk at the time about putting in Tazewell county lands. I might have done so, but I thought it could not be done except before some squire or some officer, and I did not know that any Tazewell county lands were put in, and have no recollection at that time of ordering any Taze-

well county lands or lots to be put in; and the first I knew of any Tazewell county lands being in the deed, Green, of Petersburg, asked me if I knew that they had put into their deed of trust the land in Tazewell county that I had deeded to him in trust? This was after my wife's acknowledgment. I knew nothing of the putting in the land in Tazewell county that I had given Green a deed of trust on; and I don't recollect of directing any one to put them in the deed to G., W. & Co. I don't recollect of directing any lands in Tazewell county to be put into it.

- 121 It was long after my wife's acknowledgment that I first knew that there were Tazewell county lands in the deed. There was no money paid me when my wife acknowledged the deed, and no change on the note, I don't remember that it was then due. I sold the lands in the deed of trust named to complainant Prettyman some nine months ago; don't remember the date; think it was 8th of December, 1858. I sold him all the land I owned in Mason and Tazewell counties. The consideration was about as follows: He paid to Judge Harriott for me \$2,340 at the time. He had also paid Charles Bacon \$5,900 for me, and was my security to Tom Gill for about \$600, and also was security for me to Rupert for \$100, and also was security for me to Ireland for \$150, and also was security for me to Hurd for \$700; also a debt to Hall of \$117, and to Meigs for \$110; all of which he was to take up; also to pay a mortgage on 80 acres of land, \$275, and was to redeem some land amounting to about \$4,000, which I had before sold to McHarry; and this was all, except some small deal between us, that was turned in, and a note with him and Tackaberry on it that I was to pay off, \$275. The Hall and Meigs note I got; I don't know whether Gill is paid.
- 123 On cross examination, he stated: I don't recollect where Fuller first spoke to me about the debt of G., W. & Co., and don't recollect what room the deed was drawn in; think it was not in Ritter's office. Recollect that Fuller got a blank, but don't
- 124 remember that it was made at the recorder's office. Cannot say that I took my deeds from a carpet-sack, or that Fuller examined the title; don't recollect that Fuller and I consulted Bill Green; don't think he was there; don't recollect that any one was present at the time; don't remember that Fuller first asked me for a deed of trust in Pekin on lands in Tazewell county, and don't recollect of ever proposing to give a deed of trust on land in Tazewell county, or writing to him to that effect.
- 125 I don't recollect giving to Fuller two sets of deeds at Havana to take the Mason county lands from. There never was any but the Mason county lands offered. I think Fuller read the deed to me in the room where it was made, and don't remember asking Fuller to put the time of advertising at 90 days, and did not understand Fuller to say to me at the time that G., W. & Co. could sell off the land any time at 30 days' notice. T. W. Pratt was in my employ in the spring of 1857. I think Fuller, Willard and I were present when my wife acknowledged the deed. I suppose Willard came there for my wife's signature. I don't remember taking Fuller and Willard to the store or warehouse, or telling them from whom I got them, and don't think that Willard asked me for more security on that note; he might have done it, but I don't think so. At the time I gave the note at St. Louis I offered to give them security. It might have been called a deed of trust; don't recollect that they asked for a conveyance they could close quicker than a mortgage. It is very likely I did tell Pratt that I was going to give them a deed of trust. I don't recollect though now, I don't think I ever told Pratt that I had given them a deed of trust on Tazewell county lands, and don't think I ever told Captain Smith so. I did not tell Captain Smith last fall that I had filed a bill against them and was doing it to fight off a year or two so that I could get the crops. I don't recollect of telling Mosteller & Brown I had put in lots in which they were interested in deed of trust to G., W. & Co.; don't recollect of saying to Fuller and Willard, when at Spring Lake, that I would deed outright to Willard a farm in Mason county if they would

give further time on the note; don't recollect of bringing Fuller pen and ink to insert lands in Tazewell county. I don't recollect of saying I had left my deed in Pekin with Puterbaugh, and don't think Fuller and Willard requested me to come to Pekin to see about other lands to have them put in the deed of trust; don't think I declined coming because I was shipping corn, I don't think I had any idea of coming at all. I don't think there was any talk at the time about my deeds in Puterbaugh's hands. I think I did not come to Pekin in two or three days afterwards to see about the deed of trust, I don't recollect of going to Fuller several times to get Tazewell county lands released from the deed of trust. I recollect of going to him once, and that was in this way: some time after the deed of trust was made, either Mosteller or Brown came to me and told me that some lots belonging to them were in the deed of trust to G., W. & Co. I told them I had given no orders for any of the Tazewell county lands to be put in the deed of trust. I had bought those lots of Mosteller & Brown, and afterwards resold them to them, and made the deed to some man in Chicago, one of their creditors; and when I found they were in the deed of trust, I went and got them released. I never requested Puterbaugh at any time to release any of these lands, except those lots I speak of. I might have applied to Puterbaugh to release the Nick Beckwith land and give him other land in place of the land I sold to Beckwith. When the Mosteller & Brown lots were released, it is very likely I authorized other lands to be put in their place. I did pay Puterbaugh \$1,400 on account of the McHarry lands, and told him and Green at the time that those lands had no business to be in the deed of trust, but that it would be so much paid on the debt, and I was willing they should get the \$1,400, and Green the \$1,000. I think I did not go to St. Louis right away after the making of the deed of trust, and did not ask G., W. & Co. to sell me more goods

130 on account of my having given them a deed of trust on Tazewell county lands. Don't think there was any talk between me and Fuller and Willard at Spring Lake about giving a new deed of trust on my lands in Tazewell county, and have heard that the lands were advertised once or twice, and I don't recollect asking to have the sale adjourned that I might get in grain and pay with it, and don't recollect that I had the sale once continued and promised to pay \$5,000 every three months. I can't say that I knew the lands were advertised in April, 1858, or that I talked with defendants about it at any time. Did not see advertisement or know of the advertisement except from hearsay, and don't think I went to St. Louis in July, 1857, and bought goods on the strength of having given security on my Tazewell county lands; I have been in St. Louis but once since I gave the deed, and that was this spring.

I don't recollect telling Puterbaugh that I told Fuller to put in Tazewell county lands until they were made safe. I don't recollect giving Puterbaugh any deeds to school land in Tazewell county and directing him to put them in the deed to G., W. & Co. I don't recollect of telling Puterbaugh that I intended to put in the Tazewell county land, but that Tackaberry and Prettyman told me not to do it as there was enough in already. Prettyman was my counsel in the case I brought last fall against G., W. & Co. to set aside this deed, and recover the land now in controversy. I sold my lands to Prettyman to pay my just debts; I can't say as I had any talk of selling these lands to Prettyman before the first day of December last. (It is insisted

by defendants, and Prettyman admits, that, as attorney for Trent, he, in November, 1858, filed a bill to set aside the deed of trust, and that respondents filed their answer thereto, and that Trent, at the December term of the court, and on the 15th day of the month, dismissed this suit.) I don't recollect going with Fuller to the recorder's office in July, 1857, nor remember of paying for the recording of the deed of trust.

To all the above questions to and responses of witness, on cross-examination, not called for by the examination in chief, or leading in their character, complainant, at the time, excepted.

Re-examined: I never directed Fuller or any body else to put the Nick Beckwith land in that deed of trust. I understood Fuller to say, at the time I executed the deed, that the lands could be redeemed from the deed of trust the same as a mortgage; that was the idea he held out to me all the time.

133 Cross-examined: I gave Green a deed of trust about that time, but I did not know then that they could sell without an order of court. I can't say when I found that out. I have bought and sold more or less land for several years.

133 Thomas N. Gill testified that Prettyman paid him about \$500, which Trent and him and Prettyman were security for.

136 Mary Trent testified that she is the wife of William Trent. She knew complainant and Fuller and Puterbaugh and Willard, and she executed a mortgage or deed of trust to lands in Illinois to G., W. & Co. The lands were in Mason county, Illinois, as I understood it. I never executed any deed of trust or mortgage to G., W. & Co. on any land in Tazewell county. Esquire Daniels took the acknowledgment. I cannot read or write, and no one ever told me that the deed contained land in Tazewell county.

On cross-examination, she stated: the squire did not tell her it was a deed of trust.

136 A. M. Pollard testified that, in a conversation in his presence between Fuller and Trent, in February, 1857, concerning the difference between a deed of trust and a mortgage, he got the impression that Trent understood that there was no difference; 140 whether Trent or Fuller said so he could not tell.

146 John O. Randolph testified that he was present at the time spoken of by Pollard, and that Fuller wanted him and partner to give a deed of trust for a debt of theirs on which Trent was security. I objected, and Trent observed to me that Fuller says it is nothing more than a common mortgage, and that he was going to give one to G., W. & Co. This conversation was in the presence of Fuller and about February, 1857. He said it was all right; Fuller was his attorney, and would not take advantage of him.

Defendants objected to the evidence of all that Trent said.

148 On cross-examination, he stated: he had known Trent eight years. He has done a great deal of trading, bought and sold land, horses and cattle. He is capable of doing good trading, but can't read or write, and has to have a clerk.

151 George H. Daniels testified that he was a justice of the peace in Tazewell county in 1857, and knew the defendants and complainant, and knew Trent's wife. He took the acknowledgment of Mrs. Mary Trent, wife of William Trent, to a deed of trust to G., W. & Co., of lands in Illinois. Could not say that the exhibit filed in this cause, and marked A, was a copy; had no opportunity to read it over at the time.

There was a good deal of talk among the parties at the time about the land contained in the deed, and I know some of the lands, in this copy described as in Mason county, are the same lands that were then talked of by the parties as being in the deed of trust. There was no talk at the time among the parties about any lands in Tazewell county being in the deed of trust. Fuller, Trent and Willard talked about the land. I know the greater portion of the land now in the deed of trust in Tazewell county. They were not then spoken of; there was nothing said about any lands lying in Tazewell county. Neither Trent or wife can read or write. I think I put her signature to the deed. I did not inform her that the deed contained any land in Tazewell county. I did not know it myself. Trent's name was to the deed when I first saw it. Exhibit G contains some of the lands talked of, whether all or not I can't say. There was no land spoken of except what lay in Mason county. There were a good many tracts spoken of, but they were all in Mason county. Fuller had acted as attorney for Trent prior to that time.

On cross-examination, he stated that he did not read the deed or examine it closely. Mrs. Trent said she knew what it was, and I told her it was merely a deed of trust to secure a debt. Don't remember whether Trent had then acknowledged it.

157 Don't recollect hearing any one speak of it as a deed of trust except Mr. Fuller, and did not hear him in the presence of Trent. I left Spring Lake immediately and before Fuller and Willard. There was no conversation about inserting any land in Tazewell county in the deed.

160 Quit-claim deed from Trent and wife to Prettyman, dated December 8th, 1858, for all their land in Tazewell county.

164 Quit-claim deed from Trent and wife to Prettyman, dated December 8th, 1858 for all their land in Mason county.

Testimony of  
Defendants.

Defendants then offered Cyrus Chambers as a witness. He testified that he was a book-keeper for G., W. & Co., in St. Louis. Saw Trent there in the spring of 1857. Heard conversation between G., W. & Co. and Trent about his giving them security for what he owed them: it was some \$25,000 or \$30,000. They wanted the thing settled up in some way. He gave them his note and they then insisted on a deed of trust to secure it. He offered to give it when he went home. He said his deeds were in the hands of Fuller & Puterbaugh, and he would get them to make a deed of trust. He said he had mules and horses and lands in Tazewell and

168 Mason counties, and would do it cheerfully. He was in St. Louis in July, 1857, and at that time he bought a bill of goods amounting to \$404 41. When he came they hesitated to let him have the goods. He asked if they were afraid of him, and said he had done as he agreed to; had given the security, the deed of trust asked for, and had afterwards given the security on lands in Tazewell county, and thought he was entitled to credit: and if they sold him the goods he could pay off the debt without a sale of the land. At that time he wanted an extension on a note of his to them dated May 1, 1857, and due at one day, for \$7,490 38.

169 Abraham Smith, for defendants, testified: He was a grain dealer in Chicago, and knew the parties to this suit; knew Trent 3 years, and was in his store in April, 1857. Trent was searching up his deeds to take to Fuller to get a deed of trust drawn for G., W. & Co, to secure them \$20,000, and witness advised him not to do so, as they wanted to get his property away from him, and by a deed of trust they could sell it in ten

days. He said he was posted, and knew the difference between a deed of trust and a mortgage, and knew they could sell right off, but did not mind putting his property in their hands as he could pay off the bill before the time. If he had not known that, he should not have given the deed of trust. It was his own offer. He said he had more land in this county that there was not a scrape of a pen against, and could give them some security if they were not satisfied. About midsummer I had another conversation with Trent. He said he had been at St. Louis and saw Willard, and they had got scared of him, and he had given them some more lands in Tazewell county, and pointed out lots in Spring Lake, and said he had given them security, or a deed of trust, on several farms in Tazewell county, and named several. I told him he was more fond of deeds of trust than I was. He said he knew all about them, and that if he got a chance  
171 to sell they would release on getting the proceeds. Had another talk in 1858 about the deed of trust. Was in Spring Lake four months in winter and spring. About the time the lands were advertised to be sold in Havana, I got the paper that had the advertisement in it and showed it, and figured it up for him; I think 2,080 acres. I told him it would take \$10 per acre to pay it. He said it was more than it was worth. The last conversation I had with him was a short time ago, and he said he had got Prettyman fighting them off. He said he did not expect to beat them, but he would get a year or two's crop off of the land at any rate.

To all of the testimony of this witness complainant objected and excepted at the time.

Cross-examined. He stated that Willard first advised him that the cause would be tried at this term. Trent and witness were in partnership in a canal boat in 1857. It was before the partnership he had the talk about the deed of trust. We dissolved partnership in 1858. We had a law suit or controversy about a note for \$500. I did have a controversy with him before Esquire Turner about an order. The controversy about the boat was settled in June, 1858. Trent did not order me out of his store, as I remember. We had a controversy about the boat at the lake. The last conversation I had with Trent was in April last, at Trent's store in Spring Lake. There were two or three present, but Trent took me one side to talk with me.

173 T. W. Pratt, for defendants, testified. He was book-keeper for Trent in April and May, 1857, and the letter shown is in his hand-writing. He can't recollect the circumstance, but it was done at Trent's instance, and is a letter from Trent to Fuller dated April 18, 1857, requesting him to prepare a deed of trust from him to G., W. & Co., on all the lands he had in Tazewell county, and bring it to Havana.

175 George S. Mosteller, for defendants, testified that he knew the parties; knew Trent in 1857. He said, in regard to the deed of trust, that he gave it to secure defendants for the amount he owed them. I asked why he did not give them a mortgage, and he said they were not willing to take it, and he would just as leave give them a deed of trust as a mortgage, for they had given him time, and he could pay it off, or so reduce it they would not trouble him, and said they had agreed that, if he could sell, they would release it and take the proceeds. I sold him some lots in Spring Lake

7 west of 3d principal meridian, were written in it by defendant Puterbaugh by my direction; and if there are no lands mentioned in the deed before the piece named by me lying in Tazewell county, then I did not write in said deed any land at Spring Lake. Trent gave me no number, but spoke of the tract as bought of different persons. I recollect none but the Pratt and Mosteller and Brown lots, but he said to Willard and myself we would find them from his deeds and records at Pekin, and from those I got the numbers which I put in the deed, except the two lots in Spring Lake last named in the deed, which he gave me himself. No land has been inserted in the deed since July 23, 1857. At the time he wanted the Moore land released, all of the lands were then in the deed of trust. He expressed no dissatisfaction as to the rest then. He repeatedly spoke to me about the lands in Tazewell county being in the deed, and particularly in July, 1857. I talked with Trent once after the lands were first advertised. He expressed then no dissatisfaction; all land in the deed was then advertised. This was in February, 1858. He said he guessed they would not sell his lands; that he would send them grain to pay it off, and wanted the sale postponed until navigation opened.

To the reception of all of the evidence of this witness complainant objected and excepted.

186 On cross-examination, he said, I think neither Trent or his wife were present when any of the lands were inserted by Puterbaugh, except the last two lots, when Trent, I think, was present. I don't know that Mrs. Trent ever saw the deed after the date of the acknowledgment. I had the deed in my hands in Trent's presence several times, and think he took it to the recorder's office when the two lots were inserted, but can't say certain. If there are no lands named in the deed before the pieces before designated by me, which are situated in Tazewell county, I then wrote nothing in the deed after it was executed at Havana, except Mrs. Trent's acknowledgment. I had no direction or authority from Trent to insert the Tazewell county lands except as above stated. After the Tazewell county lands were inserted, the deed of trust was never signed, sealed or acknowledged before any officer by Trent or his wife. I did business as counsel and attorney for Trent a year and a-half before the date of the deed, and Puterbaugh and I continued to do business for him until 1858. Puterbaugh was my partner when the Tazewell county lands were put in. All of the lands in the deed after the pieces referred to by me are in the hand-writing of Puterbaugh, and, I think, were put in by him in my presence. The authority I had to release those lands was the verbal direction of Mr. Willard. I gave no other release than what is written on the margin of the record of the deed. I requested Puterbaugh to write the description of the lands in the deed because he was a better penman than I. No other person but Puterbaugh and I wrote any description of the lands in the deed.

188 S. D. Puterbaugh, one of defendants, was offered by defendants, and sworn, and testified, that he knew the parties, and that a few days after the time spoken of by Fuller, in June, 1857, Trent came into his office and stated he had sent Fuller and Willard to get the numbers from the deeds in my hands, and had authorized them to insert the same in the deed of trust, and such other lands as he had not sold to other parties. I told him all had been inserted except what appeared by the record to have been sold by him before that time. He said, if G., W. & Co. were not yet satisfied, he would put in more, but remarked that he had now given them lands worth three or four times their debt. He said the Pratt land was worth \$7,000 or \$8,000. He spoke of the deed of trust to Noalt Green, and said he wanted Noalt's debt paid first, and would pay it off and make the land clear in G., W. & Co. I told Trent we would pay off the Noalt

Green deed, and thus perfect the title in G., W. & Co., and he said he could and would pay it off when it became due. He asked me what deeds I had in my hands. I told him. He then remarked that he was willing they should have them as security, and that he had several thousand acres yet in Mason county that he would still put in if they wanted, and that G., W. & Co. had acted so fair, he would give them all the security they wanted. At another conversation, there was a piece of the Pratt land to which title was defective, and it was necessary to foreclose a mortgage, and I desired to have it done for the benefit of G., W. & Co. He then authorized me to go on and foreclose the mortgage, and said he would pay the expenses. At another time, he wanted me to release a piece of land he had sold to Nick Beckwith, and offered me another forty acres in its stead. He sold it under the arrangement with Willard and Fuller to sell, and they would release, etc. I told him to give me the proceeds. He promised to, but never did it. He afterwards said he had fixed it all up with Beckwith, and the land might remain in the deed of trust. In another conversation he said, in April, 1858, he thought they ought not to sell his land as he had fully secured them on his Mason and Tazewell county lands, and they were getting 10 per cent. on their money. He then promised me, and pledged his word and honor, that, if they would not sell, he would pay \$5,000 every three months. He regretted that they had advertised his lands, but said they had a right to do so, and he could not  
193 blame them if they sold. The lands were several times afterwards advertised, and sales postponed at his request. He afterwards spoke to me about the Moore land, which was in the deed of trust, and I told him Moore had no title too it; but it turned out that there was a mistake in the deed from Trent to Moore.

A long time after this conversation, Willard, Trent and I were in my office, and were talking about the security from Trent to G., W. & Co.; and in consequence of this Moore suit, and the title to other lands being questioned, Willard expressed himself dissatisfied, and Trent said he had several other farms in Mason county, and he would give a deed of trust on them, and that they had acted the gentlemen with him so much and been so kind, and he had put them to so much trouble and expense, that he would make them a present of a farm in Mason county worth \$5,000. Willard remarked that he wanted none of his presents, nor a dollar not due from Trent to them, and would like a deed of trust on his Mason county farm and other lands Trent still owned in Tazewell county; and Trent then agreed to do so, and promised to come up in a day or two and do it. He did not, and I wrote him a letter requesting it, and a short time afterwards he brought me a certificate of sale of the school commissioner, and asked me to get the deed and put that in; but finding the lands valueless I did not insert them. In July, 1857, Trent and Brown, of the firm of Mosteller & Brown, came and urged us to release some lots in Spring Lake. Trent proposed to give others instead. He did so, and we released them. I examined the title to the lots taken in Trent's presence, and by his authority inserted in my office the lots mentioned as taken in the deed of trust. Trent agreed to pay the recording, and at my request went with me to the recorder's, and left the deed for record, and either paid for recording or had it done at his cost. Trent thanked Fuller and remarked that G., W. & Co. lost nothing, as the lots taken were most valuable. The erasures in the deed were made at the request of Trent, on account of land formerly sold by Trent to King.

Cross-examined. The erasures were made by Fuller, I think, but am not certain.  
196 They were made prior to June 10, 1857; I don't remember whether in my presence

or not. I remember seeing them in the deed prior to June 10, 1857. I never inserted any lands in said deed of trust, except by Fuller or Trent's order, nor before June 10, 1857. The two last lots were inserted in July by Trent's order and in Fuller's presence. The conversation about the Nick Beckwith land was had before the filing of the bill by Trent against G., W. & Co. I think the conversation, referred to as had by Willard and Trent in my office, was in April, 1858. G., W. & Co. did before and after that time, by virtue of an execution against Trent, have all of the personal property of Trent advertised and sold. I think the Moore land was part of the Pratt land spoken of. I knew, during all of the conversations spoken of, as Trent's attorney, that he was greatly indebted, and also knew he was harrassed by law suits, and otherwise greatly embarrassed during the financial crisis of 1857, and I think it was severely felt by Trent. During all the conversations after that time, I had no interest in this suit, or contingent fee.

Re-examined by defendants: I had a conversation with Prettyman on the way from Spring Lake. He and Willard were talking about the indulgence that he extended to Trent. Prettyman remarked that they had acted very fair towards Trent, and that he would try and assist Trent to pay it off. The extension they were preparing to give Trent was then spoken of.

Re-examined by plaintiff: The parties at the time had gone down to Spring Lake expressly to sell out the personal property of Trent. The time of that sale was then extended, Trent giving G., W. & Co. a draft for \$2,000 to apply on the debt for which the goods were levied upon. The conversation with Willard was not in reference to the sale of the goods and the debt for which they were about to be sold.

200 Thomas King sworn for defendants. Stated that in April, 1857, he saw the deed shown, and that the erasure was made about April 28, 1857. I had purchased the land erased of Trent before the date of the trust deed, but my deed was not recorded. Ascertaining that some of my land was in the deed of trust, I procured Trent to come to Fuller's office and arrange to have the land erased, and one other tract inserted in lieu of it. I saw it changed in the deed at Fuller's office.

Samuel W. Fuller recalled by defendants. Stated, I had forgotten, when I testified, the circumstance of King and Trent calling upon me to erase and release land. I now remember it as stated by King, and I did erase the land and directed to have it released on the Mason county records. I don't remember what lands were offered or inserted in the deed. It is my impression that I did then make the erasure, and insert the other land then put in, at the request of Trent and King; and the inserting of the other land was the occasion of having it recorded a second time in Mason county. He desires these statements may be taken as a qualification of his former testimony. The deed, after the erasure, was recorded again in Mason county.

202 Merrill C. Young was sworn for defendants, and testified, that about July 23, 1857, Fuller came to the office and wrote a release of some lots in Spring Lake set forth in the deed of trust in controversy. I think Trent was present, and stood by Fuller when he wrote the release on the record. Don't recollect hearing Trent request it, but I think it was the talk among the parties. The deed was filed a second time for record in my office, the same day I think. The recording was not then proper, and don't remember anything being said about Trent's paying for it. It was then admitted by the parties that Trent had sold and conveyed about 280 acres of the Pratt farm, before the date of the deed of trust, and that Moore was then in possession of it, but his deed was not recorded, and that Moore afterwards filed a bill, and the court decreed in his favor against the deed of trust.

205 L. M. Green sworn for defendants: Testified that in April, 1857, he was in St. Louis with Trent, and that G., W. & Co. wanted security for

their debt. Trent proposed to secure them by a lien on his real estate, and he or Goodrich suggested a mortgage, but Goodrich said it was too slow a remedy, and proposed a deed of trust. Trent said it made no difference to him; he expected to be able to pay it without trouble. He owed them some money and got more at that time. About the 1st of June, 1857, he gave a deed of trust to me, to secure a neighbor for borrowed money, on some of his lands in Tazewell county. I told him that I understood he had given G., W. & Co. a deed of trust on all the land he had. He said no, they had no lien on the Tazewell county lands. I procured the money for him and he executed the deed of trust to some lands in Tazewell county. In April, 1858, I was in Havana, and he came to me and said he had sold some of the land and wanted me to release them. After a day or two, I agreed to and did release 240 acres, and he gave me \$1,000 on the debt. He then said that G., W. & Co. had a deed of trust on the same lands, together with other lands in Tazewell county, and that they were to release the tract too. He frequently spoke of the two incumbrances as trust deeds, and said that the one to G., W. & Co. was not right, but as it was included he would pay it off; that it would be that much of his debt paid. He gave me \$1,000, and Puterbaugh, for G., W. & Co., \$1,400, Puterbaugh releasing part of the land. I afterwards advertised the balance of the land in my deed for sale to pay the balance of the debt, but the sale did not come off, and Trent regretted to me that I had not sold the land at an early hour so that he could have bought it in and so rid them of the incumbrance of G., W. & Co. I don't know that Prettyman ever requested me to make sale of them for that purpose, but he told me it would be for Trent's interest—he was then representing Trent—to make sale of them as they could be bid in for the remainder of the debt, and thus have them freed from the other incumbrance. Prettyman, in another conversation, said that he considered the trust deed to G., W. & Co. bad, and that he expected to defeat it; that he would be glad to have these lands freed from the effect of their deed. At the time I made sale of the lands, Prettyman told me that I might just as well go over to the court-house and offer the land, that he would bid it off for the debt and costs; that it was not my duty to hunt Puterbaugh up. At the time he told me this it was time for the sale and after twelve o'clock.

Cross-examined. He stated that in the conversation spoken of at Havana, at which Trent paid the \$1,400, he, Trent, repeatedly said that the G., W. & Co. trust deed on the Tazewell county lands was wrong. I think it very likely he said he never authorized those lands to be put into G., W. & Co.'s trust deed.

Trent recalled by the plaintiff. Said, I sold T. King a large quantity of land in Mason county before the deed of trust was given. He afterwards informed me that a forty acre piece, part of the Buckhart tract, was in the deed of trust. I told him I guessed not, as I had ordered them to put in none. He said it was so. He had examined it. I had a forty acres in the same tract I then turned in and put in the deed of trust in place of it. This land was all in Mason county, and it was done at the time King spoke of, and there was no Tazewell county lands put in. I know Mr. Abraham Smith who testified in this cause. I never had any such conversation

209 as he speaks of. The deed of trust as recorded May 12th, 1857, after the erasure, for Thomas King, shows the addition of but one tract in Mason county, (80 acres,) and none in Tazewell county.

213 And the above being all the evidence in the cause, the court thereupon made a decree dissolving the injunction and dismissing the bill at the costs of the plaintiff, who then and there excepted, and brings his writ of error to this court.

B. S. PRETTYMAN, *Attorney pro se.*

157-81

Prettyman

74

Goodrich, et al

Abstract

Ellis Jan 28: 60

Wm J. J. J. J.  
(initials)

STATE OF ILLINOIS.

Supreme Court, --- Second Grand Division.

JANUARY TERM, A. D. 1860.

B. S. PRETTYMAN,  
vs.  
GOODRICH WILLARD & Co., et. al.

The complainant filed his bill alleging that he is a *bona fide* purchaser, for a valuable consideration, of divers tracts and lots of land in the county of Tazewell and in the county of Mason, in the State of Illinois, and that the defendants, claiming to hold a deed of trust from the same grantor, are proceeding to sell and convey the land, under their deed of trust, and aver that the deed of trust was originally obtained through misrepresentation and fraud, and that since the execution thereof, the defendants, grantees, for their benefit have altered the deed of trust in the absence of the grantors, and without their authority, by inserting in the deed the following land, viz.: W.  $\frac{1}{2}$  N. W.  $\frac{1}{4}$  sec. 25, Township 23, N. Range 7 W. 3 P. M.; and S. W.  $\frac{1}{4}$  S. W.  $\frac{1}{4}$  sec. 24; and S. W. N. W.  $\frac{1}{4}$  sec. 24, Township 23, N. Range 7 W. 3 P. M.; and S. E.  $\frac{1}{4}$  S. E.  $\frac{1}{4}$  sec. 7, Township 23 N Range 6 W. 3 P. M., and twenty other tracts of land described in Tazewell county, and six lots in Spring Lake, in Tazewell county; (see Record, page 18), which renders the deed of trust void, and as the action of defendants would throw a cloud over plaintiff's title, and injure him, prays they may be restrained from selling, and may answer, and the oaths of defendants are waived, and that the deed of trust be set aside, and relief, &c. Defendants deny all the material allegations in the bill charging fraud, and admit they were proceeding as charged under the deed of trust, and assert that Trent, one of the grantors in the deed of trust gave parol authority to make the alteration, and since ratified and confirmed it by parol—and deny that the facts in the bill being true, the complainant is entitled to relief.

Complainant filed his replication, and proved on the trial that the deed of trust was originally procured through fraudulent misrepresentation and abused confidence on the part of the defendants. That when it was acknowledged it was understood as a common mortgage, in effect, and that at the time of the date of the deed, April 14th, 1857, when it was first recorded, no land in Tazewell county was described in the deed; and that afterwards, by the consent of the only grantor, one tract of land in the deed was stricken out and one other tract was, on the 28th of April, 1857, inserted in the same deed instead, and the deed so altered, was on the 12th of May, 1857, recorded again, and that on the 10th of June, 1857, the deed of trust was acknowledged by the wife of Trent, the grantor, and that there was not then any lands described in Tazewell county in the deed; and the wife swears, and the Justice of the Peace who took the acknowledgment, that although the grantor Trent, and the defendants Fuller and Willard talked a great deal about the land in Mason county, there was not one word said about any land in Tazewell county, either then in the deed or to be afterwards put in the deed; and the grantor, Trent, states that he did not then, (10th of June, 1857,) or at any other time, authorize any one for him to insert the Tazewell county land afterwards inserted in it, and that he knew nothing of it at the time it was done, and after he found it was done he always protested that it was done without his order, and that although he has paid \$1400 on the debt, and procured the release of the defendants to some of the Tazewell county lands, so inserted, yet at the time he insisted it was not rightfully in the trust deed; but inasmuch as it was so much money paid on the debt, he would not lose the sale of the land for that reason.

Complainant then proved that he purchased the land in controversy of Trent, for a valuable consideration, paying some \$8,000 of Trent's indebtedness down, and settling other large amounts of the debts of Trent for which he (Prettyman) was his security. (See Record, pages 121, 122, 160 and 164.)

And the defendants admit that they made the alteration charged. But offer the defendant, Fuller, as a witness to prove that Trent, on the 10th of June, 1857, at the time his wife acknowledged the deed of trust, in Spring Lake, by parol, authorized him to insert in to the deed of trust, on his return to Pekin, all of the lands inserted, which are in Tazewell county, and Fuller swears to such parol authority as to all the lands except those contained in the deed of trust to Green, and as to those is not certain; and he did not insert any of them himself, but directed the defendant Puterbaugh, to do it, and it was done on the 10th of June, 1857; and he was never directed by Trent except on the 10th of June, 1857, to insert any land in the deed. No land was then inserted or afterwards inserted by him in the deed.

On the 28th of April, 1857, at the instance of Trent and one King. He struck out one tract of land in the deed and inserted another, and then the deed was again recorded May 12th, 1857, in Mason county. (See page 209.) And that record shows that but one tract, viz.: E.  $\frac{1}{4}$  S. E.  $\frac{1}{4}$ , sections 20, 23 and 6, was then added to the deed, and this was all before the 10th of June, 1857, or the acknowledgment by Mrs. Trent.

The defendant Puterbaugh, testified and corroborated substantially the statements of Tuller, and that Trent repeatedly conversed with him about the Tazewell county lands being in the deed, and desired their release and offered other lands instead which he declined taking; and other testimony for the defence was offered, tending to show that Trent knew that Tazewell county lands were in the deed of trust, soon after they were inserted, and that defendants had advertised them for sale; and it is admitted that Trent, before he sold out to Prettyman, had commenced an action against the defendants, enjoining the sale and to set aside the deed of trust; and that that suit was pending when Prettyman purchased the land of him, and that Trent afterwards dismissed that suit.

And it was admitted that Trent was in possession of the land named in the deed of trust, from the date of it, until he sold to Prettyman. And to the admitting of defendants as witnesses complainant objected and excepted, and defendants likewise excepted to the testimony given by the complainant.

The above are the facts substantially as set out by the Record and proved on the trial.

And upon this state of fact the complainant insists that the deed of trust having been originally procured by false and fraudulent representations made by a counsel of Trent, in whom he had long confided and entrusted with his business, and who had great influence over him, he being an illiterate man who could not read or write. The said counsel, then acting as attorney for Goodrich, Willard, and others, represented the deed of trust to Trent to be but in effect a common mortgage; and Trent, relying on that representation, executed it for part of the lands contained in it, so believing it to be but a common mortgage, and at the time being greatly embarrassed with debts; ought to be set aside. And it is a well established principle in Courts of Equity in this country, that a conveyance or contract will be set aside whenever it has been obtained through undue influence over a person greatly under the power of another, if there is clear ground of inference that a confidence reposed has been abused, or advantage has been taken of incompetency, weakness of understanding, or clouded faculties. *Whalen vs. Whalen*, 3 Cowen's, 539, 572; 4 Cowen's, 207, *Jackson et al. vs. King*; 15 Mass., 113; *Breese*, 33; and *White's Equity Cases*, 420, and cases there cited. But whatever may be said of the original deed of trust, it cannot be pretended that any man in his senses, and not under delusion, would, without consideration, or time given on the debt, by parol, give an attorney for the opposite party a general power and authority to insert into a deed of trust already executed and recorded for the sum of twenty thousand dollars, due in twenty days, all the lands he owned not then contained in the deed, and including his homestead, amounting then to over one thousand acres, beside some two thousand acres already contained in the deed of trust, and which rendered it then fully secure. Nor is it a deed, or contract, or power, that any honest, fair man would accept. Fraud is therefore apparent from the intrinsic nature of the contract and the circumstances and conditions of the parties contracting. (See 2 Vesey, Sen., 155, 6.) And deeds obtained by fraud, Courts of Equity always treat as void. (*Shepherd's Touchstone*, 70; 9 *Wendell*, 511.)

But, admitting that there was not in the original inception and execution of the deed of trust, any fraud practiced in obtaining it from Trent, and that it was then executed exactly as designed

ed upon the precise lands agreed upon, yet, since the original execution of it, and since the acknowledgment of it by Mr. Trent. The defendants have altered it in a most material point by inserting other lands, as they admit, in the absence of the grantors. But as they insist by the parole authority of one of them, viz.: Trent, and it is not pretended that any other than parole authority was given, or that parole authority was from both of the grantors. And after a deed is once executed by husband and wife, the most trifling alteration of it by the grantee renders it void, and this too for the very best of reasons. For, inasmuch as the wife can, under the statute, be deprived of her title or dower only by the forms of law, the question ought not, from the dangerous consequences resulting to the rights of married women, to be tolerated for a moment by the Court, either whether grantees from them may without leave insert other lands in the deed to which they have claim or title, or even whether the husband himself could possibly collude with a grantee, and consent to insert other lands after she had acknowledged what was originally put in, so as to appear of record that she had conveyed and acknowledged it all, this was such a deed of a married woman, and that such alterations of such deeds renders the deed absolutely void. See *Moore vs. Beekham*, 4 Binn 3; *Coit vs. Starkweather*, 8 Conn., 289. That such cannot be done without avoiding the deed, and that the husband himself can neither do it or consent to its being done. See 2 Barb. Ch. R., 133.

But the statute is conclusive upon that question. The title of the wife and her dower can only be conveyed as provided by statute. See R. Statutes 107, sec. 12; and to like effect 12 Ills. 233; 11 Ills. 123; 5 Gillman 125.

But it is insisted that although the deed was altered and other lands inserted, yet it was done by parole authority of Trent, and is good and valid. But this is plainly against the express provisions of the statute of frauds, and this court in *Maus vs. Worthington* 3 Seam. 26, expressly decide that an agent or attorney cannot bind his principal by deed, except by authority under seal, and to the same effect see *Ingram vs. Little*, 14 Georgia R. 173; 9 Wendall, 56, 68, 522; 12 Wendall, 525.

And a deed altered after its execution is not the same deed, and if not sealed and delivered by the grantors, would be imposing on them covenants and obligations only recognized by law, when attended by certain solemnities. 3 Bibb. 10. And this deed of trust contains besides covenants of the grantor for title, possession, payment of taxes, &c., all of which are changed and extended by the alteration made, and a deed altered by the grantee after its execution and delivery is always void as to all the covenants contained in the deed in his favor, and an alteration of any covenant avoid the whole deed. 1 Starkey's Evidence 377; B. Nisi Prius 267; 1 Shep. Touchstone 68, 70; *Wallace vs. Honstead* 15 Penn. State R. 467; *Withers vs. Akinson*, 1 Watt. 246.

But the defendants say that even if the deed of trust was altered by parole authority and was was therefore void, yet that since its alteration by the defendants, Trent has ratified and approved it by parole. But a parole ratification of a deed made or altered by parole authority of part of the grantors, has been always held invalid, and especially so of deeds executed by married women and their husbands. See 4 Bin. 3, 8 Conn. 287, above referred to. And as to the character of the ratification see *Story on Agency*, 49, 242, 252; 12 Wendall 525; 14 John. 465.

But there is no pretence of any parole authority to alter or any such ratification by Mrs. Trent. Then as to her and persons claiming through her it is absolutely void. *Warring vs. Smyth*, 2 Barb. Ch. R. 133. And a deed void in part is void in toto. *Young vs. Pate* 4 Yerger's R. 164, 541; 14 John. 465. The deed is beyond a doubt void as to Mrs. Trent, and a deed or contract is entire in its character; if a part of it is void by the statute, the remainder, though valid in itself, is also void. 8 Johnson 253; 13 Wendell 53; 15 Pickering 163.

But Trent swears that he never gave any such parole authority or parole approval—and the Justice and his wife swear that at the time and place it is pretended that such authority was given, that no such conversation was had, and no such authority was given; and this pretended parole authority is proved only by the testimony of Fuller and Puterbaugh, two of the defendants in the action, and who are charged in the bill as parties to the fraud, and the real actors in the transaction—and they were improperly admitted against the objections and exceptions of complainant without an order of the Court first had, and when they were interested in the ques-

tion of costs, if not otherwise in the case, and parties to a fraudulent instrument, or to an instrument made or altered by parole, and who have made or altered it by parole, are never permitted to prove their authority to do it. See *Smith's Ch. Prac.* 344, 345; 1 *Greenleaf Ev.* 361; 3 *Atk.* 402; 2 *Vesie R.* 628; 1 *Yates R.* 28, 200; 2 *Dall.* 246. And to suffer parties who have by parole authority made deed or altered mortgages to come forward and prove their authority by parole to do it, and then prove a parole ratification of the act when done would open the door to the most egregious frauds, and subject every man in the hands of the unscapulous to the most dangerous consequences, and it would be only necessary to prove a deed for a single tract of land, and then have others fill up the blank with all the rest the grantor possessed, and bring forward the parties who forged in the description to prove their authority to do it by parole, and a like ratification of it afterwards; and the facility with which it can be done, and the dangers to the public attending its acknowledgment as the law, have been the cause why the Courts and Jurists have so frequently decided that it must not and cannot be done, and revives anew in our midst those powerful reasons which were enforced by our fathers in the statute of frauds. Nor is this case less exempt from them, than the most enormous of the things there cited. Here an old man not able to read or write, who was not present when the deed was done, and who denies all knowledge of it, and all authority to do it, is made by parole to give authority to convey twenty five different tracts of his land, with no consideration passing, and a party who pretends to have had the parole authority to make the alteration, delegates that authority to some one else, and he does the deed, and all are brought up to prove by parole their justification and take away his lands, and insists that his oath and denial are nothing, and his wife's deposition and the Justice's testimony are trivial and indifferent things.

But it is said this is only a deed of trust and is made to secure an honest debt, and that if the debt is paid off the deed is satisfied and the security done. And so far complainant admits that this deed of trust is only a mortgage, and is in the nature of a mortgage and but a security for a debt. See statute of 1845, page 105, sec. 12, and in deeds of trust and mortgages until possession is taken of the mortgaged premises the mortgage remains in the light of a chose in action, a mere security for the debt. See 4 *Johnson R.* 43. And the proof is that the defendants never were in possession of the land, and that Trent was in full possession of it until he sold to Pretymann.

But it is insisted that even if the deed of trust is void for the lands inserted, yet as to those originally put in it when executed in Mason county it is certainly good, as the estate had then vested and could not be divested but by deed. Yet they were never in possession, and are only entitled to it through their covenants in the deed.

And the matter and estate in deeds of trust and mortgages lies alone in grant, and cannot exist without a deed, and any alteration of such a deed by the party claiming under it avoids it as to him, and not only the remedy by action but the estate itself is gone. See *Lewis vs. Payne*, 8 *Cowen* 75; 1 *Nelson's Ab.* 625; *Warring vs. Smith*, 2 *Barbour Chy. R.* 119, 131, where the whole question is fully considered.

But it is finally insisted that although the deed was originally fraudulently obtained from Trent and was afterwards without authority altered, and even if it was never approved it was a fraud upon Trent alone, and that complainant is a subsequent purchaser from Trent and wife, and knew of the existence of the deed as altered when he purchased, and cannot avail himself of any fraud practised on Trent in originally procuring it, or an account of any interlineation even, without authority, if done before his purchase and although in possession is not entitled to relief.

Yet the complainant denies that position and insists that a junior grantee may recover, and is entitled to relief in equity against a senior grantee who fraudulently holds the deed from the original grantor and insists on enforcing it, and obtaining possession through it against the junior grantee, and this principle is fully declared in the case of *Love vs. Belk*, 1 *Iredell R.* 173, 179, and also may defend their interests; see *Decl. Court* in case *Warring vs. Smith*, 2 *Barbour Ch.* 171, and that junior grantees may prosecute and set aside such deed, see *Livingston vs. Peru Mining Company*, 9 *Wendell*, 511, 522. And that subsequent purchasers are entitled to relief, see *Isaacs vs. Steele*, 3 *Scam.* 97; *Chatau vs. Jones*, 11 *Ill.* 321, 322; *Hildreth vs. Sands*, 2 *Johnson Ch.* 50; and that they are entitled to the statute of frauds equally with the grantor himself, and may support a bill to set aside a fraudulent conveyance, see also *Sands vs.*

Hildreth, 14 Johns., 493; Roberts vs. Arden, 2 Johns. Ch., 377-8-9; Anderson vs. Roberts, 18 Johns., 516; 2 Johns. Ch., 35; and it is not material whether such subsequent purchaser had notice of the fraudulent deed or not. For if he knew of the deed he knew of the fraud also, and that for that reason it was void by law. In support of this we refer the Court to 2d Havenden on Fraud, 73, 74; 4 Kent Com., 463; Cowper Rep., 711, 712; Sterry vs. Arden, 1 Johns. Ch., 268; Sands vs. Cadies *et al.*, 4 Johns., 598; Townsend vs. Windham, 2 Vessie, 10; Wadsworth vs. Havens, 3 Wendell, 411; Clapp vs. Terrill, 20 Pick., 247; 25 Maine, 414; Carter vs. Castleberry, 5 Alabama, 279; and a mortgagor in possession of land has a vested and tangible interest in the land which has always been a subject of sale and conveyance, even in *bona fide* mortgages and deeds of trust it is such an interest that the purchaser in possession can pay off and extinguish without the aid of the Courts or the law, and that subsequent *bona fide* purchasers succeed to all the rights of the grantor and is entitled to like relief, see Kruis vs. Scripps, 11 Ill., 104; Story's Equity Jurisprudence, 1050, 1051; also Fitch vs. Pinkard *et al.*, 4 Scam., 83, and cases above referred to; and in the trust deed, by its provisions, Trent is a *cesti qui* trust of the residue after the payment of the debt secured, and is entitled to the same from the face and effect of the deed; and the beneficiaries of a trust arising out of real estate may lawfully assign the same, and that the assignee in possession may in equity enforce his rights to the same although controverted; 2 Story's Eq. Juris., 1050-51-57; and Miller vs. Davidson, 3 Gilman., 523. But the deed of trust in the hands of defendants, although void as against the complainant as a subsequent purchaser, yet it is a cloud upon his title which ought to be removed, and Courts of Equity will always entertain jurisdiction of a case when it is sought to set aside a deed or instrument that may throw a cloud or suspicion over the title or interest of the claimant. 2 Story Eq. Juris., 694-5-8-7, 700 and 702; and this is the cause the title of a fraudulent grantee until so attacked, and until there comes a *bona fide* purchaser for a valuable consideration, until then no persons rights are effected; but whenever that happens the deed as to such purchaser is set aside. (Roberts vs. Anderson, 3 John. Ch., 377.) But it is pretended that after all the lands had been inserted, Trent in effect re-delivered the deed, by standing by at the time it was recorded; yet a deed cannot be twice delivered, the first or last delivery is void; (4 Cruise Dig., 30,) and there is no pretence that it was then, or at any time after the interlineation, read to him, or signed, sealed or acknowledged by Trent and wife. Yet a deed without these is void. And could Fuller delegate to Puterbaugh even his parol authority to make the interlineation in the deed that an agent or attorney to convey can delegate his authority to do so, will not be pretended; and Puterbaugh put in the deed the lands that were in the deed of trust to Greene, though Fuller does not state that Trent ever told him to put them in; and he put in also the land which had before been sold to Moore, and it is not pretended that Trent authorized Fuller to put in land which he had already sold and conveyed to others.

The testimony of Fuller shows that Trent directed no land to be put into the deed except when it was originally made, and on the 28th of April, 1857, when King was present; and that after he put in the lands, when King was present, the deed was recorded in Mason county, and the deed so recorded 12th of May, 1857, see page 209, of Record, shows that but one tract, viz.: E.  $\frac{1}{2}$  S. E., 20, 23, six was added to it. And Fuller swears that Trent never after that time directed him to put into the deed of trust any other lands in Mason county. Yet there is now in the face of the deed and which has been added since May 12, 1857, the N.  $\frac{1}{2}$  N. W. Sec. 25, T. 23, R. 7, and two other tracts in Sec. 24, 23, 7, all lying in Mason county, and the defendants have advertised them for sale also under their deed of trust. Now who put them in there? By what authority was it done? Who gave the direction? Who let Trent know it was done? Is there any pretence that it was done by authority? Or even the pretence that they had released lots in Spring Lake for those that it is pretended that Trent authorized them to insert. And all those lots which are pretended to have been released are now among the lands they have advertized for sale, as well as those they have inserted in lieu of them. And they admit that they intended to sell them all under their deed, and the lands in the deed of trust to L. M. Green were also advertized by them for sale although they admit that they have bought out the trust deed and Green had sold the same to Prettyman

at their instance under that deed of trust. And can parties thus be permitted to prey upon and trifle with the rights of others? It will hardly be seriously insisted upon. But it is suggested that a deed to Prettyman does not include the land described in the deed of trust to defendants. Yet Trent swears that he sold that land to the complainant, and the deeds clearly show that he conveyed all the land he owned in those counties, and the rules of construction ever has been that the greater description includes the less. See Dart, on Vendors 101; 9 Pickering 212. But the deed of trust shows upon its face that it was only the land in Mason county that was ever actually designed to be conveyed in the deed, as all the lands are described to be in Mason county and are to be there advertised for sale in event of a failure to pay.

And the testimony of the defendants Fuller and Puterbaugh being the only evidence offered to show any authority to make any alteration in the deed, and the only evidence to show any recognition of it, and they being interested in the event, and being parties to the suit and parties to the fraud, the reception of this evidence was clearly an error, and the things which they stated should be swept from the cause. And without them there is nothing left but the naked deed, altered by the defendants in a material part for them, without authority, parole or otherwise, without approval, and almost without the knowledge of the grantor, while the law clearly shows that the complainant as a bona fide purchaser for a valuable consideration is entitled to instant relief from the Court, The right of the defendants lying only in grant, and they having altered the deed, the deed is void, and as they can only obtain possession of the land by action through that deed, the estate as well as the deed is gone, and they ought to be forever retained from clouding the title of the land of complainant named and described in the deed, and the deed should be set aside. The Court then erred in admitting such testimony and in dismissing the bill.

B. S. PRETTYMAN.

157-81

Prettyman

27

Goodrich &c

Argument & brief

Filed Jan 27. 69

W. H. H. H. H.  
Ch.

15  
B. S. Prettyman

v

Goodrich Willard & Co

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Argument for  
defendants.

13942

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Filed Jan 26/80  
Wm. J. Arney  
clerk

# STATE OF ILLINOIS--SUPREME COURT.

JANUARY TERM, 1860.

## SECOND GRAND DIVISION.

BENJAMIN S. PRETTYMAN  
*vs.*  
GOODRICH, WILLARD & CO. et als. } Points and authorities for  
Defendants in Error.

This is a case that involves about twenty thousand dollars' worth of property, and is of vast importance to Goodrich, Willard & Co., the real defendants in the case. They are commission merchants, doing business in St. Louis, and had made advances to William Trent, in cash, between twenty and thirty thousand dollars, on the promises of Trent to execute the deed of trust in question, to enable Trent to buy grain at Spring Lake, Tazewell county, Illinois, during the winter of 1857, which Trent was to ship them at the opening of navigation, in the spring of 1857, and which amount Trent invested, and neglected to ship the grain. And the deed of trust was taken to secure twenty thousand dollars of the amount due.

The bill was filed by the complainant to set aside the deed of trust given by Trent to Goodrich, Willard & Co., alleging that it was obtained from Trent by fraud, he supposing it was a common mortgage, with a right of redemption after sale, and, also, because other lands were inserted in the deed subsequent to its being acknowledged and recorded without the assent of Trent.

The complainant in the case, who is a solicitor of court, had, prior to filing the bill in this cause, as solicitor for Trent, filed a bill to set aside the same deed and for the same cause. That bill was dismissed, and the complainant now files a bill in his own name to have the deed set aside for the fraud he alleges to have been committed upon Trent. The record in the case is quite voluminous, covering about 200 written pages. A great deal of evidence was taken upon the question of fraud, and yet there

is no question in the case that has not been long and well settled, but considering the amount involved, we hope the Court will bear with us in going over the whole question.

There is a principle at the very threshold of the complainant's case, without going into the evidence, that must prove fatal to it. This bill is filed by the complainant after taking a quit claim deed from Trent of all the lands owned by Trent in Mason and Tazewell counties, and the question is, did that deed of Trent to the complainant give the complainant any right to take advantage of a fraud committed upon Trent? even admitting, for the sake of this argument, that a fraud had been committed upon Trent. Does the fact that Trent sold complainant all the land that he owned at the date of the quit claim deeds, give the complainant a right to land that Trent alleges had been previously obtained from him by fraud? Could the quit claim deed have any such retroactive effect, or pass to the complainant any such right? Trent does not pretend by his deed to give the complainant any right to avail himself of a fraud that had been committed upon him (Trent), but simply conveys to him such lands as he owns in Mason and Tazewell counties; there is nothing else conveyed or pretended to be conveyed by the deed. Even if a cause of action for fraud that has been committed upon one party could be assigned to a third person, and the party defrauded used as a witness, this deed does not pretend to transfer any such right to the complainant. Trent asks no relief at the hands of this Court; he, so far as appears from this record, is perfectly satisfied with what has been done; he, by his silence and acquiescence, has confirmed the whole transaction. But the complainant, who had bought all the land that Trent owned, long after the fraud is alleged to have been committed, comes before this Court and asks to have the fraud of which Trent does not complain turned to his own benefit. If a person should buy of his neighbor all his personal property, he does not thereby get any benefit of any trespass that has been committed upon the property he buys, and yet there is no difference in principle between the two cases. Even, then, as we have before said, if such right as this could be transferred, the deed under which complainant claims transfers no such right. If this deed transfers a right to have the benefit of a fraud committed on Trent in regard to land that he had previously owned, if we go at this time and get the same kind of deed from him, we know not why our rights would not be equal to his. The very statement of the proposition refutes itself.

But suppose the deed of trust in question was obtained by fraud, and was altered and changed, as alleged by complainant, it was not void, but voidable only, and capable of confirmation.

Where a contract is declared void by positive law, by public policy, or as involving moral turpitude, it is incapable of confirmation, but where it is merely voidable, or turns upon circumstances of undue advantage, surprise or imposition, then if it is deliberately and upon full examination confirmed by the parties, such confirmation will give it an *ex post facto* validity. Marriage brokerage contracts, contracts for future illicit cohabitation, being against public policy, are incapable of confirmation; 1 Story Equity, S. 263. But where a fraud is committed upon a party, the act is merely voidable, and it may be acquiesced in or confirmed, or may be set aside at the election of the party defrauded. But if he chooses to confirm it, no one else has a right to annul it for him; 16 Ill., 216 *Edmonds vs. Hildreth*. "The party on whom a fraud is practiced may take advantage of it or waive it." *Steele vs. Worthington*, 2 Ohio, 182. Even a forged note may be ratified by the acts of the party whose name has been forged; *Fitzpatrick vs. School Commissioners*, 7 Humphreys, 224-228. "Third parties cannot impeach it (a fraud), or a *particeps criminis*." 2 Ohio, 182; *White & Tudor's* leading cases in Equity, vol. 2, part 2d, 218, top paging and cases there cited; same work, page 223; *Ardens vs. Paterson*, 5 Johnson's Chancery Rep., 44; 2 Story's Equity Jurisprudence, sec. 1,040, 9, and notes; 1st American Leading Cases, page 572, and cases there cited.

To take advantage of a fraud is a personal privilege, of which none but the party defrauded can take advantage. *Edmonds vs. Hildreth*, 16 Ill., 216; *Steele vs. Worthington*, 2 Ohio, 182; 10 Humphrey's Rep., 577;

2 Story's Equity Jurisprudence, sec. 1,040, 9; *Love vs. Beck*, 1 Iredell's Chancery Rep., 163; *Maynor vs. Lewis*, 2 Georgia Rep., 12; *Hooper vs. Edwards*, 18 Alabama, 280; *Stevenson vs. Newham*, 16 Law and Equity Rep., 401; *Morrison vs. Deddrick*, 10 Humphrey's Rep., 342; *Brinsmade vs. Hurst*, 3 Duer's N. Y. Rep., 206; 10 Humphreys, 577; *Sprague vs. Graham*, 29 Maine Rep., 160; *Prosser vs. Edmonds*, 1 Young & Collyer Ex. Ch. Rep., 481.

Certainly the law cannot suffer such a right as this to be sold, and then allow the defrauded party to be a witness for his vendee. It is simply selling a right to file a bill in equity for a fraud. Personal property in the adverse possession of another cannot be sold, because it is selling a right to a law suit; *McGoon vs. Ankeny* 11 Ill., 558. Nor is a party allowed to sell a bare right to file a bill in equity for a fraud, and any such sale will be declared void, as against public policy. Where an equitable interest is assigned, in order to give the assignee a *locus standi in judicio*, the party assigning such right must have some substantial possession, not a mere legal right to overturn a legal instrument, 2 Story's Equity Jurisprudence, sec. 1,040-9; and Lord Abmyer, in the case of *Prosser vs. Edmonds*, 1 Young & Coll. Rep., 481, 496, says:—"But in a case where a party assigns his whole estate, and afterwards makes an assignment generally of the same estate to another person, and the second assignee claims to set aside the first assignment as fraudulent and void, the assignor himself making no complaint of fraud whatever, it appears to me that the right of the second assignee to make such a claim would be a question deserving of great consideration; my present impression is that such a claim could not be sustained in equity."

We would call the attention of the Court particularly to the case of *Edmonds vs. Hildreth*, 16 Ill. Rep., 214, as it decides the very point now under discussion, and it seems to be unnecessary to pursue the authorities further upon this point, except to refer to one or two analogous cases: for instance, the purchaser of an equity of redemption cannot set up usury as against the original mortgagee to avoid it; 8 Indiana (Tanner) Rep., 352, *Stephens et al. vs. Muir*; *Green vs. Kemp*, 13 Mass. Rep., 513. In 11 Ill. Rep., 522, the Court say, "Why should the first purchaser claim a benefit from the temporary existence of a right in third persons, which they have thrown away, in which he had no interest, and with which he had no connection?" Why, then, may we not ask, has the complainant here a right to claim the benefit of a right in Trent which Trent does not seek to take advantage of, and which if he sees proper to confirm is good as against all the world? This is no more than selling out a right to file a bill in equity, in order that the seller and party pretending to be defrauded may be used as a witness; and it is a species of buying and selling that

the law totally abhors, and ought not to be countenanced by the Court. It would have the tendency to encourage astute speculating land-jobbers in scanning every supposed defective transaction, and buying the same at some nominal value, and using their vender as a witness, and thus in many cases wrest property from those who have bought property in good faith.

It would be difficult to tell to what consequence a decision in favor of the complainant would lead in this case. It has always been the anxious solicitude of Courts that all temptation to perjury should be avoided as much as possible, and that invitations should not be thrown out to dishonest debtors to assign their pretended claims for fraud, and thereby avoid their honest debts. The very life of our commercial world depends upon due observance of all obligations entered into by parties; and if the debt had been paid, which is admitted to be honest, this suit would never have been heard of.

We would also call the particular attention of the Court to the case of *Maguire vs. Hall*, 27 Missouri Rep., page 146, which is a case directly in point, in which the court use the following language: "The Plaintiff, it appears, bought a lease-hold estate encumbered with a trust given to secure the payment of debts. He admits that he was aware of the encumbrance at the time of this purchase, and he says he supposed the debts were genuine and really due, but afterwards discovered that they were fraudulent and pretended. Now admitting that the debts were fraudulent, that was no concern of the plaintiff. He knew of their existence at the time of his purchase, he believed them to be justly due; he must, therefore, have been indemnified against them by the reduced price at which he purchased the property. As the debts were taken in the estimate in ascertaining the value of the estate, whether they were real or pretended cannot effect the plaintiff. To permit him to recover would be taking so much from those who are really defrauded and giving it to the plaintiff, who has no right to it. Those who conveyed the property to the plaintiff are the only persons who can take advantage of the fraud, and if they acquiesce in it nobody else has ground for complaint."

But even if there was fraud in this case it was incumbent upon Trent to take advantage of it as soon as discovered, it is a right that may be lost by acquiescence or relinquished by confirmation; 1 Sugden on Vendors, page 324. A principal should disavow promptly after notice or he will be bound by it; 14 Seargent and Rawle, 27, 30; 10 Alabama, 756, 771; 26 Wendell, 227; 26 Maine, 84, 87. *Groyne vs. Heaton*, 1 Brown's chancery cases 3, and cases cited in note. *Lawrence vs. Dale*, 3 Johnson's Chancery Rep., 23. In the language of the court in *Edmonds vs. Hildreth*, 16 Ill. Rep., 216, "If the party injured acquiesce in or confirm the contract, with a full knowledge of the fraud, no one surely can have the right

to annul his contract for him. If he have knowledge of the fraud he will be presumed to acquiesce, if he take no steps, but sleep upon his rights." One moment's glance at the evidence will clearly show, that Trent not only had knowledge of this pretended fraud, but repeatedly acted upon the deed, and treated it as a valid and subsisting security. One of his very first acts after the lands in Tazewell county had been inserted, was to pay the attorney for defendants \$1400 that he had received from a sale of some of the same lands, and got Puterbaugh to release them. When the land was advertised for sale in the Spring of 1858, he was informed of it and got an extension of the time, having full knowledge all the time that the land in Tazewell county was claimed to be in the deed of trust, and yet he sleeps upon his rights, and does not even now come to ask the aid of this court; so far as he (Trent) is concerned there is no complaint, he acquiesces, he has knowledge of the fraud, and yet takes no steps to have his rights vindicated; he acquiesces and therefore confirms. Shall he now after thus acting upon the deed, and getting the benefit of the indulgences extended to him by the defendants, and thereby inducing them to think that the deed was satisfactory to him, sell out his right to a third party, and come in himself as a witness to establish the fraud. The records of courts do not present a more glaring and premeditated sale of a law suit.

But while the above points are argued upon the assumption that fraud was practiced on Trent, we insist that the proof shows conclusively that no fraud was practiced on him. The deed was read to him, he was bound to know the legal effect of its contents, and a mistake in that knowledge does not furnish him any ground of relief in Equity; *Shafer vs. Davis*, 13 Ill., 397; *Broadwell et al. vs. Broadwell*, 1 Gilman, 599.

Trent in his testimony says that he thinks Fuller read the deed, and called it a deed of trust, but held out the idea that it was a common mortgage, and says that he never authorized the Tazewell county lands inserted. Randolph and Pollard testify to a conversation had with Trent before any deed of trust was given, in which Trent said that there was no difference between a mortgage and a deed of trust, and that this conversation was in the presence of Fuller. That Randolph told Trent that there was a difference.

Fuller testifies that he read the deed of trust over to Trent, and informed Trent that they could sell simply by advertising. After the deed was placed upon record he and Willard went to Spring Lake, and Trent then authorized him to insert the lands in Tazewell county, and told Fuller to go to Puterbaugh and get the numbers of his Tazewell county lands from the deeds in Puterbaugh's possession.

Puterbaugh testifies that Trent in a few days after called upon him and asked him what lands Fuller inserted in the deed, when he (Puterbaugh)

told him that they had inserted such of the lands described in the deeds in his possession, except such as appeared of record ~~not~~ to have been previously sold. Trent said that it was right, and said he would give them still more if they were not satisfied. Trent, also, as will appear by the records, wrote a letter to Fuller, directing him to prepare a deed of trust on his lands in Tazewell. Trent frequently applied to have some lands released and others inserted; he cannot now, after having induced others to act upon his representations, be allowed to say that those representations were false. The defendants informed him in St. Louis that they would expect a deed of trust, he then expressed his willingness "to face the music," and after the Tazewell county lands had been inserted, he was again in St. Louis, and when the defendants hesitated about selling him goods, he then called their attention to the fact that he had given them the deed of trust, and had also given the Tazewell county lands as additional security. He had given L. M. Green a deed of trust before that time, and well knew what was the effect of that sort of instruments. He had talked with Capt. Smith, and Mosteller, and other witnesses, about the same. He frequently applied to Puterbaugh to have Tazewell county lands released, and insert others, for his own convenience, and at one time did get the Mosteller and Brown lots released, and had others inserted in lieu thereof, and Trent paid the recording fee.

The whole tenor of the evidence shows that Trent is wholly unworthy of belief in anything; he can remember nothing about the transaction except that he did not authorize the Tazewell county lands to be inserted. He was advised by Smith not to give a deed of trust, but he said that he knew what it was. By a careful examination of the evidence, the Court will clearly see that there was no fraud whatever in procuring the deed in the first instance, and that all the lands that were subsequently inserted was done by the expressed authority and full knowledge and consent of Trent, and that the same was at all times acted upon by him as a valid and subsisting security.

But even if it was true, as alleged, that the deed was a different security from what Trent expected, and the deed of trust was altered without his consent, yet by his acts he has confirmed it. In the case of *Fitzpatrick vs. School Commissioners*, 7 Humphreys, pages 224-228, it was held that a person, whose name has been forged to a note, may ratify the same by his acts; and in *Mason vs. Caldwell*, 5 Gilman, 196, it was held that the contract entered into by the guardian without authority, might afterwards be adopted by the ward. Fuller and Puterbaugh pretended, at any rate, to act as agents for Trent, in the inserting the land, and the authorities are abundant to the point, that such, if an unauthorized act, could be confirmed; *Doyle et al vs. Teas, et al*, 4 Seammon, 202; *Clark vs. Van Reims-*

dyke, 9 Cranch, 153, 161; *DeLafield vs. The State of Ill.*, 26 Wendell, 193, 226; *Reynolds vs. Doehard et al.*, 11 Alabama, 531, 534; *Dearing vs. Lightfoot*, 16 Id. 28, 33; *Wilson vs. Lumman*, 6 Manning and Granger, 236, 242; *Cleveland vs. Walker*, 11 Alabama, 1059, 1063; *Fitzpatrick vs. School Com.*, 7 Humphreys, 224, 228 *Finney vs. Fairhaven Ins. Co.*, 5 Metcalf, 192; *Lawrence vs. Taylor*, 5 Hill, 108, 113; *Hatch vs. Taylor*, 10 New Hampshire, 538, 553. See 1st American leading cases, and cases cited on pages 572 and 573, which are full upon this point.

But it is again contended that the deed of trust is void, because it was altered after it was executed, without being re-acknowledged. It is not the acknowledgement that passes the estate—the delivery passes the estate—and a deed is as effectual between the parties and purchasers and creditors, with notice without acknowledgment or record as it is with it; compliance with the recording laws is necessary to protect the party against subsequent purchasers and creditors; and if a deed is not acknowledged, and is recorded, it is notice to all the world, and effectually passes the estate; *Reed vs. Kemp*, 16 Ill., 445; *Semple vs. Miles*, 2 Seammon, 316; *M'Connell vs. Reed*, 2 Seammon, 373, 4 Kent, 454. It was not necessary that the deed should be re-acknowledged in order to pass the estate; and the only question could be whether the deed was delivered by Trent as his deed; if so, it passed the estate, and it matters not how often the deed was altered prior to such delivery, if Trent, knowing of the alteration, delivered it as his deed.

A deed may be delivered by words or by acts without words, and the delivery may either be to the grantee or a third person, without any special authority for the use of the grantee; *Verplank vs. Sterry*, 12 Johnson's Rep., 536.

The deed, then, as it is clearly shown by the evidence, having been altered by the consent of Trent, at his request, and his suffering it to remain in the hands of the attorneys for the defendants, and all the time acting upon it as a valid and binding security, telling other persons in numerous instances that he had given a deed of trust upon his Tazewell county lands, his paying Puterbaugh the attorney for the defendants part of the money raised upon a sale of the Tazewell county lands, his paying for recording the deed after the last lands were inserted, about the 23d day of July, 1857, all go distinctly to show that Trent considered the deed binding upon him, and amounted to a sufficient delivery.

*Recording of a deed is prima facie  
evidence of delivery  
Haines v Keighblinger 14 Ill. 469. 471*

It would be a perfect absurdity to say that Trent, a sane adult man, could not confirm a deed as to himself, even if it had been altered without his consent. If he has acknowledged and treated it as a valid and binding security he cannot now be heard in equity to say that it is not his deed. No court has ever been found to say that an adult sane man could not confirm an act purporting to be his, although done without authority, if upon full knowledge he saw proper to do so. If he could not do so, it would be denying to an adult, what has not in modern times been denied even to an infant.

The true rule is, that an alteration in a deed without consent makes the deed voidable, and if the party whose rights are affected by it chooses to confirm it, it is good, and if the alteration is made by consent of parties, it is good against the world; *Woolly vs. Constant*, 4 Johns. Rep., 54; *Penny vs. Corwith*, 18 Johnson's Rep., 499. *Speak et al vs. U. S.*, 9 Cranch Rep., 28; *Tompkins vs. Corwin*, 9 Cowen Rep., 255; *Richmond Manufacturing Co. vs. Davis*, 7 Blackford Rep., 412; *Hudson vs. Revett*, 5 Bingham Rep., 388, 389. The evidence is full and conclusive to the point, that the alterations in the deed were made by the consent of Trent, and the deed is therefore operative against the world; and Trent, after acting upon it as binding and effectual, cannot now be heard to say that it is not his deed, and his assignee takes no greater right; *Parson vs. Hughs*, 9 Paige Rep., 591.

This bill is filed to set aside a deed which was given to secure a debt that is admitted by all parties to be justly and rightfully due from Trent to Goodrich, Willard & Co. The complainant, then should have offered to pay the debt due. "He that seeks equity must do equity," a borrower of money at usurious rates will not be relieved from his contract without an offer on his part to pay what is due; 1 Story's Equity Jurisprudence, sec. 301. The bill contains no such offer of this sort, and is therefore defective; *Wood vs. Downs*, 18 Vessey, p. 119; *Boyd vs. Dunlap*, 1 Johnson's Chancery Rep., 480; *Edmonds vs. Hildreth*, 16 Ill. 214; 16 Ill., 207; *Wright vs. McNeely*, 11 Ill., 241; *Thorp vs. McCullum*, 1 Gilman, 630.

### REVIEW OF COMPLAINANT'S POINTS.

In all the cases cited by the complainant, where the Court held a deed void for fraud, or on account of alteration, it was when the party defrauded was himself complaining of the fraud, or a creditor or subsequent purchaser was seeking to set aside the deed for fraud between the grantor and grantee. It is not contended that complainant occupies any such position here. We admit that an equity of redemption is a transferable interest, but if there is any equity of redemption, there is a valid mortgage, and to the complainant acquiring that right we have not the slightest objection, and would be glad to have him redeem at any time. But he does not seek such a standing in this Court as the owner of the equity of redemption, but only to avail himself of a fraud alleged to have been committed upon Trent. The case of *Isaac vs. Steele*, 3 Seammon, 97, cited by complainant, has not the remotest application to the case; the case of *Chouteau vs. Jones*, 11 Ills., was a bill by a creditor to set aside a voluntary conveyance; if there were any fraud, both the grantor and grantee were participants. The case of *Hildreth vs. Sands*, 2 Johnson's Chancery Rep., 35, was also a case where the bill was filed by a creditor against both the grantor and grantee; the case in *Cowper*, 711, was an action of ejectment. It would be useless to pursue the authorities cited by the complainant on the point that he as a purchaser may maintain the bill. They are cases familiar to the profession, where bills have been filed either by subsequent purchasers or creditors against the grantor and grantee for fraud and collusion between them to defraud third persons, or by the grantor himself, for fraud upon him. Here it is not pretended that any one but Trent is defrauded. The complainant has no cause to complain; no person has defrauded him in this transaction. He is at best a mere volunteer in the matter, seeking to enrich his own pockets by what he claims to be a fraud committed upon another.

But the complainant again insists that a parol ratification of a deed, altered by parol authority is absolutely void, and for this he cites Story on agency, sections 49, 242, 252, but there is no such principle advanced either by Story or by any of the authorities referred to by him. Story is there speaking of cases where the deed purports to have been executed by an agent in the name of the principal; then, in order to give the deed validity *at law*, it is necessary that the agent should be authorized by an instrument under seal, and a ratification must, at law, be by an instrument equally solemn. There can be no doubt about this principle; one of the cases cited by Story is *Blood vs. Goodrich*, 12 Wendell Rep., 525, which decides no such principle as that advanced by the complainant. The case of *Hibblewhite vs. McMorine*, 6 Meason and Welsby Rep., 200, is also cited by Story in a note to section 49. In that case it was held by Baron Parke that a vendee's name, when left blank in a deed, could not be filled by an agent authorized by parol in the absence of the principal. That was a case at law, and has no application to this. The deed was not of any force or effect until the name of the vendee was inserted, and the court distinguished the case from *Hudson vs. Revett*, 5 Bingham Rep. 372 where the deed was a valid and subsisting security, and was afterwards altered by consent of the parties. But the court will see by reference to the note by the American editor to the above case, in 6 Munson and Welsly, that the weight of American authority is against that decision. But the case before the court steers clear of the principle involved in any of those cases. The deed in this case was in the first instance regularly executed and acknowledged by Trent, and it was fully effectual to pass the land then contained in the deed. It was not a deed executed by an agent, nor purporting to have been executed by an agent. Fuller & Puterbaugh did not pretend to execute the deed for Trent, they were authorized and requested by Trent to put other lands in the deed after it had been executed and recorded; it was merely an alteration of an already valid and subsisting deed, by the mutual consent of the parties, and the actions of Trent in regard to the deed, after it was altered, was a sufficient re-delivery to make the deed valid in its altered state, and the cases referred to in the former part of this argument, upon the question of alteration, were decided upon this principle. If such were not the rule, every case deciding that an alteration made in a deed, by consent of parties, would have to be overruled. And we would call particular attention to the cases of *Penny vs. Corwithe*, 18 Johnson's Rep., 499, and *Hudson vs. Revett*, 5 Bingham Rep., 372. and also to the note to section 568, A, of Greenleaf on Evidence; and there are in the same note numerous cases cited which are directly opposed to the case in 6 Meason & Welsly Rep. It will be seen by the Court that Greenleaf arrives at a conclusion

directly opposite from that advanced by the complainant; and it is there stated to be the true principle, that wherever a deed is materially altered by consent of parties, after its formal execution, and the grantor assents, that the grantee shall retain it in its altered and complete form, as an instrument of title, this assent amounts to a delivery or re-delivery, as the case may require; such is just the case here.

But it is to be remembered that this is a case in equity, and it is very certain that if Trent authorized the alteration made in the deed, and acted upon it himself and induced the defendants to act upon it, a court of equity would hold the deed good as against him, even if it were not binding upon him at law; Story on Agency, sec. 49 (late edition); McNaughton *vs.* Partridge, 11 Ohio (Stanton) Rep., 228; Brock and wife *vs.* Pavey et al, 8 Ohio State Reports, 270; Prettyman *vs.* Wilkey, 19 Ill., Rep., 235; Lee *vs.* Porter, 5 Johns. Chancery Rep., 268.

It is also contended by the complainant that the deed is not good to pass Mrs. Trent's dower interest. It is sufficient to say to this, that whether her dower is barred by the deed or not is no concern of the complainant or any one else. Her dower is an inchoate right, and a right that she, in the event of the death of her husband, can take such advantage of as she may see proper. The complainant has no right to have the deed set aside for any fraud upon her inchoate right of dower, and the deed is perfectly good to pass the fee, whether her dower has been released or not, and it is perfectly absurd, that if the deed is void as to her that it is void in toto. No law or reason can be found for such a proposition.

S. D. PUTERBAUGH,  
JAMES ROBERTS,

*Solicitors for Defendants.*

201  
(11) 1  
I was at a Term of the Circuit Court, begun & held at the Court House in the City of Pekin within & for the County of Tazewell and State of Illinois on the first Monday of the Month of the Month of February in the Year of our Lord One thousand eight hundred and fifty nine, it being the Seventh day of said Month of February. Present Hon James Harriott Judge of the Twenty first Judicial Circuit of the State of Illinois, composed of Mason Tazewell &c. Hugh Fullerton Esq Prosecuting Attorney, Thomas C Reeves Sheriff and Merrill C. Young Clerk

Benjamin S. Pettyman  
v  
James G. Goodrich  
Peter W. Willard  
Albert A. Child &  
Samuel W. Fuller  
& Sabin D. Puterbaugh

Bill for  
Injunction  
etc

Be it remembered that on the 31st day of December A. D. 1858 a Bill was filed in the words and figures following to wit: ~

To the Honourable James

2/  
Harriott Judge of the 21<sup>st</sup> Judicial  
Circuit of the State of Illinois, com-  
posed of the County of Tazewell, Mason  
& others

In Chancery sitting. Your  
Orator Benjamin S. Pettyman, a  
resident of the County of Tazewell  
aforesaid, humbly complaining  
sheweth unto Your Honor, that  
on the 8<sup>th</sup> day of December 1858  
he purchased of one William Trent  
for a full, good & valuable consid-  
eration, all of the Real Estate  
which he then owned in the  
County of Tazewell, and also all  
that he then owned in the  
County of Mason aforesaid,  
a part of which real Estate  
is herein after described in an  
exhibit hereto attached mark'd  
(A) and hereby made part of this  
Bill. And Your Orator shows &  
charges that said Instrument  
described and Copied in said  
exhibit (A) was, in part viz; said lands  
in Mason County, obtained by  
fraud & false representations, on  
the part of the Defendants, or one of  
them, for the benefit of the rest; and that  
as to the residue, to wit all of the said  
lots & lands so described therein as lying  
in Tazewell County, the said Trent  
never executed or made any such  
Deed, and the whole instrument

3

is false, fraudulent and voids and he avers & charges that notwithstanding the facts are as above alleged above yet the said Goodrich Willard also named herein in said Instrument mark<sup>d</sup>. ("A") aforesaid and who are more particularly hereinafter described and made Defendants to this Bill by one Samuel W. Fuller who is also made a Defendant herein, and one S. D. Peterbaugh, who is also made a defendant to this Bill, as their attorneys, have proceeded to advertise all of the said Property for sale, as they pretend by virtue of the said instrument Marked "A" & subsequently altered again by them, and a copy so altered is marked "B" and also made part of this Bill for greater certy herein, is fully shown a copy of which advertisement of the Lands in Malon County is hereto attached Mark<sup>d</sup> ("C") and made part of this Bill. And a copy of the advertisement of the Land & lots in Tazewell County is also duly exhibited herein after and made a part of this Bill.

And Your Orator avers that he is informed & verily believes, and therefore charges, that in

relation to said Execution of said Pretended Deed, under which said advertisements are pretended to have been made, the facts are that, said William Trent on the 24th day of April 1857 was indebted unto James G. Goodrich, Peter W. Willard and Albert A. Childs, parties trading under the name or style of Goodrich Willard & Co in the sum of twenty thousand dollars and he avers that Trent executed to them his promissory note for the amount payable on the 30th day of June 1857 and he avers that for the purpose of securing the said sum of money in the said promissory note, named Trent, together with his wife, executed a Mortgage on sundry Lands in Mason County, in said State, bearing date April 24th 1857, and he avers that Trent, then signed and acknowledged the said Mortgage in Mason County before the Clerk of the Circuit Court on the day of the date of the Mortgage, a copy of which is herewith filed and marked "G" and made part of this Bill, and that the same was afterwards on the 10th day of June 1857 acknowledged by his wife in Saywell County, and he avers and charges, that at the time

5  
of making & executing said Mortgage,  
by Trent, neither the said Child,  
Willard, or Goodrich, was present,  
but they were represented by an  
Samuel W. Fuller as their agent,  
and he shows to the Court that the  
said Samuel W. Fuller had formerly  
been said Trents Constant Counsel  
& attorney in his business generally  
and said Trent being unable to  
read or write, and being from  
that Cause compelled to depend  
on others for information of  
what was contained in said  
instrument of writing produced  
for his signature, & from the reasons  
aforesaid, said Trent depended  
and confidently relied upon  
the said Samuel W. Fuller in pre-  
paring the said Mortgage, that he  
would not prepare it otherwise  
or different from what he repre-  
sented it to be; and Your Orator  
charges that said Trent directed  
the said Fuller to prepare a Mort-  
gage in the Ordinary form, upon  
the Lands described in the an-  
nexed Deed of Trust Mark'd "G."  
which lay in Mason County, Miss.,  
and upon no other tracts or lots  
of Land whatever; and Your Orator  
further Shows, that the said Fuller  
so represented and read said  
Deed of Trust above named

6  
mark<sup>c</sup> "G" as being of & but an Ordinary Mortgage containing the ordinary equity of redemption to said Trust, and as covering and containing the lands in Mason County only and your Orator avers that the said Mortgage or Deed of Trust mark<sup>d</sup> "A" aforesaid and herewith for greater certainty, made part of this Bill, then contained no Land or lots except those lying in Mason County, and he is advised that the Copy mark<sup>d</sup> "G" of the Mason County Records herewith filed as a copy of said Record of said Deed in Mason County so shows it. And your Orator Charges that at the time above named, when the same was acknowledged by Trust's wife aforesaid, the said Mortgage or Deed of Trust, then contained no Land except those tracts lying in Mason County, aforesaid, and was then so read and represented to Trust's Wife in obtaining her signature and acknowledgment, thereto by the Justice of the Peace, before whom the acknowledgment was taken. And your Orator Charges that afterwards on the 10th of June 1857 the said Defendants, Goodrich Willard & Child, and the said Samuel W Fuller, whom your Orator prays may be

7  
made a defendant herein, colleague & combined together to wrong & defraud said Trent and Wife, out of said divers large tracts of Land, and very valuable Farms and lots & Houses, in Tazewell County, and for that purpose, and with that intention after the said Deed of Trust, above named, mark "G" had been, through & by false representations executed and acknowledged by said Trent, as above named, and by the wife of said Trent as above named and without the order, Consent or knowledge of said Trent, or his wife aforesaid, or of the Justice of the Peace & officer before whom the acknowledgments were taken, fraudulently wrote & inserted into the said Deeds of Trust aforesaid, or caused to be done, all of those tracts of land and valuable Farms and Houses & Lots described therein, and which by their description appear to be situated in Tazewell County Illinois, which said tracts and lots of land so inserted fraudulently and without authority of said Trent, and without his knowledge or consent, are described as follows, to wit.

The S.E. 1/4 of the S.E. 1/4 of and S.E. 1/4 of the S.W. 1/4 & S.W. 1/4 of S.E. 1/4 of Section 7 and the S.E. 1/2 of N.E. 1/4 and S.W. 1/4 of N.E. 1/4 and S.E. 1/4 of N.W. 1/4 and N.W. 1/4 of N.E. 1/4 and N.E. 1/4 of N.W. 1/4 of Section 18.

and the N.E.  $\frac{1}{4}$  of the S.W.  $\frac{1}{4}$  of Section 7. and the S.E.  $\frac{1}{4}$  of N.W.  $\frac{1}{4}$  and S.W.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$  and N.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$  and N.E.  $\frac{1}{4}$  of S.W.  $\frac{1}{4}$  of and E.  $\frac{1}{2}$  of S.E.  $\frac{1}{4}$  and S.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$ . and S.E.  $\frac{1}{4}$  of N.E.  $\frac{1}{4}$  of Section Seventeen (17) all in Township Twenty three, North of Range Six, West of the third principal Meridian, and also the S.W.  $\frac{1}{4}$  of the N.E.  $\frac{1}{4}$  of Section 11. and the North half of Lot three N.W.  $\frac{1}{4}$  of S.E.  $\frac{1}{4}$ . of Section 16. and the North West  $\frac{1}{4}$  of the N.E.  $\frac{1}{4}$  of Section 14 and the South  $\frac{1}{2}$  of Lot 3 in Section (16) Sixteen all in Township Twenty three (23) North of Range (7) west of the Third Principal Meridian containing in all 880 Acres and also Lots 2, 3, 5 & 6 in Block 4 in the Town of Spring Lake in said Saginaw County.

And your orator further Charges that afterwards, to wit: on the 23<sup>rd</sup> day of July A.D. 1857 the said Defendants further Colleague & Combining together to Cheat, wrong & defraud said Trent and wife, inserted and wrote or caused to be wrote or inserted into said Deed of Trust aforesaid, also without the knowledge or due leave or consent of said Trent or his wife Lot 1 in Block 5, and Lot 5 in Block 2. in said Town of Spring Lake, and caused the said

9. Deed of Trust to be again Recorded  
so as to appear as though they had  
duly acknowledged the same, & so execu-  
ted it as their Deed, which is false  
and the same is void, as then so fraud-  
ulently altered by them, ~~to fraudulently~~  
a copy of which said Deed of  
Trust, so altered and Recorded,  
is herewith also filed, and marked  
("B.") and prayed to be taken as  
part & parcel of this Bill of Complaint

And your Orator  
Charges that the Two Lots, last  
inserted in said Deed of Trust,  
as Lots, aforesaid, were improved  
Lots, with dwellings thereon, &  
reasonably worth the sum of  
Two Thousand Dollars, and  
he Charges that the Lands  
so lying in Tazewell and so fraud-  
ulently and wrongfully inserted  
in said Deed of Trust, are reasonably  
worth the sum of \$8,000. Dollars

And your Orator further  
shows & Charges that the lands  
lying in Mason County and designed  
to be mortgaged to secure said  
sum of money to said Goodrich  
Willard & Co are worth fully  
the debt designed to be secured  
thereof. —

And your Orator further Charges  
that although said Trust  
directed the said Fuller to

prepare a Mortgage on such lands in Mason County, and was so informed that a Mortgage was so prepared thereon and although said Trent Executed said instrument with the belief and understanding that it was a Common Mortgage, and they knew he, said Trent, so understood the same.

Yet Your Orator Charges that the said Defendants, Goodrich Willard & Co. and the said S. W. Fuller & S. D. Peterbaugh as their attorneys have inserted, and are now insisting that said Mortgage is a Deed of Trust, with full power of Sale and with full power to them to release and sell, and Bar to said Trent and to his assigns, Your Orator, all equity of Redemption therein, and to release sell and Bar the wife of said Trent of all right of Dower therein, and pursuant to said purpose, they have now advertised all of the said lands and lots in Mason County for Sale under and by virtue of said Deed of Trust first aforesaid and Mark'd "A" herewith, and propose then to sell the same at the Court House in Havana on the 13th day of January 1859.

a copy of which advertisement is hereto attached marked exhibit (C) and is prayed to be taken as part & parcel of this Bill of Complaint -

And Your Orator Charges that said Deed of Trust, under which said Defendants proposed to sell said Lands & lots is not the Deed of said Trent or Wife, and he Charges that said Goodrich Willard & Child, and said Fuller & one S. D. Puterbaugh as their attorneys are now proposing to sell and have now also advertised for sale, pretending under said Deed of Trust all of said Lands & lots in Sagerwell County so fraudulently inserted in said Deed, to wrong & Injure Your Orator in his purchase of the same.

And he avers that so far as said lands and lots in Sagerwell County are concerned the Deed is void, and he again Charges that Trent never inserted or authorized there to be inserted in said Deed or Mortgage, or, knew it was done, until long after the same appeared on Record, and it is not the kind of instrument it was represented to Trent or Wife to be, as far as all of said Lands and lots are concerned, and

the same is wholly void, in every part for the reasons aforesaid.

And Your Orator Charges that the said Defendants by reason of their said false and fraudulent transactions, and by so fraudulently and falsely inserting the said Tazewell County Lands & Lots in said Deed after the same was executed and acknowledged, have so embarrassed and clouded the title thereto, that the same was greatly injured in value, and Trent found it difficult and almost impossible to sell the land at any thing like a reasonable price, and he charges that by reason thereof, Trent has been unable thus far to raise all the money to pay off said debt. And ~~he~~ charges about \$13000. Dollars of the same is still unpaid.

And he charges that the said Defendants, as he verily believes, at the time of preparing said Deed of Trust, or Mortgage, and at the time they so fraudulently inserted therein, said Tazewell County Lands, designed thereby to put it out of Trent's Power to pay off said Note, and under said Lands designed to have been mortgaged, as well as those so

wrongfully inserted, ~~inserted~~, and he charges that the insertion of said lands, in Saywell County into said instrument, was a down right forgery, and that for that reason, and the causes aforesaid, the said Mortgage & Deed of Trust, is absolutely void.

And your orator charges that the said Defendants, for the purpose of injuring him and throwing a cloud over the title of said land so purchased of said Grant by him, and notwithstanding their pretended deed of Trust thereto is known to them to be absolutely fraudulent & void in every part, yet they have now also advertised all the lands & lots named therein & described as in Saywell County, and propose to sell the same on the 31st day of January 1859 - as they pretend by virtue of said instrument so marked "F" as aforesaid and a copy of which advertisement marked "E" is hereto attached and for greater certainty, made part of this Bill, which sale if made, by clouding the title would greatly injure & wrong your orator, all of which is contrary to equity & good conscience.

And your

Orator avers that he purchased said Lands subject to a Deed of Trust to one S. M. Green on part of the same and to the lien of divers Judgments against said Trent for about \$8,000. Dollars, and he shows that he paid therefor a full and valuable Consideration. And he Charges that unless the said Defendants and their agents, Attorneys abettors and Colleagues are restrained by the Court, they will sell & dispose of said Lands to innocent purchasers and convey the same by said false and pretended Authority by which, by which as he is now advised he would probably suffer ~~by~~ serious injury in the value of his land, if not lose his right and title thereto forever, and much if not all recourse against said Defendants who are mostly non residents of this State, and he further avers that he is now informed and believes that said instrument which said Trent did sign and acknowledge supposing it to be only a common Mortgage is a Deed of Trust in form, & with pretended power of sale and conveyance of the premises therein inserted

and complete release of all  
 equity of Redemption therein,  
 though contrary to his, Trusts,  
 designs, and as Your Orator  
 is ~~remedyless~~ except in a Court  
 of equity to the end thereof (of) Your  
 Orator prays that the said James  
 G. Goodrich, Peter H. Willard  
 Albert H. Child, Sabin D.  
 Puterbaugh and Samuel W. Fuller  
 may be made Defendants, herein  
 and that they and each of  
 them, may be duly summoned  
 to appear at the next terms  
 of this Court and, ~~there~~ <sup>and</sup>  
 there severally true, <sup>perfect</sup> answers  
 make to all and singular  
 the Charges and allegations  
 in this Bill of Complaint  
 severally and particularly  
 as though herein inserted in  
 the form of interrogatories to  
 them though not on their  
 Corporeal oaths which  
 Complainant expressly hereby  
 waives, and that until a  
 hearing of the Cause, this  
 Honorable Court will re-  
 strain and enjoin them (and  
 each of them, their attorneys  
 servants and representatives  
 from the further advertising  
 said Premises named in said

Deed of Trust, or Mortgage or  
 Mortgage, and from all Sale,  
 or disposition of the same  
 or any part thereof in either  
 Tazewell or Marion County in  
 any manner or form, and  
 that on a hearing of said  
 Cause that said Injunction  
 against them may be made  
 perpetual and all pretence of  
 Claim, power, right and title to  
 said Lands in said Deed of  
 Trust named, by virtue of said  
 Deed, may be for ever set aside &  
 declared fraudulent & void, and  
 for such other & further order,  
 Judgment & decree in the premises  
 as to Your Honor may seem meet  
 & proper, and as in duty bound  
 Your Orator will ever Pray &c.

Benjamin S. Prettyman  
 Pro. Se

Exhibit "A"

William Trent } No 252  
 To } Recorded June 10  
 Goodrich Willard & Co } 1854

This Indenture made  
 this Twenty fourth day of April  
 in the Year of our Lord one thousand  
 eight hundred and fifty seven

Between William Trent of Saywell  
 in the State of Illinois of the first  
 part and Goodrich Willard also of  
 St Louis in the State of Missouri  
 of the second part Witnesseth  
 that the said William Trent  
 is justly indebted unto Goodrich  
 Willard also in the sum  
 of Twenty thousand Dollars  
 Secured by said Trent's promis-  
 sory Note dated March 30th  
 A.D. 1857. due three months  
 after date from said Trent  
 to said Goodrich Willard also  
 with ten per cent Interest  
 from maturity. Now therefore  
 these presents Witness that said  
 party of the first part, in order  
 to secure the prompt payment  
 and punctual payment of the  
 said sum of money herein  
 before specified according  
 to its tenor or effect, and in  
 consideration of one Dollar  
 to the said party of the first part,  
 the receipt whereof is hereby  
 confessed, do hereby Grant  
 bargain and sell unto the  
 said party of the second part  
 and to his executors and  
 administrators all the following  
 described Premises Situate  
 lying and being in the County  
 of Madison State of Illinois to wit:

In Consideration of other property being substituted we  
 have released Lots 2, 3, 5, 6, in Block 4 in Spring Lake  
 Ms July 20<sup>th</sup> 1857. Goodrich Willard & Co Fuller atty

18  
 E 1/2 N.E. S. 30 S 1/2 N.W. Sec. 29 T23 NR  
 6. W. 3<sup>rd</sup> PM, S.W. S.E. Sec 34 T22. NR. 4  
 W. 3<sup>rd</sup> PM S 1/2 Sec 23. T23. NR. W 3<sup>rd</sup> P.M.  
 S.W. N.W. & N.W. S.W. Sec 34. T23 N.R. 7  
 3<sup>rd</sup> P.M. W 1/2 S.W. fractional quarter Sec 19  
 T.23 NR 6 3<sup>rd</sup> P.M. S.W. S.W. Sec 20 Town  
 23 NR 6 W 3<sup>rd</sup> P.M. NW Sec 29 & N 1/2 N 1/2 Sec  
 30 T.23. NR 6 W 3<sup>rd</sup> P.M. S.W. N.W. Sec 24 Town  
 23 NR 7 W 3<sup>rd</sup> P.M. N.W. N.E. Sec 35 & S.E. S.E.  
 Sec 26. Also N.E. S.W. Sec 26 T23. NR 7 W  
 3<sup>rd</sup> P.M. N.W. N.W. T23. T23. NR 7 W 3<sup>rd</sup> P.M.  
 S.E. N.E. S.30 T23 NR 6. W 3<sup>rd</sup> P.M. S 1/2 N.E.  
 & N 1/2 & S.W. & N 1/2 S.E. & S.E. S.E. Sec 20 &  
 N.W. S.W. Sec 21 T23 NR 6 W 3<sup>rd</sup> P.M. S.E. S.E. S.25  
 T23. R 7 W 3<sup>rd</sup> P.M. S.W. N.E. & N.W. S.E. S.25 &  
 N.E. N.E. S.36 T23 NR 7 W 3<sup>rd</sup> P.M. W 1/2 S.W. frac  
 1/4 S.19. W 1/2 NW frac 1/4 Sec 30 T23. NR. 6  
 W. 3<sup>rd</sup> P.M. S.E. N.E. S.25 T23. N.R. 7 W 3<sup>rd</sup> P.M.  
 Also E 1/2. S.E. S.20 T23. NR 6. W. 80 acres  
 Also the N 1/2 N.W. Sec 25  
 T.23 N Range 7 W 3<sup>rd</sup> P.M. 80 acres, and S.W. S.W. 1/4  
 Sec 24 and S.W. N.W. 1/4 Sec 24 T23 NR 7 W.  
 3<sup>rd</sup> P.M. also S.E. 1/4 S.E. 1/4 & S.E. 1/4. S.W. 1/4 & S.W. 1/4  
 of S.E. 1/4 Sec. 7 T23 NR 6 W 3<sup>rd</sup> P.M. & E 1/2. N.E.  
 & S.W. N.E. 1/4 & S.E. 1/4 N.W. 1/4 N.W. 1/4 N.E. 1/4 & N.E. 1/4  
 N.W. Sec 18 T23 R 6. W 3<sup>rd</sup> P.M. & N 1/2 Lot 3  
 N.W. S.E. 1/4 Sec 16 T23 R 7 W 3<sup>rd</sup> P.M. N 1/4 S.W. 1/4  
 Sec 7 T23 R 6. W 3<sup>rd</sup> P.M. S.E. N.W. 1/4 & S.W.  
 N.E. & N.W. 1/4 S.E. 1/4 & N.E. 1/4 S.W. 1/4 & E 1/2 S.E.  
 & S.W. S.E. 1/4 & S.E. 1/4 N.E. & S.W. 1/4 Sec 17 T23 N.  
 6 W 3<sup>rd</sup> P.M. & S.W. 1/4 S.E. 1/4 S 11 T23 R 7 W 3<sup>rd</sup> P.M.  
 & N.W. N.E. S.14 T23. R 7 W 3<sup>rd</sup> P.M. & S 1/2  
 Lot 3. School Sec 16. T23 R 7 W 3<sup>rd</sup> P.M.

19

also lots 2, 3, 5 & 6 in Block 4 Spring Lake  
Together with all and singular  
the Tenements hereditaments and  
appurtenances therunto belonging  
or in anywise appertaining. To have  
and to hold the above described  
premises unto the said party of the  
second part and to their executors  
and Administrators in Trust,  
Nevertheless for the following pur-  
poses to wit, in Trust in case ~~of~~  
default shall be made by the  
said party of the first part, his  
heirs Executors and administrators  
to pay the said sum of Money above  
~~mentioned~~ mentioned according  
to the tenor and effect thereof,  
then on application of the said  
Goodrich Willard or the legal  
holder or holders of said Note, &  
having first given thirty days  
Notice by publishing the same  
in a public Newspaper printed  
in the County where said prem-  
ises are situated, then it shall  
and may be lawful for the  
said party of the second part  
their Executors, Administrators or  
attorney duly Authorized, to take  
possession of the premises afore-  
said and sell the same or any  
part thereof, at Public Sale  
at such hour and place  
as the said party of the second




out of

part, their Executors, administrators or attorneys duly authorized, may appoint, or to adjourn said sale from time to time, and upon making sale as aforesaid to make and deliver to the purchaser thereof, a good & sufficient deed or deeds of conveyance in the law for the same in fee simple, and the money arising from such sale, after first paying all reasonable expenses growing out of the execution of Trusts aforesaid and all Taxes & assessments levied on the premises aforesaid or on such part thereof as may be sold for the purpose aforesaid to pay the said Goodrich Willard & Co their representatives, Executors, or administrators, or legal holders or holders thereof, the amount which may then be due on said Note, above mentioned for principal and interest, rendering the overplus of the proceeds of such sale, if any there should be, unto the said party of the first part, his heirs, Executors or Administrators - In case no default is made in the payment of the aforesaid Note, then this Conveyance shall be null & void - In case the aforesaid Note and all Costs and reasonable


expenses of the said Trust shall be satisfied by the sale of part of the premises aforesaid, then the title to, and right of entry in the unsold residue of the premises aforesaid shall vest absolutely in the party of the first part, and the said unsold residue shall be fully discharged from all liens created by the Trusts aforesaid.

And the said William Trent party of the first part for himself and his heirs Executors and administrators, do hereby Covenant to and with the said party of the second part, and Executors, and Administrators, and to and with the purchaser or purchasers, at the sale aforesaid, that at the time of the sealing and delivery of these presents, he is well seized of the Premises above conveyed as of an indefeasible estate of fee simple, and that the same are free from all incumbrance of what nature soever, and against all and every person or persons lawfully claiming or to claim the whole or any part thereof, will forever Warrant and defend, and that he will during the continuance of these presents, pay all taxes, and

assessments levied on the above described premises, or any part thereof, before any advertisements or charges accrued against the said premises.

In witness whereof the said party of the first part, has herunto set his hand and seal this day and Year first above written signed sealed and <sup>his</sup> William Trent <sup>mark</sup>  delivered in presence of  
Sam W. Fuller <sup>3</sup> Mary A. <sup>her of</sup> Trent <sup>mark</sup>   
R Ritter  
Sam W Fuller 

State of Illinois } ss  
Madison County }

Richard Ritter 

Clerk of the Circuit Court for said County do Certify that on this day personally appeared William Trent, before me, whose name appears subscribed to the foregoing deed of Trust and who is personally known to me to be the real person who, and in whose name the acknowledgement of the above deed is proposed to be made as having executed the same 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 Office at  
 Havana this 24<sup>th</sup> day of  
 April A. D. 1854  
 R. Ritter clerk  
 per Jamm. C. Davis

State of Illinois  
 Jaywell County  
 I George H. Daniels  
 Justice of the Peace  
 within and for said County of  
 Jaywell do hereby certify that on  
 this day personally appeared before  
 me, Mary Ann Trent wife of William  
 Trent who signed & sealed the  
 foregoing deed of conveyance  
 and having been by me made  
 acquainted with the contents  
 of said deed, and being by me  
 examined separate and apart  
 from her said husband and  
 acknowledged that she exe-  
 cuted the same freely and  
 voluntarily and relinquished  
 her right of dower in said  
 premises, without compulsion  
 of her said husband and does  
 not wish to retract

Given under my hand  
 and seal this June 10<sup>th</sup> 1854  
 George H. Daniels  
 Justice of the Peace

## Exhibit "B"

William Trent 3 No 260  
 Goodrich Willard & Co 3 Recorded July 23 1857

This Indenture made this Tenth fourth day of April in the Year of our Lord one thousand eight Hundred and fifty seven, Between William Trent, of Saywell County in the State of Illinois of the first part and Goodrich Willard & Co, of Saint Louis in the State of Missouri of the second part, Witnesseth, that the said William Trent is justly indebted unto Goodrich Willard & Co in the sum of Twenty thousand dollars, secured by said Trent's Promissory Note, dated March 30. AD 1854. due three months after date from said Trent to said Goodrich Willard & Co., with ten percent interest from Maturity. Now, therefore, these presents witness that the said party of the first part in order to secure the prompt and punctual payment of the said sum of money herein before specified, according to its tenor and effect, and in

consideration of one dollar to the  
 said party of the first part, paid,  
 the receipt whereof is hereby  
 confessed, do hereby grant  
 bargain and sell unto the said  
 party of the second part, and to his  
 executors and administrators all  
 the following described ~~premises~~  
 Premises situated lying and being in the  
 County of Mason and State of  
 Illinois, to wit:

E 1/2 N.E. Sec 30 S 1/2 N.W. Sec 29 T 23 N.R  
 6 W. 3<sup>d</sup> R.M. S.W. S.E. Sec 34 T 22. N.R. 7  
 W 3<sup>d</sup> R.M S 1/2 S.E. Sec 23 T 23 N.R. W 3<sup>d</sup> R.M  
 S.W. N.W. + N.W. S.W. Sec 34 T 23 R 7 W 3<sup>d</sup> R.M.  
 W 1/2 S.W. fractional quarter S 19 T 23 N.R  
 6 W 3<sup>d</sup> R.M S.W. S.W. Sec 20 Tow 23 N.R  
 6 W 3<sup>d</sup> R.M N.W. Sec 29 + N 1/2 N.E. 1/4 Sec  
 30 T 23 N.R. 6 W 3<sup>d</sup> R.M S.W. N.W. Sec 24  
 T 23 N.R 7 3<sup>d</sup> R.M. N.W N.E. Sec 35 + S.E. S.E.  
 Sec 26 also N.E. S.W. Sec 26. T 23 N.R 7  
 W. 3<sup>d</sup> R.M. N.W. N.W. S 23 T 23 N.R 7 W 3<sup>d</sup>  
 R.M. S.E. N.E. S 30 T 23 N.R 7 W 3<sup>d</sup> R.M. S 1/2  
 N.E. + N 1/2 S.W. + N 1/2 S.E. + S.E. S.E. Sec 20  
 + N.W. S.W. Sec 21 T 23 N.R 6 W 3<sup>d</sup> R.M  
 S.E. S.E. <sup>T 23 N.R 7 W 3<sup>d</sup> R.M S.W. N.W. + N.W. S.E. S 25</sup> S 25  
 N.E. S 36 T 23. N.R 7 W 3<sup>d</sup>  
 R.M. W 1/2 S.W. frac 1/4 S 19 W 1/2 N.W. frac.  
 1/4 S 30 T 23 N.R. 6 W 3<sup>d</sup> R.M S.E. N.E. S 25  
 T 23 N.R 7 W 3<sup>d</sup> R.M. also E 1/2 S.E. S 20  
 T 23 N.R 80 acres - also the N 1/2 N.W. 1/4  
 S 25 Tow 23 N. Range 7 West 3<sup>d</sup> R.M 80 acres  
 and S.W. S.W. S 24 and S.W. N.W. 1/4 Sec 24  
 T 23 N.R 7 W 3<sup>d</sup> R.M also S.E. 1/2 S.E. 1/2 + S.E. 1/2  
 S.W. 1/4 + S.W. 1/4 of S.E. 1/4 Sec 7 T 23 N.R. 6 W 3<sup>d</sup> R.M

+ E $\frac{1}{2}$  N.E. & S.W. N.E. & S.E. $\frac{1}{4}$  N.W. $\frac{1}{4}$   
 N.W. $\frac{1}{4}$ . N.E. $\frac{1}{4}$ . & N.E. $\frac{1}{4}$  N.W. $\frac{1}{4}$  Sec 18 T23 R  
 6 N 3<sup>d</sup> PM & N $\frac{1}{2}$  Lot 3. N.W. $\frac{1}{4}$  S.E. $\frac{1}{4}$  Sec 16  
 T23. R 7 N 3<sup>d</sup> PM N.E. $\frac{1}{4}$ . S.W. $\frac{1}{4}$  S 7. T23  
 R 6. N 3<sup>d</sup> PM S.E. $\frac{1}{2}$  S.W. $\frac{1}{4}$  & S.W. $\frac{1}{4}$  N.E.~~1/4~~  
 and N.W. $\frac{1}{4}$  S.E. $\frac{1}{4}$  & N.E. $\frac{1}{4}$  S.W. $\frac{1}{4}$  and  
 E $\frac{1}{2}$  S.E. & S.W. S.E. $\frac{1}{4}$  & S.E. $\frac{1}{2}$  N.E. Sec 17  
 T. 23 N.R 6 N 3<sup>d</sup> PM & S.W. $\frac{1}{4}$  S.E. $\frac{1}{4}$  Sec 11  
 T. 23 R 7 N 3<sup>d</sup> PM & N.W. N.E. S 14 T23. R 7  
 N 3<sup>d</sup> PM & S $\frac{1}{2}$  Lot 3. School Sec 16. T23  
 R 7 N 3<sup>d</sup> PM also Lots 2, 3, 5 & 6  
 in Block 4. in Spring Lake  
 Lot one in Block ~~two~~ Spring Lake  
 four. Spring Lake and Lot five in  
 Block two Spring Lake.

Together with all  
 and singular the tenements and  
 hereditaments and appurtenances  
 therunto belonging or in any wise  
 appertaining, To have and to  
 hold the above described prem-  
 ises unto the said party of the  
 second part, and their Executors  
 or administrators in Trust never-  
 theless for the following (persons)  
 to wit: In Trust in Case default  
 shall be made (in) by the said  
 party of the first part, his heirs,  
 Executors or Administrators to pay  
 the said sum of Money above  
 mentioned according to the tenor  
 and effect thereof, then on ap-  
 plication of the said Goodrich

Willard and Co or the legal holder or holders of said Note, and having first given thirty days Notice, by publishing the Same in a public News Paper printed in the County where said Premises are situated. Then it shall and may be lawful for the said party of the second part, their Executors, Administrators or attorney duly authorized to take possession of the premises aforesaid, and to sell the same or any part thereof at public sale at such hour and place as the said party of the second part, their Executors administrators or attorney duly authorized may appoint, or adjourn said sale from time to time, and upon making sale as aforesaid to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee simple, and out of money arising from such sale, after paying all reasonable expenses growing out of the execution of the Trusts aforesaid, and all Taxes & assessments levied on the premises aforesaid, or on such part thereof as may be sold for the purpose aforesaid,

to pay the said Goodrich Willard & Co their representatives, Executors or Administrators, or the legal holder or holders thereof the amount which may be there due on said Note above mentioned, for the principle and interest ~~thereon~~ rendering the overplus of the proceeds of such sale, if any there should be, unto the said party of the first part, or his heirs, Executors or Administrators.

In case no default is made in the payment of the aforesaid Note, then this conveyance shall be null and void. In case the aforesaid Note and all costs and reasonable expenses of the said Trust, shall be ~~satisfactorily~~ satisfied by the sale of part of the premises aforesaid then the Title to and the right of entry in the unsold residue of the premises aforesaid, shall vest absolutely in the party of the first part, and the said unsold residue shall be fully discharged from all liens created by the Trusts aforesaid. And the said William Trent, party of the first part, for himself and his heirs, Executors and Administrators

29.

do hereby covenant to and with the said party of the second part and Executors or administrators, and to and with the purchaser or purchasers at the sale aforesaid that at the time of the sealing and delivery of these Presents, he is well seized of the premises above conveyed as of an indefeasible estate of inheritance in the Law in fee simple, and that the same are free from all incumbrance of what nature soever and against all and every person or persons lawfully claiming or to claim, the whole or any part thereof will forever warrant and defend, and that he will during the continuance of these Presents pay all taxes and assessments levied on the above described premises or any part thereof before any advertisements or Charges accrue against the said premises —

In witness whereof the said party of the first part have hereunto set his hand & seal the day and Year first above written —

Signed Sealed & <sup>his</sup> William <sup>Trout</sup> <sup>mark</sup> delivered in <sup>3</sup>

the presence of }  
 Sam W. Fuller }  
 R Ritter }  
 Sam W. Fuller }

Mary A <sup>her</sup> Trent <sup>mark</sup> Seal

State of Illinois }  
 Sazwell County }


J. Richard Ritter  
 Clerk of the Circuit Court for said  
 County do certify that on this day  
 personally appeared before me  
 William Trent before me, whose  
 name appears subscribed to the  
 forgoing Deed of Trust & who  
 is personally known to me  
 to be the real person who &  
 in whose name the acknowledg-  
 ment of the above deed is pro-  
 posed to be made as having  
 executed the same, and ac-  
 knowledged the execution there-  
 of, as his voluntary act and  
 deed for the uses & purposes  
 therein expressed.

Given under my hand  
 and seal of office at Havana  
 this 24<sup>th</sup> day of April A.D. 1857  
 R Ritter Clerk  
 for J. C. Davis

Seal

State of Illinois }  
 Sazwell County }  
 J. George H. Davis  
 Justice of the Peace

within and for said County of Laze-  
 well do hereby Certify that on this  
 day personally appeared before  
 me Mary Ann Trent wife of William  
 Trent, who signed and sealed the  
 foregoing Deed of Conveyance, and  
 having been by me made acquainted  
 with the Contents of said Deed  
 and by me examined seperate &  
 apart from her said husband, &  
 acknowledged that she had  
 executed the same & relinquished  
 her right of dower on said prem-  
 ises without compulsion of her  
 said husband and does not  
 wish to retract.

Given under my hand  
 and seal this June 10<sup>th</sup> 1854  
 George H. Daniels   
 Justice of the Peace

# Exhibit "E."

## Real Estate Sale

Whereas, William Trent and Wife, died on the 24th day of April A.D. 1857 executes to the undersigned, a deed of Trust, or Mortgage deed, upon the premises hereinafter mentioned, and other lands in Mason County to secure the payment of a certain promissory note therein particularly described payable by the ~~the~~ said William Trent to Goodrich Willard & Co. (a firm composed of James G. Goodrich Peter W. Willard and Albert W. Child) in three months months after the date thereof, for the sum of Twenty Thousand dollars (\$20,000.) with interest at the rate of ten per cent per annum after maturity which said note bears date March 30th 1857, which said deed is recorded in the recorder's office of Mason County, State of Illinois, on the 23d day of June A.D. 1857, and in the Recorder's office of Tazewell County, Illinois, on the 23d day of July A.D. 1857, and Whereas it was provided in and by said Mortgage Deed, or Deed of Trust, that in case of default in the payment of said note or any part thereof and on applications of the legal

holders of the same, the said Goodrich Willard & Co. after having advertised the time & place of sale thirty days in a Newspaper printed & published in the County wherein the premises therein described, were situated, were authorized to sell the said premises, or any part thereof, and all right and equity of Redemption of said William Trent and wife, their heirs and assigns therein, at public Vendue, to the highest bidder, for cash, and to execute to the purchaser a Deed to the premises sold.

Now, therefore, default having <sup>been</sup> made in the payment of said promissory Note, and by virtue of the power & authority given in said Deed, we the undersigned Mortgagees, will offer for sale, to the highest bidder, for cash, at the front door of the Court house, in the City of Pekin, in said Tazewell County, Illinois, on Monday the 31<sup>st</sup> day of January A.D. 1859, between the hours of 10 A.M. and 5 P.M. of said day, so much of the Lands and Premises in said Deed mentioned as are situated in Tazewell County, Illinois, described as follows, to wit:

S.E. 1/4. S.E. 1/4 Sec 7. T. 23. N.R. 6 W 3<sup>rd</sup> P.M.

S.E. 1/4.	S.W. 1/4	Sec. 7.	T. 23.	N.R.	6. 20 3 <sup>o</sup> P.M.	
S.W. 1/4.	S.E. 1/4	Sec 7.	T. 23.	N.R.	6. 17. 3 <sup>o</sup> P.M.	
E. 1/2.	N.E. 1/4	Sec 18.	T. 23.	N.R.	6. 11. 3 <sup>o</sup> P.M.	
S.W. 1/4.	N.E. 1/4	Sec. 18.	T. 23.	N.R.	6. 11. 3 <sup>o</sup> P.M.	
S.E. 1/4.	N.W. 1/4	Sec 18	T. 23.	N.R.	6. 11. 3 <sup>o</sup> P.M.	
N.W. 1/4.	N.E. 1/4	Sec 18	T. 23.	N.R.	6. 11 3 <sup>o</sup> P.M.	
N.E. 1/4.	N.W. 1/4.	Sec 18.	T. 23	N.R.	6. 11 " "	
N. 1/2 (3)	N.W. 1/4	S.E. 1/4	Sec 16	T. 23	N.R.	7 " " "
N.E. 1/4	S.W. 1/4	Sec 7	T. 23.	"	6 " " "	
S.E. 1/4	N.W. 1/4	"	17	" 23	" 6 " " "	
S.W. 1/4	N.E. 1/4	"	17	" 23	" 6 " " "	
N.W. 1/4.	S.E. 1/4	"	17	" 23	" 6 " " "	
N.E. 1/4.	S.W. 1/4	"	17	" 23	" 6 " " "	
N. 1/2	S.E. 1/4	"	17	" 23	" 6 " " "	
S.W. 1/4.	S.E. 1/4	"	17	" 23	" 6 " " "	
S.E. 1/4.	N.E. 1/4	"	17	" 23	" 6 " " "	
S.W. 1/4.	S.E. 1/4	"	11	" 23	" 7 " " "	
N.W. 1/4	N.E. 1/4	"	14	" 23	" 7 " " "	
S. 1/2	Lot 3.	"	16	" 23	" 7 " " "	

Lots 1, 2, 3, 5 & 6 in Block 4 in the town of Spring Lake.

Lot 1 in Block 4 and Lot 5 in Block 2 in the town of Spring Lake in Sagewell County, or so much of said lands and premises as may be necessary to satisfy said note with the interest and expenses.

Absolute Deeds of conveyance will be given to the purchaser of any of said lands so sold without redemption, and immediate possession given

Goodrich Willard & Co  
Mortgagees

Fuller & Peterbaugh Attys for Mortgages  
ReKin Dec 30. 1858.

35

Exhibit "A"

Real Estate Sale

Whereas William Trent and Wife did on the 24<sup>th</sup> day of April A D 1857 execute to the undersigned, a Deed of Trust or Mortgage Deed, upon the premises hereinafter mentioned, and other lands not mentioned herein, to secure the payment of a certain promissory Note therein particularly described, payable by the said William Trent to Goodrich Willard & Co (a firm composed of James G. Goodrich, Peter W. Willard and Albert A Child) in three months after the date thereof, for the sum of twenty thousand dollars \$20,000. with interest at the rate of ten percent per annum after maturity, which said Note bears date March 30<sup>th</sup> 1857, which said Deed is recorded in the recorder's office of Mason County, State of Illinois on the 23<sup>d</sup> day of June A D 1857, and in the recorder's office of Tazewell County, Illinois, on the 23<sup>d</sup> day of July A D 1857, and whereas it was provided in and by said Mortgage deed, or deed of Trust, that in case of default in the payment

of said Note, or any part thereof, and on application of the legal holders of the same, the said Goodrich Willard & Co. after having advertised the time and place of sale thirty days in a Newspaper printed and published in the County wherein the premises therein described were situated, were authorized to sell the said premises, or any part thereof, and all right and equity of redemption of said William Trent and wife, their heirs and assigns, therein, at public Vendue, to the highest bidder, for Cash, and to execute to the purchaser a deed to the premises sold.

Now therefore default having been made in the payment of said promissory Note, and by Virtue of the power and Authority given in said deed, we, the undersigned, Mortgagees, will offer for sale to ~~the~~ the highest bidder, for Cash, at the front door of the Court House, in Havana, in said Mason County, Illinois, on Thursday, the 13<sup>th</sup> day of January A. D. 1859 between the hours of 10 O'clock am. and 5 O'clock P.M. of said day, the following described Lands, and premises situated in Mason County, Illinois, (being part of the Lands mentioned in said deed) to wit:

E 1/2	N.E. 1/4	S. 30.	T 23.	N.R. 6.	W 3 <sup>d</sup> P.M.
S 1/2	N.W. 1/4	S. 29	T 23	N.R. 6.	W 3 <sup>d</sup> P.M.
S.W. 1/4	S.E. 1/4	S. 34	T 22	N.R. 7.	W. 3 <sup>d</sup> P.M.
S 1/2	S.E. 1/4	S. 23.	T. 23.	N.R. 7	W. 3 <sup>d</sup> P.M.
S.W. 1/4	N.W. 1/4	S. 34	T. 23.	N.R. 7	W 3 <sup>d</sup> P.M.
N.W. 1/4	S.W. 1/4	S. 34.	T 23	N.R. 7	W. 3 <sup>d</sup> P.M.
W 1/2	S.W. frac. 1/4	S. 19.	T 23	N. R. 6.	W. 3 <sup>d</sup> P.M.
S.W. 1/4	S.W. 1/4	S. 20.	T 23.	N. R. 6	W 3 <sup>e</sup> P.M.
N.W. 1/4		S. 29	T 23	N. R. 6	W <sup>d</sup> P.M.
N 1/2	N.W. 1/4	S. 30	T 23.	N. R. 6.	W 3 <sup>d</sup> P.M.
S.W. 1/4	N.W. 1/4	S. 24.	T 23.	N. R. 7	W 3 <sup>a</sup> P.M.
N.W. 1/4	N.E. 1/4	S. 35.	T. 23	N.R. 7.	W 3 <sup>d</sup> P.M.
S.E. 1/4	S.E. 1/4	S. 26	T 23	N.R. 7	W 3 <sup>d</sup> P.M.
N.E. 1/4	S.W. 1/4	S. 26	T 23	N.R. 7	W. 3 <sup>d</sup> P.M.
N.W. 1/4	N.W. 1/4	S. 23.	T. 23	N.R. 7	W. 3 <sup>d</sup> P.M.
S.E. 1/4	N.E. 1/4	S. 30	T 23	N.R. 6	W 3 <sup>d</sup> P.M.
S 1/2	N.E. 1/4	S. 20	T 23	N.R. 6	W 3 <sup>a</sup> P.M.
N 1/2	S.W. 1/4	S. 20	T 23	N.R. 6.	W 3 <sup>a</sup> P.M.
N 1/2	S.E. 1/4	S. 20	T 23	N.R. 6	W. 3 <sup>d</sup> P.M.
S.E. 1/4	S.E. 1/4	S. 20	T 23	N.R. 6	W 3 <sup>d</sup> P.M.
N.W. 1/4	S.W. 1/4	S. 21	T 23.	N.R. 6	W 3 <sup>d</sup> P.M.
S.E. 1/4	S.E. 1/4	S. 25	T 23	N.R. 7	W 3 <sup>d</sup> P.M.
<del>S.W.</del> 1/4	N.E. 1/4	S. 25	T 23	N.R. 7	W 3 <sup>d</sup> P.M.
N.W. 1/4	S.E. 1/4	S. 25	T 23.	N.R. 7	W 3 <sup>d</sup> P.M.
N.E. 1/4	N.E. 1/4	S. 36.	T 23.	N.R. 7	W 3 <sup>d</sup> P.M.
W 1/2	S.W. frac. 1/4	S. 19	T 23	N.R. 6.	W 3 <sup>a</sup> P.M.
W 1/2	N.W. frac. 1/4	S. 30	T 23	N.R. 6	W 3 <sup>a</sup> P.M.
S.E. 1/4	N.E. 1/4	S. 25	T 23.	N.R. 7	W 3 <sup>d</sup> P.M.
E 1/2	S.E. 1/4	S. 20	T. 23	N.R. 6	W 3 <sup>d</sup> P.M.
N 1/2	N.W. 1/4	S. 25	T 23	N.R. 7	W 3 <sup>e</sup> P.M.
S.W. 1/4	S.W. 1/4	S. 24	T 23	N.R. 7	W 3 <sup>d</sup> P.M.
S.W. 1/4	N.W. 1/4	S. 24	T 23	N.R. 7	W 3 <sup>d</sup> P.M.

or so much of said Lands and premises as may be necessary to

Satisfy said note with the interest and expenses - Absolute deeds of conveyance will be given to the purchaser of any of said lands, so sold without redemption, and immediate possession given.

Goodrich Willard & Co  
Fuller & Peterbaugh  
attys for Mortgages  
Havana, November 26. 1858.

H

Exhibit "G"

Filed this 24th day of April A.D. 1854 }  
at 3 Oclk P.M. }  
No 1140. William Trent }  
To Trust Deed }  
Goodrich Willard & Co }  
\_\_\_\_\_

This Indenture made this twenty fourth day of April in the year of Our Lord one thousand eight hundred and fifty seven, Between William Trent of Tazewell County in the State of Illinois of the first part, and Goodrich Willard & Co of St Louis in the State of Missouri. Witnesseth that the said William Trent is justly indebted unto Goodrich Willard & Co in the sum of Twenty thousand dollars, said Trent's promissory Note dated

March 30<sup>th</sup> AD 1854 due three months after date from said Street to said Goodrich Willard & Co with ten per cent interest from maturity.

Now therefore the presents Witness that the said party, in order to secure the prompt and punctual payment of the said sum of money herein before specified according to its tenor and effect and in consideration of one dollar to the said party of the second part paid the receipt whereof is hereby confessed, do hereby grant, bargain and sell unto the said party of the second part & to his executors and administrators all the following described premises situate lying and being in the County of Marion and State of Illinois to wit:

$\frac{1}{2}$  N.E. Sec 30.  $\frac{1}{2}$  N.W. Sec 29. T23 NR  
 6. W 3<sup>d</sup> PM SW. SE. Sec 34 T22 NR 7. W 3<sup>d</sup> PM  
 $\frac{1}{2}$  S.E. Sec 23 T23. NR. W. 3<sup>d</sup> PM. N.E. Sec 29 T  
 23 N.R. 6. W. 3<sup>d</sup> PM. SW. NW. & NW. SW. Sec 34 T23 NR;  
 W. 3<sup>d</sup> PM.  $\frac{1}{2}$  SW. frac. quarter S19 T23 NR 6. W.  
 3<sup>d</sup> PM. - SW. SW. Sec 20 T23 NR 6. W 3<sup>d</sup> PM. N.W.  
 Sec 29 &  $\frac{1}{2}$  N.E.  $\frac{1}{4}$  Sec 30 T23 NR 6. W 3<sup>d</sup> PM. SW.  
 N.W. Sec 24 T23 NR 7. W 3<sup>d</sup> PM. N.W. NE Sec 35 &  
 S.E. S.E. Sec 26 also N.E. SW Sec 26. T23 NR 7. W 3<sup>d</sup>  
 PM. NW. NW. S23. T23. NR 7. W 3<sup>d</sup> PM. S.E. N.E. Sec 30.  
 T23 NR 6. W 3<sup>d</sup> PM. NW. NW. Sec 28 T23 NR 6. W 3<sup>d</sup>  
 PM  $\frac{1}{2}$  N.E. &  $\frac{1}{2}$  S.W. &  $\frac{1}{2}$  S.E. & S.E. Sec 20 &

N.W. Sec 21 T23 NR 6. W 3<sup>rd</sup> PM S.E. S.E. S25 T23  
 R 7. W 3<sup>rd</sup> PM, S.W. N.E. & N.W. S.E. S25 & N.E. N.E. Sec  
 36. T23 NR 7 W 3<sup>rd</sup> PM. W 1/2 SW frac 1/4 S19. W 1/2  
 NW frac 1/4 Sec 30 T23 NR 6. W 3<sup>rd</sup> PM. S.E. N.E. Sec  
 25 T23. NR 7. W 3<sup>rd</sup> PM Together with all and  
 singular the tenements hereditaments and  
 appurtenances therunto belonging or in  
 any wise appertaining to have and to  
 hold the above described premises  
 unto the said party of the second  
 part and to their heirs executors or  
 administrators in Trust nevertheless  
 for the following purposes to wit: In  
 Trust in Case default shall be made  
 by the said party of the first part, his  
 heirs, executors or administrators, to pay  
 the said sum of money above mentioned  
 according to the tenor & effect thereof, then  
 on application of the said Goodrich  
 Willard & Co or the legal holder or holders  
 of said Note, and having first given  
 thirty days notice by publishing the  
 same in a public Newspaper printed  
 in the Country where said premises  
 are situated, then it shall and may  
 be lawful for the said party of the  
 second part, their executors, adminis-  
 trators or attorney duly authorized  
 to take possession of the premises  
 aforesaid, and to sell, or any part thereof,  
 at public sale at such hour and  
 place as the said party of the second  
 part, their executors administrators  
 or attorney may appoint, or to adjourn

Said Sale from Time to time, and upon making Sale as aforesaid, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same in fee simple, and out of money arising from such sale, after first paying all reasonable expenses growing out of the execution of the Trusts aforesaid and all Taxes & assessments levied on the premises aforesaid, or on such part thereof as may be sold for the purpose aforesaid, to pay the said Goodrich Willard & Co. Their representatives executors or administrators, or the legal holder or holders thereof the amount which may then be due on said Note above mentioned for principal & interest, rendering the overplus of the proceeds of such sale (if any there should be) unto the said party of the first part, or his heirs, executors and administrators, In case no default is made in the payment of the aforesaid Note, then this conveyance shall be null & void, In case the aforesaid note and all costs & reasonable expenses of the said Trust shall be satisfied by the sale of part of the premises aforesaid, then the title to and right of entry in the unsold residue of the premises aforesaid shall vest absolutely in the party of the first part, and the

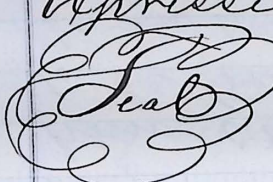
said unsold residue shall be fully discharged from all liens created by the trust aforesaid; And the said William Trent, party of the first part, for himself and his heirs executors and Administrators do hereby covenant to and with the said party of the second part and executors & administrators, and to or with the purchaser or purchasers at the sale aforesaid, that at the time of the enrolling & delivery of these presents, he is well seized of the premises above conveyed as of an indefeasible estate of inheritance in the law in fee simple, and that the same are free from incumbrances of what nature soever, and against all and every person or persons lawfully claiming or to claim the whole or any part thereof, will forever warrant and defend, and that he will, during the continuance of these presents pay all taxes and assessments levied on the above described premises, or on any part thereof, before any advertisement or charges accrue against the said premises.

In witness whereof the said party of the first part ~~part~~ has hereunto set his hand and seal, the day and year first above written.

Signed Sealed & William <sup>his</sup> Trent ~~Seal~~  
 mark

delivered in presence of  
 Samuel W. Fuller - R. Ritter

State of Illinois }  
 Mason County } I Richard Ritter Clerk  
 of the Circuit Court for said County  
 do certify that on this day personally  
 appeared William Trent before me,  
 whose name appears subscribed to the  
 foregoing deed of Trust, and who  
 is personally known to me to be the  
 real person, who & in whose name  
 the acknowledgement of the above  
 deed is proposed to be made, as  
 having executed the same 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 Office at Havana  
 this 24<sup>th</sup> day of April A.D.  
 1858. R. Ritter

for John C. Davis Clerk

State of Illinois }  
 Mason County } I Richard Ritter  
 Clerk of the Circuit  
 Court and Ex officio Recorder  
 in and for said County do hereby  
 certify that the foregoing is a true  
 and perfect copy of the Original  
 Trust deed from William Trent  
 to Goodrich Willard & Co as the same  
 appears of Record in my office  
 In Witness whereof I have  
 hereunto set my hand and  
 affixed my seal of office

at Havana this 31<sup>st</sup> day of  
 December A.D. 1858

R. Ritter Clerk

By W. H. Evans deputy

State of Illinois }  
 County of Jaywell } Benjamin J. Pethyman  
 Plaintiff in the foregoing  
 Bill & Cause of action, being first  
 duly sworn according to Law  
 deposes & says that the matters  
 and things set forth in the foregoing  
 Bill of Complaint, so far as charged,  
 in his own knowledge, is true, and  
 so far as his knowledge is derived  
 from others, he believes the same  
 to be true as charged  
 Sworn to and B. J. Pethyman  
 subscribed before  
 me at my office  
 in Pekin Dec 30/58  
 Samuel P. Bailey J.P.

State of Illinois 3p  
 Tazewell County 3p  
 Let an Injunction  
 issue as prayed for in the foregoing  
 in the foregoing Bill upon the  
 Complainant Benjamin S. Pettyman  
 filing his Bond in the sum of Five  
 Thousand dollars with Security  
 to be approved by the Clerk of the  
 Circuit Court of said County, said  
 Bond conditioned for the payment  
 of all damages which may arise  
 by reason of the wrongful suing  
 out of said injunction, or in  
 case the same shall be dissolved

James Harriott  
 Judge of the 21st  
 Judicial Circuit  
 Done December 31<sup>st</sup> 1858

And afterwards  
 to wit, on the same day last above  
 mentioned an Injunction Bond  
 was filed in words & figures as  
 follows, to wit;

Know all men  
 by these Presents, that We Benjamin  
 S. Pettyman as Principal and  
 Benjamin Piddy as sureties  
 are held and firmly bound  
 unto James G. Goodrich, Peter W.  
 Willard Albat A. Child, Samuel

W. Fuller & Sabir D. Puterbaugh  
 in the Penal sum of Five thousand  
 dollars for the payment of which  
 well & truly to be made <sup>hereby</sup> we bind  
 ourselves, our heirs, Executors and  
 Administrators, firmly by these  
 presents

The condition of the above  
 obligation is such that, whereas,  
 the above bounden Benjamin S.  
 Puttyman has this day prayed for  
 a writ of Injunction from the Hon  
 James Harriott Judge of the 21<sup>st</sup> J<sup>d</sup>  
 Judicial Circuit to restrain the  
 said Goodrich, Willard, Child  
 Fuller & Puterbaugh, their agents  
 Attornies or Solicitors, ~~and others~~  
 from selling or disposing of certain  
 lands in the Counties of Marion  
 & Tazewell, which they claim the  
 right of selling under a certain  
 Deed of Trust, according to the  
 prayer of a Bill filed by said  
 Puttyman against said Goodrich  
 Willard, Child Fuller & Puterbaugh  
 which said writ of Injunction is  
 allowed by said Judge.

Now if the  
 said ~~Benjamin S. Puttyman~~ Puttyman  
 shall pay all such damages as shall  
 be sustained by the said Goodrich  
 Willard, Child, Fuller & Puterbaugh  
 by reason of the wrongful issuing  
 of said injunction, or in case the

47

same shall be dissolved, then  
this Bond to be void otherwise in  
full force & effect

Witness our hands and  
seals this day of Day of Decembe  
A.D. 1858 -

J. S. Pettyman  
Prun Riddy

Taken & approved  
before me this  
31<sup>st</sup> day of Decembe  
A.D. 1858  
M. Young Clerk

Afterwards, to wit, on the  
same day, last aforesaid, Two Subpoena  
writs and a summons issued in the  
words & figures following to wit.

State of Illinois of the People of the State  
Sagewell County of Illinois to James G.  
Goodrich, Peter W. Willard  
Albert A Child Samuel W.  
Fuller and Sabir D. Paterbaugh,  
their agents, Attornies  
servents and representa-  
tives - Greeting;

Whereas Benjamin S Pettyman has  
lately exhibited his Bill of Complaint  
to the Hon James Harriott Judge of the  
21<sup>st</sup> Judicial Circuit of the State of  
Illinois. Wherein among other things  
It is alleged that you the said Good-  
rich, Willard, Child, Fuller & Paterbaugh

and the persons aforesaid are by virtue of a certain deed of Trust executed by our William Trent & wife to you the said Goodrich Willard & Child, as partners under the style of Goodrich Willard & Co (which said deed of Trust was obtained by fraud and a portion thereof forged as it is said & charged in said Bill of Complaint) have advertised for sale and are about to sell at public sale the following described Real Estate to wit:

The S.E. 1/4 of the S.E. 1/4, the S.E. 1/4 of S.W. 1/4 the S.W. 1/4 of S.E. 1/4  
 The N.E. 1/4 of S.W. 1/4 of Sec. 7 Town 23. North Range 6 West  
 3<sup>d</sup> R. the E. 1/2. N.E. 1/4 the S.W. 1/4 N.E. 1/4 the S.E. 1/4 of S.W. 1/4  
 the N.W. 1/4 of N.E. 1/4 the N.E. 1/4 of N.W. 1/4 of Sec 18 in T.  
 23 N. R. 6 W. 3<sup>d</sup> R. M. The S.E. 1/4 of N.W. 1/4. The S.W. 1/4 of  
 N.E. 1/4. the N.W. 1/4 of S.E. 1/4 the N.E. 1/4 of S.W. 1/4 The N. 1/2 of  
 S.E. 1/4 the S.W. 1/4 of S.E. 1/4 & the S.E. 1/4 of N.E. 1/4 of Sec 17 T. 23.  
 N.R. 6. W. 3<sup>d</sup> R. M. The N. 1/2 Lot 3. N.W. 1/4 of S.E. 1/4 & the  
 S. 1/2 of Lot 3 in Sec. 16. T. 23. N.R. 7 W. 3<sup>d</sup> R. M. The N. 1/2  
 of S.E. 1/4. Sec 11 & the N.W. 1/4 of S.E. 1/4 of Sec 14 in the  
 town & Range last aforesaid. Also lots 1. 2. 3. 5.  
 & 6 in Block 4 in the Town of Spring Lake.  
 Lot 1 in Block 5. and lot 5 in Block 2 in the  
 town of Spring Lake All of said lots &  
 lands lying & being in said County  
 of Lawrence. Also the following described  
 Real Estate in Mason County Illinois

The E. 1/2. N.E. Section 30 Town 23. N.R. 6. W. 3<sup>d</sup> R. M.  
 " S. 1/2. N.W. 1/4. " 29 " 23 " " "  
 " S.W. 1/4. S.E. 1/4 " 34 " 22 " 7 " "  
 " S. 1/2 S.E. 1/4 " 23. " 23 " 7 " "  
 " S.W. 1/4 S.W. 1/4 " 34 " 23 " 7 " "

N. 1/2 S.W. frac 1/4	Section 19.	Town 23.	N.R. 6.	W 3 P.M
S.W. 1/4. S.W. 1/4	" 20	" 23	" 6	" "
N.W. 1/4	" 29	" 23	" 6	" "
N. 1/2 N.E. 1/4	" 30	" 23	" 6	" "
S.W. 1/4 N.W. 1/4	" 24	" 23	" 7	" "
N.W. 1/4 N.E. 1/4	" 35	" 23	" 7	" "
S.E. 1/4 S.E. 1/4	" 26	" 23	" 7	" "
N.E. 1/4 S.W. 1/4	" 26	" 23	" 7	" "
N.W. 1/4 N.W. 1/4	" 26	" 23	" 7	" "
S.E. 1/4 N.E. 1/4	" 30	" 23	" 6	" "
S. 1/2 N.E. 1/4	" 20	" 23	" 6	" "
N. 1/2 S.W. 1/4	" 20	" 23	" 6	" "
N. 1/2 S.E. 1/4	" 20	" 23	" 6	" "
S.E. 1/4 S.E. 1/4	" 20	" 23	" 6	" "
N.W. 1/4 S.W. 1/4	" 21	" 23	" 6	" "
S.E. 1/4 S.E. 1/4	" 25	" 23	" 7	" "
S.W. 1/4 N.E. 1/4	" 25	" 23	" 7	" "
N.W. 1/4 S.E. 1/4	" 25	" 23	" 7	" "
N.E. 1/4 N.E. 1/4	" 36	" 23	" 7	" "
W. 1/2 S.W. frac 1/4	" 19	" 23	" 6	" "
W. 1/2 N.W. frac 1/4	" 30	" 23	" 6	" "
S.E. 1/4 N.E. 1/4	" 25	" 23	" 7	" "
E. 1/2 S.E. 1/4	" 20	" 23	" 6	" "
N. 1/2 N.W. 1/4	" 25	" 23	" 7	" "
S.W. 1/4 S.W. 1/4	" 25	" 23	" 7	" "
S.W. 1/4 N.W. 1/4	" 24	" 23	" 7	" "

and the said Benjamin S. Pettyman having by his said Bill prayed for an injunction, which is allowed,

Now therefore We do strictly restrain, prohibit & enjoin you the said James G. Goodrich Peter W. Willard, Albert A. Child, Samuel W. Fuller & Sabin D. Peterbaryh and each of you and

your Agents, Attorneys, Servants and Representatives from further advertising the premises aforesaid, or any of the premises, lots or lands mentioned in said Deed of Trust, and from selling or disposing of the same, or any part thereof, in either Sagwell or Mason Counties in any manner or form, until our said Court make other order to the Contrary.

Witness Myself Merrill C. Young Clerk and the Seal of our Circuit <sup>Court</sup> for said Sagwell County, hereto affixed at office in Pekin this 31<sup>st</sup> day of December in the Year of our Lord one thousand eight hundred and fifty eight

Merrill C. Young Clerk  
To the Sheriff of Mason County to Execute

Which said Writ of Exemption was afterwards to wit: on the 3<sup>d</sup> day of February A D 1859 returned with the following endorsement thereon to wit:

State of Ills  
Mason County  
I do certify hereby certify that I cannot find within my County, the the within named Defendants  
January 28. 1859.

J. H. Waverhorst Sheriff.

Shiff fees copy \$5.00 By J. J. Wavorthorn Dep. Shiff

(Summons)

57

State of Illinois of  
Saxwell County of

The People of the State  
of Illinois to the Sheriff of Malon County;  
Greeting:

We Command you that  
you summon James G. Goodrich  
Peter W. Willard, Albert A. Childs  
Samuel W. Fuller & Sabin D. Peterbaugh  
if found in your County personally  
to 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 Pekin  
in said County on the first  
Monday in the month of April  
next, to answer to a certain Bill  
of Complaint, filed in our  
said Circuit Court on the ~~Chancery~~  
side thereof, against them by  
Benjamin S. Petteyman.

And to do and receive  
whatever our said Court may  
order & decree on the premises.  
And have you true & true this writ, &  
make return thereon, in what  
manner you execute the same  
Witness My hand, Young Clerk of said  
Circuit Court, and the seal  
thereof hereto affixed at Pekin  
this 31st day of December 1858  
Seal Merrill C. Young  
Clerk

Which said summons was afterwards,

To wit, on the 3<sup>d</sup> day of February AD 1859  
returned with an endorsement  
thereon as follows, to wit:

State of Ills 3<sup>d</sup>  
Mason County 3<sup>d</sup> I do hereby certify  
that I cannot within  
my county find the within named  
defendants. Jan'y 28. 1859  
J W Haverhorst Sheriff  
By J J Hawthorn Dep't Sheriff.

(Writ)  
State of Illinois 2<sup>d</sup>  
Tazewell County 2<sup>d</sup>  
The people of the State  
of Illinois to James G Goodrich, Peter W  
Willard, Albert A Child, Samuel W. Fuller  
& Sabiu D. Paterbaugh, their agents,  
attorneys, servants and representa-  
tives, Greeting: Whereas, Benjamin S  
Pettysman has lately exhibited his  
bill of Complaint to the Hon James  
Warriott Judge of the 21<sup>st</sup> Judicial Cir-  
cuit of the State of Illinois, Wherein  
among other things, it is alleged that  
you the said Goodrich, Willard, Child  
Fuller & Paterbaugh and the persons aforesaid  
are by virtue of a certain Deed of Trust  
executed by one William Trent & Wife  
to upon the said Goodrich Willard &  
Child as partners under the style of

Goodrich Willard & Co (which said deed of Trust was obtained by fraud & a portion thereof forged as it is said & charged in said Bill of Complaint) have advertised for sale and are about to sell at Public Sale the following described Real Estate, to-wit:

The S.E. 1/4 of S.E. 1/4. The S.E. 1/4 of N.W. 1/4. the N.W. 1/4 of S.E. 1/4. The N.E. 1/4 of S.W. 1/4 of Sec 7 T. 23 N.R. 6 W. 3 P.M. The E. 1/2 of N.E. 1/4 the S.W. 1/4 of N.E. 1/4. the S.E. 1/4 of N.W. 1/4 The N.W. of the N.E. 1/4. the N.E. 1/4 of N.W. 1/4 of Sec 18 in T. 23. N.R. 6 W. 3 P.M. The S.E. 1/4 N.W. 1/4. the S.W. 1/4 N.E. 1/4. the N.W. 1/4 S.E. 1/4 the N.E. 1/4 S.W. 1/4. The N. 1/2 of S.E. 1/4. the S.W. 1/4 of S.E. 1/4 & the S.E. 1/4 of N.E. 1/4 of Sec 17. T. 23. N.R. 6 W. 3 P.M. The N. 1/2 lot 3. N.W. 1/4 of S.E. 1/4 & S. 1/2 of lot 3. in Sec 16 T. 23 N.R. 7 W. 3 P.M. The S.W. 1/4 of S.E. 1/4 of Sec 11 & the N.W. 1/4 of N.E. 1/4 Sec 14 in the Town & Range last aforesaid; Also lots 1. 2. 3. 5 & 6. in Block 4 in the Town of Spring Lake, Lot 1 in Block 5 and lot 5 in Block 2 in the Town of Spring Lake, all of said lots and lands lying & being in said County of Gazeview.

Also the following described Real Estate in Mason County.

The E. 1/2. N.E. 1/4.	S. 30	Town 23	N.R. 6	W. 3 P.M.
" S. 1/2 N.W. 1/4	S. 29	" 23	" 6	" "
" S.W. 1/4 S.E. 1/4	S. 34	" 22	" 7	" "
" S. 1/2 S.E. 1/4	S. 23	" 23	" 7	" "
" N.W. 1/4 S.W. 1/4	S. 34	" 23	" 7	" "
" W. 1/2 S.W. 1/4	S. 19	" 23	" 6	" "

The SW 1/4 of S.W. 1/4	S. 20	Town 23.	NR 6	W 3 <sup>rd</sup> R. 2
" NW 1/4 of	" 29	" 23	" 6	"
" N 1/2 NE 1/4	" 30	" 23	" 6	"
" SW 1/4 NW 1/4	" 24	" 23	" 7	"
" NW 1/4 NE	" 35	" 23	" 7	"
" SE 1/4 SE.	" 26	" 23	" 7	"
" NE SW	" 26	" 23	" 7	"
" NW NW	" 23	" 23	" 7	"
" SE NE	" 30	" 23	" 6	"
" S 1/2 NE 1/4	" 20	" 23	" 6	"
" N 1/2 SW 1/4	" 20	" 23	" 6	"
" N 1/2 SE 1/4	" 20	" 23	" 6	"
" SE 1/4 SE 1/4	" 20	" 23	" 6	"
" NW 1/4 SW 1/4	" 21	" 23	" 6	"
" SE SE	" 25	" 23	" 7	"
" SW 1/4 NE 1/4	" 25	" 23	" 7	"
" NW 1/4 SE 1/4	" 25	" 23	" 7	"
" NE NE	" 36	" 23	" 7	"
" W 1/2 SW frac 1/4	" 19	" 23	" 6	"
" W 1/2 N.W. frac 1/4	" 30	" 23	" 6	"
" SE 1/4 NE 1/4	" 25	" 23	" 7	"
" S 1/2 SE 1/4	" 20	" 23	" 6	"
" N 1/2 NW 1/4	" 25	" 23	" 7	"
" SW SW	" 25	" 23	" 7	"
" SW NW 1/4	" 24	" 23	" 7	"

And the said Benjamin S. Pettyman having by his said Bill of Complaint prayed for an injunction, which is allowed, now therefore we do hereby strictly restrain, prohibit and enjoin you the said James G. Goodrich Peter C. Willard, Albert A. Child, Samuel W. Fuller & Sabin D. Puterbaugh

and each of you and your agents, attorneys, servants or representatives, from further Advertising the premises aforesaid, or any of the premised lots, or lands mentioned in said Deed of Trust, and from selling or disposing of the same, or any part thereof, in either Tazewell or Macon Counties, in any manner or form until our said Court make other order to the contrary.

Witness Myself Merrill C. Young  
Clerk and the Seal of our Circuit  
Court for said County of Tazewell  
hereto affixed at office in  
Pekin this 31<sup>st</sup> day of December  
in the Year of our Lord one  
thousand eight hundred  
& fifty eight  
Merrill C. Young Clerk

To the Sheriff of Tazewell County  
to Execute

Which said Writ of Injunction  
was afterwards returned on the 8<sup>th</sup>  
day of February A.D. 1859 with the  
following endorsement thereon  
to wit.

"Served the within writ on  
Fuller & Puterbaugh by delivering  
a true copy of the within, also  
on all the other Defendants  
by delivering a true copy for each

of them to Sabin D. Peterbaugh their  
attorney, and <sup>res,</sup> at the same time,  
acknowledging service <sup>for them,</sup> as their  
attorney; this 4th day of January  
A.D. 1859 J. C. Reeves S. J. C.

(Summons)  
State of Illinois }  
Tazewell County } The People of the  
State of Illinois to  
the Sheriff of Tazewell County, Greeting;  
We Command you that  
you summon James G. Goodrich  
Peter H. Willard, Albert S. Childs  
Samuel W. Fuller and Sabin D. Peterbaugh  
if found in your County, personally to  
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 Pekin, in said County  
on the first Monday in the Month  
of February next to answer to a  
certain Bill of Complaint, filed  
in our said Circuit Court on  
the the Chancery side thereof,  
against them by Benjamin  
S. Prittyman

And to do and  
receive whatever our said Court  
may order and decree on the  
premises. And have you then  
and there this writ, and make

return thereon, in what manner  
you execute the same.

Witness Merrill C. Young, Clerk  
of the said Circuit Court,  
and the Seal thereof, hereto  
affixed, at Pekin, this 31<sup>st</sup>  
day of December 1858.

Merrill C. Young Clerk

Which said ~~writ~~ summons  
was afterwards returned on the  
5<sup>th</sup> day of February AD 1859 with  
the following endorsement  
thereon, to wit:

"Served the  
within writ by delivering  
a true copy of the within to  
Fuller & Peterbaugh, also on  
all of the other within Defendants  
by delivering to Sabin D. Peterbaugh  
a true copy for each of them,  
and he, at the same time,  
acknowledging service for them  
as their attorney, this 4<sup>th</sup> day  
of January AD 1859

J. C. Reeves S. C.

And now afterwards to wit:

~~At~~ At a Term of the Circuit Court begun and held at the Court House, in the City of Pekin, within, and for the County of Tazewell and State of Illinois, on the first Monday of the Month of February, in the Year of our Lord one thousand eight hundred and Fifty nine, and on the first day of said Term, it being the seventh day of said Month of February, Present the Honorable James Harriott Judge of the 21st Judicial Circuit of the State of Illinois, composed of Mason Tazewell &c.

The following proceedings were had to wit

Benjamin S. Pettymaw	} In Chancery Injunction & Relief
James G. Goodrich et al	

And now on this 7th day of February A.D. 1859 comes as well the Complainant, in his own proper person, as Sabin D. Puterbaugh Esq. who enters the appearance of James G. Goodrich, P. B. Willard, Albert A. Childs and Samuel W. Fuller, ~~and this case~~ is continued with leave to take evidence in vacation.

# Supreme Court, --- Second Grand Division.

JANUARY TERM, 1860.

B. S. PRETTYMAN,

vs.

GOODRICH WILLARD & Co., et. al.

## BRIEF OF COMPLAINANT.

1st. Complainant insists that the Deed was originally procured, through fraudulent misrepresentation and abused confidence on the part of Defendant, and that the Deed of Trust so obtained ought to be set aside. Whalen vs. Whalen, 3 Cowen 539, 572. And fraud may be presumed—4 Cowen 220; 15 Mass. 113; Breeze R. 33. White's Equity Cases, 420.

2nd. The Deed of Trust was materially altered by the Defendant, after its execution by Trent and wife, and in their absence, without authority, and deeds so altered are void. Miller vs. Stewart, 4 Wash. C. C. Rep. 26. Commissioner vs. Harmion 1, Nott & McCord 554. Barrington et. al. vs. Bank of Washington, 14, Serg. & Rawley, 424. Lewis vs. Payne, 8 Cowen, 71. Perry vs. Corwith 17, John. 449.  
*6 Allen & Miley 200. 2 Dwyer 271 (Graham) 584, 518*

3d. The Deed of Trust is in the nature of and in effect a mortgage. R. Statutes 1845—105, sec. 12.

4th. The Defendants never were in possession of the land, and until possession is taken, the mortgage remains in the light of a chose in action, a mere security for the debt. 4 John. 43.

5th. The matter of the Deed of Trust lies in grant, and cannot exist without Deed, and any alteration of such Deed by the party claiming under it avoids as to him, and not only the remedy by action, but the estate is gone. Lewis vs. Payne, 8 Cowen 75. 1 Nels. Ab. 625. Warring vs. Smyth, 2 Barb. Ch. R. 119, 131.

6th. After execution and acknowledgment of a Deed by husband and wife, the most trifling alteration will render it void, as to the grantors, and the husband alone cannot consent to authorize an agent by Parole to make an alteration inserting other land. Moore vs. Beekham, 4 Bin. 3; Coit vs. Starkweather, 8 Conn. 289. Worrying vs. Smyth, 2 Barb. Ch. R. 133. The wife's title and dower can be transmitted only as provided by statute. Rev. Stat. 107, sec. 12; 12 Ills. 273; 11 Ills. 123; Gill. 276. 125

7. The junior grantee may recover, and is entitled to relief in equity against a senior grantee who fraudulently holds the deed against the original grantor, and insists upon enforcing it and obtaining possession against the junior grantee. Love vs. Belk et. al. 1 Iredell 163, 173, 179. And junior grantees may defend their interest. Warring vs. Smyth, 2 Barb. Ch. 132. *9 Muddell 511.*

Subsequent purchasers are entitled to relief. Isaacs vs. Steel 3 Seam 97, 104; Choteau vs. Jones, 11 Ills. 321, 322, Hildrith vs. Sands, 2. John. Ch. Rep. 50; and are entitled to the statute of frauds equally with the grantor himself, and may support a bill to set aside a fraudulent conveyance. Sands vs. Hildreth 14 John R. 493; Robts. vs. Anderson, 3 John. Ch. R. 377-8-9; Anderson vs. Roberts. 18 John. R. 516; 2 John Ch. R. 35.

And it is not material whether such subsequent purchaser had notice of the fraudulent deed or not, for if he knew of the deed he knew of the fraud, and also that it was void by law. Cowp. Rep. 711, 712; Sterry vs. Arden, 1 John Ch. R. 268; Sands vs. Codwise et. al. 4 John R. 598; Townsend vs. Windham, 2 Vesey 10; Wadsworth vs. Havens, 3 Wendell 411; Clapp vs. Terrill, 20 Pick. R. 247, 4 Kent. 463; 25 Maine 414; Carter vs. Castleberry, 5 Alabama R. 279, and cases cited; 2 Hovenden on Fraud, 73, 74.

8. A Deed fraudulently altered by the grantee after execution and delivery is void, as to the covenants in his favor. An alteration of any covenant avoids the whole Deed. Starky's Evidence 377; B. Nisi Prius 267; 1 Shepherd Touchstone 68, 70; Wallace vs. Honneted 15; Penn. State R. 467; Withers vs. Atkinson, 1 Watts, 246.

9. An agent or attorney cannot bind his principal by Deed unless his authority is under seal. Maus vs. Worthington, 3 Seam. 26; Ingram vs. Little, 14 Georgia 173; Williams vs. Hendly, 3 Bibb. 10. *9 Muddell*

*5-6-68. 522. 12 Muddell 525.*  
10. A parole ratification of a Deed made or altered by Parole authority in part of the grantors in it, is absolutely void. Story on Agency, 242, 252, and 49 and 50. The alteration of the Deed is admitted, and parole or other authority of Mrs. Trent to alter the Deed is not pretended, and as to her and those claiming through her it is void. A Deed void in part is void in toto. Young vs. Pate, Yerger's Rep. 164, 541.  
*14 John R. 485.*

11. The mortgagor in possession has a vested tangible interest, which has always been the subject of sale and conveyance, and the bona fide purchaser succeeds to all his rights. Kruse vs. Scrips, 11 Ills. 104; Story's Eq. Jurisprudence, 1050, 1051 and note; Fitch vs. Pinkard, et. al., 4 Seam. 83.

12. The grantors in a mortgage are cesti qui trusts of the residue if the land and proceeds after payment of the debt secured, and entitled to the same, and a beneficiary of a trust may lawfully assign it when arising out of real estate, and the assignee may in equity enforce his right to the same, although controverted. 2 Story Eq. Jurisprudence, 1050, 1051, 1057. Miller vs. Davidson, 3 Gillman, 523.

13. The description of the land in the Deed to Complainant is full, and includes the property in controversy. *Dot on Vendors 101. 9 Pick 212. 11 Ills 318*

14. The testimony of the Deft's and their witnesses was improperly received, because they are interested and parties to the trust. *Frost 3 Atk 402. 2 Vesey 128. Mithell P. 344, 348. 1 Graham E. 311, 1 Yates R. 28, 200, 2 Dell 248.* PRETTYMAN, Prose.

*Grantor may testify 1 Graham E. 381, 384, 4 Muddell 441*

157-61

Wofford

General Stal.

Brady PA

Filed Jan 27. 65

W. J. Sumner  
CH

Shipping and... Second Grand Division

RECEIVED

# SUPREME COURT.

J A N U A R Y T E R M 1 8 6 0 .

State of Illinois, Second Grand Division.

Benjamin S. Prettyman,

vs.

Goodrich, Willard & Co.

BRIEF OF DEFENDANTS.

1. The deed from Trent to complainant conveys no right to file a bill to set aside a deed given by him to Goodrich, Willard & Co., for fraud.
2. If the deed from Trent to defendants was obtained by fraud, it was not void, but voidable only and capable of confirmation—1 Story Eq. Sec. 263. 16 Ill. 216. 2 Ohio 182. 7 Humphreys 224, 228—White & Tudors' leading cases, vol. 2, part 2d, 218, 223; Ardens vs. Paterson 5, Johns. Chy. R. 44. 2 Story Eq. J. Sec. 1040-9 and notes cited; 1 American leading case 572 and cases there cited—10 Humphreys 577.
3. To take advantage of a fraud is a personal privilege of which none but the party defrauded can take advantage. 16 Ill. 216; 2 Ohio, 182; 10 Humphrey, 577; 2 Story Eq. J. Sec. 1040-9; 1 Iredell's Chy. Rep. 163, 173; 2 Georgian R. 12; 18 Alabama 280; 16 Law and Equity Rep. 411; 10 Humphreys 342; 3 Duer's N. Y. R. 206; 29 Maine 160; 1 Young and Collyer Ex. Ch. Rep. 481, 496; 11 Ill. 522: Maguire vs. Hall 27; Missouri R. 146.
4. A right to take advantage of an alleged fraud may be lost by acquiescence or relinquishment by confirmation. 1 Sugden on vendors 324; 14 Seargent and Rawle 27, 30; 10 Alabama 576, 771; 26 Wendell, 227; 26 Maine, 84, 87; 1 Brown's Chy. cases 3, and cases there cited; 3 Johns. Chy. R. 23; 16 Ill. 216.
5. The deed of trust was read to Trent, and he was bound to know the legal effect of its contents, and a mistake in that knowledge does not furnish him any ground for relief in Equity, 13 Ill. 397; 1 Gilman, 599.
6. If it were true as alleged that the deed was a different security from what Trent expected, and was altered without his consent, yet by his acts he has confirmed it. 7 Humphrey's Rep. 224, 228; 5 Gilman, 176; 4 Scam, 202; 9 Cranch, 153, 161; 26 Wendell, 193, 226; 11 Alabama, 531, 534; 16 Ill. 28, 33; 6 Manning & Granger 236, 242; 11 Alabama, 1059, 1063; 5 Metcalf, 192; 5 Hill, 108, 113; 10 New Hampshire, 538, 553; 1 American leading case, 572, 573, and cases here cited.
7. It is contended that the deed of trust is void, because it was altered after it was executed without being acknowledged. It is not the acknowledgement that passes the estate; the delivery passes the estate. 16 Ill. 445 2 Scam. 316, 373, 4 Kent. 454 12 Johns. Rep. 336, 14 Ill. 469 471.
8. If a party who is defrauded chooses to confirm it is good, and if the parties by consent alter a deed it is good against the world. 4 Johns. 54; 18 Johns. 499; 9 Cranch. 28; 9 Cowen 255; 7 Blackford 412; 5 Bingham 388, 389; 9 Paige 591.
9. This bill is filed to set aside a deed which was given to secure a debt that is admitted to be justly due from Trent to defendants. The complainant should have offered to pay the debt due. The bill contains no such offer, and is therefore defective 18 Vessey 119, 1 Johns. Chy. Rep. 480, 16 Ill. 214 Ill. 207, 11 Ill. 241, 1 Gillman 630.
10. The certified copies of the record of the deed of trust in Mason county were improperly admitted as evidence. Scates, &c., Statutes, 974 975; 1 Starkie Eq. 194.
11. There is no equity in the bill.

612 u

157-81

Godrich vs

vs

Prettyman

Brief

LIBRARY  
COURT

Filed Jan 29 1860

Wm A. Murray  
clerk

State of Illinois } Second Grand Division  
Supreme Court } January Term 1860.

Benjamin S. Prettyman } Additional argu-  
v } ment for Defendants.  
Goodrich Willard Co. }

The certified copies of the record of the deed of trust as recorded in Mason County is not proper evidence.

The original deed was in evidence, and a copy is never admissible where the original is produced, Starkie on Evidence 193. 194. Our statutes give no such rights. By our statutes a certified copy of a deed may be used in evidence when it shall appear to the satisfaction of the court that the original deed so recorded is lost, or is not in the power of the party wishing to use it. I can find no cases in the books where copies like these are permitted to be used as is proposed in this case. (Scates re Statutes 974. 975)

The complainant insists that the defendants Fuller & Puterbaugh who are not interested in the result

of the suit, should not have been permitted to testify because there was no order of court permitting them to do so. It is not necessary to get an order for that purpose. 4 Scam. 135, 139. If the complainant wishes the defendant to testify it might be necessary from the authorities cited by ~~him~~ the complainant to get an order of court for that purpose. A complainant cannot by making uninterested parties defendants cut off their testimony.

The complainant also insists that parties who have altered an instrument by parol are never permitted to prove their authority to do it. This is not the law. An agent is a competent witness to prove his own authority if it be by parol, 1 Greenleaf on Evidence Sec. 416. 5 Mason 242, McGunnagle v Thornton 10 Seargent & Rawles Rep. 251 - Birt v Kershaw 2 East 458.

The complainant contends that a deed of trust is but a mortgage in effect. This court has held that there is a distinction. Reese v Allen 5 Gilman 236. 238

The Complainant in his printed argument has perverted the facts and evidence in the case. which will fully appear by examining the record of the case.

S. D. Puterbaugh  
for Defts.

Supreme Court  
January Term 1860.

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Benjamin S. Prettyman

v

Goodrich Willard & Co

---

Additional arguments  
for Defendants.

Filed Jan 27. 60

Wm. S. Ferry  
clerk

And afterwards to wit on the 8th day of Feb. 1859 the bills Goodrich Willard & Child  
filed their joint and several answers in the words of figures following to wit:

61

State of Illinois 38 Circuit Court  
Tazewell County 3 February Term 1859

Benjamin S. Prettyman  
vs  
Samuel G. Goodrich  
Peter A. Willard  
Albert A. Child  
Samuel Fuller  
S. D. Peterbaugh  
J. Chancery  
Bill of Injunction  
&c

The joint and several answers of Samuel G. Goodrich Peter A. Willard Albert A. Child who partners trading and doing business under the name and style of Goodrich Willard & Co. to the bill of Complaint herein filed by Benjamin S. Prettyman

These defendants now and at all times hereafter deriving all manner of benefit and advantage to themselves of exceptions to the many errors and insufficiencies in said bill contained for answers therunto or unto so much or such parts thereof as these defendants are advised is material for them to make answers unto, they answer and say that they do not know whether the said complainants did on the 8th day of December 1858 or at

any other time purchase of William Trent? for a full good and valuable consideration all of the real Estate which he then owned in the County of Hazwell and also all that he then owned in the County of Mason? These defendants state their belief to be that if any such conveyance was made by said Trent to said Complainant it was done for the purpose of depriving these respondents out of their just rights - as well as other Creditors of said William Trent - whom he justly owes and respondents believe that said Complainant and said Trent are now colluding together for the purpose of depriving said Trent's Creditors of their just dues. Respondents further answering say that it is positively false that said instrument marked Exhibit A to Complainant's bill referred to was in part obtained by fraud and false representations and that it is also false that ~~on~~ all of the said lots and lands lying in Hazwell County, the said Trent never Executed or made any such deed and the whole instrument is false fraudulent and void. Respondents further answering say that it is true that said William Trent at the time stated in said

bill was indebted to these respon-  
 -dents in the sum of twenty thous-  
 -and dollars for which the Execu-  
 -ted his promisory Note dated the  
 30<sup>th</sup> day of March AD 1857 and  
 payable in three months after date  
 thereof with ten per cent interest  
 after maturity Respondents admit  
 that at or about the time stated  
 in Complainants bill said —  
 William Trent Executed a Mortgage or  
 deed of trust to respondents to  
 secure the prompt payment of  
 said Notes with power vested  
 in Respondents to sell under the  
 same without foreclosure and  
 that the same was acknowledged  
 and recorded as stated in the  
 bill and that respondents were  
 not present at the time said  
 deed of trust was Executed but  
 but they were represented by —  
 Samuel W. Fuller whom they had  
 authorized to act for them in  
 every thing in relation thereto  
 Respondents answering further say  
 that they know nothing about whether  
 said Samuel W. Fuller was ever the Cou-  
 -ncil for the said William Trent or not  
 nor whether Complainant relied upon  
 him in any manner in regard to  
 said transaction, these respondents  
 have been informed that said Willi-  
 -am Trent cannot read nor write

Respondents further say that they  
 employed said Fuller for the pur-  
 -pose of obtaining from said Trent a  
 deed of trust to them on all the lands  
 said William Trent had if he could  
 obtain it - and that in procuring  
 said deed of trust said Samuel  
 - W. Fuller proceeded strictly in acco-  
 -rdance with the directions of these  
 respondents" Respondents further  
 answering say that it is wholly false  
 that said Fuller prepared said deed  
 of trust any way different from what  
 said Trent thought it to be, that  
 they believe it to be false that said  
 Trent directed said Fuller to pre-  
 -pare a Mortgage in the ordinary  
 form, for the reasons that said Trent  
 has often spoken to respondents -  
 Goodrich and Willard about exten-  
 -ding the time of sale, they state  
 that they have often advertised -  
 said lands for sale by virtue of the  
 authority given them by said -  
 deed of trust and that said Trent  
 has repeatedly applied to them to  
 extend the time and making favour-  
 -able promises of a payment of said  
 debt at stipulated periods in -  
 large installments - each and all  
 of <sup>said</sup> ~~these~~ promises made at these times  
 by said Trent were broken he  
 would also agree at various

times to give further lands than those mentioned in said deed of trust in consideration of the many exertions given him by Respondents Respondents admit that when the said deed of trust was first executed that only the lands of said Trent in Mason County Illinois were included in the same, but Respondents say that they believe it to be false that said Fuller read said Mortgage to said Trent as being an ordinary Mortgage and Call for Proof of said Charge" Respondents further answering say that it is positively false that said lands were inserted in said deed of trust fraudulently or without the consent or knowledge of said Trent and deny most positively all fraud and combination to injure him in any manner whatever" Respondents state the truth to be, after the execution, acknowledgment, and recording, of the said Mortgage or deed of trust in Mason County State of Illinois, on or about the tenth day of June A.D. 1857 Respondents Willard and said Samuel W Fuller went together to Spring Lake where said Trent then resided with a view of procuring further security for the said indebtedness from said Trent to these respondents and after making known to said Trent that

Respondents desired further security from said Trent for his indebtedness, said Trent procured the signature of his wife to said deed of trust and he together with his wife acknowledged the same in due form of law, he further cheerfully and willingly authorized and directed said Fuller to insert in said deed of trust all the lands said Trent then owned in Tazewell County and for that purpose directed them to examine the records of said Tazewell County in order to ascertain to what lands said Trent had title, he the said Trent directed them to get all the lands they could find, and stated that they could find several deeds in the hands of S. D. Peterbaugh and to insert all the lands described in said deeds in said deed of trust, said Fuller and said Respondent Willard returned to Petkin and said Fuller inserted the lands in said Complainants bill described, and the said mortgage was then recorded in the recorder's office of said Tazewell County Illinois. Respondents positively deny that any lands were fraudulently inserted in said deed of trust, but assert the fact to be that all said lands inserted in said deed were

607

inserted by the express order of  
said "Trent" Respondents further an-  
-swering say that they are informed  
and verily believe it to be false  
that on or about the 23<sup>rd</sup> day of July  
1857 or at any other time that lot  
one in block five, and lot five in-  
-block two in Spring Lake were fraud-  
-ulently inserted in said deed of trust  
and here again deny all fraud  
and combination to injure or cheat  
said Trent, and now state the  
truth to be, as they are informed  
and believe that said Trent repe-  
-atedly called upon Respondents  
attorneys Fuller & Peterbaugh and  
requested that lots two, three, five  
and six in block four Spring-  
-Lake should be released upon the  
records of said County, because he  
wanted to make some trade or exch-  
-ange of them with Mostelle & Brown  
or some other persons and in place  
of said lots said Trent desired  
to have inserted in their stead  
in lieu thereof the said lots one  
in block five and lot five in block  
two which said Trent represented to  
respondents said attorneys as being  
worth thirty five hundred or four  
thousand dollars or at least double  
the value of the property which he  
was anxious to have released, and  
the said Fuller & Peterbaugh at the

urgent solicitations of said William  
 Trent entered upon the records of said  
 County a release of said lots two  
 three five and six in block number  
 four in said Town of Spring Lake in  
 County and State aforesaid and at the  
 request of the said William Trent in-  
 serted said lots one in block four  
 and lot five in block two in Spring  
 Lake aforesaid and had the said  
 deed again recorded at request  
 and expense of said William Trent  
 which said release responds as to  
 to have read on the hearing of this  
 Cause 1 Respondents hope said lots  
 are improved with dwellings there-  
 on and worth at least two thousand  
 dollars as stated in the said bill  
 were they not the said Trent  
 would be guilty of a most base and  
 glaring fraud in making the repre-  
 sentations he did in order to  
 induce respondents <sup>said</sup> attorneys -  
 Fuller & Peterbaugh to make the re-  
 lease aforesaid for said Trent repre-  
 sented them to be worth thirty five  
 hundred or four thousand dollars  
 as an inducement held out to  
 Fuller & Peterbaugh to release one  
 set of lots and insert the other  
 Respondents admit or believe that  
 the lands in Sagwell County are  
 worth eight thousand dollars

69

as stated in Complainants bill but they deny that the lands lying in Mason County Illinois are worth fully the debt of these respondents

Respondents further answering state the fact to be that it will take all the lands mentioned in said deed of trust to fully secure the debt due and owing to these respondents from The said William Trent. Respondents answering again deny the many repeated charges of fraud and combinations made in said bill of Complaint. Respondents admit that they and their said attorneys S. L. Fuller and S. D. Pitzerbaugh as their attorneys have insisted and are now insisting as well they may that said instrument is a deed of trust with full power of sale and with full power to respondents to release and and sell and bar to said Trent and his assigns all right of redemption therein as stated in said bill and that pursuant to said purpose they have now actually advertised all of the said lands and lots in Mason County for sale under and by virtue of said deed of trust, and that they did propose to sell the same at the Court house in Havana on the 13<sup>th</sup> day of January 1859 and they would undoubtedly have done so as they had a right to do at the time

advertised had they not been enjoined by this Honourable Court from so doing" Respondents further answering say that the Charge that the Charge" that said deed of trust under which said defendants propose to sell said lands & Lots is not the deed of said Trent & wife" is a falsehood" they admit that they and said Fuller & Peterbaugh as their attorneys, are now proposing to sell and that they have advertised for sale under said deed of trust all of said lands and lots in Yazoo County inserted in said deed, but they deny that they have done so to wrong the Complainant in his pretended purchase of the same, but that they believe on the other hand that it is the full design of the said Complainant to wrong and injure Respondents the again most positively deny that the Charge made that so far as the said lands and lots in Yazoo County are concerned that the deed is void" and most emphatically deny that said Trent never inserted or authorized them to be inserted in said deed or mortgage or knew it was done until long after the same appeared of record" Respondents further answering state that the said deed of trust is the kind of instrument it was represented to Trent & wife to be"

71

and they deny that said deed is wholly void in every part or in any particular

Respondents further answering say that the Charge that "the said defendants for the purpose of injuring him, and throwing a cloud over the title of said land, and said deed of trust is known to Respondents to be absolutely fraudulent and void in every part are advertising the same to injure the Complainant is false"

they admit that they have advertised the lands and lots in Gajwell County for sale on the 31 day of January 1859 " Respondents state that the " Charge that the defendants by reason of " their false and fraudulent insertions " and by so fraudulently and falsly in " serting the said Gajwell County " lands and lots in said deed " after after the same was Executed " and acknowledge have so embarrassed and clouded the title thereto " that the same was greatly injured in " value, and spent found it difficult " and almost impossible to sell the same " at any thing like a reasonable price " is not true " And Respondents further answering say that it is not true that they have in any manner embarrassed said trust in raising the money to pay off said debt and that instead of there being only

about thirte[n] thousand dollars due on said indebtedness there is as much if not more than twenty thousand dollars due yet on said note and interest." Respondents state that the Charge that the said defendants at the time of preparing said deed of trust or mortgage and at the time they inserted the Yazwell County lands designed thereby to put it out of Trent's power to pay off said note is a base fabrication and that the Charge that the insertion of said lands in Yazwell County into said instrument "was a down right forgery" is also false and that the Charge is a down right forgery and that the said instrument is not void.

Respondents further answering say that they have not tried to embarrass said Trent in paying said note, but they state the truth to be that they have several times advertised said lands in Mason & Yazwell Counties for sale and that Trent repeatedly called upon respondents and their attorneys and asked a postponement of sale and that the said Trent has often agreed to have still other lands in Mason and Yazwell Counties inserted in said deed in consideration of respondents extending the time of sale and has repeatedly talked with respondents in regard to their power of sale

73

without foreclosure in the ordinary way he has always admitted that the said instrument was a deed of trust with power of sale and that said Grant has often spoken to them about the land in Hazlewell County being in said deed and of their right to sell the same on short notice

Respondents deny that they by any conduct of Respondents or their attorneys have embarrassed said Grant in paying said Note) but they state the fact to be that that they have always given him the privilege of selling said lands and paying the proceeds to respondents and that upon said Grant doing the same they were ready and willing to release all lands so sold for any thing like a reasonable price from said deed of trust all of which was well known to said Grant and to Complainant Prettyman

Respondents deny most positively that they designed to put it out of the power of said Grant to pay said Note and redeem said land but state the truth to be that they have at all times and now are willing and anxious to receive the same, the amount of said Note and interest and release said lands from said deed of trust and if said Grant or Mr Prettyman the Complainant will pay the same now they will release the said lands instantly

with pleasure" Respondents further state that said Trent in addition to agreeing to give still more lands to be inserted in said trust has even proposed and insisted on making these respondents a present of a valuable farm in view of the many extensions and favours shown him by respondents which respondents decline receiving believing that it would be better for said Trent to keep said to pay other creditors what he justly owes them and desiring only to receive what was justly due them.

Respondents further answering say that they have not any knowledge of their own in regard to the sale from said Trent to Complainant but state their to be that if any such sale has taken place it was done in order to injure these respondents and other creditors of said Trent they also believe that Complainant and Trent are colluding together for that purpose for Complainant well knew of respondents deed of trust on said lands and has talked with respondent Willard in relation thereto and pledged himself to do all in his power to aid Trent to pay off said indebtedness but instead of fulfilling his agreement in this behalf is now trying to assist said Trent in trying to cover up the title of the

75

land mentioned in said deed of trust. Respondents state that the charge in said bill that respondents and their attorneys unless constrained by the Court will sell, sell lands is just what they intend to do they feel that they have waited long enough on Trent and will now take every justifiable and lawful means to realize the amount due them from said Trent that they will sell said lands unless said note and interest is paid and that it is wholly false that said Trent signed and acknowledged said deed supposing it to be a common mortgage but that said Trent has at all times well known what its legal effect was. Respondents again answering state that they do contend that said instrument is a deed of trust with full power of sale and conveyance of the premises therein described and complete release by Trent of all Equity of Redemption therein. They state that the same was not contrary to Trent's design. And when having fully answered said bill of Complaint these respondents pray a dissolution of said injunction and to be dismissed with their reasonable costs in this behalf most lawfully sustained.

Waller & Peterbaugh } James G. Goodrich  
 Respondents } Peter H. Willard  
 Solicitors } Albert A. Child

State of Missouri }  
 County & City of }  
 St. Louis }

On this 20 day  
 of January A.D. 1859  
 before the undersigned Notary Public  
 in and for said City County and  
 State personally appeared  
 James G. Goodrich Peter H. Willard  
 and Albert A. Child  
 and made oath the matters and  
 things set forth in the foregoing  
 answer are true except such  
 matters as are stated upon belief  
 and that as to those matters they  
 believe it to be true

Edward W. Shandy  
 Notary Public

77

And afterwards to wit on the 8<sup>th</sup> day of February AD 1859 the defendant Samuel W. Fuller filed his answer in the words of figures following to wit

State of Illinois } Circuit Court  
Jaywell county } To February Term 1859

Benjamin S. Prettyman  
vs.

James G. Goodrich  
Peter H. Willard  
Albert A. Child  
Samuel W. Fuller  
Sabin D. Peterbaugh

The separate answer of Samuel W. Fuller one of the defendants to the bill of complaint filed in this cause

This defendant now and at all times hereafter reserving all manner of benefit and advantage to the many errors and insufficiencies in said bill contained for answer for answer thereunto says that he is informed & verily believes that the records of said County of Jaywell show that on the 8<sup>th</sup> day of December AD 1858 the Complainant received a deed of conveyance from William Trent of all the real estate which said Trent then owned in the counties of Jaywell and Mason in said State of Illinois but whether Complainant purchased the same of said Trent for a full good and valuable consideration is a

Matter about which this respondent enters  
 claims great doubt.

Respondant denies that a part of the real estate mentioned in Complaint exhibit "A" to his bill of Complaint were obtained in said deed of trust by fraud and false representations on the part of defendant. And that it is false that all of the lands and lots described in said deed of trust as lying in Yagewell County that said Trent at Pekin in this county during the April Term of the Circuit Court of Yagewell County for the year A.D. 1857 and mentioned to said Trent the fact of the said note being in respondent's hands and asked said Trent to give him such security as asked for by Goodrich Willard & Co said Trent replied that most of his lands were lying in Mason County and he was willing to give the security required and would meet this respondent at Havana in Mason County during the Spring Term of the Circuit Court of 1857 for that county and would then give the said Goodrich Willard & Co the security required.

Said Trent did meet this respondent at Havana at the time agreed upon when said Trent said to this respondent that he had requested Goodrich Willard & Co to send said note

79

to this respondent - to obtain security for the payment thereof as this respondent had been his lawyer and knew about his business and so could not act for both parties said Trent then told this respondent that he expected to pay said Goodrich Willard & Co the amount of said note by shipping to them grain but they were afraid that he would not get grain enough to pay it when due and they wanted he should secure the payment of it in some way and that he (Trent) had proposed to give them a deed of trust - on his lands to secure the said promissory note so that if he did not ship them sufficient grain to pay said promissory note they could at once sell the lands conveyed as security and make their money Before any deed or paper was made said Trent remarked that he was to give them a deed of trust - by which they could sell his lands without applying to court - and this respondent fully advised him before making out said deed of trust - that Goodrich Willard & Co would have the power to do so under a deed of trust and that such an instrument with power to sell on short notice was the kind of instrument of conveyance which said Goodrich Willard & Co wanted said Trent to execute to them all of which the said Trent fully understood

ood

before any deed was made or any examination of titles had and said Trent well knew that a deed of trust was the kind of instrument he was to execute to said Goodrich Willard & Co after these matters had all been talked over said Trent and this respondent went into the Recorders office of said Mason County Illinois to look for lands to be given as security said Trent then took from his Carpet-bag various deeds and evidences of title and requested this respondent to select therefrom sufficient of lands to secure said indebtedness to said Goodrich Willard & Co This respondent made examination of the title of the lands then first offered and found the titles defective said Trent then offered respondent other lands which respondent examined the title to and after enquiring of said Trent as to the value of the same proposed a deed of trust of the same from the said William Trent to the said Goodrich Willard & Co which was read over and fully explained to said Trent before he signed it This defendant denies that he ever represented to said Trent that he was to execute a Mortgage or that he talked of a Mortgage to said Trent but only spoke of a deed of trust with a short power of sale which

81

would cut off all equity of redemption. Answering this respondent further says that he is not certain but believes that said deed of trust as then filled up only contained lands situated in Mason County Illinois. Said deed of trust was then executed acknowledged and delivered by said William Trent to this respondent for the said Goodrich Willard & Co. The same was placed on record about the 24<sup>th</sup> day of April A.D. 1857 for the first time in the said County of Mason.

Respondent further says that early in the month of June A.D. 1857 this respondent and Peter H. Willard of the said firm of Goodrich Willard & Co and one of the defendants to complainant's bill went together to the house of said William Trent - where they met said in Spring Lake in Taylor County where they met said William Trent - said note had then matured and was wholly unpaid and said Trent had not any grain ready to be shipped to said Goodrich Willard & Co and they the said Goodrich Willard & Co were anxious to obtain further security for the payment of the same. Said Trent proposed to give them other land to be inserted in said deed of trust as an additional security for said promissory note from said

Went to the said Goodrich Willard & Co at this time it was talked over between them said Willard and the said Trent that Goodrich Willard & Co could sell out the lands which they held under said deed of trust as a short notice which they did not wish to do as they wanted their money and not the land and were afraid that the land would not then bring the money. The said Trent then pointed out to said Willard certain lots and warehouses and dwelling houses in the town of Spring Lake which he said he owned and would have put in said deed of trust as further security but he could not give the numbers of them as he had not his deeds at home. and said Trent then directed this respondent to insert in said deed of trust certain lands and lots which he named and told this respondent that he would find still another lands and lots belonging to him the said Trent by examining the records of land titles in the recorder's office at Petkin of said Sagewell County at Petkin and certain deeds of land to him which were then at Petkin and directed this respondent to select all or so much thereof as he might deem necessary and proper to make said indebtedness perfectly secure this respondent then in ac-

cordance with the expressed directions of said Trent made such the examinations and inserted in said deed of trust such lands and lots as he had been directed to find and insert by said Trent for that purpose.

This respondent further answering says that he believes he was not present when said deed was acknowledged by said William Trent and his wife before the Justice of the Peace. And respondent further states that said deed of trust was only recorded in the Recorder's office of said Tayewell County on the tenth day of June A.D. 1857 that after it was so recorded and after the lands in Tayewell County had been inserted therein. This respondent saw said Trent and talked with him about the lands included in the said Deed of trust and said Trent at different times applied to defendant to release certain of the lands and lots from said Deed of trust that he Trent might trade them off or complete contracts of sale which he had made with other parties respecting the same but on all these occasions said Trent offered other securities to be given in lieu of those which he wanted to have released in one instance on the 23<sup>rd</sup> day of July A.D. 1857 This respondent consented and on that day released

Lot two three five & six in Block four in the town of Spring Lake in Jayewell County Illinois in consideration of which release said Trent directed this respondent to insert in said Deed of Trust Lot one in Block four Lot five in Block two in the town of Spring Lake in said Jayewell County Illinois and the said Deed was then again recorded at the proper expense of the said Trent

This defendant further answering says that he was then informed by said Trent that he desired to exchange said town lots because of some contract ~~to~~ which he had with Mosteller Brown who then resided at Spring Lake respecting the town lots which were released and said Trent assured this respondent that the lots which he gave in lieu of those released were much more valuable than those which were released and this respondent believes that with said Trent told him that the lots last inserted were the lots whereon he Trent then lived about this time said ~~Mr.~~ Trent said to this defendant that he could make a good sale of another piece of Land which was included in said Deed of trust lying in Jayewell County if it could be released from said Deed of trust and offered other

Security instead this respondent deeming the securities offered insufficient refused to release it - and it was not done respondent however offered to release said tract or any other mentioned in said deed if said Trent would sell them for any thing like a reasonable price and would turn the proceeds over to respondent for the use of Goodrich Willard & Co

During these negotiations respondent and the said William Trent repeatedly talked about the lands included in said Deed of Trust which were in Taywell County and the sufficiency of the security for said indebtedness. During all this time said Trent seemed to know perfectly well what lands were included in said Deed of Trust and in fact did know for the reason that he repeatedly talked with this respondent about their value and the powers which Goodrich Willard & Co possessed under and by virtue of the Deed of Trust - to sell the same absolutely in payment of said promissory note

Respondent further answering says that he hopes that said lot one in Block four and lot five in Block two are improved lots with dwellings thereon and reasonably worth two thousand Dollars because said Trent represented them to be worth

Thirty five hundred or four thousand dollars at the time he was seeking the release of one set of lots and insertion of the other as an inducement for the charge

Defendant further answering says that he has know personal knowledge of the lands in Tazewell County but thinks they are worth eight thousand dollars as stated in Complainant's bill of Complaint nor has he any personal knowledge of the value of the lands mentioned in said Deed of trust situated in Mason County and no information as to their value except what said Trent has from time to time told this respondent. Respondent does not believe that all the lands in said deed of trust included would bring more than the amount of said promisory note and the interest due thereon at public sale at the present time. Respondent further answering says that one reason of said Trent's applying from time to time to release some of the lands included in said deed of trust was that this respondent and said Peter H. Willard another of these defendants had told said Trent that whenever he could cause sale of any of the lands included in said Deed of Trust he might do so and the land

87

Should be released upon his going to defendants or Goodrich Willard & Co the proceeds of such sale or the securities which he might reserve provided such sales were sold for anything near the value of the lands sold but the said Trent never disposed to pay over the proceeds of sales made except in one instance so far as now known to this respondent

Respondent further answering says that the purpose of taking said deed of Trust was solely and only to secure said indebtedness from Trent to Goodrich Willard & Co that said Trent often and always spoke to said respondent of it as a Deed of Trust with power of sale without redemption that said Trent has often spoken to this respondent of the power in said Deed to make said sale the idea that said Deed was or was intended to be a Mortgage deed was never expressed by this respondent to said Trent either before at the time or after the making of said Deed of Trust and this respondent positively denies that he ever inserted any lot or parcel of land in said Deed of Trust except by the express & Direction and authority and with the knowledge of the said William Trent and that said Trent knew perfectly well what lands were in-

included therein and what was the powers of sale contained in said deed of trust and this respondent denies that he was ever directed by the said trust to prepare a mortgage from him to Goodrich Willard & Co or any other or different instrument than the said deed of trust which was prepared and executed as of one said Respondent further answering says that in all said transactions he acted fairly as he supposed as the attorney and for the interest of both parties and did no act or thing except what he understood to be desired by both parties and denies all fraud or intention to deceive or wrong said Trust in that in that matter and now believes that any thing which was done in preparing filling up and executing said Deed of trust was done with the full knowledge of and assent of said William Trent at the time and his repeated approbation of what had been done afterwards and the said Trust was often proposed to this respondent to allow still more lands to be inserted in said deed of trust if the said Goodrich Willard & Co deemed themselves insecure in consideration of those given him the many extortions which they had

89

done from time to time Respondent  
 further answering admits it to be true  
 as stated in complainant's bill that  
 said lands were advertised to be sold  
 and states that they have been adver-  
 tised for sale several times and  
 that sales were postponed from time  
 to time at the instance of said Trent  
 upon his making repeated promises  
 and pledges to pay said note at stated  
 period Respondent further answering  
 says that there is about twenty thousand  
 dollars due to said Goodrich Will-  
 and & Co on said promissory note and  
 the interest and that said note has  
 been due and payable over twenty  
 months Respondent <sup>admits that the said instrument</sup> executed <sup>means</sup>  
 to said Goodrich Willand & Co by  
 said William Trent was and is a  
 deed of trust with full power to  
 sell and insists that such was the  
 intention of said Goodrich Willand & Co  
 and this respondent as well as the said  
 Wm Trent Respondent further  
 states that said instrument was made  
 solely as a security to said Goodrich  
 Willand & Co for said indebtedness and  
 not for any fraudulent or wicked  
 purpose to deprive said Wm Trent of  
 his lands or property and the defen-  
 dant believes that said Goodrich Willand  
 & Co would most gladly release every  
 acre of said land if said Trent  
 would pay them what he justly owes

them or on said promissory note

Respondent further answering says that said lands have been several times advertised for sale under said deed of trust with the full knowledge of the said Wm Trent but have not been sold as this respondent believes because of said Trent's promises to Goodrich Willard & Co to pay said indebtedness to them in some other way and their pay was all they wanted and not the lands of the said William Trent. This respondent further answering ~~positively~~ denies all fraud, forgery or corrupt dealings or intention towards said Trent or the complainant in that matter. Respondent denies the charge that the said defendants for the purpose injuring complainant and throwing a cloud over the title of said lands for sale on the 31<sup>st</sup> of January A.D. 1859 is true.

Respondent admits that the said Goodrich Willard & Co have advertised all the said lands in Jaywell County Illinois for sale on the 31<sup>st</sup> of January A.D. 1859 and they had also advertised all the Mason County lands for sale 13<sup>th</sup> day of January <sup>A.D. 1859</sup> when this respondent contends they had a perfect and complete right to do under and by virtue of said deed of trust and that the lands

would have been sold as above stated had the injunction in this case been granted. Respondent further answering again states that he is informed and believes it appears on the records of Jayewell County Illinois that said William Trent has conveyed all the lands owned by him in the counties of Jayewell & Mason to Benjamin S. Prettyman the Complainant but this respondent does not know whether the said purchase or supposed purchase was made or subject to the Deed of Trust to one L. M. Green on the part of the same and also to the Crew of Avers judgements against said Trent and that Complainant paid therefore a full and valuable consideration. Respondent states his belief to be that the said conveyance was made for the purpose of trying to defraud the said Goodrich Millard & Co out of what was justly owing to them from said William Trent said Complainant well knowing and understanding at the time of said conveyance that said Trent owing said Goodrich Millard & Co and had given to them a deed of trust on the lands mentioned in said deed of Trust.

Respondent further answering states

that he never had nor has now any  
 interest in the claim against said  
 Trent or the deed of trust or any  
 matter in controversy except as  
 attorney and adviser of the parties  
 of said deed of trust and has done  
 nothing or advised nothing but  
~~part~~ what he understood to be the  
 wish and purpose of both parties  
 to effect a complete and efficient  
 security for said Trent's indebted-  
 ness to said Goodrich Willard  
 & Co and now denies once for all  
 that in making said deed in  
 filling up the same reading the  
 same to said Trent or releasing  
 any of the lands therein inserted  
 that he deceived the said Trent  
 or misrepresented any matter  
 or thing to him but did say every  
 act with said Trent's full know-  
 ledge at the time and his often  
 repeated approbation afterwards  
 And now having fully answered  
 the complainant's Bill this respon-  
 -dant prays to be dismissed with  
 his reasonable costs in this beh-  
 -alf most wrongfully sustained

Saml W Fuller

Fuller & Puterbaugh }  
 Solicitors for Defto

State of Illinois }  
 Jayewell County } Samuel W Fuller  
 being duly sworn ac-  
 cording to law on oath says that  
 the matters and things set forth in the  
 foregoing answer in Chancery so far  
 as the same are stated upon his own  
 knowledge are true in substance and  
 fact and so far as stated to be true  
 upon his information and belief he  
 has good reason to believe and does  
 believe them to be true

Samuel W Fuller  
 Subscribed and sworn to before  
 me this 28<sup>th</sup> day of January A.D.  
 1859 S. D. Pulenbaugh N.S.

(11)  
96

And afterwards to wit on the 8<sup>th</sup> day of Feb<sup>y</sup>  
A.D. 1859. The defendant Paterbaugh filed his answer  
In the words of request follows to wit:

State of Illinois } In the Circuit Court  
Jaywell County } February Term  
A.D. 1859

Benj. S. Prettyman }  
vs }  
James S. Goodrich } In Chancery  
Peter H. Willard }  
Albert A Child }  
Saml W Fuller }  
S. D. Paterbaugh }

The separate answer of S. D. Paterbaugh one of the defendants to the bill of complaint filed in the above entitled cause.

This defendant now and at all times hereafter reserving all manner of benefit and advantage to the many errors and insufficiencies in said bill continued for answer thereto says:

That he has seen from the records of the Recorders Office of Jaywell County that there was a conveyance made by William Trent to complainant on the 8<sup>th</sup> day of December 1858 all of the real estate which Trent then owned in the counties of Jaywell and Mason in the State of Illinois

but whether the same were conveyed for a full good and valuable consideration respondents entertains great doubts but believes said conveyance was made for the sole purpose of defrauding the said Goodrich Willard & Co of their just rights

Respondent denies that the said instrument of which Exhibit "A" referred to in the Complainant's bill is a copy was in part obtained by fraud and full representation on the part of defendants - And that it is positively false that the lots and lands lying in Jaywell County were not inserted in said deed with the consent of said Trent and that Trent never executed or made any such deed and that the whole instrument is not false fraudulent and void Respondent further answering admits that defendants have authorized said lands for sale under and by virtue of said deed of trust as well they may and that it was fully the intention of said defendants to sell said lands under and by virtue of the same

Respondents admit that the said William Trent at the time stated in complainant's bill was indebted to Goodrich Willard & Co in the sum of Twenty thousand dollars for which he executed his promissory note dated

98

the 30<sup>th</sup> day of March aD 1857 and payable in three months after date thereof with ten per cent interest from after maturity - And that at or about the time stated in complainant's bill said Trent executed a mortgage or deed of trust to Goodrich Willard & Co ~~to sell under the same with foreclosure~~ and that to secure the prompt payment of said note with power vested in said Goodrich Willard & Co to sell under the same without foreclosure and that same was acknowledged and recorded as stated in the bill and that Goodrich Willard & Co and Child were not present at the time said deed of trust was executed but they were represented by Samuel W. Fuller whom they had authorized to act for them in every thing in relation thereto Respondents admit that said Fuller had been said Trent's Counsel and respondents believe said Trent relied on said Fuller in preparing said deed of trust for the reason that said Trent has often since the said deed of trust was executed and since the insertions of the Tazewell County lands in said deed of trust by said Trent authority and since the same was advertised for sale and when said Trent was fully known to said lands being in said deed and that said deed was a trust

deed said to the respondent that he had the utmost confidence in said Fuller and that he had always been fair and done what was right with him the said Trent for this reason and others this respondent thinks said Trent fully relied on any representation or statement said Fuller may have made in the matter.

But the respondents do not believe that said Fuller represented represented said instrument as being a common mortgage or represented it to be anything else than what it really was and is.

Respondent admits that when the said deed of trust was first executed that only the lands of said Trent in Mason County Illinois were included in the same respondent says that he believes it to be false that said Fuller read said mortgage to said Trent as being an ordinary mortgage that it is positively false that said lands in Jaywell County were inserted in said deed of trust fraudulently or without the consent or knowledge of said Trent and denies all fraud and combination to injure him in any manner. Respondent states the truth to be that after the execution acknowledgment and recording of the said deed of trust in Mason

(15)  
100

County on or about the 10<sup>th</sup> day of June A D 1857 Peter H. Willard of the firm of Goodrich Willard & Co and Samuel W Fuller went together to Spring Lake where said Trent resided to procure further security for said Trent indebted to Goodrich Willard & Co at which time respondent is informed and believes that said Trent authorized said Fuller to insert said Faywell County lands said Fuller and Willard returned to Pekin and stated that Trent had authorized them to insert all the lands embraced in certain deeds in my hands the lands were then inserted said Trent came to Pekin in a very short time thereafter and said to this respondent that he had authorized Fuller to insert in said deed of trust all the lands mentioned in the deeds in my hands belonging to said Trent and as much more of his lands as they wanted to make them safe often afterwards said Trent in conversation with respondent spoke of said deed of trust and of the deed lands in Faywell County and this respondent as one of the attorneys and agent for said Goodrich Willard & Co told said Trent to go on and sell said lands in Faywell <sup>& Mason</sup> Counties and apply the proceeds of such sale on the said note

The said Goodrich Willard & Co  
and that upon his doing so that  
respondant would release the same  
from deed of Trust said Trent  
said that said proposition was fair  
and equitable and that he would  
sell as much of said lands as  
he could and apply the proceeds  
towards the payment of Goodrich  
Willard & Co debt against him  
And in pursuance of said agreement  
said Trent did sell part of the  
land lying in Jaywell County to  
a man by the name of M<sup>c</sup>Harry  
and said Trent applied to this re-  
spondant to release said land  
sold from said deed of Trust and  
paid to this respondant the proceed  
of such sale whereupon respondant  
released the lands sold in pursu-  
ance of said agreement said Trent  
has also repeatedly spoke to respon-  
dant about the said deed of Trust  
on his Jaywell County lands as being  
right and proper and in one case  
he told respondant that he had re-  
perfected the title of one piece of  
land in Jaywell County in such  
a way as to make it clear in  
Goodrich Willard & Co Respondant  
most positively deny that any such  
lands were inserted in said deed  
of Trust without the knowledge  
or consent of said Trent  
Respondant further answering says

that it is positively false that  
defendants did on the 23<sup>rd</sup> day of  
July A.D. 1857 or at any other time  
fraudulently combining and collecting  
together to cheat wrong and defraud  
said Trent & wife inserted and wrote  
or caused to be written or inserted  
into said deed of trust without  
the knowledge or due leave or con-  
sent of said Trent or his wife  
Lot one in block five and lot  
five in Block Two in said town  
of Spring Lake Respondent  
states the truth to be in relation  
to the insertion of said lots into  
said deed to be as follows: That  
said Trent had often and repeate-  
dly importuned and urged respondent  
and said Samuel W Fuller who were  
the attorneys for said Goodrich  
Willard & Co to release lots Two three  
five and six in Block Four (4) in  
the Town of Spring Lake in said  
Tazewell County from said deed of  
Trust in order that he might make  
some change with the same said  
Trent offered as an inducement to  
respondent that if they would release  
said lots he would give other lots  
in lieu thereof which he represents  
as being worth thirty five hundred  
or four thousand dollars in order  
to accommodate said Trent-respondent  
and said Fuller consented to make

a release of said lots and at the request and in accordance with the express direction and authority of said William Trent said Fuller released said lots Two Three Four and six in Block Four in Spring Lake and this respondent inserted in said deed by the authority of said Trent as aforesaid deed lot one in Block Four and lot five in Block Two in Spring Lake and the said deed was recorded in the recorder's office of said Jayville County after being so changed in the presence of said William Trent who paid the expenses of the recording and expressed himself greatly satisfied at the accommodation he had received and respondent further answering says he hopes that said lots last inserted are improved lots with dwelling thereon as stated in complainant's bill because said Trent had represented them to respondent to be worth as aforesaid thirty five hundred or four thousand dollars Trent represented one of the lots to be the lot on which his residence in Spring Lake is built and told this respondent that the house had in its self cost thirty hundred or four thousand dollars and respondent is not now surprised that said complainant represents

(9)  
104

as being worth two thousand dollars Respondent admits that the land in said deed of trust lying in Jaywell County are worth about Eight Thousand Dollars but respondent doubts very much whether the lands lying in Mason County are worth the amount of said debt but states his belief to be that the whole of the land and town lots mentioned in said deed are <sup>not</sup> more than sufficient to fully secure Goodrich Willard & Co debt due from said Trent Respondent further answering says that it is false that said Trent executed the deed of Trust on the lands in Mason County with the understanding that it was a common Mortgage but that said Trent knew it to be a deed of trust with full power of sale vested in said Goodrich Willard & Co to sell said land without any right of redemption and that said Trent well knew what was the legal effect

Respondent further answering says that it is true that Goodrich Willard & Co and Samuel W Fuller & this respondent have insisted and are now insisting that said instrument is a deed of trust as well they may with full power of sale and with full power to them to

release and sell and bar to said Trent and his assignee all equity of redemption to said lands and that in pursuance to said deed of trust they did actually advertise all of the said lands and lots in Mason County under and by virtue of said deed of trust on the 13<sup>th</sup> day of January A.D. 1859

Respondent again denies that the said deed so far as the land in Jaywell County are concerned it is not the deed of said Trent but states the fact to be that the same were inserted into said deed of trust by the expressed authority and request of said William Trent and that it is utterly false that said Trent did not know they were so inserted in said deed until long after the same appeared of record and states that said deed is exactly the kind of instrument it was represented to said Trent to be and that the same as far as said lands and lots are concerned is not wholly void in any part or particular

Respondent states the fact to be that they the said Goodrich Willard & Co advertised for sale on the 2<sup>d</sup> day April A.D. 1858 all the said lands lying in Mason County Illinois and all the said lands in Jaywell Coun<sup>ty</sup>

on the 5<sup>th</sup> day of April a.D. 1858  
and that said sales were postponed  
with the understanding that said  
Trent was to pay the whole or  
large part of said Twenty thousand  
dollars within a few months and  
that the whole of the said lands have  
often since been advertised for sale  
and said Trent has never denied  
until recently that the lands were  
rightly in said deed but has al-  
ways expressed his willingness to put  
still more lands in said deed of  
trust if Goodrich Willard & Co desired  
it or thought themselves insecure  
and has often times since said that  
last land was inserted authorized.  
This respondent to hunt up title  
to more of his lands and insert  
same in said deed of trust and at  
one time furnished respondent  
with deed to select land from to  
have inserted in said deed which  
was not inserted in said deed and  
respondent further asserts that said  
Trent offered and was anxious to  
make said Goodrich Willard & Co a  
deed out right or present to a  
valuable farm situated in  
Mason County Illinois which he  
desired them to receive a token  
of his appreciation of their kind-  
ness, in the many favors and ex-  
tentions extended to him by Goodrich  
Willard & Co

said money due them now and if said Trent or his college B. S. Prettiman will pay the same now this respondent assure them that said Goodrich Willard & Co will receive the same and release the said lands with pleasure This respondent states the fact-to-be that the said Goodrich Willard & Co have always been willing to release any of said lands from said deed of trust if Trent would make sale of same and apply the proceeds towards the payment of their debts and in order to facilitate the sale of said lands they the said Goodrich Willard & Co executed to this respondent a power of attorney to release any of said lands to the persons to whom said Trent might make sale and said Complainant and said Trent well knew the facts above stated Respondent further answering says that the charge that the insertion of the Gaywell County lands and lots into said deed of trust is a down right forgery - is false and the making of said charge is committing a bare faced perjury and said deed is not void - Respondent admits that the said lands lying in Gaywell County were advertised for sale in Petkin the 31<sup>st</sup> day of February A.D. 1859 and that they would have been sold had it not been for the injunction in this cause Respondent further

answering says that it appears from the records and the statements of said complainant that he has purchased all the lands of said Trent in said Counties of Taywell and Mason but it is a matter of very grave doubt whether said purchase was for a valuable consideration or whether the same was not made for the purpose of defrauding the said Goodrich Willard & Co out of their just equitable rights. Respondent believe the fact to be that said Trent and complainant are now colluding together to defraud the Creditors of said Trent. The charge made in complainant's bill that the defendants will unless restrained by the court sell said lands is true as they will undoubtedly will as they have a just equitable and legal right to do having waited on said Trent until the said note against said Trent is now over nineteen months due and payable and they now feel themselves perfectly justifiable in selling the same at once in satisfaction of their debt.

Respondent again answering denies all fraud combination colluding or collusion to cheat or defraud the said Trent or to injure him or the complainant in any manner whatever. Respondent further answering says that he never had nor has now any interest in said deed of trust

Nor the indebtedness from said Trent-  
to the said Goodrich Willard & Co except  
as attorney for said Goodrich Willard  
& Co. and desires now nothing more  
than that strict justice shall be done  
in the matter

And now having fully answered Com-  
plainant's bill this respondent prays  
to be dismissed with his reasonable  
costs and charge in this behalf most  
wrongfully sustained

S. D. Puterbaugh

State of Illinois }  
Jaywell County }

Personably appeared  
before me S. D. Puterbaugh

who signed the foregoing answer in Chan-  
cery. who being sworn on oath said  
that the matters therein stated to be  
true in substance and fact, and so  
far as stated to be true upon his in-  
formation and belief, he has good  
reason to believe, and does believe  
them to be true

S. D. Puterbaugh

Subscribed & sworn to before  
me this 8<sup>th</sup> day of February A.D. 1859

M. C. Young Clerk  
By S. W. Stone D. C.

And afterwards to wit on the 8<sup>th</sup>  
day of February A.D. 1859 the  
Complainant filed his  
application to the defendants  
for a several answers in writing

and answers following to wit:

vs  
James L. Goodrich  
Albans. A. Childs  
Peter H. Willard  
Samuel W. Fuller  
Sabin D. Puttbaugh

In Chancery for  
Injunction & of  
the February Term  
Court of the Faywell  
County Circuit  
Court A.D. 1859

And the said compl-  
aintant. For replication to the said  
several answer of said Defendants  
filed said cause aforesaid says that  
the matters and things in the said cause  
answers of the said Defendants as  
therein set forth are not true certain  
and sufficient as therein set forth and  
that the matters and things set forth  
in said Bill of complaint are true  
certain and sufficient, as he is ready  
and where ever this Honorable Court  
shall Direct-

Prettyman  
Prose

1.12)

And afterwards to wit, on the 16<sup>th</sup> day  
of said Term of said Court, it being the  
24<sup>th</sup> day of February A. D. 1859  
Pursuit to and James Harriott Judge 21<sup>st</sup>  
Judicial Circuit of the State of Illinois; vs  
The following Proceedings were had

Benjamin S. Pettysman } In Chancery  
James G. Goodrich et al } Injunction &  
Relief

And now on this  
24<sup>th</sup> day of February A. D. 1859 Comes  
as well the Complainant, in his  
own proper person, as the Defendants  
by Sabin D. Peterburgh, their attorney,  
and by agreement this cause  
is continued with leave to  
take evidence in Vacation.

Afterwards, the defendants  
Filed June 13th 1859 their amended  
answer to their said answers in  
the words of figures following

To Wit:

In Gaywell County Circuit  
Court State of Illinois  
June Term A.D. 1859

Benj. S. Prettyman Comptroller

vs

Goodrich Willard

Child Fuller &

Puterbaugh Defendants

In Chancery

And now by leave of the Court  
came each of the above named Def-  
endants and by way of Amendment  
to each one of their ~~trial~~ answers  
heretofore filed in this cause  
crave the same benefit of a ~~plea~~ <sup>demurrer</sup>  
to complainant's bill, the same as if  
they had each demurred to the same,  
before filing their several answers  
to the same, which is the same, which  
is allowed, there.

Roberts Puterbaugh & Fuller  
Solicitors for Defs.

In Circuit Court Jaywell  
County Illinois  
June Term A.D. 1859

Benj. S. Prettyman }  
vs }  
Goodrich Willard & al. }  
In Chancery

And now came the defendants  
in this cause and move that the  
injunction in this cause allowed, be  
dissolved, because,

First. There is no equity  
in the bill

Secondly

because the answers  
of the defendants now here on file and  
sworn to, deny all the material alle-  
gations, and equity of the bill

by their solicitors

James Roberts

Fuller & Peterbaugh



Afterwards to wit on the 22<sup>nd</sup> day of  
December A.D. 1859 a Decree was  
filed in the words & figures following  
to wit:

State of Illinois } Circuit Court  
Sagwell County } Said County June  
Term 1859

Benjamin S. Pettyman  
v  
James G. Goodrich  
Peter W. Willard  
Albert A. Child  
partners as Goodrich Willard & Co.  
Samuel W. Fuller  
and S. D. Peterbaugh

In Chancery

And the  
Court now having had this cause  
under advisement, with the  
agreement of both parties to said  
suit, that the same might be taken  
under advisement and decided  
in any vacation, and a decree  
therein entered with like effect  
as if the same had been decided  
at the above entitled Term—  
And now the Court having fully  
considered the matter, It is ordered  
adjudged and decreed, by the Court,  
that the Complainant's Bill be  
dismissed, and that the Com-  
plainant pay the costs of this suit—  
and that this decree be entered

117

and recorded, by the Clerks of the  
June Term 1859  
James Harriott

Also, afterwards to wit on the 22<sup>nd</sup>  
day of December AD 1859 a Bill  
of exceptions was filed in the words  
of figures following to wit:

State of Illinois } In Circuit Court  
Tazewell County } of June Term 1859

Benjamin S. Pettyman

James G. Goodrich

Peter W. Willards

Albert A. Child

Samuel W. Fuller

Samuel Peterbaugh

Bill of  
Exceptions

Be it remembered  
that upon the hearing of this Cause  
the following was all the evidence  
given in the Cause, either by  
depositions or otherwise.



That Dr. Couder be named the same as a mortgage. And he held the deed all the time. The same evening Pitter came to me and told me that there was some doubt about that using the same as a mortgage but he rather thought I had got my fingers burnt.

Fuller & Willard came to Springfield some time after.

I cannot say how long but think it must be a month to get my wife a acknowledgment & before they came there and after I came from Havana I told my wife I had had given a mortgage on some Mason Co land & that some time she would have to acknowledge the deed.

When they came there I know what the cause for Mr Daniels was in there, and when they came he called Mr Daniels in and they all came into the house and we then were short time. I don't think the deed was read over.

Mr Daniels told my wife a acknowledgment and never did at any other time to my knowledge. I did not acknowledge the deed at that time.

There was no land or town lots in Sapwell County in the deed of Trust at the time I acknowledged it in Havana and then not any in

120

Cross E

at the time my wife acknowledged  
it at Spring Lake that is right  
up & down as straight as a string,  
At the time they were at Spring  
Lake, I had bought a tract of land  
in Mason County & I offered to let  
them pass it in at that time,  
but they did not put it in to  
my knowledge or any rate they  
took no acknowledgment of it.  
I told them this much that if  
they failed that there was not lands  
enough in, I would put in more, but  
they were not to be in Mason County  
I did not own them at any time  
to put in any Taylor County lands,  
I can't recollect about any talk  
at that time about putting in  
any Taylor County lands, I can't  
recollect that owned any Taylor County  
lands when put in, but I might  
have done so, but I thought that Dr  
could not be done if kept before  
some squires or some officer.  
I did not know that they were any  
Taylor County lands in at that time  
I can't recollect at that time of owning  
any Taylor lands in or any lots  
in Spring Lake, because I did not  
expect that they would ever be  
any trouble about it. I expected  
the debt to be paid & that they would  
see no trouble about it.  
The fears that I ever knew anything

About my Tazewell lands being it given from Petersburg was settling with me & asked me if B. Sinner what I further understood Expansion

I had before the 10 June 1857 made Deed of Trust in Tazewell County lands to Green or some of my heirs a acknowledgment of Deed to G.W. & Co, I did not know that any of the lands I had given a Deed of Trust to Green or some in the Deed to G.W. & Co, and I don't recollect of ever directing Mr Fuller or any body else to put any of the lands that were in Deed of Trust to Green in Tazewell County to be put in the Deed to Norwich Millers & Co.

I don't recollect of having directed them to put in any lands at all that lay in Tazewell County

Canter say how long after my wife's acknowledgment that I first knew that there were Tazewell County lands in the Deed of Trust to G.W. & Co, I can't say how long.

at time of my wife's acknowledgment G.W. & Co did not pay me any money - did not take a new note, never was seen or note given. Don't remember whether the note was then due.

I sold the lands in said Deed of Trust to B. Sinner, Canter say or what date must be some 8 or 9 months since.

About the 8th of December last is  
the time I think, I sold to hire  
all the lands that I owned in  
Tahmell and Munn Counties.

The Consideration was about as  
follows; there was about \$2340. in  
hands of Judge Hamwith against Mr  
Wm Priddyman paid; I own Bacon  
of Mission about \$500. as near as I  
can collect & Priddyman <sup>which he paid me</sup> was security  
on note to Tom Gill I think some  
5 or \$600. that he was to left;  
there was a claim of about \$100 to  
Sam Raper that he was security  
on that he agreed to take up;  
There was a Mortgage lien on my 80  
acres paid of this land of some \$275  
and he was to redeem that; There  
was dealing with Dick Ireland I  
think \$150. that he was also security  
on that he agreed to take up; There  
was a Debt to a man by the name  
of Howard of Lexington Co of \$700. that he  
was security on he was to pay;

Mr I had a Debt of \$117 against  
a man by name of Samuel C. I had  
collected & turned that in; There was  
\$110. to Dr. Meligs that I turned in;  
There was the Receipt on some  
lands that I had sold to Mr Henry,  
I don't recollect the amount some  
300 or \$400, but whatever the amount  
was he was to redeem it; that is about  
all Except there were some small

Matters of deal between us of our kind  
and another that were turned in.  
There was a note also with Anthony  
& including as security of \$25 or  
thereabouts that he was also to  
take up.

The notes that were in the name  
as of Harriet were taken up &  
I think before the deed was made  
to Anthony. The Debt to Bacon  
has been paid & the note delivered  
up to us - the Debt to Gill I  
don't know whether it has been  
paid or not, but he has never done  
me for it.

Cross Examined  
 Don't recollect when Fuller  
 first spoke to me about the  
 Debt of W & Co. Might have been at  
 Justice Circuit Court before the  
 Nevada Court, but don't recollect,  
 but not certain he ever spoke  
 to me about it before the Nevada  
 Court.

Do not recollect the room in  
 Nevada Court House when the Debt  
 was made, but think it was not in the  
 office of Ritter it might have been  
 however.

I recollect Mr Fuller getting  
 a blank sheet when, but cannot  
 say whether he got it of Fullerton or not.  
 Don't recollect that it was made in  
 the office of Ritter that evening.  
 Cannot say that I took from my  
 Carpet sack a lot of Deeds on lands  
 in Mason County & Nevada then to  
 Fullerton Examine titles & that Fuller  
 after looking for letter found that  
 they both had been sold under Justice Court,  
 it might have been however but I cannot  
 say.

Don't recollect of Fuller and  
 myself Consulting Bill Gross about the  
 value of the lands, Don't think he was  
 there, he might have been however but  
 Don't recollect of any one that was present  
 at the time.

Don't think Fuller first —

Called me in Dublin to give Deed of Trust on land in Tazewell County, & Don't recollect that I ever prepared to give a Deed of Trust to any lands in Tazewell County.

Don't recollect of ever writing to Fuller from Springfield to make Deed of Trust of lands in Tazewell County.

Don't recollect of giving Fuller or Keavane two different sets of Deeds to take the lands from in Mason County. There never was but the Mason County lands offered.

Think the Deed was read to me at the time.

Don't recollect who gave Fuller the Blank Deed or think he read it to me in the room where it was made. Don't recollect of his reading it to me in the office of Ritter.

Don't recollect of asking Fuller to fix the time of advertising to sell under Deed at 90 days.

Did not understand Fuller to say to me at the time that H. M. C. could sell off the land any time on giving 30 day notice.

Mr Pratt was in my employ in Spring of 1857.

Don't recollect who paid for recording the Deed at Mason County.

Mr who paid Ritter for the acknowledgment  
ing it

I think it was soon in the  
Morning that Willard & Fuller came to  
my house at the time of talking my  
wife's acknowledgment, cannot say  
for certain, but think it was early  
in the day.

As well as I recollect it  
Fuller Willard Daniels & myself were all  
present at the time my wife's acknowledgment.

I suppose Willard came then that  
Morning to get signature of wife in her own  
hand what was done at any rate,  
Don't recollect of going with Fuller & Willard  
to the Store House & Warehouse and  
telling them their value & from  
whom I got them.

Don't recollect of Willard's  
asking me to give him non security  
on that note, but he might have done it  
but I don't think so.

At the time the note  
was given in St Louis I offered to give  
them security, it might have been  
called a Deed of Trust it is possible  
it was.

Don't recollect of J.W. & Co  
asking me for a conveyance that they  
could close quicker than a mortgage.  
It is very likely that I did tell  
J.W. Pratt that I was going to give them  
a Deed of Trust, I don't recollect though  
now.

I don't think I ever told J W Pratts that I had given them a Deed of Trust on any land, less I might -  
I don't think I ever told Captain Smith that I was going to give them a Deed of Trust on any lands and Town Lots in Tazewell County.

I don't believe I ever told Capt Smith I had given them a Deed of Trust on any lands in Tazewell County. Did not ever tell Capt Smith last fall after I had filed a bill against them that I was just using it to frighten them off a year or two so that I could get the crops.

I don't recollect of telling Dr Matthew that I had put into Deed of Trust to G W & Co certain Town Lots in which Matthew Brown was interested.

I don't recollect of saying when Fuller & Willard were at Spring Lake that I would give him a Deed of a Farm in consideration of his having nicely mated on me so long.

I don't recollect of ever having offered to make a Deed over right to a Farm in Mason County to G W & Co if they would give me for the time in my favor.

I don't recollect that at my table in the upper room of my house at Spring Lake I brought Ben & Curt to Fuller & Willard to have inserted in said Deed of Trust some lands in Tazewell County.

I do not recollect that at <sup>(that)</sup> time I told Fuller  
 & Willard that I had left some of my Deeds  
 with Puterbaugh in Selin to have the title  
 Examined or it might have been so however -

I do not think Fuller & Willard requested me  
 at that time to come to Selin to see about  
 other lands to have them put in the Deed  
 of Trust.

I do not think I declined coming because  
 I was busy shipping Corn, I do not think  
 I had any idea of coming at all.

I do not think there was any talk at the  
 time about my Deeds in Puterbaugh's hands.  
 They might have been some I do not recollect.  
 I think I did not come to Selin in two  
 or three days after to see Fuller about  
 the Deed of Trust. I do not recollect how  
 long after it was that I came up.  
 I do not recollect of going to Fuller  
 several times to get him to release  
 on the record from said Deed of Trust  
 various lands and lots in Tazewell  
 County, only recollect of going to him  
 and that was in that way - Some  
 time after this Deed of Trust was made,  
 either Masteller or Browne came to  
 me and told me that there were  
 some lots belonging to them that were in  
 that Deed of Trust - I told them I had  
 given no mass for any of the Tazewell County  
 Lands to be put in the Deed of Trust,  
 I had bought those lots of Masteller & Browne  
 & given them notes for them, & they after-  
 wards returned the notes to me and I sold

then lead the lots again and made  
 the deed to some man in Chicago by their  
 directions, and afterwards finding that  
 they were in the Deed of Trust, I went to  
 Fuller to get them released.

Never requested Puterbaugh at any time  
 to release any of these lands from said  
 Deed of Trust except these lots I spoke  
 of before.

I might have applied to Mr Puterbaugh  
 to get him to release land I had  
 sold to Nick Biquette and to give him  
 other land in the place of it. Cannot say  
 what I did say to him.

I do not know whether or not I  
 offered to give Puterbaugh 400 acres of  
 other land in place of that I had  
 sold to Biquette.

~~I do not know whether or not~~

I do not recollect that when the  
 Montell & Dawson lots were released,  
 I authorized other lands to be given  
 in their place. Am not certain about  
 it, it is my belief I did though.

I did pay to Puterbaugh \$1400. on  
 account of the 1000 acres land. and told  
 him and Green at the time that  
 these lands had no business to be in the  
 Deed of Trust, but that it would be so  
 much paid in the Debt. I was willing  
 they should get the \$1400. + Green got 500  
 I think I did not go to St Louis right away  
 after the Deed of Trust was made, to buy  
 Goods, I do not think. I have been there

but once since it was made - that  
was this Spring.

Did not ask G.W. Co to see  
Mr. Mason's goods on account of my having  
given them security on my lands & bonds  
in Tazewell County.

Do not think there  
was any talk between Mr. Fuller &  
Burdick at Spring Lake about giving  
a new deed on Tazewell County Lands  
than heard that these lands in Tazewell  
and Mason Counties had been offered  
once or twice for sale.

Do not recollect that I asked Goodrich  
or Willard or Peterbaugh to have the sale  
adjourned so that I could get in grain  
to pay rather than have the lands sold.

Do not recollect that I had the sale  
once continued on promising to pay  
\$5000 - once in three months.

I am sure as I can say that I saw  
the lands were advertised for sale in April 1855.

Cannot say that I ever had  
any talk with Goodrich, Willard or  
Peterbaugh about the lands being advertised  
at that time.

Did not see any hand bills of the  
sale in the Tazewell Courthouse.

Do not recollect that I knew of  
the Mason County lands being advertised  
for sale, though as before I heard that  
they had been once or twice advertised  
for sale.

Do not think that I did go to -

St Louis in July 1857 and being 4 or 500 \$  
 worth of goods of G W + Co as the strength of having  
 given them security in Tazewell County  
 Census. Don't think I have been over  
 your hair once since I gave the deed  
 & that was this Spring -

~~Telling~~ Don't recollect of  
 Telling Willard at Spring Lake that  
 I would give him security on all  
 my lands in Tazewell County if he  
 wanted it. I told him I would  
 put in Mason County lands if he  
 wanted them -

Don't recollect of Telling Puterbaugh  
 that I directed Fuller to put in Tazewell  
 County Lands unless they were made  
 safe -

Don't recollect that I ever saw  
 any hand bill at Spring Lake like the  
 one showed me, or or about the time  
 these lands were advertised for sale in  
 April 1858.

I Don't recollect of ever giving to  
 Puterbaugh, some deeds to me of School  
 lands in Tazewell County with direction  
 to him to put the same in the Deed  
 of Trust to G W + Co -

Don't recollect of ever telling  
 Puterbaugh, Long after Fuller's Willard  
 was at Spring Lake, that I intended  
 to put in some lands in Tazewell County  
 but that Puttyman + Tuckley told  
 me not to do it as they were engaged  
 in already - Cannot tell how I learned

in January last that my lands were advertised  
for sale.

Puttymann was my Counsel  
in Case of me against G. W. & last fall  
if there was any such Case I had for-  
gotten all about it though  
I sold my lands to Puttymann to pay my  
just debts.

(Can't say that I had any talk  
of selling these lands to Puttymann  
before the first of December last.)

Puttymann admits that as atty for Trust  
in Nov last he filed a bill for Trust  
to set this same deed aside.

Don't recollect of going with Fuller  
to Recorder's office in Tazewell County  
on 23 July 1857 to get some Deeds  
released from said Deed of Trust.

Don't recollect whether or not I paid  
for the Recording the Deed of Trust or all  
in Tazewell County.

Re Examined By atty

I never directed Fuller or  
any body else to put the Nick Beppath  
land in that Deed of Trust.

I married and Fuller to say at the time  
I went into the office of Pettus & Co. that  
the Lands could be redeemed from  
the deed of Trust, the same as from a Mortgage.  
That was the case that he held to me all  
the time and I never heard it from any  
one else.

Cross of again of Defts  
I did at about that time give an  
Green a Deed of Trust for a Man  
named Spear

I did not know at the time of the  
by a Deed of Trust at any time sold  
the lands without coming Court.

I cannot say when I first learned  
than could be done

I did not know that when I gave  
the Deed of Trust to Green

I gave the Deed to Green before I did to  
W. H. W.

I have bought and sold more  
or less land for several years

I did not know at the time of the  
Circuit Court at Havana last fall that  
the lands were advertised for sale under  
the Green Deed of Trust

I am recollect of telling  
Fuller and Willard when they were at  
Spring Lake that they could keep my lands  
on giving 30 days notice

Thomas H. Rice Collected  
By Plaintiff

Am acquainted with Trust He was  
indebted to me in the sum of about  
\$500. with Puttman on security &  
Puttman paid it to me

17 134

Mr Trout Recalled by Cliff  
I sold Tom King a large quantity of  
land in Mason County before the Deed  
of Trout was given. After that I think  
that King testified me that there was  
40 acres of the land he had bought of me  
that was called the Burnport farm  
that had a Deed of Trout on it.

I told him I did not think it was  
because I had ordered not to have any  
of the land put in that I have said  
& he told me that it was so for he  
had examined -

I then turned in and had a notice  
in the same tract first in the Deed of Trout  
in the place of it. This land was sold  
in Mason County, and was done at the  
time Mr King speaks of and there were  
no Taylor County lands put in -

I know Mr Abram Smith who has  
testified here - I never had any such  
Conversations with him about this deed  
of Trout as he speaks of -

136

State of Illinois } In the Saywell  
County of Saywell } Circuit Court  
} In Chancery  
for Injunction &c  
1859

Benjamin S. Puttymann  
vs  
James G. Goodrich  
Peter H. Willard  
Alfred A. Child  
Samuel W. Fuller  
Robert D. Puttymann

Deposition of Nancy Trout  
a witness produced before and  
Examined on the part and behalf  
of the Complainant in the above Cause  
before William Stewart a Justice of the  
Peace in and for said County on the  
3d day of June A.D. 1859 pursuant to  
agreement of the parties in the Cause  
between the sum of 100 cts & 20 cts  
& 40 cts P.M. of said day at the  
office of William Stewart in the Town  
of Spring Lake in said County

Interrogatory 1st What is your name & age, your place of  
residence and are you the wife of  
William Trout

Ans Nancy Trout My age is twenty one or two  
years and my residence is the Town of  
Spring Lake Saywell County, and I am the  
wife of William Trout

Question 2 do you show the parties to the suit and  
the subject matter in controversy

Ques 137 I well know Fuller Furbrecht and  
Peter H. Millard & B. S. Putnam and have  
been informed of the subject matter  
in controversy.

Ques 3) did you at any time join with your  
husband in executing and acknowledging  
a mortgage or deed of trust to the Defendants  
Gerrish Millard and Company upon any  
lands in Illinois

Ans 3 I did  
Ques 4. When was the land situated which was  
described in that mortgage or deed of trust  
as you understood it.

Ans 5 On Mason County Illinois  
did you ever execute any mortgage or  
deed of trust to the Defendants Gerrish  
Millard & Company upon any lands or lots  
in Taylor County or in the Town of Spring  
Lake

Ans 6 I did not.  
Who took your acknowledgements to the  
mortgage or deed of trust that you did  
execute to Gerrish Millard & Company  
George H. Daniel

Ans 7 Can you or your husband read or write  
No.

8 did any one ever inform you before you  
signed and acknowledged that instrument  
that it contained any lands or lots in  
Taylor County.

Ans No

Question

Answer

Keep Commenced by Defendant  
 Did Mr Daniels inform you that the  
 Deed you signed was ordered of Towner  
 He did not tell me what it was only  
 he said he had a Deed for me to sign

Mat<sup>h</sup> J. Towner  
 Towner

Deposition of A. M. Pollard in the above  
 entitled case

Interrogatory

Answer

What is your name age and occupation  
 Name A. M. Pollard age Forty three years of  
 age occupation House regular occupat  
 ion

" 2

Do you know the parties to the Deed and  
 the Subject Matter in Controversy,  
 I do

Answer

" 3

Did you at any time during the Spring  
 of Eighteen and fifty seven have any Con-  
 versation between the Defendant Fuller  
 and one Wm. Towner in regard to the Execution  
 of a Mortgage or Deed of Trust to General Willard  
 and Company upon any of the lands in  
 Controversy -

Answer

Says that I was in the Store of Amos Randall  
 and Mr Fuller came in there to see Mr  
 Amos Randall

14

Was there any Controversy between Mr Fuller  
 and Mr Towner in your presence in regard  
 to the Execution of a Mortgage or Deed of  
 Trust on the lands in Controversy -

My impression is that there was some  
Conversation but I don't know whether  
it was from Fuller or not -

1. 5

Was Mr Fuller Present at that Conversa-  
tion

Ans

Mr Fuller was in Ann Randolphs  
House

6

Was Mr Trout there at that time

Ans

he was in and out with Mr Fuller

7

Was there any thing said in that Conversa-  
tion Mr Trout by Mr Fuller or in his presence  
concerning the Nature or Character of a Deed  
of Grant or Mortgage then spoken of

Ans

Trout and Fuller being in there for  
the purpose of getting Ann + Randolph  
& Co fix up a Claim he Fuller had  
against them in favor of Mum. Kiss + Co  
For which Trout was Security I gather  
impression or that Conversation that  
Trout understood that there was no  
Difference between a Deed of Grant and  
and a Mortgage. He says that I reme-  
mber it is that when Fuller and Trout  
went over that, Ann + I myself talked  
of it and thought that trout would find  
out the Difference -

8

Do you know whether Mr Fuller was at  
that time or had been the attorney of Mr  
Trout

Ans

I understood to hear Mr Randolph and  
I know of him doing some business for him  
Was John C Randolph Present at the time  
of the Controversy between Trout and  
Fuller that you speak of -

9

Ques  
140

Wanna say at a part of it they came in  
to see him.

Antropus 1.

Cross interrogation By Defts attys  
Did you hear Mr Fuller tell Mr Trumb that  
there was no difference between a Mortgage  
& a Deed of Trust?

Ques

I could not say I got that impression  
that conversation I do not know whether  
by Fuller or the Trust Secs &c.

A. W. Pollard

142

Deposition of Richard Pitter  
before me Merrill C Young clerk  
of the circuit court Jaywell County  
Illinois on the tenth day June A.D.  
1859 to be used in the case Prettyman  
vs Goodrich Willard & Co now pending  
in the Jaywell Circuit court

What is your name age residence  
and occupation and tell all you  
know about cause

My name is Richard Pitter age 27  
years of age residence at Havana Mo  
and clerk of the circuit court of  
Mason County Illinois

On the 24<sup>th</sup> day of April 1857 at  
Havana William Trent and Saml  
N. Fuller came to my office and  
met me at the door Fuller handed  
me a paper remarking that he wanted  
that he wanted me to take Trent's ac-  
knowledgement to it Trent then spoke  
and said in the presence of Fuller  
that it was a mortgage which he  
was making to secure some money  
which he had borrowed or got of  
some men in St Louis I then asked  
Trent in the presence of Fuller if he  
understood the nature of and contents  
of the instrument to which Trent  
replied "Yes" Mr Fuller had read  
it to him and had told him all about  
it Trent then acknowledged the instru-  
ment before me I then handed the

instrument to one John C. Davis  
 who was then one of my Deputies  
 and directed him to fill up and  
 certify the acknowledgement to  
 the instrument Fuller handed me  
 the fee for recording the same and  
 I directed one J. S. Wright who was  
 also one of my deputies to file and  
 record said instrument which said  
 Wright accordingly done on the 24<sup>th</sup>  
 day of April aforesaid On the evening  
 of the same day I examined the Mortga-  
 ge as Trent called it and found it  
 to be a Deed of Trust to Goodrich  
 Willard & Co for the some of Twenty  
 Thousand dollars on a large amount  
 of land in Mason County said  
 Deed of Trust then contained no  
 lands or Town lots situated in  
 Yazewell County Mo on the 12<sup>th</sup>  
 day of May 1857 said Deed of Trust  
 aforesaid was again recorded being  
 substantially the same as when recor-  
 ded before the first time two<sup>th</sup>  
 tracts of Land being left out when  
 compared with first record and  
 that ~~said~~ <sup>Deed</sup> of Trust then contained  
 no lands in Yazewell County Minn<sup>o</sup>  
 and that afterwards on the 22<sup>nd</sup> day  
 of June 1857 said Deed of Trust  
 was recorded in my office and at  
 this time Trent's wife's signature  
 and acknowledgement was attached  
 to it and that it then contained

144

a large amount of land situate  
in Jaywell County and some lots  
in Spring Lake

R. Ritter  
"

State of Illinois } ss  
Jaywell County }

I Merrill C. Young  
Clerk of the Circuit Court - do here  
by certify that in this day personally  
appeared before me Richard Ritter  
who first being duly sworn accor-  
-ding to law made answer to the  
interrogatories propounded to him  
and written down in the foregoing  
deposition and signed ~~and~~ the  
same in my presence

Witness Merrill C. Young clerk  
and the seal of the court at Pekin  
this 10<sup>th</sup> June A.D. 1859

Merrill C. Young Clerk  
9

State of Illinois  
Tazewell County & Circuit Court

B. S. Tuttyman  
vs  
Governor Willard  
Co et al

In Chancery

The undersigned  
would respectfully Refer to the  
Court, that on the 8th day of June  
AD 1839. The Complainant in his own  
proper person and the Defendant by their  
Solicitor James Robert and John D. Tuttle  
-ant appeared before him for the  
purpose of taking the Evidence of John  
O. Randolph a Witness produced at the  
part of Complainant to be used on the  
Trial of said Cause

John O. Randolph being duly sworn  
deposed, I am 42 years Old have at  
Spring Lake in this County know the  
parties to this Suit know the Subject  
Matter of this Suit and know William  
Trotter a little over two years ago  
Fuller and Trotter came into our Store  
in Spring Lake, Fuller had a Claim  
against us "Omnio Randolph" on which  
Trotter was our Security and Fuller and  
Trotter came in to make some arrange-  
ment to secure the Debt otherwise  
Fuller wanted to show if we could  
not give a Debt of Trotter on our Real

Estate I Objected and Trout  
 observed to me that Fuller says  
 it is nothing more than a Com-  
 mon Mortgage Fuller was present  
 Trout observed that he was  
 going to give one to Goodrich  
 Millard & Co and wanted us to give  
 one to Fuller to secure the claim  
 he held in favor of Mum Gill & Co  
 in which Trout was security  
 All this conversation was in the  
 presence of Fuller I took Trout  
 out to the Red to talk with him  
 about the trust I did and told him  
 that if I was in his place I would  
 not do it for if he did he would  
 be sure to lose his land he  
 answered me by saying that he  
 guessed not for sure he Fuller says  
 that it is nothing more than a  
 Mortgage and I will have a chance  
 to redeem it

Fuller had been doing  
 business for Trout - Trout held out  
 the idea to me that he thought it was  
 all right for the Fuller was his atten-  
 tion that he thought that he Fuller  
 would not take any advantage of  
 him

Defendant objected to all of  
 the evidence relating to what  
 Trout said

Cross Examination

has been over <sup>more than</sup> eight  
years. He has done a great deal of  
trading bought and sold land  
beats Hoopes grain and grows  
He is capable of doing good trading  
but he has to have a Clerk who can  
neither read nor write

I think the Commission refused to  
is the direct Examination occur  
ed two years ago last February  
I think there was no stranger  
with Fuller at that time. Fuller did  
not say what land he was going to  
buy in the end of June

Compt. objected to all the  
evidence drawn over on Crisp  
Examination.

All of which is Respectfully  
Submitted

June 8 1854. Mr. Dm. Maus  
M. L. Hoopes

Fees \$ 2.50  
J. C. Randolph Mmmp  
2 Days to Mile  
\$ 3.00

State of Illinois } Circuit Court  
 County of Jasper } in Chancery  
 Benjamin S. Prettyman } Injunction  
 vs  
 James G. Goodrich }  
 Robert A. Child }  
 Peter H. Dillard }  
 Samuel W. Fuller }  
 S. D. Peterbaugh }

The defendants in above entitled cause will take notice that on the 3<sup>rd</sup> day of January A.D. 1859 I shall attend at the office of William Stewart Esq in the town of Spring Lake in said County of Jasper before said William Stewart or some other Justice of the Peace of said County between the hours of Eight O'clock in the morning and five O'clock in the afternoon of said day for the purpose of taking the Deposition of William Grant Mary Grant Anson M. Pollard and George H Daniels to be read in Evidence in said Cause when and where you may attend and Cross Examine said witnesses if you choose

B. S. Prettyman

Received a true Copy of this May 23/59  
 & it is agreed that these Depositions may be taken before Turner at Pekin on the 31 & continue till done and not before William Stewart }  
 B. S. Prettyman }  
 S. D. Peterbaugh }  
 for Deft.

Depositions of witnesses taken on the 31<sup>st</sup> day of May A.D. 1859 between the hours of nine A.M. & five P.M. at the Office of C. Furner a Justice of the Peace of Hazwell County Illinois in the City of Pekin in said County before the said Charles Furner by & in pursuance of the inclosed Notice and agreement to be read in Evidence in a certain Suit now pending in the Circuit Court of Hazwell County Illinois wherein Benjamin B. Pettyman is Plaintiff and James B. Goodrich Peter Willard Albert A. Child Samuel H. Fuller and Sabie D. Putterbaugh are Defendants

Deposition of George W. Daniels the said George W. Daniels being first duly sworn doeth depose and say in answer to the several interrogatories as follows

Interrogatory 1.<sup>st</sup> What is your name age and place of residence

Answer - My name is George W. Daniels My age is forty five years My residence is Spring Lake Hazwell County Illinois

Int. 2<sup>nd</sup> Do you know the Parties to this Suit

Ans - I know Pettyman Willard Fuller and Putterbaugh

Int 3<sup>rd</sup>  
(152)  
Ans ---

Are you acquainted with William Trent and Mary Trent his wife  
I am

Int 4<sup>th</sup>

Ans ---

Are you now or were you on the tenth of June 1857 a Justice of the Peace of Taylor County Illinois  
I was a Justice of the Peace of Taylor County during the year 1857 and until the Spring of 1858

Int 5<sup>th</sup>

Did you on the 10<sup>th</sup> of June 1857 as Justice of the Peace take the acknowledgment of Mary Trent the wife of Wm Trent to a deed of trust from said Trent and wife to Goodrich Willard & Co, a part of the defendants in this suit to any lands in Illinois  
I did

Ans ---

Int 6<sup>th</sup>

Ans

Is the copy of the deed of trust filed in this cause marked Exhibit "A" a copy of the deed of trust of which you took the acknowledgment of Wm Trent on that day  
I cannot say really that it is a copy as I did not have an opportunity to read over the deed at the time there was a good deal of talk among the parties at the time about the lands contained in the deed and I knew that some of the lands described in this copy as in

Mason County are the same lands that were talked of by the Parties at the time as being the Deed of trust.

There was no talk at that time among the Parties about any lands lying in Yazwell County being in said Deed of trust. Mr. Keller, Mr. Willard, and Mr. Trent, were talking together about the lands

Int<sup>n</sup> 7<sup>th</sup> Are you acquainted with the lands described in this Copy of said Deed of trust as lying in Yazwell County?

ans — I am with the greater portion of them

Int<sup>n</sup> 8<sup>th</sup> Were any of lands mentioned in said ~~Deed of trust~~ Copy as lying in Yazwell County spoken of by the Parties in that conversation?

ans — They were not, there was nothing said about any lands lying in Yazwell County.

Int<sup>n</sup> 9<sup>th</sup> Do you know whether William Trent and his wife can read and write?

ans — I do know that neither of them can read or write.

Int<sup>n</sup> 10<sup>th</sup> At the time of her acknowledgment to the Deed of trust spoken of who placed her signature to the Deed?

Ans. ---  
154

I did, I think, I had always been in the habit of doing it for her when I took the acknowledgment of deeds for her

Int<sup>y</sup> 10<sup>th</sup>

Did you at the time of taking her acknowledgment to that deed of trust inform her that there were any lands in that deed in Yazwell County?

Ans. ---

I did not

Int<sup>y</sup> 12<sup>th</sup>

Did you at the time know yourself that there were any lands in Yazwell County in said deed of trust?

Ans. ---

I did not, I merely asked her at the time of taking the acknowledgment if she was apprised of what it was, and she told me that she was and that she was perfectly satisfied with it.

Int<sup>y</sup> 13<sup>th</sup>

Were you present on the 24<sup>th</sup> of April 1857 when the Deed of trust was executed by Mr. Trent?

Ans. ---

No his name was already attached to it when I first saw it

Int<sup>y</sup> 14<sup>th</sup>

In looking at Exhibit "B" filed in this case state whether it contains a description of all the

lands in Mason County that were contained in said Deed of trust at the time it was Executed by Mrs Grent

ans -

I see that it contains some of the lands that were talked of as being in said deed of trust " whether it contains all that were talked of or not I cannot say " there were no lands spoken of at that time except what lay in Mason County " there were a good many different tracts of land spoken of but all lying in Mason County

Int. 15<sup>th</sup>

Do you or not know whether Samuel W Fuller had acted as attorney for Mrs Grent previous to June 1857

ans -

He did

Cross Examination by Depon  
ent's Attorney

Int. 1<sup>st</sup>

Did you read the Deed of trust at the time it was Executed by Mrs Grent

ans -

I did not read it only a small part of it " I looked at it enough to see that it was a deed of trust and looked more particularly to see the description of the lands it contained

Int<sup>n</sup> 2<sup>nd</sup>  
156

If it had contained a description of any lands in Hazwell County would you have been likely to have seen them

ans -

It might have been that they might have been in there and I not have seen them as I did not examine it very closely. I saw that it contained a description of lands that were spoken of as lying in Mason County

Int<sup>n</sup> 3<sup>rd</sup>

Did you say any thing to Mrs Trent at the time she executed it about its being a deed of trust

ans -

I asked her if she was aware of what it was that she was going to sign, and she said she was, and that she was perfectly satisfied with it

I told her that it was not an absolute conveyance of the lands that it was a deed of trust merely made to secure a debt

Int<sup>n</sup> 4<sup>th</sup>

Was the acknowledgment in the Deed of Trust written by the Clerk of the Circuit Court of Mason County on it at the time you took Mrs Trent's acknowledgment

ans -

I do not know, Trent told me at the time that he had already signed it and that I had nothing to do but take

154

The acknowledgment of Polly Ann

Int<sup>n</sup> 5<sup>th</sup>

Did you at that time hear Grent say any thing about that being a Deed of Trust

Ans ---

I dont recollect that I did, I dont recollect of hearing any one say or speak of <sup>it</sup> being a deed of trust except Mr Fuller

Int<sup>n</sup> 6<sup>th</sup>

Did you hear Mr Fuller say any thing in the presence of Mr Grent at that time abouts its being a Deed of Trust

Ans. ---

No I did not

Int<sup>n</sup> 7<sup>th</sup>

Did you leave Spring Lake Town at that time before Willard and Fuller did

Ans

I did, I left immediately after I got through with my business

Re Examined by Plaintiff

Int<sup>n</sup> 1<sup>st</sup>

At the time of taking this acknowledgment, was there any conversation about inserting any lands in Taberwell County

Ans ---

No there was not

George H. Daniels

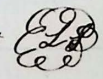

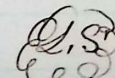
State of Missouri }  
 Jasper County } J

I Charles Turner  
 a Justice of the Peace of Said  
 County Do hereby Certify that the  
 Said Witness George & Daniel prior  
 to the taking of Said Deposition and  
 on the Said 31<sup>st</sup> day of May 1857  
 was by me duly sworn to testify the  
 truth the whole truth and nothing but  
 the truth in relation to the Matter in  
 Controversy in the Suit mentioned in the  
 Caption of these Depositions and in  
 the inclosed Notice so far as he might  
 be interrogated in relation thereto, and  
 that the Said Deposition was on  
 the 31<sup>st</sup> day of May 1859 at my  
 Office in Pekin in Said County  
 taken and reduced to writing and  
 signed and sworn to by said witness  
 in my presence

Given under my hand and seal  
 this 31<sup>st</sup> day of May A.D. 1859  
 Charles Turner J.P.

Here  
 of Justice Peace \$ 2.75  
 G. & Daniel witness  
 one day & 20 miles 2.00  
 J. C. Reeves Sheriff  
 Subpoening 4 witnesses  
 and traveling 20  
 miles ----- 5.00

To have and to hold the said premises as above described with the privileges and appurtenances therunto belonging to him the Party of the second Part his heirs and assigns forever  
 In witness whereof the said Party of the first Part have herunto set their hands and seals the day and year first above written

Signed sealed and delivered in presence of  
 Samuel P. Bailey to } William <sup>his</sup> Trent   
 and Mary Trent signed } <sub>mark</sub>  
 the said deed in my } Mary <sup>her</sup> Trent   
 presence on the 20th } <sub>mark</sub>  
 April 1859 Samuel P. Bailey } 

State of Illinois }  
 Schwell County } Jf

I Samuel P. Bailey a Justice of the Peace in and for said County do Certify that on this day personally appeared before me William Trent whose signature appears and whose name appears subscribed to the foregoing deed of Conveyance as having executed the same 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 and Mary Trent wife of said William Trent having been by me made

acquainted with the Contents of said  
 deed and by me Examined Separate  
 and apart from her husband Ackno-  
 wledged she had Executed the same  
 voluntarily and freely and without Com-  
 pulsion of her said husband and for  
 the purpose relinquishing all her inter-  
 est in said premises and her right  
 of Dower

Given under my hand and seal of Office  
 at Pekin this 8<sup>th</sup> day of December  
 A.D. 1858

Samuel P. Bailey J.P. (S.P.)

Quit-Claim Deed  
 From  
 William Trent  
 To  
 B. S. Prettyman

State of Illinois, Fulton County  
 This instrument was filed for  
 record the 8<sup>th</sup> day of Decr 1858  
 and duly recorded in book A.J.  
 page 333

M. C. Young Recorder

No. --- Fees \$4.75

Charge B. S. Prettyman

Quit Claim deeds  
to  
Pellyman  
Mason Co Lands  
164

This indenture made this 8<sup>th</sup> day of December in the year of our Lord one thousand eight hundred and fifty eight between William Trent and Mary Ann Trent his \_\_\_\_\_ of the first part and Benjamin S. Pellyman of the second part  
witnesseth

That the said parties of the first part for and in consideration of the sum of ten thousand dollars lawfull money of the United States of America to them in hand paid by the said party of the second part at or before the Unsealing and delivery of these presents the receipt whereof is hereby acknowledged have remised released sold and forever quit-claimed and by these presents do remise release and forever quitclaim unto the party of the second part and to his heirs and assigns forever all of the real Estate of Every kind and Character owned by us in the County of Mason and State of Illinois whenever and however the same may be located or situated or described in said County of Mason for ever and all Right or Equity of redemption in any and all such lands in said County of Mason To have and to hold the said premises as above described with the privileges and appurtenances therunto belonging to him and to the use of to the party of the

Second Part his heirs and assigns  
for Ever

In witness whereof the said parties  
of the first part have therunto set their  
hands and seals the day and year -  
first above written

Signed sealed and delivered in presence

of Samuel P Bailey } W, W, Stewart	} William <sup>his H</sup> & <sup>went</sup> <sup>month</sup>	} Mary <sup>her H</sup> & <sup>went</sup> <sup>month</sup>	} 

State of Illinois  
Mazewell County

I William -

Stewart a Justice of the Peace of said  
County do Certify that on this day  
personally appeared before me William  
Went and Mary Ann Went  
whose name appear subscribed to the  
foregoing deed of Conveyance as having  
Executed the same, who is personally known  
to me to be the real person who and in  
whose name the acknowledgment is prop-  
osed to be made and acknowledged the  
Execution thereof as a voluntary act and deed  
for the uses and purposes therein expres-  
ed and Mary Ann Went wife of  
the said William Went having been  
by me made acquainted with the Con-  
ts of said deed and by me Examined  
Separate and apart from her said hus-  
band whether she had Executed the  
said relinquished her dower to the lands

and relinquished her dower to the lands

166

and tenements therein mentioned  
acknowledge that she had done  
so voluntarily and freely and with-  
out compulsion of her said hus-  
band and does not wish to  
retract

given under my hand seal of office at  
Spring Lake this 10th day of  
December AD, 1858

Amund P. Baity J.P.  
for Stewart J.P.

Quit-claim Deed

From  
William Grant & wife

To  
B. S. Petterson  
State of Illinois  
Mason County

This instrument was filed for  
Record the 11th day of December 1858  
and duly Recorded in book R  
Page 249

R. Pitty  
Recorder  
No. Fees & Paid

Defendants  
Evidence  
167

Cyrus Chambers

Know G W & Co + 4th Street  
I live at St Louis Mo + I was Book  
Keeper for G W & Co

Saw Trent at G W & Co in the  
Spring of 1857

Had Conversation between  
Trent + G W & Co. about his (Trent's)  
giving them Security for what he  
owed them - When the old man  
Came down then they loaned him for  
what he owed them which was 2500  
3000 if they told him they wanted to  
have the thing settled up in some  
way the old man might die and they  
proposed to take his note after he gave  
them his note Mr Goodrich told him  
they must have a Deed of Trust to secure  
the note as they had waited on him  
a long time - Trent told them that  
he could face the music that if  
they would give him three months  
time on the note which would give  
him time to turn around where  
he never home he would give them  
a Deed of Trust. He said Mr Fuller  
& Puterbaugh had all his Deeds and  
when he next home he would go  
up and get them to make a Deed  
of Trust. He said he had Miller and  
Kornes + he had lands in Tipton and  
Miam + he would do it cheerfully  
Trent Came to St Louis in the first  
of July following the giving of the -

Deed of Trust, and at that time, the  
 first of July 1857, he bought Goods of  
 G. W. Co he was there in person &  
 bought the bill himself. He bought  
 on that day a bill of goods amounting  
 to \$404.<sup>40</sup>

When he came to get these  
 goods they hesitated about letting him  
 have any more, because he owed  
 them about \$20,000. Then they thought  
 that was enough without going any  
 further. He says see you against the  
 Credit old Bill any man; however  
 I came as I agreed to do, you came  
 up there & I gave you <sup>the</sup> Security that  
 you asked for, I gave you the Deed of  
 Trust that you asked for and after-  
 wards I gave you additional Security  
 on lands up in Fayette - He thought  
 as that granted as long as he had  
 faced the music as well as he had  
 he was entitled to a little more  
 Credit - He remarked that he had  
 been buying a good many thousand  
 bushels of Corn, and if they would  
 let him have the goods to pay  
 off his Contracts and he could pay  
 off his Debt to them without them  
 having to sell the Land, that the  
 Corn would come down like hot  
 Cakes - When he came down there  
 in July he was come to get an Execu-  
 tion of time on a note they held  
 against him for \$460.<sup>25</sup> note

tion of times on a note they held  
against him for \$490<sup>38</sup>/<sub>100</sub> date

169

May 1st 1857 payable one day after date-

Abram Smith Sum-

A firm in Chicago Ill Lewis is  
Dealing in grain and in  
I show the parties to this suit  
I have known Mr Trout about 3 years  
I was in Trout's firm in the early part  
of 1857. I think about April. Mr Pratt  
& Mr Trout were looking in a Box  
for a particular Quad. Trout picked  
the one out they wanted himself,  
he left Pratt torturing a whole lot  
of Quads then and came around &  
spoke to me said he was getting  
them down ready to go to Fuller to  
get him to draw up a Quad of Trout  
to Lewis Goodrich & Millard for \$2000  
I told him that I would not give a  
Man a Quad of Trout because it took the  
power right out of a man's hands  
with regard to his property if they  
wanted him to give them a Quad  
of Trout they wanted to get his  
property away from him.  
I told him what they could sell  
in a way that time in 10 days he  
said he was well posted about a  
Quad of Trout and knew the difference  
between that of a Monty, he knew they  
could sell it right off he did not mind  
putting his property out of his hands  
into theirs because he could pay  
the Bill before the time came around.

If he had not had reasons that he should not have given the Deed of Trust or was his own offer. He said he had more land than there was not a scrap of the pen against in this County that he could give them more Security if they were not satisfied with that. I saw him again in Midsummer the same year & we had some more conversations about the Deed of Trust. He said he had been at St Louis and seen Old Man Willard, they got kind a scared of him though he would not pay & he had given them some more land in this County, he saw them at his court house in Tappan Court (last Court objected to by Jeff) He said he had given them Security on this lot and that lot, and he pointed around to different lots in Spring Lake Town. He said he had given them Security on a Deed of Trust on several Farms in Tappan Court, but never on to enumerate their names.

I told him he saw more funds of Deeds of Trust than I saw. He said he knew all about them. He had no less a dictionary in hand so many years and, how what a Deed of Trust was, he said if he got a chance to see, Loran & Miller would return them on account of their having the proceeds. Had talked with him

in the early part of last year (1889) again about the Deed of Trust.

141

in the early part of last year (1859)  
 again about the Duc of Strass & was  
 for Spring last, the first 4 months  
 of the year, and talked with him  
 about it more or less; at about the  
 time lands were advertised to be  
 sold in Germany. I got the paper  
 that had the advertisement in it  
 and showed it - He told me to fig-  
 ure up how much it was, how  
 many acres, I took my pencil and  
 figured on newspaper & others  
 I called the description he told  
 the number of acres, and I hurried  
 & figured it up & think it made  
 2280 acres. I told him it would  
 take \$10 an acre to make the money,  
 he said that was a damned sight more  
 than it was worth then even good  
 money land hills in it  
 We had conversation I had with  
 him was quite a short time ago,  
 he said he had got little Ben Inty  
 a fighting them off; I asked him  
 if he expected to beat them, he  
 said he did not expect to beat them  
 but he would get a year or two  
 more off the land at any rate.

This <sup>to land</sup> was wholly expected to by court & I appeared the  
 time.

Cross Examined by Jeff  
 Mr Willard first advised me  
 that this suit would be tried  
 here this term -

Trent & myself  
 went into partnership in General  
 Boat early in 1857. I can say  
 at what time; the Boat had  
 been to St Louis; my Boat lay  
 at Iowa that winter -  
 I think it was before April  
 that Trent & myself went into  
 partnership. It was before I went  
 into partnership that I had the  
 talk with Trent about his  
 Debt of Trent -

I Disolved with Trent  
 in 1858. Trent & me had a lawsuit  
 or Controversy about a Debt I had  
 against him for about \$500.  
 I did have a Controversy with Trent  
 before Eg Turner about an order  
 it was in 1858.

The Controversy about  
 the Boat was settled in June 1858,  
 I think early in July.

Trent & myself have not been  
 on each others lines that time  
 so far as I am concerned -  
 Trent did not owe me one of his shares  
 at any time as I remember of.  
 Trent & me had a Controversy  
 about that Boat at the last  
 I told him I wanted time to settle

173

before the Boat went out,  
I think there was a crowd present  
at the time I had the Conversation  
about the Boat, I not signed the words  
The next time I had a talk with  
him was in July; a Boy that with  
Trent was by.

The last next Conversation we  
had was in April last at Trent's  
Store in Spring Lake then were two  
or three persons present but Trent  
Called me to one side to talk  
with me, I do not remember who was  
by.

A Spoke of lending Trent some  
money, I lent him \$600  
Mr Pratt drew a Draft for me  
in Goodrich Willard & Co + Willard  
Paid the money. The Draft I took  
was a Sight Draft on G. W. & Co  
Mr Pratt I think drew it, Mr Coy  
was also present, it was also inserted  
in the Draft "Money Loaned."

T. W. Pratt, Severno  
I live in Moscow + serve the  
Parties to this suit.

In the month of April May to  
the 21st of June 1857. I was keeping  
Books for Mr Trent at Spring Lake  
House where Mr Trent abode 9  
years. The latter shows me a very  
hand writing. I do not recollect.

174

particularly the circumstances  
connected with writing it.

At the date of that letter I was  
Clerk for Mr Trust.

I am satisfied that  
I never wrote that letter without  
his knowledge because I never write  
any letter of that importance without  
his knowledge or through I don't recollect  
at any particulars about writing  
this particular one letter offered as  
follows.

" Spring Lake April 18, 1857.  
" Mr J. W. Trust, Jr in please make  
" a Deed of Trust from me to Horwich  
" Willard & Co of St Louis covering  
" all the land and Town Lots belong-  
" ing to me in Tazewell.  
" Please make such Deed and bring  
" it to Havana next week when  
" I will see you.  
" Respectfully  
" J. W. Trust  
" Jr J. W. Pratt

9  
175

# Cross of Graft

I know Abram Smith

I don't recollect of making a Graft on G.W. & Co to him for \$600 in gold in 1857. I think I did draw one or more drafts in his favor on G.W. & Co for similar amounts.

Gen S Mosteller Town

I am resident of Logan County aged 36 years. I knew the most of the parties to this suit. I am acquainted with Mr. Smith in 1857. About the last of April also about the last of June same year also in the first part of July same year.

In regard to this Deed of Trust I asked him what was his object in giving a Deed of Trust to these men. He said it was to secure them for the amount he was owing them. I don't recollect whether he stated the amount or not. I then remarked if his object was to secure them why not give a Mortgage and not a Deed of Trust because that would make them secure. I then endeavored to explain to him the difference as I understood between a Mortgage & a Deed of Trust. I told him if his object was to secure them that they would be perfectly secure if giving a Mortgage, in that case should

Any of the parties die & Comins  
get into other hands or should  
any Difficulties arise between  
the parties, that there would be sufficient  
time to recover and settle it -  
He said they were not willing to  
take a Mortgage.

I again remarked  
if their only object was to be secur-  
ed, I did not know the reason  
why they would not take the  
Mortgage; that I would not give  
a Deed of Trust but would let  
them sell their land and Judgment  
and Execution first & then I  
would have time to make the  
Money. He said he would just  
as soon give a Deed of Trust on a  
Mortgage to them for they have  
given him time that he could  
pay it off in this time, or at  
least he could raise it so much,  
that they would not trouble him  
about it.

He said they had agreed with  
him that any time he could  
a portion of this land they would  
release it & let him have by paying  
them the proceeds of the sale -  
Then near some some lots in Spring  
Gardens that I had sold to him the  
latter part of April 1857 which on  
my return in June, I learned that  
there was some imperfection in

177

the title or incumbered, he wanted  
 his pay back for the property and let  
 us have it again. We paid him cash  
 +m calling on him for a title.  
 I then heard that it was included  
 and Deed of Trust to G.M. Co Trust  
 said he would see Mr Fuller and  
 have it released shortly after that heard  
 Mr Brown came to Berlin for the pur-  
 pose of having it released. On Mr  
 Trust's return home he told me  
 that he had got it released by putting  
 in other property in the same County  
 of much better value. Trust  
 did not say whether it was land  
 or Town Lots that he put in. He  
 spoke of the difficulty of getting it released  
 I told him that perhaps the land  
 was in the other County. He said no it  
 was in the same County & of much  
 more value & all Mr Fuller had to do  
 was to go to the Clerk's office & have the  
 released and have other property put  
 in in lieu of it. Stating at the same  
 time that he paid all expenses that  
 there was no expense to Mr Fuller.

I cannot give why he  
 included these lots in that Deed  
 he knew the title was not good  
 wanted us to take them back.  
 He first said they were per in law  
 he knew the title was not good  
 and then afterwards said that he  
 did not know what was in the

178

Dad for he had told Mr Fuller just to  
take his Deeds and put in enough  
until he thought it would secure  
the debt, or until the St Louis men wo-  
uld be satisfied

### Cross Ex of Deft

Had no controversy with Trust about  
the time we bought the lots of Trust.  
It was about the 28th of April 1857 I  
left for the west & returned in  
April the same year.

I have probably said  
that I knew nothing about this  
transaction except from what I heard  
from others -

Your Trust Recalled of Deft  
I was in possession of those lands  
except such as I had sold, up  
to the time I sold to Mr. [unclear]  
in 1858.

Samuel W. Fuller ex D. of D.  
Sworn

I am a lawyer by profession  
I know the Complainant the Defendant  
Willard, Puterbaugh, & am a Defendant

Myself. I know Mr. Trout,  
 Some time in April 1857.  
 I saw Mr. Trout at Pullin During  
 a term of Court & told him  
 I had a note of his to Linnick Mill-  
 and & Co. which they wanted Security  
 of Dues of Trout on his lands; at first  
 he proposed to give them lands in  
 Jaywalk County. and I made some  
 examination of the records to see  
 how his lands in this County stood,  
 afterwards for some reason which  
 I dont remember & dont know  
 what he gave any. he refused to give  
 them Security on the lands in  
 Jaywalk County - but would give  
 them Security on lands in Mason  
 County & would not meet at Newsum  
 at the next Court in that County.  
 I met him soon after at Newsum  
 in Mason County he brought his dues to the  
 office of the Circuit Clerk of that County  
 in a Carpet sack and took from  
 it a quantity of Dues telling me to  
 select the lands from them, I advanced  
 the title to them I did not like it &  
 he then took from his sack other  
 Dues from which I selected  
 lands Examined the title & then  
 procured from Mr. Fullerton a blank  
 Dues which I filled up and gave him  
 & placed on record of the execution  
 I cant say whether the instrument  
 was talked of as a Dues of Trout or

a Mortgage, but I accused him that  
 under the Deed the lands could be  
 sold by simply advertising them  
 without going to the Court & it is my  
 impression he differed about this  
 time they should be advertised &  
 think he wanted longer time  
 than was named in the Deed of  
 first. The next I saw of him about  
 the matter was at Spring Lake with  
 Defendant Willard some time in  
 June 1857. We arrived at Trout  
 house early in the morning before  
 breakfast having read previously  
 that morning. Willard wanted of  
 Trout more security because corn  
 had not been shipped of Trout to them  
 G. W. Co, as far as it was expected. It  
 was then proposed by Willard to Trout  
 to give him lands in the Deed of Trout  
 in Lyall County. Trout said he had  
 not all his Deeds there, that they were  
 in the hands of Defendant Pitentaype  
 at Putlin. It is my impression that  
 he had some Deeds there from which  
 I take the number of Trout lands.  
 Part of this I am not certain &  
 don't state it positively, but  
 I know he did some writing there  
 about this matter. I note the ad-  
 vance of Mrs. Trout which  
 appears upon the Deed & don't think  
 I was present when the Justice took  
 the actual log run.

Mr. Trout offered to give Deferman's  
 Willards and Lancaster Security but  
 wanted that would make him  
 feel safe or satisfied and told  
 me to take the Deed to Perkins  
 and put in sufficient lands  
 to make it safe - I think he specif-  
 ically some lands which he obtained  
 from one Pratt & Sons lots in  
 Spring Lake. He talked with  
 me and Willard about the value  
 of the house and lot where he  
 then lived which was either  
 then or afterwards included in  
 the Deed. I think he also told  
 me of having given a Deed a Deed  
 of Trust to Walter Green of same  
 lands in this County & I can't  
 say whether he told me to put them  
 in or not. I came to Perkins with the  
 Deed the Day & made some examina-  
 tion of the names for his lands, &  
 I think of Deeds that were in Patent  
 of lands belonging to Trout.  
 I then wrote in the Deed the Description  
 of other lands and lots in this County  
 I think the Deed to Trout was not in  
 record but am not certain.  
 I know I did not see or or know  
 then what lands were included in it  
 this was about the middle of June 1857.  
 I can't think I saw Mr. Trout again  
 until the Fall Term of the County Court of  
 Sagwell County.

H. Haines objected primarily to  
statements of conversation with  
Hunt about the lands

At that time Hunt applied to me  
in person to release some of the lots  
& lands which were included in  
the Deed in Sequel County at that  
time & I think on the 23<sup>rd</sup> of July  
1857 I did as his <sup>request</sup> release upon the  
record of Deed in Sequel County  
Lots 2, 3, 5, 4, in Block 4 in Spring  
Lake Division in Circumstances of other  
property being substituted there for,  
this appears by an entry of Miss  
Muel as that on the margin of the  
record of this deed in question; at that  
time other property was substituted  
for that release which I think is  
Lots 1, in Block 4, & Lots 5 in Block  
2 in the Town of Spring Lake; and the  
Deed was again placed on record  
on that day including the property  
so substituted; I think Mr. Hunt  
paid for the 2<sup>nd</sup> recording of the  
Deed, but I am not certain what  
he paid me or told me that he  
would pay me afterwards,  
He advised this property release  
on account of some business dealings  
between him and Masteller  
& Brown, but I cannot now  
tell what those were of I know  
at the time when the same time,  
but I think afterwards Hunt  
requested me to release some  
other lands in Sequel County,  
which I think he called the Moon

17  
183

Lands" Expressing himself Dissat-  
isfied with the Moor Lands being  
included in the Deed he offered  
to give other lands in place of them  
if I would release them but  
I was not satisfied with the  
value of those which he offered and  
refused to do it & did not do it.  
I thought he Claimed to have sold  
those lands but gave me no evidence  
of that - I don't know remember  
of Mr Trout asking me to release  
any other of the lands named in  
the Deed - When we were at Spring  
Lake on the 18th of June it was agreed  
between him and Willard that  
Whenever he could sell any of the  
lands conveyed to them they should  
be released on his paying over  
the proceeds of the sale to G. W. Co.  
As I said before I can't certainly  
say when I wrote in the Deed the  
lands in Sagwell County which  
was written in by me. It is my  
impression that I put them  
at the same time and place  
that I wrote the acknowledgment  
for Mrs Trout, but I will not  
state certain -

All the lands named  
in the Deed after the piece of land  
described as the South # 17 1/4 17 1/4  
Sec. 24 Twp. 23. N 7 W. 3d R. 21  
was written in the Deed of Defendants

If there are no lands named in the Deed before  
the piece of land described lying in Sagwell County  
then said not write in said Deed any lands at  
Spring Lake

184

Puttrbaugh of my directions + I think  
in my presence

Trent at Spring Lake  
offered to give Willard Security on  
enough of his lands in Cassel County  
to make them satisfied with the  
Security - He did not give me the  
numbers of the lands, but spoke  
of pieces of land which he had  
bought of different persons many  
times but I cannot state the names  
of those he mentioned except those  
of a man named Prater + Matelle  
+ Brown; but said to Willard and  
myself we would find the num-  
bers from the records at Pullin +  
from Deeds in Puttrbaugh's hands. From  
those Deeds and the records, I got the  
numbers which I put in the Deed,  
except the last 2 lots named in the  
Deed which he gave me at Pullin  
in person + a Description inserted  
by Defendant Puttrbaugh.

There have been no lands inserted  
in said Deed since the 25<sup>th</sup> of July  
1857. As I said before about that  
time he asked to have the Moon  
lands included, all the lands  
now included in the Deed were  
in it then + he expressed no Dissent  
to any lands being included on the  
Deed except the Moon lands + Des-  
cription of them I can now show.  
From Repeatedly spoke to

185

MS about the lands in Saginaw  
County being in that Debt & particularly  
ly in that occasion in July 1857.

I never heard Mr. Frew Express  
any Dissatisfaction that any lands  
in Saginaw County were inserted in  
that Debt except the "Moon lands"  
I talked with Mr. Frost once after  
the lands were advertised the  
first time & he appeared no  
Dissatisfaction of the advertising  
of any lands; they were all ad-  
vertised which were in the Debt.

He said he guessed G. W. & Co. would  
not sell his lands for he would  
send them grain to pay off the  
Debt if they would only give him  
a little time; I should think  
this was some time in February  
or March 1858 at Detroit. I think  
at that time he wanted to have  
the sale postponed, that he might  
send down the Spring grain to  
G. W. & Co. as the navigation was not  
then open.

## Cross Examined by Plff

I ~~threw~~ neither Grant or his wife were present when any of the lands were inserted by Outborough except the last two lots named in the Deed when I think Grant was present. I don't know that Mr Grant ever saw the Deed after the acknowledgment, I had the Deed in my hands in Grants presence several times, but I cannot say whether he took hold of it or not, it is my impression that the last two lots were inserted at my office, & that Grant took the Deed to the records office here of that I am not certain.

If there ~~was~~ are no lands named in the Deed before the piece of land above Designated, which are situated in Jayneel County then I think I wrote nothing in said Deed after or was made at Howard, except Mrs Grants acknowledgment.

Question - inserted by Direction of Plff  
Had you any other authority to insert the Jayneel County-lands in that Deed of Grant, or direct it to be done except what you had before stated.

I had no authority to insert any lands in said Deed, or direct them to be inserted except as above stated by directions of Mr Grant at Spring Lake, and his personal direction at the time the last two lots -

21  
187

named in the Deed was inserted  
I had no other verbal or written  
authority than that.

Question- after the insertion of those  
lands by Puterbaugh, was the Deed  
signed, sealed, or acknowledged before  
an officer by either I or my wife?

Answer- No it was not.

I did business for Mr Grant as  
attly and Commissioner, say a year  
and a half before the date of the Deed -  
& and my partner Puterbaugh  
continued to do business for him  
until some time in the year 1858.  
Puterbaugh was my partner at  
the time of Mrs Grant's acknowleg-  
ement to the Deed & when the papers  
concerning lands were put in -  
Deputy Puterbaugh was our  
partner to my knowledge, at the  
time Mrs Grant's acknowlegem-  
ent was taken.

All of the lands inserted  
in said Deed of Grant after the piece  
above referred to by me, appear to  
be in the hand writing of Mr Puterbaugh  
& I think were put in by him in my  
presence.

The authority I had from  
myself to release those lands which  
I released, was the verbal direction  
of Mr Willard.

I think I gave no other

release there what is written upon  
 the margin of the record of said Deed  
 The reason that I requested  
 Mr Puterbaugh to write the Description  
 of the lands in said Deed instead  
 of doing it myself was because  
 he was a better penman than my-  
 self - no other person wrote any of  
 the Descriptions of the lands in  
 said Deed but Puterbaugh & myself

S. D. Puterbaugh (one of Defts)  
 Duane

My name is S. D. Puterbaugh  
 & reside in Tiffin and am an at-  
 torney at law, I know all the parties  
 to the suit except Child one of the  
 Defendants & with him I have no  
 acquaintance -  
 I am acquainted with Mr Trout  
 In June 1857 a few days after the  
 time that Mr Fuller speaks of  
 having you at Spring Lake with  
 Willard.

Trout came into our office  
 & stated that he had sent Fuller  
 & Willard to me to get the numbers  
 of the Deed in my hands & had autho-  
 rized them to insert the same in  
 the Deed of Trout from him to  
 H. N. & Co & such other lands as he had  
 not sold to other parties - I said to him  
 that the numbers of all the Lands

189

described in the Deeds that in my possession had been inserted in the Deed of Trust, except those that appeared of record to have been sold by him prior to that time, he said that he had authorized Fuller to have them put in the Deed of Trust of G. N. & Co. now very satisfied he would give them title now lands but he remarked that they ought now to be satisfied as he had given them lands worth three or four times the amount of their Debt.

He said that the land he had bought of Pratt, was worth seven or eight thousand Dollars I think some where along there.

I told him that their security was ample & that they were fully satisfied. - Prior to the lands being inserted in the Deed of Trust I had made an examination of the Record to ascertain which of the lands described in Deeds in my possession had been sold by Trust & I said to Trust at that time, that most of the lands appeared to have been sold but few of the titles wanted perfecting.

He spoke of the Deed of Trust to Auto Green & said he wanted Auto Debt paid first, but that he intended to pay Auto off and then make the land clear

190

in G. W. & Co Deed of Trust - I reminded  
to him at the time that they could  
not cut off Green Deed of Trust  
for reasons that they had notice  
of its existence at the time the  
land was inserted

I told him that the land in  
Nutt's Green Deed of Trust should  
not be sold by him, that we would  
pay off Green Deed of Trust when  
it became due in court's process  
G. W. & Co. Trust said he did not  
expect the Deed of Trust in favor  
of Green would ever be called  
that he would and could pay the  
same the day it became due -  
at the conversation spoken of  
Trust asked me what Deeds I had  
in my hands I told him he  
then remarked that he was willing  
that they should have them as se-  
curity & that he had <sup>you</sup> several  
thousand acres in Mann County  
that he would sell part in if they  
felt themselves insecure that  
G. W. & Co had acted so far that  
he was willing to give them  
all the security they wanted -  
At another conversation there  
was a piece of land which was  
a map of the Prate Lands to which  
Prate had not a perfect title,  
I told him in order to make  
the title perfect it would be

25  
191

necessary to foreclose a Mortgage  
against the Williams Estate &  
that I desired to have or come  
for G. W. & Co's Protection on the land  
was among the land that he  
had put in the Deed of Trust to  
them.

He then authorized me  
to go on and foreclose the Mortgage  
and that he would pay the expen-  
ses.

At another time he called  
upon me to release a piece  
a piece of land, that he had sold  
to Arch Bequaith offering at  
the same time to purchase ~~40~~  
acres of other land which he repre-  
sented as being worth more than  
the Bequaith land. He said he  
had made the sale to Bequaith  
in accordance with an instru-  
ment that he had with G. W. & Co  
& Fuller that he should sell  
any of the lands whenever he got  
an opportunity. I said to him  
that if he would turn over the  
Mortgage & Securities or pay them  
the value of the land or their note  
that the land should be released.

This he said he would do but  
never did it.

After that in another  
Conversation in regard to this  
Arch Bequaith land, he said that

he had fixed the matter all up with Beagwater + that the land might remain in their Deed of Trust. After that time Drury was in my office + speaking of their having advertised his lands for sale on the first of April 1838. He said that he thought that they ought not to sell his lands now since he had given them a Deed of Trust on his Mason County and Tazewell County lands to such a large amount + that they were perfectly safe - and that they were getting 10 per cent interest on their money.

He promised me at that time + pledged me his word + honor that if they would not sell his land that he would pay \$5000 in May and \$5000 every three months thereafter. I said to Drury that if he would be sure + sure I would use my influence with G. W. Co. to give him that opportunity.

He expressed his regret that they should advertise his lands but he did not believe them for so long; that they had a perfect right to do so - + he could not claim them if they sold several times after that, on two or three occasions at least. Drury having failed to comply with his

193

agreement, the lands were again advertised & sales adjourned as before upon his promises and representation -

At one time afterwards he spoke to me about the land that 'Morn claimed - I told him that the Deed he had given to 'Murre was not on any of the land in this Deed of Trust - & that I had Examined the Record of the Deed from him to 'Murre, which appeared to be on other land, but afterwards I found that there was a mistake in the Deed from Trust to 'Murre as it appeared in Record -

A long time after this Enumeration I think 'William Trout & myself were in my office & were talking as to the Security from Trust to G.W. Co & in consequence of this Morn suit and the title to other lands in the Deed of Trust being quite good 'William expressed himself in the presence of Trout, as though he felt his Security insufficient, & Trout then told him that he had found farms in 'Murre's name which there was not the Serateto of a Deed against & that he would give a Deed of Trust on them & said that they had acted the

194

Agreement with him so much  
& had been so kind to him & had  
put them to so much trouble &  
Expense that he would make them  
a present of a farm in Mason County  
worth \$5000. Willard remarked  
that he did not want any of his  
parents nor did he want a Dollar  
more than was actually due from  
Trust to them.

Willard said that he  
would like if he would give him  
a Deed of Trust on his Mason  
County farm, & to the land which  
Trust said he still owned in  
Waynes County, & Trust at that  
time agreed to do so & promised  
to come to Dublin in a Day or two  
& bring his Deeds both to the Mason  
County farm & the land he owned  
in Waynes County. Trust failing  
to come as agreed upon I wrote  
him a letter urgently requesting  
him to come up and down he  
agreed a short time afterwards  
he brought me a Certificate  
or Receipt of the School Commis-  
sioners & asked me to get the Deeds  
from Mr Allen & put them in  
the Deed of Trust.

I took the Certificate  
& got the Deeds but learning that they  
were of little value did not purchase

29

195

in the Decd.

About July 1857, Trent with one of the firm of Mustelle & Brown, I think Brown came to me & also to Mr Fuller & urged us to release from the Decd of Trent Lots 2, 3, 5 & 6, in Block 4 in Spring Lake Division.

I hesitated for some time & did not wish to make the change but Trent & Brown urged so strongly & Trent promising to pay for lots 1 in their stead, which run north double the amount of the Mustelle & Brown lots, out of the lots which he proposed to pay he stated that the house on it cost at least \$500.

Fuller & I agreed then that we would release it if he would authorize us, to renew the lots spoken of.

I examined the title to the lots & finding them about perfect we did in the Circuit Clerk's office in the presence of Trent & at his request release the Mustelle & Brown lots & by the authority of Trent in my office issue the two last lots mentioned in the Decd of Trent.

Trent agreed to pay the recording & at my request he came with me to the Circuit Clerk's office & left the Decd for Record, Trent at the time either paid

196

for the Recording or told the Court  
to do so at his cost which was done.  
Trent expressed himself  
thankful to Mr Fuller & Remanded  
that G.W. & Co did not lose any  
thing by the operation because of the  
land not being of much more value  
than the former cost.

The erasures in the Deed  
of Trent were made prior to the  
time that Willard & Fuller went  
to Spring Lake & they were made  
at the request of Mr Trent, on account  
of his having sold or wanting to  
sell some of the land to Mr King  
so as to release them from the  
Deed of Trent.

Erases Examined by Jeff

Those Erasures in the Deed  
were not made by me & I think they  
were made by Mr Fuller, being of  
this, I am not certain, I cannot  
tell who did make them.

They were made prior to the  
10th of June 1857. I don't remember  
when the Erasures were made  
whether in my presence or not.  
I remember of seeing them in  
the Deed prior to the time they  
took the Deed to Spring Lake on the  
10th of June 1857.

197

I never did as Counsel for Trust  
Charge him \$80. for searching the  
title to the lands in that Deed Trust  
I did Charge him \$25. for each of the  
Counties of Tazewell and Mason for  
searching the titles to their lands  
I went to Mason County & spent  
Three or four days & paid my own  
expenses. The titles in Tazewell County  
were Examined I think before the  
Deed of Trust was made & the Mason  
County lands afterwards.

It took me about a day and  
a half in Tazewell County, the work  
for Mason County was about more  
than in Tazewell but I thought that  
\$50. for both Counties would be  
less enough.

I never inserted any  
lands in said Deed of Trust without  
Mr Fuller or Trustee's order before  
the 15th of June 1857; The two last  
lots in said Deed in Spring Lake  
were inserted by me in July by Mr  
Trustee's order & I think in Mr Fuller  
presence.

The Conversation about the  
Bequath land was had in Pullin  
Somewhere, probably somewhere  
along in the summer fall, or winter  
following the making of the Deed  
I cannot say as to the precise time  
it was however long before the filing  
of the bill by Trust against G. W. & Co =

The Conversation referred to between Willard Trent & myself at my office was about the time that his personal property was advertised for sale by the Sheriff on Execution - I think it was at or about the time of the advertisement for the sale of the lands in April 1858. Fuller & myself were then and now Counsel for G. W. & Co

I think G. W. & Co did before & after that time by virtue of an execution under their Control have all the personal property of Mr Trent advertised & sold.

I think the Moon land spoken of was a part of the Pratt lands.

I think during all these Conversations Spulien of, as atty for Trent that he was greatly indebted I also knew he was harassed by law suits & otherwise greatly embarrassed. The Financial Crisis of 1857 I think commenced in the fall or late in the summer I think the effects of that financial crisis were severely felt by Trent during all these Conversations that were had after that time.

The Conversation about the Moon lands I think occurred early in 1858, but I cannot fix the time or might have been much later. I have not any interest in this suit or any contingent fee whatever.

Re Examine of Defto-

I did have a Conversation with Mr. Pruthymann on the way from Spring Lake to Putnam. Willard & Pruthymann were talking about the indulgence they had extended to Trent & in that Conversation Pruthymann remarked that they had acted very fair towards Trent or words to that effect & that he should talk hold with Trent & try & assist him to raise the money to pay thereof. I that Conversation the extensions they were preparing to give Trent were spoken of - Pruthymann said he required their proposition as fair & all that Trent ought to ask.

Re Examine of Pruthy

All these parties went down to Spring Lake expressly to sell out the personal property of Trent. The time of that sale was then extended & Trent gave \$1000 then or soon after a draft for \$2000 to apply on the Debt for which the goods were levied upon.

The Conversation at that time with Willard was not in reference to the sale of those goods and the Debt for which they were about to be sold -

Thomas Strong Sworn in Defts  
 Show all the parties Except G. W. C.  
 think I have seen the Deed show  
 I think about the last of April 1857 -  
 I do not recollect of being present when the  
 erasure was made - About the 28th of April  
 1857 I purchased the land erased in  
 the Deed from Mr. Trust before I had  
 my Deed on Record I ascertained that this  
 land that appears to be erased was the  
 same land I had purchased -

After ascertaining that a part of  
 the land produced was in the Deed of  
 Trust we went down for Mr. Trust and so  
 come up & we went to Mr. Fuller's office  
 and made an arrangement by which  
 the land was to be released from the  
 Deed of Trust and other land wanted  
 is left of it

I saw the erasure in the  
 Deed of Trust, at Fuller's office after it has  
 been made -

I know that Trust offered to  
 put other lands in the Deed in place  
 of the Deed. This was in Fuller's office  
 The lands erased in this Deed  
 of Trust are the same lands we  
 purchased of Trust -

Samuel W. Fuller recurring Deft

When I testified before I did not remember the circumstances of Mr. King calling upon me to release the lands which he had spoken of - I now remember that he did so & he came with Trout to me to have it done. I did so at the request of him and Trout - This was in Dublin after the Deed had first been recorded in Mann County & I gave them leave erasing the lands from the Deed as soon as I directed to have them released on the Records of Mann County. I know there was talk of having other lands put in the Deed in place that Trout set out, but I do not distinctly recollect what lands were offered nor do I distinctly remember the act of inserting them - It is my impression that I did insert other lands - that this was the reason of having the Deed Recorded a second time in Mann County. I wish this to be taken as a qualification of what I before said in regard to not having written anything into the Deed after its first execution as aforesaid - I made the erasures at the request and for the purpose of accommodating Mr. King & Mr. Trout -

Cross Examination of Puff  
 I think the Deed after the seizure  
 was again recorded in Mann Court  
 and remember that I ever exam-  
 ined the records of it there-

Me, C. Young sworn for Deft  
 My residence is Astoria 220  
 My occupation since Nov 1856  
 has been Clerk of the Circuit Court  
 of Tazewell County -  
 I know Prattman the Complainant,  
 and Fuller Interbaugh & Willard  
 of the Defendants I know Mr Grant  
 Mr Fuller I think on the  
 23d July 1857 came into my office  
 and wrote a release of two copies  
 of the lot in Spring Lake as set forth  
 and described in the Deed of Trust  
 in Controversy, as described in the  
 first record of that Deed of Trust  
 It is my impression that Mr Grant  
 also Mr. Interbaugh & Don were then  
 present in the office at the time  
 It is my impression that Mr Grant  
 stood by the side of Mr Fuller at the  
 time he wrote the release  
 Don recollect hearing Grant  
 make any request to have them  
 released, though I think that was  
 talked among the parties above

having it done

The Deed was filed the second time for record on the date of the recall of the lot.

It is my impression that the fee for recording was not paid at the time or if it was it was paid to Mr. Maul. Do not know who did finally pay for it. Do not recollect of anything being said about Trust paying for it.

### Cross Ex of Staff

Our recollect as Mr. Tuttle was present at the time there were a quite a number present.

The Deed was recorded twice in this County.

It is admitted of the parties that a Deed from Trust to Mr. D. H. Moore for a part of the lands described in the Deed of Trust to Mr. J. H. & S. D. W. Sec 7. Also N. E. N. E. 1/4 N. W. 1/4 Sec 18, T 23. R. 6. Also Lot 3 N. W. 1/4 S. E. 1/4 Sec 16. T 23. N. E. 1/4. Which lands were in possession of said Moore at the time of executing the Deed of Trust. Was made by said Trust to said Moore before the date of this Deed of Trust & by the justice who took the acknowledgment was changed in the Description of the lands that said Deed from Trust to Moore was not on Record at the time of

Executing this Deed of Trust but  
that Monk having been in possession  
afterwards filed his bill in equity  
to cure the mistake in the Deed  
from Trust to him; also to make  
the said Deed of Trust secondary in  
its lien to the said Deed from Trust  
to Monk; and that a Decree of this  
Court was obtained in that case  
correcting said Deed and making  
its lien prior to the said Deed of Trust  
to Edward Willard & Co

State of Illinois  
 Taylor County Circuit Court

P. S. Putyman  
 vs  
 Samuel Willard  
 & c et al

In Bancam.

Thursday June 9 1859

The parties to this suit in person  
 and by their Solicitor appeared before the  
 undersigned for the purpose of taking  
 the testimony of S. M. Green a witness  
 produced and sworn on the part of the  
 Defendants to be read on the trial  
 of said cause

S. M. Green being first duly sworn  
 Deposed that he is 45 years old Resides in Attending  
 Mendon Co Ill. Knows the parties to this suit and  
 William Trout

About the last of March or first of April 1857  
 I was in St Louis on the heels of Samuel  
 Willard & Co in Company with Trout

Trout proposed to Swain to secure his  
 indebtedness to them by a lien on his real  
 estate, Trout or Swain Spoke of a  
 Mortgage on Real Estate Swain objected  
 to it on the ground that it was to show  
 a remedy that he proposed a Trust Bond  
 & Trout said that it did not make any  
 difference to him that he expected to  
 be able to pay it without trouble

need they some money and got them  
 at that time - About the first day  
 of June 1857 Trust was at my office and  
 wanted to get some money of a neighbor  
 of ours and proposed to secure the land  
 by a Trust deed on lands in Sagwell  
 County - I told him that I never  
 thought he had given Linnick Millard  
 & Co a lien on all the lands he  
 had - he said that he had not  
 that they had a lien on the Sagwell  
 Co Lands I then procured him the  
 money and he gave me a Trust  
 Deed on some lands in Sagwell County  
 In April 1858 I was at Nevada and  
 he came to me and said he had  
 sold some of the lands and wanted  
 me to release after a day or two  
 I agreed to release some 240 acres  
 in consideration of his paying me  
 \$1000 - he then said that Linnick Millard  
 & Co had a Trust Deed on the same  
 lands together with other lands  
 in Sagwell Co and that they were  
 to release the tract he had sold -  
 he frequently spoke during the  
 transaction of the two incumbrances  
 as Trust Deeds and said the one on the  
 Sagwell Co lands to Linnick Millard & Co  
 was not right but as it (the Sagwell  
 was included he would pay it off  
 that it would be that much of his  
 debt paid - he paid out of the

purchase money

207

purchase money he received for said  
lands to me \$ 1000. and to Putnbaugh  
\$ 1400 for Lovanich Millard & Co  
Putnbaugh releasing a part of the  
Sagwell Co lands which Trust had  
sold to McKeamy. Afterward I advertis-  
ed the remaining lands in my  
Trust Deed for sale to make the  
balance of money due. For some  
reason, or other the sale did not  
go off, Trust then wrote to me that  
I had not sold the lands at an early  
hour - so that he could have bought  
in all the lands and so rid them of  
the incumbrance of Lovanich Millard & Co  
I dont know what Putnbaugh ever  
requested me to make sale of said lands  
for that purpose but he told me  
that it would be for Trusts interest  
he was then representing Trust to  
make sale of them so that they  
could be bid in for the remainder  
of the Debt and thus have them freed  
from the other incumbrance  
Putnbaugh in an other conversation  
said that he considered the Trust Deed to  
Lovanich Millard & Co lands that  
he expected to defeat it that he  
would be glad to have these lands  
released from the effect of their Deed -  
At the time I made the sale of the lands  
Putnbaugh told me that I might just  
as well go over to the Court House and  
offer the land that he would bid

it off for Debt and Costs that it was  
not my duty to honor Putnam's  
At the time he told me this it was  
time for the sale and after 12 O'clock

Crop

Examination,

In the Conversation at Revere  
at which he paid me the \$1400 spoke  
of above Trust repeatedly said that  
the Trust Deed in the Gaynell Co lands  
was wrong. I think it very probable  
that he said that he never attempted  
these lands to be put in Godrich Willard  
& Co Trust Deed.

Fee of Master's }  
L. M. Green } All of which is  
Claims for fee of \$6.50 } respectfully  
Paid him by Putnam } submitted

W<sup>m</sup> Don Maus.  
No. 12, Des-

All the testimony taken on the part  
on Complainant was at the time excepted  
to <sup>by the defendant</sup> ~~at the time~~ & overruled by the Court.  
and all the testimony taken by the  
Defendants was at the time excepted to  
by the Complainant, all of which was  
overruled by the Court. = And that the  
original deed of Trust which does not  
appear of Record, was offered in evidence  
by Deft. it being the same as Exhibit B.

W. D. Putnam

To Trust Deed  
Godrich Willard & Co This is a true copy

209

To Trusteeds  
 Goodrich Willard & Co. This Indenture made this  
 Twentyfourth day of April  
 A.D. 1857, between William Trent of Saywell Co  
 in the State of Illinois of the first part, and Good-  
 rich Willard & Co of St Louis in the State of Missouri of  
 the second part, Witnesseth that the said William  
 Trent is justly indebted unto the said Goodrich Willard  
 & Co in the sum of Twenty Thousand Dollars  
 Trent's promissory note dated March 30. A.D. 1857, due  
 three months after date from said Trent to said  
 Goodrich Willard & Co with ten percent int from  
 maturity. Now, therefore, these presents Witnesseth  
 that the said party of the first part in order to secure  
 the prompt and punctual payment of the said sum  
 of Money herein before specified according to its  
 tenor and effect and in consideration of One  
 Dollar to the said party of the first part paid, the  
 receipt whereof is hereby Confessed do hereby  
 Grant Bargain and Sell unto the said party of  
 the second part and to his executors and Admini-  
 strators all the following described premises situate by  
 and being in the County of Mason and State of  
 Illinois, to wit: E 1/2 of N.E. Sec 30. S 1/2 of N.W. Sec 29. S 2  
 N.E. 6. N 3/4 P.M. S.W. of S.E. Sec 34. T23. N.R. 7. N 3/4 P.M. S 1/2 S.E.  
 Sec 25. T23. N.R. - N 3/4 P.M. S.W. N.W. + N.W. S.W. Sec 34. T23. N.R. 7.  
 N 3/4 P.M. N 1/2 S.W. fractional quarter. S. 19. T23. N.R. 6. N 3/4 P.M.  
 S.W. S.W. S 26. Town 23. N.R. 6. N 3/4 P.M. N.W. S 19 + N 1/2 N.E. 1/4 S.W.  
 T23. N.R. 6. N 3/4 P.M. S.W. of N.W. S 24. T23. N.R. 7. N 3/4 P.M. N.W.  
 N.E. S 35. + S.E. S.E. S 26. also N.E. S.W. S 26. T23. N.R. 7. N 3/4 P.M.  
 N.W. N.W. S 23. T23. N.R. 7. N 3/4 P.M. S.E. N.E. S 30. T23. N.R. 6. N 3/4 P.M.  
 S 1/2 N.E. + N 1/2 S.W. + N 1/2 S.E. + S.E. S.E. S 26. + N.W. S.W. Sec 21. T23. N.R.  
 N 3/4 P.M. S.E. S.E. S 25. T23. N.R. 7. N 3/4 P.M. S.W. N.E. + N.W. S.E. S 25.  
 N.E. S 36. T23. N.R. 7. N 3/4 P.M. N 1/2 S.W. frac 1/4 S. 19. N 1/2 N.W. frac 1/4  
 T23. N.R. 6. N 3/4 P.M. S.E. N.E. Sec 25. T23. N.R. 7. N 3/4 P.M. also E 1/2  
 S 20. T23. N.R. 6. N. 80 acres - Together with all and single

The Tenements, Hereditaments and appurtenances  
 thereunto belonging or in anywise appertaining  
 have and to hold the above described premises unto  
 The said party of the second part and to their Executors  
 or Administrators, in Trust, notwithstanding for the follow-  
 ing purposes to wit, in Trust in Case Default shall  
 be made by the said party of the first part his heirs  
 Executors or Administrators to pay the said Sum of  
 Money above mentioned according to the tenor and  
 effect thereof Then on application of the said Goodrich  
 Willard & Co or the legal holder or holders of said mortgage  
 and having first giving thirty days notice by pub-  
 lishing the same in a public Newspaper printed in  
 County where said premises are situated Then it  
 shall and may be lawful for the said party of  
 second part their Executors Administrators or  
 duly authorized to take possession of the premises  
 aforesaid and to sell the same or any part thereof  
 at public sale at such hour and place as the said  
 party of the second part their Executors Administrators  
 or attorney may appoint or to adjourn said sale  
 from time to time and upon making sale as aforesaid  
 to make and deliver to the purchaser or purchasers  
 thereof a good and sufficient Deed or Deeds of  
 Conveyance in the Law for the same in person  
 And out of money arising from such sale or  
 first paying all reasonable Expenses growing  
 The Execution of the trust aforesaid and all taxes  
 and assessments levied on the premises aforesaid  
 or on such part thereof as may be sold for the  
 purposes aforesaid to pay the said Goodrich  
 & Co their Representatives Executors or Adminis-  
 trators or the legal holder or holders thereof the  
 amount which may then be due on said mortgage  
 with the interest and costs of the same and the  
 balance of the money to be paid to the party of the  
 second part or to his heirs Executors or Administrators

211

Should be unto the said party of the first part  
 or his heirs Executors or Administrators. In  
 Case no default is made in the payment of the aforesaid  
 note then this Conveyance shall be null and void.  
 In Case the aforesaid note and all costs and rea-  
 sonable expences of the said Trust shall be satisfied.  
 the sale of part of the premises aforesaid then the  
 title to and the right of Entry in the unsold residue  
 of the premises aforesaid shall rest absolutely  
 on the party of the first part and the said unsold  
 residue shall be fully discharged from all liens  
 created by the Trust aforesaid. And the said  
 William Trust party of the first part for himself  
 and his heirs Executors and Administrators do hereby  
 Covenant to and with the said party of the second  
 part and - Executors ~~and~~ Administrators and to and  
 with the purchasers at the sale aforesaid that - the  
 time of the sealing and delivery of these presents  
 he is well seized of the premises above Conveyed  
 as of an indefeasible estate of inheritance in the  
 Law in fee simple and that the same are free  
 from all incumbrance of what nature soever  
 and against all and every person or persons lawfully  
 Claiming or to Claim the whole or any part thereof  
 Will forever Warrant and Defend and that he will  
 during the continuance of these presents pay all  
 Taxes and assessments levied on the above described  
 premises or any part thereof before any advertisement  
 or Charges accrue against the said premises.

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, Saml. W. Fuller } William Trust  
 Richard Ritter } Trustee

State of Illinois  
 Mason County } J. Richard Ritter Clerk of  
 Circuit Court for said County

212

Certify that on this day personally appeared  
Trent before me whose name appears subscribed  
to the foregoing Deed of Trust and who is personally  
known to me to be the real person who and in  
whose name the acknowledgment of the above  
Deed is proposed to be made as having executed the  
same 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 office at Havana this  
17<sup>th</sup> day of April A.D. 1857.

Richard Ritter, Clerk  
per Jno. C. Davis, Deputy

State of Illinois

Madison County, J. Richard Ritter Clerk of the  
Circuit Court & Ex officio Recorder

and for said County in the State aforesaid do hereby  
certify that the foregoing is a true and perfect copy  
of the Deed of Trust from William Trent To Woodrich  
Willard & Co, as the same appears of Record in my  
office, in Book "J" of Deeds on pages 227, 228, + 229.

In Witness whereof I have hereunto set  
my hand and affixed the seal of our said  
Circuit Court, at Havana, this 17<sup>th</sup> day  
of January A.D. 1858

R. Ritter, Clerk

Copy of Deed of Trust  
William Trent  
To  
Woodrich Willard & Co

Copy

~~213~~  
213

and both parties pray that this  
may be signed and sealed  
as their Bill of exceptions;  
which is accordingly done.  
James W. Drriott Seal

We mutually agree that the foregoing  
bill of exceptions may be signed  
and filed at this time as of the  
June Term 1859 of the Sagwell Circuit  
Court.

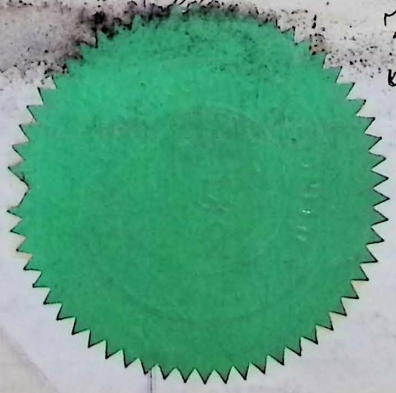
December 21<sup>st</sup> 1859. B. S. Petteyman  
Fuller Puterbaugh & Roberts  
for Defendants

State of Illinois }  
Sagwell County }

J. Merrill C. Young, Clerk

of the Circuit Court within and for the  
said County of Sagwell, do hereby certify  
that the foregoing two hundred ~~pages~~<sup>pages</sup>  
pages contain a true perfect and  
complete copy of the record and the  
proceedings had, and of the papers  
in the above entitled Cause, as the  
same appear of Record in my  
office.

Witness my hand and the judicial  
Seal of said Circuit Court, at Pekin  
this 31<sup>st</sup> day of December A.D. 1859  
Merrill C. Young Clerk



Supreme Court 2<sup>d</sup> Grand Division  
January Term A.D. 1867

B. B. Potts

Guadalupe Villalobos & Co. et al.

And now comes the said  
Complainant, and assigns the following  
~~errors~~ Manifest Errors in the foregoing  
Record viz:

- 1 The Court erred in permitting the Defendants Fuller & Putchough, to testify for the Defendants in the Cause and in receiving evidence of the Declaration of Rent after the commencement of this suit;
- 2 The Court erred in refusing the Prayers of Complaint in the Bill, and in not not rendering a Decree setting aside the deed of Trust to Defendant as fraudulent and void;
- 3 The Court erred in dissolving the injunction and dismissing the Bill at the Costs of the Complainant.

B. B. Potts  
Pro. et c.

And now comes the defendants and  
say there are no such errors in  
said record

S. D. Pulesbaugh  
for Defts

101

MAN

which  
is all

Wes Jan 5/6  
W. H. Thomas  
C. L. C.