

No. 14562

Supreme Court of Illinois

James L. Adams

vs.

Robertson

71641  7

State of Illinois } Douglas Circuit Court
Douglas County } ss:

Plas began and held at
the Court House in Tuscola in the County
of Douglas in the State of Illinois, before
the Hon. Justin Warlan Sole Judge thereof
sitting as a Court of Chancery, on the
Fifth Monday and twenty ninth day
of August in the year of Our Lord one
thousand eight hundred and fifty
nine,

Be it remembered, that heretofore,
to wit: on the Sixteenth day of August
in the year aforesaid, that James S.
Adams, Nelson W. Graham, John Buck-
ingham & Ebenezer Buckingham, by
George W. Thomas & Robert their solicitors
filed with ~~the~~ Clerk of said Court
their bill in Chancery, in words and
figures following, to wit:

"State of Illinois }
Douglas County } ss. To the Honorable
the Judge of the Douglas Circuit Court
in Chancery sitting,

Show unto your
Honor, your Petors, James S. Adams,
Nelson W. Graham, John Buckingham
& Ebenezer Buckingham, constituting a
mercantile partnership by the name

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firm and style of Graham & Buckingham,
that before the 30th. day of March
1856, one James M. Robertson was indebted
to your Creditors by their said name
firm and style in about the sum of
two thousand three hundred and
sixty nine dollars and ninety eight
cents, and that about the same time
the said James M. Robertson was in-
debted to the Prairie City Bank a
banking institution or corporation
formed and incorporated under an
act of the general assembly of the
State of Indiana duly passed, and
approved by the executive authority
of said State, the 28th. of May 1853,
and still in force in said State, entitled
'an act to authorize and regulate
the business of General Banking; which
said Prairie City Bank was and is
located at the City of Terre Haute in
the County of Vigo in said State, and
which then carries on the business
of general banking, but the precise
amount of said indebtedness of the
said James M. Robertson to said
Bank is unknown to your Creditors
but they believe it did not then
exceed about the sum of eleven thousand

and debts and for hundred dollars, which amount your Orators believe and state has been greatly reduced by payments since that time, but to what extent is unknown to your Orators,

And your Orators state that it is provided among other things in said Act of the General Assembly of the State of Indiana, that all persons having demands against any banking association formed or organized under said Act, may maintain actions against the President thereof which suits or actions shall not abate by reason of the death, resignation or removal from office of such President but may proceed to judgment against his successor.

And your Orators further state that about the said 20th. day of March 1856, the said James M. Robertson for the purpose of securing the said indebtedness to the said Prairie City Bank and to your Orators, and being the owner of the lands hereinafter mentioned, then situated in said County of Coles, but now being in the County of Douglas, executed a

Certain deed, whereby in consideration of the nominal sum of Five thousand dollars the said James M. Robertson attempted to convey to Crannell W. Barbour who was then President of said bank the lands so owned by him but by mistake the said lands were described in said deed as the West half of the North East quarter, and ten acres off the West side of the South East quarter of the North East quarter of Section twenty five; and also the West half of the North East quarter, and the South East quarter of the North East quarter of Section twenty six, and also fifty two acres in the North West corner of the South East quarter of Section twenty five, all in Township sixteen North, of Range seven East of the third principal meridian, which said deed was duly acknowledged by the said James M. Robertson, and was recorded in the office of the Clerk of the Circuit Court and ex officio Recorder of said County of Coler among the records of deeds thereof on the 12th day of April 1856, which deed is not in the possession of your Orators, and they make a copy thereof

certified by the said Clerk an exhibit to this
their bill marked "A", and refer to the
same for greater certainty.

And your Orators state that although
the said deed imports upon its face to
be an absolute conveyance the same
was taken and intended as a Mortgage,
and that simultaneously with the said
execution of the said deed and as a
part thereof the said L. W. Barlow
executed to the said James Robertson
an instrument of writing or agreement of
deceitance, whereby it was intimated that
the said James Mr. Robertson had that
day conveyed to the said L. W. Barlow
as President of the Prairie City Bank certain
lands in the County of Cook and State of
Illinois, by his deed bearing date March
20th. 1856. The said Barlow agreed to con-
vey the said lands to said Robertson
provided, the said Robertson should pay
what he owed to the said Prairie City
Bank, being about \$11,500; and what
might be due to your Orators in manner
following, to wit; four thousand and
five hundred dollars in June then
next, one half of the balance in Decem-
ber 1856, and the remainder in one
year thereafter, and interest at the customary

6 Bank notes at Genesee Falls which being accomplished the said land was to be reconveyed to the said Robertson, which agreement an instrument of defeasance signed by the said L. W. Barbour and dated March 20-1856, is not in the possession of your Orators, but in the possession of the said Prairie City Bank or its officers, wherefore your Orators cannot produce the same,

And your Orators state that in the execution of the deed first aforesaid an error occurred in the description of the tracts firstly and secondly mentioned and intended to be described in this, that they were described as lying in and being parts of the north East quarter of Section Twenty five when they should have been described as lying in and being parts of the North West quarter of said section and that afterwards, to wit, on or about the 24th day of February, 1858, for the purpose of correcting the said error the said James M. Robertson executed his further deed of that date, to Samuel S. Early who was then the President of the Prairie City Bank, in which the said mistake and correction were

declared, which last mentioned deed was duly acknowledged and recorded on the 25th day of February 1858, in the Records office of the said County of Coler, which last mentioned deed is not in the possession of your Orators, but as your Orators believe in the possession of the Prairie City Bank, or its officers, and your Orators makes a duly certified copy thereof an exhibit to this their bill, designated as exhibit "B".

And your Orators state that on or about the 26th day of October 1858, they obtained a judgment at Law against the said James M. Robertson in the Coler Circuit Court for the amount of said demand so due them, to wit, the sum of Two thousand three hundred and sixty nine dollars and ninety eight cents, which judgment remains in full force and unpaid.

And your Orators charge that although they are entitled to share equally and notably in the said security with the said Prairie City Bank yet the said Prairie City Bank by its officers and agents deny such right of your Orators and allege and pretend that your Orators are not entitled to

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participate in or to have any benefit from said security until the amount due to the said Bank shall have been fully paid.

And your Creators charge that the Prairie City Bank has collected and received large sums of Money in part payment of their said demand against the said James M. Robertson, but the amount and extent thereof are unknown to your Creators, & further charge And your Creators further charge that the said Prairie City Bank has, and holds other securities against the said James M. Robertson for this said debt, by which it might and ought to resort for the collection of this said demand, And your Creators further charge that the said lands are not sufficient in value for the payment of both said debts, and that the said Prairie City Bank is therefore bound in Equity to resort to its other securities, to the end that the demand of your Creators may be fully paid and satisfied out of the proceeds of the sale of said Lands.

Your Creators being reminded by the strict rules of the Canon or

law, pray that the said James M. Robertson and the said Cromwell M. Barbour and the said Prairie City Bank and Samuel S. Early, who is now President of the same may be made defendants to this your creditors bill and that they answer the same according to the usage of Courts of Equity upon their several and respective corporal oaths of the said James M. Robertson, Cromwell M. Barbour and Samuel S. Early, and specially that the said Samuel S. Early set forth and state the amount due the said Bank from the said James M. Robertson and that he accompany his answer with the evidence of such indebtedness, and that he also state set forth and state how much of the said indebtedness has been paid and whether the said Prairie City Bank does not hold other and what securities for their said debt or some part thereof and of what nature and the amount and value of the same, also that he set forth and accompany his answer with the original contract or agreement of defeasance, and the said original deeds, copies of which are exhibited

by your Orators, And your Orators pray
 that the equity of redemption of the
 said James M. Robertson in said lands
 be foreclosed, and that he be decreed
 to surrender and deliver up the pos-
 session thereof to your Orators and to
 the said Prairie City Bank; as if the
 same be adjudged to be of greater
 value than the amount due from the
 said James M. Robertson, that the said
 lands be decreed to be sold, and that
 the proceeds of such sale be ratably di-
 vided between your Orators and the
 said Prairie City Bank according to the
 amounts which may be found equi-
 tably due them, and that in case of
 such sale the said Robertson be de-
 creed to surrender and deliver up
 the possession of said lands to the
 purchaser of said lands, and that
 you grant your Orators such other
 and further relief in the premises as may
 remain be consistent with equity and
 good conscience and your Orators will
 ever pray &c. Hookins Thorro & Roberts,
 Sols. for Coprs."

And at the time and place of the
 filing of the aforesaid bill the said
 complainants filed their bond for

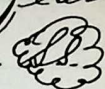
Exhibits "A" & "B," as follows, to wit:

Exhibit "A."

"This Indenture Witnesseth, that James M. Robertson of Putnam County Indiana for and in consideration of five thousand Dollars, the receipt whereof is hereby acknowledged, hath granted, bargained, sold conveyed and by these presents doth grant bargain sell & convey to G. W. Barlow as President of the Prairie City Bank in fee simple the following tracts of Land in the County of Cook and State of Illinois to wit; the West half of the North East quarter and ten acres off the West of the South East quarter of the North East quarter all of Section Twenty five, Also the West half of the North East quarter, and the South East quarter of the North East quarter, all of Section Twenty six, Also Fifty two acres, in the North East Corner of the South West quarter of Section twenty five being the tract purchased by me of William Brown all of said land being in Township Sixteen North of Range Seven East

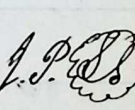
To Have and To Hold the Same to the said G. W. Barlow and his successors in office forever.

In Testimony whereof I have hereunto

set my hand and seal this day and year
first above written. James M. Robertson 

State of Indiana

County of Vigo } ss. Personally appeared
before me the above named James Robertson
and acknowledged the foregoing instru-
ment of writing to be his act and
deed, Witness my hand and seal of
office at Lerne Haute this 20th day of
March in the year 1856.

Harven Harper J.P. 

State of Indiana

Vigo County } ss. I Andrew Wilkins
Clerk of the Circuit Court in and for
said County, do hereby certify that
Harven Harper whose name appears
to the above certificate was at the date
thereof a Justice of the Peace in and
for said County duly commissioned
and qualified, and that his signature
thereto is genuine, and that full faith
and credit are due to his official
acts, Witness my hand the seal of the
Clerk of said Court this 8th day
 of April in the year 1856.

And Wilkins, Clerk

By John Wilkins depty.

Filed & Recorded April 12th 1856.

J. D. Ellington, Clerk

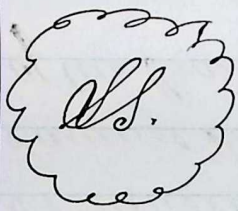
By W. Warren, Deputy.
Exhibit "B."

"This Indenture Witnesseth, Where-
as James M. Robertson formerly of
Putnam County, State of Indiana now
of Tuscola Coles County State of Illin-
ois by his deed of the 20th day of M-
arch A. D. 1856, conveyed to C. W. Bar-
bour of Terre Haute Indiana as
President of the Prairie City Bank at
Terre Haute, certain lands situated in
Coles County Illinois in consideration
for the sum of Five thousand dollars
the receipt whereof was duly acknow-
ledged in said deed, and whereas
certain of the lands so conveyed were
erroneously described in said deed
being set forth as the West half of the
North East quarter and Ten Acres off
the West side of the South East quarter
of the North East quarter all of Section
Twenty five all of Township Sixteen N-
orth of Range Seven East, when it should
have been described as the West half
of the North West quarter, and Ten Acres
off the West side of the South East
quarter of the North West quarter all
of which Section Twenty five all of
said land being in Township Sixteen

North, of Range Seven East, Now therefore
 the said James M. Robertson of Lusk
 Coles County and State of Illinois to
 rectify said Mistake as herein set forth
 doth hereby grant bargain, sell and
 convey to Samuel S. Early or President
 of the Prairie City Bank at Terre Ha-
 ute Indiana the foregoing tracts of
 Land intended to have been conveyed
 in the deed to his predecessor, to wit:
 the West half of the North West quarter
 and Ten Acres off the West side of
 the South East quarter of the North
 West quarter all of Section Twenty
 five in Township Sixteen North of
 Range Seven East, in the County of
 Coles and State of Illinois, To Have
 and To Hold the same to the said
 Samuel S. Early and his successors
 in office forever, In Witness whereof
 the said James M. Robertson hath
 hereunto set his hand and seal this
 Twenty fourth day of February A. D.
 1858,

James M. Robertson Esq
 State of Indiana
 Vigo County } Personally appeared
 before me a Notary Public in and for
 said County the above named James
 M. Robertson and acknowledged the

foregoing instrument of writing to be
his act and deed



Witness my hand and Seal
of office the twenty fourth
day of February A. D. 1858.

D. S. Donaldson Notary Public

State of Illinois,
Vigo County } ss.

I Andrew Wilkins Clerk
of the Circuit Court in and for the
County and State aforesaid do hereby
certify that David S. Donaldson Esq.
before whom the annexed instrument
appears to have been acknowledged
was at the time of taking the such
acknowledgment a Notary Public
in and for said County and duly
authorized by law to take the same,
and am acquainted with his signa-
-ture, and believe the annexed signa-
-ture purporting to be his to be genu-
-ine, and further, that the annexed in-
-strument is executed and acknowled-
-ged according to the laws of said
State; Witness my hand and the

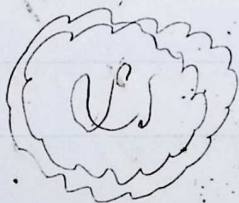


Seal of said Court this 24th
day of February A. D. 1858.

And, Wilkins, Clerk

Filed Feb. 23rd 1859, Recorded, February 27-1859,
J. M. Leach Recorder

State of Illinois
 Coles County } SS: I, Geo. W. Leel Clerk
 of the Circuit Court & of office the
 recorder in and for the County aforesaid
 do hereby certify that the foregoing
 is a true copy of the Deed from James
 M. Robertson to Samuel S. Early as Pres-
 ident of the Prairie City Bank at Ter-
 re Haute Indiana as appears from
 the records in my office.



Witness my hand and offi-
 cial seal this July 30, 1859.

Geo. W. Leel, clk.

By W. A. Whitmore Dep."

And on the filing of the foregoing
 bill and exhibits the complainants
 filed their bond for costs in words &
 figures following, to wit:

"James S. Adams,
 Nelson W. Graham,
 John Buckingham &
 Ebenezer Buckingham,
 vs.

James M. Robertson,
 Cromwell W. Barbour &
 Samuel S. Early, President
 of the Prairie City Bank,

In Chancery

In the Douglas
 Circuit Court,

We do hereby enter ourselves security

for costs in this cause and acknowl-
-edge ourselves bound to pay or cause
to be paid all costs which may accrue
in this action to the defendants or to
any of the officers of this Court, by vir-
-tue of the laws of this State, Dated
this 15th day of August 1859,

Gookins, Thomas & Roberts,

Which said bill & exhibits & bond were
endorsed by the clerk of said Court thus
"Filed August 16th 1859.

A. G. Wallace, clerk,

And upon the filing of the foregoing
bill, exhibits & bond the clerk of the Douglas
Circuit Court issued a summons in
words & figures following, to wit;

"State of Illinois

Douglas County } ss: The People of
the State of Illinois to the Sheriff of said
County, Greeting;

We command you to
summon James M. Robertson, Brownell
H. Barber, & Samuel S. Early if they
shall be found in your County, pers-
-onally to be and appear before the Ci-
-cuit Court of Douglas County, on the
first day of the next term thereof, to be
holden at the Court-House in Lurcola
in said County of Douglas on the 5th

Monday of August next, to answer
unto James S. Adams, Nelson W. Gra-
ham, John Buckingham and E. H. Hogan
Buckingham in their certain Bill of
Complaint of foreclosure, filed in the
said Court, on the chancery side th-
ereof. And have you then and there

this writ, with an endorsement
thereon in what manner you

shall have executed the same

Witness, A. G. Wallace, Clerk of
our said Court and the
Seal thereof, at Lincoln Co-
=resaid this 17th day of
August A. D. 1859.



A. G. Wallace Clerk

Which said summons was returned
by the Sheriff of Douglas County thus,
"Not found, S. B. Hogan, Sheriff."

And at the Term of Court as aforesaid
the following order & judgment of said
Court was had as follows, to wit:

"James S. Adams, et. al.

vs.

James M. Robertson

} Bill to fore close

This day

came the complainants by their solicitors
and on their motion it is ordered
that this cause stand continued?

And afterwards, to wit, on the 30th day

of September A. D. 1859, the Clerk of the Douglas Circuit Court aforesaid issued this other and further summons in the words and figures following, to wit:

"State of Illinois }
County of Douglas } ss: The People of
the State of Illinois, to the Sheriff of said
County greeting:

We command you to summon James M. Robertson, Cromwell W. Bar-
born and Samuel S. Early, President
of the Prairie City Bank if they shall be
found in your County, personally to be
and appear before the Circuit Court
of Douglas County, on the first day of
the next term thereof, to be holden at
the Court House in Tuscola in said
County of Douglas on the 4th Monday
of March next, to answer unto James
S. Adams, Nelson W. Graham, John
Buckingham & Ebenezer Buckingham
in their certain Bill of Complaint for
foreclosure filed in the said Court, on
the Chancery side thereof. And have
you then and there this writ, with your
return thereon in what manner you
shall have executed the same,

Witness, A. G. Wallace Clerk of
Our said Court, and the

Seal thereof at Tuscola aforesaid
 this 30th day of September
 A. D. 1859, A. G. Wallace, clk.

On the back of said summons
 was an endorsement made by the
 Sheriff, in words & figures following
 to wit:

"Sened this writ, on the within
 named James M. Robertson by
 delivering a copy thereof to him
 the 5th day of October 1859.

Senice 50; Copy 25; Mileage 10; return 10. = .95
 S. B. Hogan Sheriff."

And afterwards, to wit, at an other Term
 of the said Douglas Circuit Court began &
 held at Tuscola aforesaid before the Judge
 aforesaid, on Monday the 26th day of March
 A. D. 1860, this further order of said Court
 was had, to wit:

"James S. Adams,
 Nelson W. Graham,
 John Buckingham &
 Ebenezer Buckingham
 vs.

James M. Robertson, et. al.

Foreclosure

This day came
 the complainants by their solicitors and
 on their motion leave is given to answer

and bill in 60 days. It is further ordered that this cause be continued."

And afterwards, to wit, on the 16th day of April A. D. 1860, then again comes the complainants by Hookins Thomas & Roberts their solicitors and file in said Court their amended bill as by leave aforesaid in words and figures following, to wit:

"State of Illinois }
Douglas County. In the Douglas
Circuit Court, Subhancery,

The amendment of James S. Adams, Nelson M. Graham, John Buckingham and Ebenezer Buckingham to their bill of complaint against James M. Robertson, the Prairie City Bank, Cromwell M. Barlow and Samuel S. Early, in the Douglas Circuit Court,

And your Orators state by way of amendment to their said bill, that since filing their original bill they have discovered that one of the tracts of land mentioned in their said bill, and described as fifty two acres in the North East corner of the South West quarter of Section Twenty five (25) in Township sixteen (16) North, of Range Seven (7) East, in said County of Coles now

Douglas, is, or they believe, erroneously described, and they state from the best of their knowledge and belief that the same should be described as a tract, piece or parcel of land fifty three rods in width east and west, and one hundred and thirty two rods and six hundredths of a rod in length north and south in the North East corner of the South West quarter of said section twenty-five. But your Orators do not know of their own knowledge of the correction of the said description.

And your Orators further state that ~~some time~~ since the filing of their original bill they have discovered that at the time of the execution of the said Mortgage, to wit, the deed of conveyance and defeasance mentioned in their original bill and at the time of the execution of said deed made for the purpose of correcting the error in the first deed as set forth in in your Orators original bill, the said James M. Robertson had not the legal title to the said tract of land in the amendments above described, nor has he yet obtained the same but

the legal title thereto as your Oators are informed and believe, is in one William Brian, and your Oators state, that before the execution of the said mortgage the said James M. Robertson had by a verbal contract with the said William Brian purchased the said tract of land, for a certain price which is unknown to your Oators, but which your Oators state was an adequate and full consideration therefor, and that the said James M. Robertson made full payment to the said William Brian for the said tract of land, and took possession thereof with the consent of the said William Brian, and made lasting and valuable improvements thereon and cut therefrom a large quantity of Wood and Lumber all which was well known to the said William Brian who resided in the immediate vicinity of the said land and at the time of the execution of the said deeds to the said Cromwell W. Barbour, and the said Samuel S. Early by the said James M. Robertson in the original bills mentioned the said James M. Robertson was in the open and visible possession and

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Occupancy of the said tract of land
as owner thereof, claiming it as such
and your Orators state that since
discovering the defect in the title of-
-foresaid they and the said Prairie City
Bank and its officers and agents have
brought the said William Brian to ex-
-ecute a conveyance of the said tract
of land, to the said James M. Robert-
-son, as to the said Brownell W. Bar-
-bour and Samuel S. Early, as one
of them to the use of the said Prairie
City Bank and your Orators,

And your Orators had well ho-
-ped that the said William Brian
would have complied with such their
reasonable request, and would have
executed such conveyance, but now
so it is may it please your Honor
the said William Brian wholly re-
-fuses to make such conveyance some-
-times pretending that the said James
M. Robertson has not made payment
for said land, and at other times pre-
-tending that the said James M. Rob-
-ertson is indebted to him the said
William Brian on some other or
different account, and by divers
other excuses and pretences seeks to

avoid the making of said conveyance and relying on his legal title to the said land, seeks thereby to deprave your Orotors, and to deprive them of their security to which they are entitled as aforesaid.

And your Orotors pray that the said William Brian may be made a defendante to your Orotors original bill and this amendment thereto, and that he answer the said bill and amendment without oath, his oath to such answer being hereby specially waived, and your Orotors pray that the said James M. Robertson and William Brian may answer and set forth a true description of the said tract the time and terms of the contract by which the said Robertson purchased the same from the said Brian the price in gross, or per acre, at which the same was purchased, the amount paid therefor, and when the same was paid, whether the said James M. Robertson did not take possession of the said land pursuant to such purchase, and with the knowledge and consent of the said William Brian, whether he did not make lasting and valuable improve-

on said land, and cut and removed wood and Limber from the same, and exercised other acts of ownership over the same with the knowledge of the said William Brian, and without any objection from him.

And your Orators pray that the said William Brian may be decreed to convey the said tract of land to the said James Mr. Robertson to the use of your Orators and the said Prairie City Bank, according to the equity set forth in your Orators original bill and this amendment, or to the said Cromwell M. Barlow, or Samuel S. Early for the same use, and that the said William Brian be perpetually enjoined and restrained from setting up or claiming any right or title to said tract as against your Orators and the said Prairie City Bank. And that you grant your Orators such other and further relief, or other or different relief as may be consistent with equity and good conscience, And Your Orators will pray for process against the said William Brian returnable according to Law.

Gookins, Thomas & Roberts,
Sols. for Cpts."

Which said Bill was endorsed thus,
 "Filed April 16th 1860. A.G. Wallace, Clerk."

And upon the filing of the said amended bill the clerk of the Court as aforesaid according to the prayer of the said bill issued a summons in the words and figures following, to wit:

"State of Illinois

Douglas County } ss. The People of the
 State of Illinois to the Sheriff of said
 County Meeting:

We command you to summon
 William Brian, to be impleaded with
 James M. Robertson, Brownell W. Bar-
 -bour, and Samuel S. Early, President of
 the Prairie City Bank, if he shall be found
 in your County, personally to be and
 appear before the Douglas Circuit Court
 of the County of Douglas on the first
 day of the next Term thereof, to be holden
 at the Court House in Tuscola in and
 for the County of Douglas on the 3rd Monday
 of August next to answer unto James
 S. Adams, Nelson W. Graham, John Buck-
 -ingham and Ebenezer Buckingham
 in their original & amended Bill of
 Complaint for foreclosure, filed in the
 said Court, on the Chancery side thereof

And have you then and there this

unit, with an endorsement thereon in what manner you shall have executed the same
 Within A. G. Wallace, Clerk of our
 said Court and the seal thereof
 at Tuscola aforesaid this 16th
 day of April A. D. 1860,
 A. G. Wallace, Clerk"

Which said unit was endorsed by the
 Sheriff of Douglas County in words and
 figures following, to wit:

"Served this unit on William Brown
 the within named defendant by delivering
 a copy thereof to him on the 19th day of
 May 1860. Fees, Service 50; Copy 25; — .75
 Mileage 10; Return 10; — 10; — .30
 \$1.05

S. B. Sogan, Shff."

Copy of agreement to enter the appearance
 of defendants Early & Barlow, filed &c. as
 follows, to wit:

"State of Illinois, Douglas County, St.
 In the Douglas Circuit Court,

James S. Adams,
 Nelson M. Graham,
 John Buckingham &
 Ebenezer Buckingham
 vs.

James M. Robertson,
 Cromwell M. Barlow

In Chancery,

Samuel S. Early President
of the Prairie City Bank }

I hereby waive pro-
cess and publication, and enter the
Appearance of the above named def-
endants Cromwell W. Barlow and Sam-
uel S. Early President of the Prairie City
Bank Sept. 24th 1859; Thomas M. Nelson,

And afterwards, to wit, at an other &
further Term of the Court aforesaid at
the place aforesaid on the third Monday
of August A.D. eighteen hundred and
sixty, being the 20th day of said month
and continued until the eighth day of
said Term before the Hon. Justin Har-
lan sole Judge thereof the complain-
ants aforesaid file in said Court their
further amendment to their original &
amended bill, in words & figures fol-
lowing, to wit:

"State of Illinois

Douglas County } ss.

In the Douglas Circuit Court,
James S. Adams, Nelson W. Graham
John Buckingham & Ebenezer Buckingham

vs,

In Chancery.

James M. Robertson, Cromwell W. Barlow
Samuel S. Early, President of the Prairie City
Bank, and William Brian,

The said

Complainants by way of Amendment to their bill in this cause say that the said Prairie City Bank is a corporation formed under the act as set forth in their original bill and that in and by said Act it is provided among other things, that Banks formed and organized under said act may loan money at a rate of interest not exceeding six per centum per annum and the said complainants allege and say that the indebtedness claimed by the said Prairie City Bank and secured by the said Mortgage as set forth in their original bill is and was for money loaned by the said Prairie City Bank to the said James M. Robertson, and the said complainants allege and charge that in the making of said loan the said Prairie City Bank corruptly and unlawfully contracted for and took reserved and took from the said James M. Robertson upon the said loan to him secured by the said Mortgage interest at a rate over and above six per centum per annum, to wit, at and after the rate of twelve per centum per annum,

And the said complainants allege and charge that the notes, bills of exchange and obligations of the said James

Mr. Robertson gives for such loans the particulars of which are unknown to your Creditors, and all renewals ^{are} is wholly void and that the said Mortgage so far as it is a security for the said alleged indebtedness to the said Prairie City Bank, was, and is wholly void.

And your Creditors allege that the said indebtedness was and is secured by diverse notes, bills of exchange and other securities, and that in making and discounting thereof they were made payable in the City of New York and at other places abroad, and out of the State of Indiana, and that such excess of interest was reserved and taken in the form of exchange between Terre Haute and the place where the same was made payable. And your Creditors Alledge that at no time when the loans were made, or notes or bills discounted was the exchange in favor of Terre Haute, and against the place where the said bills and notes were made payable, but at all such times the exchange was in favor of the places where said notes and bills were made payable, and that the said pretence of taking such excess ^{as} exchange was a shift to avoid ^{the law} the law under which said Bank was organized, and to obtain complicity

and usuriously an excess over and above six per centum per annum for the loan of money by said Bank.

And your Orators charge that the terms upon which said loans were made are in the particular knowledge of Horace W. Barton who was at the time thereof President of the Bank, and your Orators pray that the said Horace W. Barton may be required upon his oath to answer and set forth and to state in full how and where in what manner the said loans were made or effected and what notes or bills were taken to secure the same and what amount was taken upon each of the said loans or any amount thereof in the form of interest or exchange or under any other name or denomination, and that he distinguish between interest and exchange, And that the defendant Samuel S. Early answer and set forth and state what entries were made in the books of said Bank on the occasion of each of such loans, discounts or any renewal thereof and the dates of the same respectively and that he fully show the terms and conditions of such loans in every particular and

respect, showing the amount of the paper discounted, the time it had to run, the amount taken on and for interest, or exchange or in any other name, and how much money in each instance was paid over to said Robertson,

And Your Orators pray that the said Mortgage so far as it is intended to secure such loan to said Bank be decreed and declared to be void, and that the same be postponed to the right and prior equity of your Orators, and that you grant your Orators such other relief or any other or different relief as to equity may belong, And Your Orators will ever pray, Gookins, Thorne & Roberts,
Sols. for C. & T.

(The following amendment was allowed to be made and was added to the bill above and "Filed" April 25th 1862, Clerk)

"Amendment,

And your Orators state that by a Statute of the State of New York in force when the said several bills and notes were made and still in force it was and is enacted that all bonds, bills, notes, assurances, conveyances and securities whatsoever, whereupon or whereby there shall be reserved or taken any greater sum

as value for the loan or for bearing
 of any money goods or things in
 action than seven dollars upon one
 hundred dollars for one year and
 after that rate for a greater or less time
 or for a longer or shorter time shall
 be void. And your Oreator charge
^{that} upon the said loans to the said
 James M. Robertson and the securities
 given for the same, which were paya-
 ble in New-York a greater rate of inter-
 est than seven per cent as aforesaid
 was corruptly and unlawfully re-
 -sented and taken by the said Prairie
 City Bank, and that the same were
 and are void."

"Amendment filed April 25-1862.

D. L. Wallace, clerk."

And now, to wit, on the 28th. day of August, A.D. eighteen hundred and sixty, being the eighth day of the Term of the Douglas Circuit Court last opened, comes the Prairie City Bank by J. P. Usher its Attorney, and files in said Court its cross bill in words and figures following, to wit:

In the Douglas Circuit Court,
August Term 1860.

James S. Adams, et al.

vs.

James M. Robertson et al. } To the Hon. J. Harlan sole judge of the Douglas Circuit Court in Chancery sitting.

Now Creator the Prairie City Bank one of the defendants in the above entitled suit would respectfully represent unto your honor that their co-defendant, Robertson on the day of March 1856, made his deed and delivered the same to L. M. Barbour then the President and Trustee of this complainant by which the said Robertson conveyed to said Barbour as trustee for the complainant the West half of the North East quarter & ten acres off of the North East quarter of sections West side of the South East quarter of the

North East quarter of section twenty five;
 Also the West half of the North East quarter
 and the South East quarter of the North
 East quarter all of section thirty six
 Also fifty two acres in the North East
 corner of the South East quarter of sec-
 tion twenty five being the tract pur-
 chased of William Brian, all Town-
 ship sixteen North of Range seven East,
 in the County of Douglas aforesaid.

And complainant further states that
 there was a mistake in said deed, and
 the two first mentioned tracts and errone-
 ously described, and should have been
 described as the West half of the North
 West quarter & ten acres off the West
 side of the South East quarter of the
 North West quarter of section twenty
 five Township sixteen North of Range seven
 East, in the County aforesaid, which last
 described tracts of land the said Rob-
 ertson afterwards conveyed to S. S. Early
 depts in this suit, in which this is a
 cross bill, that said Early was the suc-
 cessor of said Barbour as President of
 this Corporation, and that he held the
 same in trust for the Corporation, he nor
 the said Barbour being an interest in

the said lands except as such naked trustees, that the deeds of said Robertson to said Barlow and Early are here to the Court shown, made exhibits in this cause and a part of this bill: the first named deed was duly acknowledged and filed for record in the recorder's office of the County of Coles on the 12th day of April 1856, and recorded on the 26th day of the same month in book N. Page 316.

And the other of said deeds was in like manner duly acknowledged & recorded in said recorder's office on the 27th day of February 1858, in Book N. 1 of deeds page 401, in which County of Coles said lands were at the time situate, it being before the organization of the County of Douglas that said conveyances were made as aforesaid to secure to this Corporation complainant the payt. of the sum of Eleven thousand five hundred dollars with interest which the said Robertson then owed the Prairie City Bank, all of which is yet due and unpaid & of all which said Brian then had notice.

That at the time of making said conveyances this complainant supposed that the said Robertson had

the legal title to said lands, that he
 was then in possession of the same but
 Complainant has lately heard that the
 fifty two acres in the North East cor-
 ner of the South West quarter of sec-
 tion twenty five, which is described as
 they believe as 63 acres in width East
 & West by 13 $\frac{3}{4}$ rods in width East & West
 has not been conveyed to said Robertson
 but that the legal title is in said Brian
 he never having conveyed the same to
 the said Robertson, but complainant
 says that the said Brian actually sold
 said Robertson said fifty two acres of
 land and put him in the possession thereof
 and the said Robertson paid said Brian
 the full value and agreed price thereof
 to wit, the sum of \$2000, and that the
 said Brian put the said Robertson in full
 possession of — lands, who ever since
 has had the same, and said Robertson
 with the full knowledge of the said
 Brian has made many lasting and
 valuable improvements upon said lands
 in the building of fences and houses
 upon said lands, that said Robert-
 son has not paid this Corporation the
 aforesaid sum of \$11500, or nor any part
 of it, but the same is unpaid, that the

Land conveyed to Barlow & Early are
 altogether insufficient to pay said debts
 that said Briant now refuses or com-
 plainant has heard to go on and execute
 a deed to said Lands to said Robertson
 as in equity he ought to do, sometimes
 unjustly alleging that he is not bound
 to do so, because the contract was not
 reduced to writing, and sometimes pre-
 tending that the said Robertson was
 indebted to him said Briant at the
 time he made said Robertson said
 deed to Barlow & Early, all which preten-
 ces actings and doings are untrue
 and unjust and against equity and
 good conscience, complainant prays
 that said Briant and Robertson may
 be made debtors to cross bill and that
 they respectively answer the same, that
 complainant have a decree for the a-
 mount of the debt due and owing by
 said Robertson to said complainant

That said Briant may be decreed to
 convey said 52 acres - Land to said Rob-
 ertson or to the complainant, that the
 same be decreed to be sold and the pro-
 ceeds applied to the payment of cross
 debt, and for such other and further
 decree as to the Court shall seem

just and as shall appear to be equitable
and agreeable to conscience.

J. P. Usher, atty. for
P. City Bank"

Exhibit "A" to foregoing bill,

"This Indenture

Witnesseth, that James M. Robertson of
Putnam County Indiana for and in con-
sideration of Five thousand dollars the
receipt whereof is hereby acknowledged,
hath granted bargained, sold & conveyed
& by these presents doth grant bargain
sell & convey to E. M. Babson as President
of the Prairie City Bank in fee simple the
following tracts of land in the County
of Coles & State of Illinois, to wit: The
West half of the North East quarter, and
ten acres of the West side of the South
East quarter of the North East quarter, all
of Section twenty five; also the West half
of the North East quarter quarter and
the South East quarter of the North East
quarter all of Section twenty six; Also
fifty two acres in the North East corner
of the South West quarter of Section twenty
five, being the tract purchased by me of
William R. Main, all of said land being
in Township Sixteen North of Range Seven

East, To Have and to hold the same
to the said L. M. Barlow, & his successors
in office for ever, In testimony whereof I
have hereto set my hand & seal the day
& year first above written

James M. Robertson *Esq.*

State of Indiana, County of Vigo, *SS.*

Personally appeared before me the above
named James M. Robertson, and acknow-
-ledged the foregoing instrument of
writing to be his act and deed, Witness
my hand and seal of office this 20th
day of March in the year 1856.

Warren Harper, *J.P. Esq.*

State of Indiana Vigo County, *SS.*

I Andrew Wilkins Clerk of the
Circuit Court in and for said County
do hereby certify that Warren Harper
whose name appears to the above certifi-
-cate was at the time date thereof a Jus-
-tice of the Peace in & for said County
duly commissioned and qualified &
that his signature thereto is genuine
and that full faith & credit are due
to his official acts,

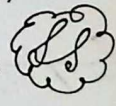
SS. Witness my hand & the seal of the
Clerk of said Court this 8th
day of April in the year 1856.

And. Wilkins Clerk.
By Geo. Wilkins Deputy.

Exhibit "B." to Defendant Prairie City Bank, cross bill, to wit:

This Indenture witnesseth, that whereas James M. Robertson, formerly of Putnam County, State of Indiana, now of Leves-Cole Co. State of Illinois, by his deed of the 20th day of March A. D. 1856, conveyed to L. W. Barborn of Gene Haute Indiana as President of the Prairie City Bank of Gene Haute certain land situated in Cooks Co. Illinois in consideration for the sum of Five Thousand dollars the receipt whereof was duly acknowledged in said deed; and whereas certain of the lands so conveyed were erroneously described in said deed; being set forth as the West half of the North East quarter, and ten acres off the west side of the South East quarter of the North East quarter all of Section Twenty five, all of said land being in Township Sixteen North, of Range Seven East; when they should have been described as the West half of the North West quarter, and ten acres off the West side of the South East quarter of the North West quarter all of Section twenty five, all of said lands being in Township Sixteen North, of Range Seven East,

Now Therefore the said James M. Robertson
 of Lincoln, Boles County and State of Il-
 linois to rectify said mistake as herein
 set forth, doth hereby grant, bargain sell
 & convey to Samuel S. Early as President
 of the Prairie City Bank at Terre Haute
 Indiana the foregoing tract of land
 intended to have been conveyed in the
 deed to his predecessor, to wit: The West
 half of the North West quarter and ten
 acres off the West side of the South
 East quarter of the North West quarter
 all of section twenty five in Township six-
 teen North, of Range seven East, in the
 County of Boles and State of Illinois
 To Have and To Hold the same to
 the said Samuel S. Early and his suc-
 cessors in office forever; In Witness whereof
 the said James M. Robertson hath hereunto
 set his hand and seal this Twenty
 fourth day of February A. D. 1858.

James M. Robertson 

State of Indiana,
 County of Vigo. I, Personally appeared
 before me a Notary Public in and for
 said County the above named James
 M. Robertson and acknowledged the
 foregoing instrument of writing to be
 his act and deed, Witness my hand and

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Seal of office this twenty fourth
day of February A. D. 1858.

D. S. Donaldson

Notary Public

Endorsed on the back by the Circuit
Clerk of Coles County Illinois, thus,
"Filed February 25th 1858.

Recorded February 27th 1858. Book No. 1 of
Deeds page 401, Geo. W. Leel

Recorder Coles Co. Ill.

Copy of agreement or defeasance filed
August 28th 1860. to wit:

"This Instrument
of writing witnesseth that James M. Rob-
-ertson has this day conveyed to C.
M. Barbour, or President of the Prairie
City Bank certain lands in the County
of Coles, & State of Illinois by his deed
bearing date March 20, 1856. Now the
said Barbour agrees to convey said
lands to said Robinson provided
the said Robinson pays what he owes
to the Prairie City Bank being about
\$11,500 and what may be due to Gra-
-ham & Buckingham in manner fol-
-lowing, to wit, four thousand five
hundred dollars in June next, and
half of the balance in December 1856
& the remainder in one year thereafter

and interest at the customary Bank rates of this place. This being accomplished said land to be received and reconveyed to said Robertson.

March 20, 1856,

C. W. Baiborn

Thert."

And now in open Court on the 28th day of August, A.D. 1860, being the 8th day of the August Term A.D. 1860 of the Douglas Circuit Court, for said Douglas County, comes the defendant, the Prairie City Bank by J. P. Usher its atty. and files in said Court, its answer in words & figures following to wit:

"The Prairie City Bank et al.

ats

} Chancery

James S. Adams, et. al. }

In the Douglas Circuit Court,

And the

said Prairie City Bank defendant comes and answers, and says that it is true that the said Robertson the complainant mentioned executed his deeds of the Lands in the complaint mentioned, to said C. W. Baiborn, & S. S. Early, who were respectively the Presidents of the corporation the Prairie City Bank, and that said conveyances were made for the benefit of this corporation defendant and to secure

the payment to this defendant of the sum of eleven thousand five hundred dollars with interest which the said Robertson then owed this defendant, which deeds were intended to be in the nature and condition of a mortgage of said land to the said Barbour & Early acting as the Presidents of this Bank and trustees thereof.

This defendant has been informed and so charges the fact to be that it was stipulated and agreed by and between the said Barbour & Robertson that after the paying of the debt due to the Prairie City Bank the debt that the overplus should be paid to the complainants in liquidation of any demand that the complainant might have against said Robertson, that there was no defeasance executed at the time of the execution and delivery of said mortgage and the pretended defeasance if any exists was made by said Barbour some time after the delivery of said deed, and without any authority in said Barbour, to execute said supposed defeasance in prejudice of the rights of this debt and if any such supposed defeasance was executed

by said Barbon the same was executed after the delivery of the deed and with the intention of explaining the reason, and occasion of making said deed to said Barbon, and if the said supposed defeasance contains any such supposed stipulations indicating that the complainants are or were to share pro. rate, with this debt, in the said lands or the proceeds thereof upon sale, that the same was made and inserted by mistake by the said Barbon and without any authority of law, and in fraud of the rights of this debt, of whom the said Barbon was the trustee & without any authority to waive or release any of the rights of this defendant and without any consideration whatever, and debt. deny that there is any such alleged defeasance operative or effective against this debt, and that the complainants have no interest in said lands, or the proceeds thereof till the entire debt of this debt, of \$11,500.00 with interest due or aforesaid has been paid to this debt. all which with the exception of about \$1000, is due and unpaid to this debt. Debt. have been informed

that since the making of said Deed to Early & Barlow for deft. now as of-
 -oresaid it has been ascertained that the said Robertson had not the legal title to the lands conveyed & described as the Briant Lands but has the equitable title only to the Briant lands and is entitled to the conveyed
 -ance of said Lands from Briant as the complainants have alleged, and that subject to the Prior Equity of this deft. in said Land as before stated complainants are entitled as this deft. believes to the balance of the pro-
 -ceeds of the sale of said Lands to be applied to the payment of their debt whotere it may be against said Robertson, the amount and nature of which this deft. is ignor-
 -ant and requires proof of the same. That upon their debts being re-
 -ceived their aforesaid debt and interest they have no claim upon said Lands.

And now whatever allegations in said bill of complainants, is not admitted or denied, this deft. hereforever and denies and says that not part of the same is true, and this

deft. pray to be hence dismissed
with their costs and charges in and
about this suit in defts. defence
in this behalf expended,

J. P. Usher, atty. for
deft. the Prairie City Bank.

And now on the 28th day of
August A. D. 1860, comes into open
Court at the August Term aforesaid
of the Court aforesaid comes the
defendant James M. Robertson &
files in open Court his separate
answer in words & figures following
that is to say,

"James S. Adams, et. al.	{	Douglas Ci-
vs.		vil Court
James M. Robertson, et. al.		
August Term A. D. 1860,		

The Separate
answer of James M. Robertson to so
much of the bill of complaint of
said corrupts, filed herein as he is ad-
vised is material for him to answer
saying to himself all exceptions &c. for
answer says, 'That true it is that the
said Deed in bill mentioned as well
as the said defeasance was executed
between said Prairie City Bank and
this respondent, And respondent says

that at the time said deed of conveyance was made by respondent to said Prairie City Bank there was a verbal contract and full understanding that said deed should only be held as a Mortgage to secure said indebtedness, should be satisfied, the said Land should stand as security for a debt due said compts. the same mentioned in compts. bill

That the said defeasance was afterwards made and intended to carry out the contract on which said deed of conveyance was executed and understood by the parties thereto at the time as being for the benefit of said Bank as security for their debt and if any overplus remained after paying said Bank debt, the complainants were to be secured thereby.

and deft. having fully answered says to be discharged &c. } James M. Roberts,
Sworn to this 28th day Aug, }
1860. A. G. Wallace, clk. }

And now, to wit, on the 28th day of August, on the 8th day of the August term of the Douglas Circuit Court as aforesaid, comes the defendant Brown, and files in open court

*Shut out
and
a
of
all
-*

his answer in words & figures following,
to wit:

"State of Illinois, Douglas County ss.
Douglas Circuit Court,
In Chancery,"

The
separate answer of William Brian, de-
fendant impleaded with James M. Rob-
ertson & others to the original & Amend-
ed Bill of Complaint of James S. Ad-
ams & others complainants as exhibited
against the said defendants on the
chancery side of said Court, at the Au-
gust Term thereof A. D. 1860.

The said de-
fendant saving and reserving to him-
self all right of and benefit of excep-
tion to the said original bill and am-
ended bill, for reason of its many errors
uncertainties &c. for answer thereto or
to so much thereof as he is advised it is
material for him to ~~answer~~ make answer
unto, this defendant answering says - that
so far as the allegations contained in
said original bill of his own knowledge
he knows nothing, nor can he admit
or deny the same to any extent whatever
but requires of the complainants to
make strict proof of each and every

material allegation therein stated and set forth.

Further answering the said defendant says, that by a certain "Act of the People of the State of Illinois, represented in the general assembly of the State passed on the day of A. D. 18__ and in force on the day of __ of the same year, for the prevention of frauds and perjuries, and commonly called the Statute of frauds all contracts and agreements in relation to lands except as is therein excepted are required to be reduced into writing and signed by the party or parties to be bound thereby; And that the said contract and agreement in the said amended bill mentioned and therein alleged to have been made and entered into by this defendant and the said James M. Robertson was not reduced to writing and executed in pursuance of the said Statutes, and therefore this defendant insists that the same is void as against this defendant and that he cannot be affected thereby; and this defendant claims the same benefit as if he had pleaded the said Statute in this cause, and this

defendants for the reason and under the circumstances aforesaid, is advised and insists that the said complainants are not entitled to any relief against this defendant. Touching the interests complained of in the said original and amended bill

Further answering this defendant shews that since the year of our Lord 1856, up to this date there has been a large subsisting indebtedness from the said James M. Robertson to this defendant and a judgment now remains unsatisfied in the local Circuit Court in this State for about \$1000, on account thereof that besides this defendant as surety for said Robertson on two appeal bonds for removing cases at the suit of James Mount against said Robertson, into the Supreme Court of this State on the appeal of said Robertson, has had to pay over \$3000, for him \$1500. of which remain due and unpaid from said Robertson to him that said Robertson is hopelessly insolvent at this time, that defendant is wholly ignorant of any transfers of property as set forth in said bill

Can & men no belief touching the ob-
 -ligations of complainants about the
 same, but insists that under no cir-
 -cumstances should defendant be
 required to relinquish up to any
 one any security he might have
 for the said claim of \$2500. which he
 has against the said James M. Rob-
 -ertson as hereinbefore stated

And now having fully answered,
 this defendant asks to be hence dis-
 -charged with his reasonable costs,
 as in equity and good conscience
 he should be &c. { William Brian
 or B. Ficklin, Sol } defendants

"It is
 agreed that this shall be taken as
 the answer to the cross bills of the
 Prairie City Bank. J.P. Nether, for
 P.C. Bank."

Upon the filing of the defendant Brian's
 answer, the complainants by their
 sol^r filed their replication thereto in
 words & figures following, to wit,

"The
 replication of James S. Adams, Nelson
 M. Graham, John Buckingham - and
 Ebenezer Buckingham complainants
 to the answer of William Brian, de-

-pendant to the bill of complaints
against said William Brian, James
Mr. Robertson, Cromwell Mr. Barlow
& Samuel S. Early in Douglas Circuit
Court in Chancery.

These replicants for replica-
-tions to the answer of the said Wil-
-liam Brian say that the said bill
is good and true, certain and suf-
-ficient, and that the said answer of
the said William Brian is untrue
erroneous and insufficient, except so
far as the same admits the matters
in the said bill alleged, all which
they will aver, maintain and prove
as this honorable Court shall direct,

Gookins, Thomas & Roberts,

Complainants Solrs."

And on the filing the foregoing answer
& replications &c. the following agreement
was filed in words & figures following to wit:

State of Illinois, Douglas

Circuit Court. August Term 1960.

James S. Adams & others

M.

James M. Robertson et al

{ On to Chancery.

It is agreed by
and between the parties, that any jud-
-gment or judgments, or any legal

proceedings held in the Boles Circuit Court, establishing any right or affecting any party to this suit may be proved by parol, by satisfactory evidence without bringing the record of such proceedings and that the same shall have like force and effect as if the records were produced, Aug. 28-1860.

Gookins, Thomas & Roberts,

Sols. for complainants,

J. P. ~~Prasher~~ for Prairie City Bank,

O. B. Ficklin for Brian.

And on the day and time and place of filing the foregoing agreement the following stipulations were filed, to wit:

"State of Illinois

Douglas County } Sd. Douglas Circuit Court
August Term 1860.

James S. Adams, et. al.

vs.

James M. Robertson, et. al.

{ Ex Chancery }

It is agreed by and between the complainants and the defendants S. W. Barlow & S. S. Early representing the interests of the Prairie City Bank that this cause may be set down for hearing upon the right to a foreclosure or against the defendant Robertson

and upon the right to a decree against the defendants Brian as claimed in the complainants amendment to their bill, in which questions the parties to this agreement have an interest, and that all questions of the distribution of the funds arising from the sale of the Mortgaged premises are continued for further directions and shall be determined according to the respective rights and equities of the parties without regard to the form or substance of the pleadings upon such evidence as they may respectively adduce reserving the right of either party to call upon the other for discovery, Aug. 28th 1860.

Hookins, Thomas & Roberts
sols. for Cpts.

J. P. Usher, for Deft.

"P. City Bank & Cash."

And now again comes the parties, and at the same time and place this other agreement was filed to wit:

"Adams, et al.

11. } In the Douglas Cir.
Robertson, et al. } Court Aug. 1. 1860. Indorsed.

It is agreed that the entry of ~~this~~ the decree in this case, shall as between the complainants and the Prairie City

Bank be formal for their benefit and that the amount of the decree in their favor and the questions of priority in the distribution of the funds arising from the sale of the property shall be the subject of future adjustment by the Court without prejudice by reason of any order or testimony may be given or made in the cause, and the amount of the decree in favor of the Bank shall be subject to review in favor of Deft. Robertson,

Aug. 29-1860,

J. P. Nishe, for L. C. Bank
Hookins, Thomas & Roberts
Sols. for Cpts.

James M. Robertson?

And now to wit at the Term of the said Court at the August Term thereof on the 8th day of said Term the following Order, Judgment and decree was had and entered of Record in words and figures following, to wit:

James S. Adams,
Nelson W. Graham
John Buckingham &
Ebenezer Buckingham

vs.

James M. Robertson, The
Prairie City Bank, Com-
-well W. Barlow, Samuel S.
Early & William Brian

Bill to foreclose,

Come now

the parties by their solicitors and this cause is set down for hearing upon the pleadings and the evidence adduced & the Court being sufficiently advised of and concerning the premises, It is ordered adjudged and decreed that the defendant William Brian within ten days from this date convey to the defendant Samuel S. Early that certain tract or parcel of land designated and known as being sixty three rods in width East and West, by one hundred and thirty two and six hundredths rods in length, North and South, in the North East, corner of the South West quarter of Section Twenty five in Township Sixteen North, of Range Seven East, in the County of Douglas in the State of Illinois To Have and to hold the same as the assignee and mortgage of the said James M. Robertson, and for uses in the decree hereinafter, specified, and that in default of such conveyance A. G. Wallace equis the Clerk of this Court as a commissioner of this Court make such conveyance on behalf of said Brian, and it is further ordered, adjudged and decreed that the deeds from the said James M. Robertson to the said Cromwell W. Barbour of date

March 20, 1856, as set forth in compl-
-airants bill and as corrected by the
deed from the said James M. Robertson
to the said Samuel S. Early dated Feb-
ruary 24th 1858, and the contract or
instrument of defeasance, executed, by
the said Lemuel W. Barbour, to the said
James M. Robertson of date March 20th
1856, he established as a mortgage upon
the lands therein mentioned from the
said James M. Robertson to the said
Lemuel W. Barbour in trust for the
Prairie City Bank and the said compl-
-airants which lands are described as
follows, to wit: the West half of the North
West quarter of section Twenty five and ten
acres off of the West side of the South
East quarter of the North West quarter of
said section, and a tract or parcel of land
lying in the North East corner of the East
half of the South West quarter of section
twenty five, Sixty three rods in width
East and West by one hundred and
thirty two and six hundredths rods in
length North and South, and contain-
-ing fifty two acres; Also the West
half of the North East quarter of of
section Twenty six; and the South East
quarter of the North East quarter of

of the North East quarter of the same section, all of which lands are in Township Sixteen, North, of Range Seven East, in said County of Douglas.

And it is further ordered, adjudged and decreed that there is due to the Prairie City Bank from the said James M. Robertson the sum of Eleven Thousand dollars, and that there is due to the said complainants the sum of Two thousand six hundred and twenty dollars and sixty seven cents upon the several debts secured by the said Mortgage, and that default having been made in the payment of the said Money according to the terms and conditions of the said Deed of Conveyance the equity of redemption of the said James M. Robertson in the said lands be foreclosed, and it is ordered and decreed that the Sheriff of the County of Douglas be appointed a commissioner to sell said lands, and that he sell the same pursuant to this decree, and that he give like notice, and sell in like manner as lands are sold under execution in actions at law, and that he proceed to make such sale if the

said Mortgage money be not paid with accruing interest and costs within sixty days from this date and that he report such sale, and bring the proceeds thereof into this Court for distribution between the parties entitled thereto.

And it is further ordered adjudged and decreed that if the said Mortgage money shall be paid within the time aforesaid by the said James M. Robertson or the said William Brian or at any time before a sale of the said Mortgaged premises the said James M. Robertson and William Brian shall be remitted to their respective rights and equities as between themselves, and the said Samuel S. Early shall thereupon release and quit claim the said fifty two acres of land to the said William Brian, and it is further ordered, adjudged and decreed that upon the sale of the said lands under this decree, the said William Brian be forever enjoined and restrained from setting up any title claim to said land as against the said Mortgage or any purchaser under the same and it

is further ordered adjudged and
 decreed that upon sale and conveyance
 of the said lands pursuant to said de-
 =cees, the said James M. Robertson
 do forthwith surrender and deliver to
 the purchaser the possession of the said
 lands and that in default thereof a writ
 of assistance issue upon this decree for
 the delivery of such possession. And it
 is further ordered, adjudged and dec-
 =reed that the said complainants rec-
 =over against the defendant James M.
 Robertson, their costs by them about
 their suit in this behalf expended to be
 taxed by the Clerk, & except the costs made
 under the amendment of the complain-
 =ants bill as against the said William
 Brian, And that they recover against
 the said William Brian their costs in
 that behalf expended by the Clerk to
 be taxed. And it is further ordered
 adjudged and decreed that the dis-
 =tribution of the fund arising from
 the sale of the said land and all
 other matters not determined by the
 foregoing decrees be reserved for the
 further discretion of this Court, upon
 the coming in of the report of the sale
 of the Mortgaged premises, and therefore

the said William Brian may appeal to the Supreme Court, which is granted upon filing his bond within twenty days in the penal sum of Dollars with R. E. H. Westfall as his security conditioned according to Law."

And now, to wit, on the 29th day of August, being the 9th judicial day of the Term of the Douglas Circuit Court, began and held on the 20th day of August A.D. 1860, the complainants filed their bill of exceptions duly signed by the Hon. J. H. H. sole Judge thereof, in the words & figures following, to wit:

"State of Illinois
Douglas County } Douglas Circuit
Court, August Term 1860.

James S. Adams, et al.

v.

James M. Robertson, et al.

In Chancery.

Be it remembered that on the trial of this cause before the Court on the 28th. day of August 1860, the complainant gave evidence and proved that on the 26th day of October 1858 they recovered a judgment in the Coles Circuit Court against the said James M. Robertson for \$2369 $\frac{28}{100}$ in an

action of assumpsit on an account for a balance due them prior to the making of the Mortgage as stated in the bill— The complainants also produced and gave in evidence the original deed from James M. Robertson to E. W. Barbour dated March 20th. 1856, a copy of which is made a part of this bill as exhibit "A".

Exhibit "A".

"This Indenture witnesses, that James M. Robertson of Putnam County Indiana for and in consideration of his Thousand dollars, the receipt whereof is hereby acknowledged hath granted Bargained, sold & conveyed & by these presents doth grant Bargain, sell and convey to E. W. Barbour or President of the Prairie City Bank, in fee simple the following tracts of Land in the County of Coles & State of Illinois, to wit: the West half of the North East quarter and ten acres off the West side of the South East quarter of the North East quarter all of section twenty five also the West half of the North East quarter and the South East quarter all of section twenty six, also fifty two acres in the North East corner of the South West

quarter of section twenty five, being
the tract purchased by me of William
Bryan, all said land being in Town-
ship sixteen North, of Range seven
East, To have and To hold the
same to the said C. W. Barlow & his
successors in office for ever, In Tes-
timony whereof I have hereunto set my
hand and seal the day & year first
above written. James M. Robertson *Seal*
State of Indiana,

Nigo County St. } Personally appear-
ed before me the above named James
Robertson and acknowledged the
foregoing instrument of writing to be
his act and deed, Witness my hand
and seal of office at Terre Haute
this 20th day of March in the year 1856.

Warren Harper, J. P. *Seal*

State of Indiana, {
Nigo County, { } I Andrew Wilkin
Clerk of the Circuit Court in & for said
County do hereby certify that Warren
Harper whose name appears to the
above certificate was at the date thereof
a Justice of the peace in and for
said County duly commissioned and
qualified and that his signature is
genuine and that full faith and

Credit are due to his official acts,
 Witness my hand & the seal
 of the Clerk of said Court at
 this 8th. day of April in the
 year 1856. And Wilkins clk.
 by Jm. Wilkins dep."

Endorsed on the back thereof as follows,
 "Filed April 12-1856. Recorded April
 26-1856. in Book N. on Pages 316,

J. D. Ellington clerk,
 By W. Mann, Dpty."

and proved that it was duly record-
 ed in the recorder's office of Coles e-
 county on the 12th. day of April 1856,
 also the agreement or contract of
 defeasance executed by the said Bar-
 born to said Robertson dated March
 20, 1856, which was produced by the
 said Robertson at the trial and is
 as follows: "This instrument of vi-
 -ting witnesseth that James M. Robert-
 -son has this day conveyed to G. W.
 Barborn as President of the Prairie City
 Bank, certain lands in the County of
 Coles, and State of Illinois by his deed
 bearing date March 20 1856. Now the
 said Barborn agrees to convey said lands
 to said Robertson, provided the said
 Robertson pay what he owes to the

to the Prairie City Bank, being about \$11,000 and what may be due to Graham & Buckingham in manner following, to wit, Four thousand five hundred dollars in June next, one half of the balance in December 1856 and the remainder in one year thereafter, with interest at the customary bank rates of this place, This being accomplished said land is to be reconveyed to said Robertson.

March 20, 1856,

C. W. Barlow
Pres't."

"Complainants also gave in evidence the deed from James M. Robertson, to S. S. Early dated Feb. 24 1858 and made a part of this bill as exhibit "B."

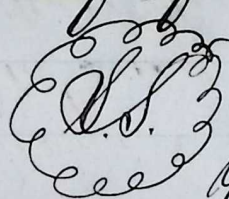
Exhibit "B"

"This Indenture Witnesseth; Whereas James M. Robertson formerly of Putnam County State of Indiana, now of Tazewell Coles County Illinois by his deed of the 20th. day of March A. D. 1856, conveyed to C. W. Barlow of Seneca Haute Indiana as President of the Prairie City Bank at Seneca Haute, certain lands situated in Coles County Illinois in

consideration for the sum of Five thousand
dollars, the receipt whereof was duly
acknowledged in said deed; and
whereas certain of the lands so con-
veyed were erroneously described
in said deed, being set forth as the
West half of the North East quarter
and ten acres off the West side of the
South East quarter of the North East
quarter, all in section twenty five
all of said Lands being in Town-
ship sixteen, North, of Range Seven
East, when it should have been de-
scribed as the West half of the North
West quarter and ten acres off the
West side of the South East quarter of
the North West quarter of section twenty
five all of said lands being in Town-
ship sixteen, North, of Range Seven
East; Now therefore, the said James
M. Robertson of Lincoln, Cook County
and State of Illinois, to rectify said
mistake as herein set forth doth hereby
grant bargain sell and convey to
Samuel S. Early or President of the
Prarie City Bank at Terre Haute In-
diana, the foregoing tract of Land
intended to have been conveyed in
the deed to his predecessor, to wit, The

West half of the North West quarter of
and ten acres off the West side of
the South East quarter of the North
West quarter all of Section Twenty
five in Township Sixteen North of
Range Seven East, in the County of
Coles and State of Illinois: To have
and to hold the same to the said
Samuel S. Early and his successors
in office forever.

In Witness whereof The said James
M. Robertson hath hereunto set his
hand and seal this 24th day of
February A. D. 1858, James M. Robertson 
State of Indiana,
County of Vigo, St. Personally appeared
before me a Notary Public in and for
said County the above named James
M. Robertson and acknowledged the
foregoing instrument of writing to be
his act and deed, Witness my hand
and seal of office this twenty fourth
day of February A. D. 1858.



D. S. Donaldson,

Notary Public

Which said deed was endorsed
on the back as follows, by the Clerk
of the Circuit Court of Coles County, Il-
linois, "Filed Feb. 25th 1858, Recorded

Feb. 27th 1858, Book No. 1, of Deeds
 Page 401, Geo. W. Teel, Recorder
 Coles Co. Ills"

and proved that it was duly recorded in the recorder's office of Coles County on the 25th day of February 1858.

The lands described in said deed lay in the County of Coles at the date of their recording and are now in the County of Douglas.

The complainants proved E. S. Brawley in the Winter of 1858, = 9 he heard the defendant say Brian say, that Defendant Robertson had paid him in full for the 52 acres of land mentioned in the bill as having been purchased by Robertson from Brian and that he was ready to make a deed for the land to Robertson, but that he would not convey it to the Prairie City Bank. That he intended when he conveyed it to Robertson, to have an execution ready and levy on it, - Witness further testified that in 1856, Robertson took possession of the land, and cut a large quantity of timber and wood from it for the use of his Prairie Land adjoining, and built a cabin on it which was occupied

by Robertsons hands and tenants, that he had continued in possession to the present time exercising acts of ownership with the knowledge of Brian, who was present when the work was going on and made no objection and asserted no claim to the land. On cross examination by Brian's witness testified that at the time Brian stated he had been paid for the land Robertson and Brian had a settlement when a balance was found due Brian from Robertson of about \$1500, for which sum Robertson executed his notes to Brian, that afterwards Robertson brought forward claims that had been omitted which reduced the amount to \$1000.

It was proved that Brian brought suit on this note and obtained judgment for \$1000 against Robertson in the Cooks Circuit Court.

Complainants proved by Joseph Black that the description of the 52 acres, the Brian tract was as stated in the bill, that he was present when the land was surveyed and Brian was present also, and stated that he had sold the land to Robertson.

W. M. Wilson for complainant testified that he was present at the settlement between Robertson & Brian that Brian stated that Robertson owed him nothing on the land, that on the settlement some \$1500 was found due Brian for which Robertson gave his note agreeing to correct any mistakes, and afterwards, for the purpose of correcting them a credit of \$500. was entered on this note.

Dr. J. A. Reynenon testified that during the winter last past, at the instance of one Cowgill who was an endorser on the paper of Robertson held by the Prairie City Bank he applied to Brian and requested him to make a deed to the Prairie City Bank for the 52 acres. Brian said he was ready and willing to make the deed to Robertson, but refused to make it to the Bank, he said he was ready and willing to make the deed to Robertson, but refused to make it to the Bank, He said he had demands against Robertson, he expected to try to get out of him when he made the deed.

The defendant W. Brian called the

defendant, Robertson as a witness who testified that he bought the 52 acres in question from Brian in July 1854 or 1855, at \$20. per acre amounting to \$1040 and paid him the money in full for it, in the fall of the same year.

That they had dealings from time to time since, that at the settlement spoken of he gave his note to Brian for \$1500, that some of his books were then in Brian's possession, and were not brought forward, that after obtaining them there was found about \$500, which had been omitted and Brian gave a credit on the note for that amount. He had previously brought suit on the note in the Coler Circuit Court. He and Brian went together to Charleston and he confessed judgment for the balance of \$1000 on the note. In the settlement Brian claimed nothing on account of the land and nothing was allowed him for what he had paid on it. Brian stated that the land was fully paid for in 1857. Brian became surety for him in an appeal bond, appealing to the Supreme Court from a jud-

judgment in favor of Hammet for \$3000. That the judgment was affirmed and that Brian had paid it, and he had repaid Brian about \$1887, of the amount.

At the instance of the complainant the Witness testified that at the time he made the deed to Barbour he owed Brian nothing, but Brian was indebted to him.

That Brian was informed in the summer of 1856, that he Robertson had given the Mortgage to secure the debt to the Prairie City Bank, and at that time Brian was indebted to witness and for some time after.

The said Witness at the instance of said Mr Brian testified that H. E. Conyell, H. D. Williams & Co. & McCoy & Vestal are endorsers on his paper to the Prairie City Bank, secured by this Mortgage, That 212 acres being the land mortgaged besides the Brian land, are worth about \$20. per acre, the debt to the Prairie City Bank, he cannot exactly state, but it amounts to about \$10,000 and that he owes the debt & made

Mortgage to secure it, his endorsers
being merely accommodation en-
-dorsers.

J. W. Hylan

Judge &c."

And afterwards, to wit, at another
Term of the Douglas Circuit Court be-
-gan and held at the Court-House in
Pecola in the County of Douglas in
the State of Illinois on Monday the
Fifteenth day of April A. D. 1861, be-
-fore the Hon. C. V. Davis sole Judge
thereof, and continued until the third
day of said Term when the parties
herein filed in said Court the fol-
-lowing paper, to wit:

State of Illinois,

Douglas County, Ill.

April Term 1861,

James S. Adams, et. al.

vs.

{ Chancery.

James M. Robertson, The
Prairie City Bank, et. al. } It is stip-
-ulated and agreed by and between
the parties, that this cause be con-
-tinued to the next Term of this Court
and that a rule be entered against
the Prairie City Bank, Cromwell M.
Barlow and Samuel S. Early Plaintiff.

of the Prairie City Bank that they
answer the bill and amendment,
within sixty days, April 9-1861,

Hookins, Thomas & Roberts,
sols. for complainants,
Charles Craft, for depts."

And afterwards, to wit: on the fifth
day of the Term aforesaid, the fol-
lowing order of said Court was
entered of record, to wit:

"James S. Adams, et al.
vs.
James M. Robertson,
William Brian

} Bill to foreclose.

} This day

came the parties by their respective
attorneys, and file their agreement
herein to continue this cause, where-
-upon the Prairie City Bank, Cromwell
W. Barlow and Samuel S. Early, Pres-
-ident of the Prairie City Bank, are
ruled to answer Bill and amended
Bill within 60 days."

And afterwards,
to wit, at an other term of the Douglas
Circuit Court, began and held at the
Court House in Lincoln Illinois on
the 14th of October A. D. 1861, before the
Hon. Justice H. David Davis, sole Judge
thereof, and continued until the 4th

day of said Term, when the Prairie City Bank, by J. P. Usher its Attorney, files in said Court its demurrer to complaint amended lib, as follows, to wit:

"The Prairie City Bank et al
vs.
James L. Adams, et al

And the said def. viz. the Bank, Bar-
-bours & Early, come and say that they
ought not to be compelled to answer
to the lib of the complainants as the
same is amended because they say that
the matters and allegations in said am-
-endment as the same now therein al-
-leged and pleaded are not sufficient
in equity to be answered unto, and
said defendants demur to said am-
-endment, and pray to be dismissed
of said amendment, J. P. Usher, solr.
for said defts"

And at the same time and place the
following agreement was filed to wit:

"State of Illinois,

Douglas Circuit Court

James L. Adams, et al

vs.

James M. Robertson, et al

{ Foreclosure,

An agreement

having already been made and filed in the above entitled cause that the rights of the complainants and the Prairie City Bank shall be determined by the Court in respect to the fund ~~existing~~ to be made by the foreclosure of the Mortgage in this cause, and whereas it is probable that the property to be sold under the decree of foreclosure will for the mutual advantage of the parties have to be bought in; now it is agreed by and between the parties that Samuel S. Early will attend the sale thereof and if the property shall not be bought by any other person at as high a price as _____ dollars per acre, then to bid in the property at that price, and the proceeds of the property when and however disposed of shall be paid into Court and distributed under its order, in accordance with the rights of the parties to be thus fixed and determined. by

Oct. 24-1860. Thomas W. Nelson

Atty. for P. C. Bank.
Gookins, Thomas & Roberts,
Sols. for cpts."

And now, to wit, on the fifth day of the said October Term A. D. 1861, of the

said Douglas Circuit Court as aforesaid the following proceeding of said Court was had and entered of record in words and figures following, to wit:

"James S. Adams, & others

v.

} Chancery,

James M. Robertson & others } Come now. The parties by their solicitors aforesaid and A. G. Wallace Clerk of this Court appointed at the August Term 1860, a Commissioner to make a conveyance in this cause makes his report accompanied by a deed executed by him, which report and deed are as follows, to wit:

"State of Illinois,
Douglas County, } ss:

James S. Adams, and others

v.

} Chancery,

James M. Robertson and others }

The undersigned A. G. Wallace, Clerk of this Court and Commissioner appointed at the August Term 1860, to convey to Samuel S. Early that tract of Land described in said decree, as a piece or parcel of land Sixty three rods in width East and West, and one hundred and thirty two and six hundredths rods in length North and South, in the North East Corner of the South West quarter of

Section twenty-five (25) in Township
Sixteen (16) North, of Range Seven (7)
East in said County of Douglas if
the same should not be conveyed
by William Brian within ten days from
the date of said decree, respectfully re-
ports that the said William Brian
having wholly failed to execute such
conveyance, the undersigned as such
commissioner under and pursuant
to said decree, has executed a deed
as required by said decree, which he
herewith brings into Court and submits
the same for confirmation.

Oct. 18-1861,

A. G. Wallace,
Commissioner.

(Deed)

"Whereas in a certain case pending
in the Circuit Court of the County of
Douglas in the State of Illinois, at the
August Term 1860, wherein James S.
Adams, Nelson M. Graham, John Buck-
ingham and Ebenezer Buckingham
were complainants and James M. Rob-
ertson, The Prairie City Bank, Crom-
well M. Barlow, Samuel S. Early and
William Brian were defendants in
Chancery, it was among other things or-
dered, adjudged and decreed that

the said William Brian, within ten days
 from the date of the said decree convey
 to the defendant Samuel S. Early, that
 certain tract or parcel of land des-
 ignated and known as being sixty
 three rods in width East and West
 by one hundred and thirty two and six
 hundredths rods in length North and
 South, in the North East corner of the
 South West quarter of section twenty
 five (25) in Township sixteen (16) North
 of Range seven (7) East, in said County
 of Douglas, To Have and To Hold the
 same as the assignee and Mortgagee
 of the said James M. Robertson, and
 for the uses in the said decree specified
 and that in default of such conveyance
 A. G. Wallace, the Clerk of said Court
 or a Commissioner of the said Court
 make such conveyance on behalf of
 the said Brian, and whereas it was
 in and by the said decree further de-
 creed and declared that the said
 tract of land with others in the said
 decree mentioned was held in Mortg-
 age in trust for the complainants
 and the Prairie City Bank, and sub-
 ject to sale as the lands of the said
 James M. Robertson for the payment of

certain debts due from the said James M. Robertson to the said complainants and the said Prairie City Bank as set forth in said decree on failure to pay the same by the said James M. Robertson, within the time in the said decree limited, and whereas the said William Brian has wholly failed to convey the said land according to the terms of said decree,

Now therefore in consideration of the premises and in obedience to the said decree, I, A. G. Wallace as such commissioner do by these presents grant, assign, convey and confirm unto the said Samuel S. Early and his heirs in trust as aforesaid the said tract or parcel of land with its appurtenances, To have and to hold the same to the said Samuel S. Early and his heirs in trust for the uses and purposes in the said decree mentioned. In Witness whereof I have as such Commissioner hereunto set my hand and seal this 18th day of October 1861,

A. G. Wallace, *Clk*

State of Illinois

Douglas County } Before me John
Chandler Clerk of the County Court

of said County this day personally
 came A. G. Wallace who as com-
 =missioner as named and described
 in the foregoing deed, is personally
 know to me as the grantor des-
 =cribed in and who executed the
 same, and as such commissioner
 acknowledged the execution of said
 deed for the uses and purposes therein
 expressed. Witness my hand and

W. S.

the Seal of said Court
 this 18th day of October
 1861, John Chandler, Clerk

"which report and conveyance are
 confirmed."

"James S. Adams et al.

vs.

James M. Robertson, et al.

In Chancery

Come now

again the parties by their solicitors
 aforesaid, and James B. Logan the spe-
 =cial commissioner appointed at the
 August Term 1860, to make sale of
 the mortgaged premises, makes his
 report, which with a stipulation of
 the parties thereto appointed is as
 follows,"

"James S. Adams, et al.

vs.

Enclosure

"Douglas County Circuit Court
August Term 1860,

James S. Adams
Alson W. Graham,
John Buckingham
Ebenezer Buckingham
vs.

In Foreclosure

James M. Robertson
The Prairie City Bank
Brownell W. Baird
Samuel S. Early
William Brian

State of Illinois, Douglas County SS:

I Samuel B. Sagan Special Commissioner in Chancery in and for said County do hereby certify that in pursuance and by virtue of the Order and decree of said Court in said cause made at the August Term A. D. 1860, I did on Monday December 18th 1860 according to previous notice given as required in said decree offer for sale at public Auction at the Court-House in Lescota in said County the lands and premises in said decree mentioned and involved to the highest bidder for cash, and Samuel S. Early President of the Prairie City Bank having bid therefor the sum of Fifty four hundred

86 = died and forty eight dollars and fifty cents, and that being the highest bid-
-der at said sale they were then and there struck off and sold to Samuel S. Early President and for said Bank as aforesaid said premises are situated in said County of Douglas and State of Illinois, and known and described as follows, to wit:

SW ^{1/4} NW ^{1/4} Sec. 25 T. 16 N. 7 E. or 40 acres	\$810.00
SW ^{1/4} NW ^{1/4} Sec. 25 T. 16 N. 7 E. or 40 acres	810.00
NW ^{1/4} NE ^{1/4} Sec. 26 T. 16 N. 7 E. or 40 acres	810.00
SW ^{1/4} NE ^{1/4} Sec. 26 T. 16 N. 7 E. or 40 acres	810.00
SE ^{1/4} NE ^{1/4} Sec. 26 T. 16 N. 7 E. or 40 acres	810.00

Ten acres off the West side of the South East quarter of the North West quarter of Section Twenty five T. 16 N. 7 E. or 40 acres.

202.30

The North East corner of East half of the South West quarter of Section of Section 25 T. 16 N. 7 E. or 40 acres Sixty three rods in width East and West by one hundred and thirty two and six hundredths rods in length North and South, containing fifty two acres, 1196.00

Now if the said premises shall not be redeemed within fifteen months from said sale as allowed by the Statute in such case made

and provided, then the said Samuel S. Early President of the Prairie City Bank of Low Haute Indiana and for said Bank, their assigns or legal representatives will be entitled to a deed for the same,

Witness my hand and seal in duplicate, at Leicola Illinois this 17th day of December A.D. 1860.

Samuel B. Sagan 
Special Commissioner."

Stipulation appended, to certificate as signed by parties,

"It is agreed by the parties that the purchase by Samuel S. Early of the property in the foregoing report and certificate mentioned was in trust for the complainants and the Prairie City Bank pursuant to the terms of an agreement made between the parties dated October 24-1860, and herewith filed and that the said certificate be so amended as to state truly the said trust Oct. 18-1861. J. P. Miller

Sol. for P. C. Bank
Gookins, Thomas & Roberts,
Sols. for Cpts."

"Which report as modified by the said stipulations is copied, and it is or-

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=deed, that the said commissioner
be allowed the sum of Twenty five dol-
=lars for his services to be taxed among
the costs in this cause, and this
cause is reserved for such further di-
=rections as equity may require."

"James S. Adams
Nelson W. Graham,
John Buckingham &
Ebenze Buckingham
vs.

Chancery

James M. Robertson,
Cromwell W. Barlow,
Samuel S. Early, Presi-
=ent of the Prairie City Bank
& William Brian

Comes now
again the parties by their solicitors
aforesaid and the defendants the
Prairie City Bank, Cromwell W. B=
arlow and Samuel

S. Early withdrew their motion to reject the amendment to the compul-
-sants bill, and the said defendants
having filed their demurrer to the said
amendment, the Court being suffi-
-ciently advised of the premises overrules
said demurrer, and it is ordered
that they have leave to amend their
amendment to said bill, which a-
-mendment is now made, to wit:

(Amendment,

And your Orators
state that by a statute of the State of
New York in force when the several bills
and notes were made and still in force
it was and is enacted that all bonds
bills notes, assurances, conveyances and
all other contracts and securities what-
-soever, whereupon, or whereby there shall
be reserved or taken any greater sum
or value for the loan or forbearance of
any money, goods or things in action
than seven dollars upon one hundred
dollars for one year, and after that
rate for a greater or less sum, or for
a longer or shorter time shall be void

And your Orators charge, that upon the
said loans to the said James M. Rob-
-ertson, and the securities given for the

same which were payable in New York a greater rate of interest than seven per cent as aforesaid was corruptly and unlawfully reserved and taken by the said Prairie City Bank, and that the same were, and are void,

"(order continued) " And it is ordered that defendants above named within sixty days from this date, file their answers to the original bill and amendments, And on motion of the said complainants, it is ordered that they be leave to take the deposition of the defendant Brownell W. Barlow, and this cause continued until the next term of this Court,"

And afterwards, to wit, at an other Term of the Douglas Circuit Court began and held before the Hon. Dan Davis, sole judge thereof at Luccola in in the County of Douglas in the State of Illinois on the 22nd day of April A. D. 1862, there other and further proceedings were had as follows, to wit: on the third day of said Term the complainants filed the following motion, to wit,

"State of Illinois,

Douglas County, Circuit Court,

James S. Adams, & others }
 vs. } Chancey
 James Robertson & others }

The complainants move the Court that the original bill and the amendment thereto be taken for confessed for the failures on the part of the defendants to comply with the rules to answer heretofore entered against them in this cause as required by the said rules

Hookins, Thomas & Roberts
 Solrs. for chrs."

And now at the same time & place came Ballard Smith esq. Atty for the defence herein and files his cross motion and affidavit in words and figures following, to wit;

"State of Illinois,
 Douglas County, } Douglas Cui. Court,
 James S. Adams and others

vs. }
 James Robertson & others } The de-
 fendant Samuel S. Early moves the Court, that the rule taken in this case at the last term of this Court against him and others for an answer to the original bill and amend-
 -ment herein may be extended for

the reasons stated in the affidavit made part hereof* and leave given him to answer ^{or answer} to the amendment of the original Bill or amended within such limits as the Court may direct

Ballard Smith

Sol. for Defendants

* Affidavit of Ballard Smith,

"State of Illinois,

Douglas County, } Douglas Cir. Court.

James S. Adams and others

against

James Robertson and others

{ In Chancery

Bornes Bal-

-laid Smith solicitor for Samuel S.

Early President of the Prairie City Bank Defendant in this cause and makes oath that said Bank is a corporation ex-citing & doing business in the State of Indiana. and that heretofore John P. Asher esq. an Attorney of this Court has been acting as the solicitor of this defendant and has had ~~acting~~ the entire control and charge of the in-terests of and rights of said Bank in this cause that the said Asher was recently appointed assistant Secretary of the Interior of the United States and was compelled to leave

for Washington City where he is at this time, and this affiant was then retained as the solicitor of the said Bank, ^{that neither of the officers of said Bank,} knew any thing of the rule in this case, neither at the last term to answer the amended Bill within sixty days, & when advised by this affiant that the said Amended Bill remained unanswered, that immediately by their directions this affiant commenced the preparation of this cause, with diligence and the solicitor of the complainants was advised thereof, and the affiant has attended at this term of the Court to respond for said Bank to the said rule.

That the said Usher soon after the last term of this Court procured copies of the said Bill and answered ~~answering~~ Bill with him to leave & until the place of his residence to prepare the necessary answer to the amended Bill but he was about that time appointed Attorney General of the State of Indiana and afterwards assistant secretary of the Interior or of said and the public business of the State was at the time so important as to demand the time and engross the attention of said Usher, And the necessity of responding to the said rule within the said 60 days was by him doubtlessly

unintentionally overlooked, and this
 affiant was not called into this case
 at the instance of said Mr. Miller until
 after said 60 days had passed, to wit,
 about three or four weeks since, that
 this affiant was ignorant of the facts
 and of the steps taken in the case
 until that time, that he immediately
 commenced the preparation of the said
 defendants case for trial, but that there
 several bills, amended and cross bills
 filed & answers and stipulations fixed
 and the interests and rights of the parties
 were important, and time was required
 to make preparation, Affiant became
 satisfied upon examination that the am-
 ended bill of the complainants or am-
 ended was defective and obnoxious to
 the rules of equitable pleading, and
 waited until this term of the Court to
 file obtain leave to file a demurrer there-
 to, having been advised by the said Mr. Miller
 that leave would be given, Affiant also
 states that in order to respond to the a-
 mended bill it was necessary to make
 a careful and diligent examination
 & statement of the accounts & vouchers
 of said Bank & the said Robinson, which
 has been done, by this affiant in con-

confer with John S. Beach, Cashier of
said Bank; and no more time has been
taken than was absolutely necessary
to give true and detailed answers to the
said amended Bill as demanded therein
if after the demurrer he heard an answer
should be required by this honorable Court.
That this affiant attended upon the Court
on yesterday by appointment with the so-
-licitor for complainants and has had
no earlier opportunity to prosecute his mo-
-tion. That said Bank has a substantial
defence, and that as affiant is informed
and believes the allegations of said am-
-ended bill are untrue and that unless
opportunity is given to demur or answer
great injustice will be done the said
Bank, and leave is asked not for delay
but to obtain substantial justice &
equity in the premises. (Marked filed April 25th
1862) Signed & sworn to April 24-1862. A. H. Wallace etc.
(Signed Rolland Smith)

And on the day, time & place of
filing the foregoing Affidavit, to wit April
28th 1862, the defendant Samuel S. Early,
one of the defendants herein by B. Smith
his Attorney files his separate answer herein
as follows, to wit:

"In the Douglas Circuit Court
In Chancery

James S. Adams, Nelson W. Graham,
John Buckingham & Ebenezer Buckingham
against

James M. Robertson, Lemuel H. Barlow,
Samuel S. Early, President of Prairie City
Bank & William Brown.

The answer of Samuel S. Early President of the Prairie City Bank to the Bill and amended bill of the said James S. Adams, and other complainants. The said Defendant saving and reserving &c. for answer to so much of said Bill and amended Bill as he is advised it is material for him to answer, answer and says, that at the time said Deed was executed by said Robertson to the said Barlow as set out in the original complaint herein - the indebtedness of said Robertson to the said Bank was eleven thousand five hundred and fifty dollars, with interest, and was evidenced as follows, to wit, by four bills of exchange executed and delivered in the City of Terre Haute and State of Indiana and payable in the City of New York.

The first dated August 7th 1855, drawn by John Astor and accepted by James M. Robertson and endorsed

A. T. McCoy payable in 135 days for \$2,000. The second dated Nov. 29, 1855, drawn by James M. Robertson, on and accepted by himself and endorsed by H. D. Williams & Co. and payable in thirty days for \$2000. - The third dated August 29, 1855, drawn by Barney Allen, on James M. Robertson, and accepted and endorsed by H. D. Williams & Co. and payable at four months for \$3,000, The fourth dated Dec. 21, 1855, drawn by James M. Robertson on Adams & Bucknigham and endorsed by John Vestal, and A. T. McCoy and payable at six months for \$4,550. - The last named bill was paid at its maturity in New York, but that the first three of said Bills were forwarded to New York, Presented for payment and were protested for non payment and returned to said Bank.

That the said bills were purchased by the said Bank at about the times of their respective dates, at the fair and usual ^{Bank} rates, That the first of said bills was taken at \$56 off, the second \$10 off the third \$76.⁵⁰ off and the fourth at an abatement of \$207.²⁵ off the face of the paper. That at the various times the said bills were taken they were represented

to and understood by the said Bank to be based upon actual transactions, to wit the shipment of hogs to the Eastern market and the prices paid for said bills or of-
 -ersaid were the usual and customary Bank rates in the City of Terre Haute at the time for time Bills upon New York, to wit, interest and ^{expense} 78¹/₂ percent per month off the face of the bills, and this Respondent positively denies that the indebtedness se-
 -cured by the said Mortgage to the said Bank was for money loaned by said Bank to the said Robertson as alleged in said am-
 -ended Bill, and he denies that there was any corrupt or usurious reserva-
 -tion of interest by the said Bank or its officers to evade the usury laws of the State of Indiana, which are referred to or the laws under which said Bank was organized, and he denies any un-
 -lawful, corrupt or illegal act or intent on the part of said Bank or its officers or that said indebtedness & Bills were void and he denies that at the time said trans-
 -actions were made with said Robertson and said Bills purchased that the exchange upon said bills was in favor of the City of New York, or the City of Terre Haute but says that the fair exchange market

rates at the times said several Bills were purchased were the prices paid by the said Bank for said Bills as aforesaid and not less, and he denies that there was any usury, illegality or corrupt illegal or usurious intent, shift, or evasion, in or about the said transactions or in the renewals of said Bills. And the respondent further states, that after the execution of said Deed the said bills of exchange were renewed at various times, as follows, the first two were meted and a new Bill was taken, drawn by said Robertson on Adams & Buckingham New York and endorsed by H. E. Bowgill and A. D. Wamuck, payable on the 21st day of June 1856 for \$4.200, including the amounts of the said Bills Protests & expenses, and the usual rate of exchange interest, and one fourth per cent per month aff. That said bill was not paid at maturity but protested and was renewed by a new Bill drawn by said Robertson on and accepted by himself and endorsed by A. J. McCay, per Restal and H. E. Bowgill and payable in New York on the 25th day of December 1856, for \$4.200 which was protested for non payment and renewed by a new bill, payable in New York on the 27th day of June 1857 for \$4.200 drawn

by said Robertson on Adams & Buckingham and endorsed by the said McCoy Vestal and Corvill, upon which \$1,000 was paid at Maturity and the balance renewed by a new Bill for \$3,200 payable in New York on the 30th day of December 1857, drawn by said Robertson on C. A. Morford & Co. and endorsed by said McCoy, Vestal and Corvill and Barney Allen upon which there was paid at Maturity \$629¹⁶. The residue is wholly unpaid. Defendant further states that on the day of the said H. E. Corvill deposited with the said Bank the sum of three hundred dollars which was to be applied as a credit upon said bill if not paid by the avails of the said Bond in the suit, (Marked 2)

The account with said Bank with said Robertson as it stands upon the books of the bank is herewith filed as called for but defendant says it contains only a part of the transactions with said Robertson, also the original deed from Robertson to Barborn marked (3) and deed from said Robertson to said Early Marked (4).

The third of said Original Bills was renewed by a bill for \$3,150, payable in New York on the 4th day of July 1856,

drawn by said Robertson on Adams & Buckingham and endorsed by J. Gilman and Barney Allen upon which there was paid at maturity \$150, and a new bill given for \$3,000, payable in New York on the 7th day of December 1856, drawn by said Robertson on and accepted by himself and endorsed by said Allen and J. Rhinerson, which was protested for non-payment, and a new Bill given for \$3000 payable in New York on the 7th day of June 1857 drawn by said Robertson on said Adams & Buckingham and endorsed by John Aestel and A. S. McCoy which was also protested for non-payment, And a new Bill given in renewal for \$3000, payable in New York on the 10th day of December 1857, drawn by said Aestel on L. A. Mofford & Co. and endorsed by said Robertson and McCoy and by said Barney Allen, which was protested for non-payment and remains wholly unpaid, and upon which protested Bill there accrued to the said Bank five per cent in damages under the laws of said State or also upon the other bill due as aforesaid, That in all of said Bills except these drawn on said Robertson acceptance was waived in the bills

That the amounts reserved by said Banks upon the said Bills and their respective renewals was the interest thereon and $\frac{1}{8}^{\text{th}}$ of one per cent per month which at the respective times said several Bills were drawn was the fair and customary rates of exchange in the said city of Senne Haute for time bills upon the City of New York and not more and the costs of protests and expenses of forwarding and returning the bills, and this respondent positively denies that the original transactions between the Bank and Robertson aforesaid was a loan or intended as a loan or that the said renewals were a continuance of a loan or a shift or evasion of to avoid the usury laws of said State but say that such was a fair bonafide and legitimate transaction, and that said Bank took said Bills from time to time upon the positive assurance of said Robertson that they should be paid according to their terms and tenor & with the expectation that they would be paid. Respondent says that he was at and before the commencement of this suit has been ever since and is now the President of the said Bank, and he

The following
Robertson with the Prairie City
pled with and referred to in the foregoing
answer of Samuel S. Early, to wit:

"Jas. M. Robertson in acc. with Prairie City Bank

1855				Dr.			
June	27	To Check		1	3	13	
Augl.	3	"	"		2	23	22
"	"	"	"	1	7	40	07
Mar.	4	/56	"		2	07	78
July	19	/56	"	4	3	21	50
Apl.	2	"	"	2	0	10	00
"	"	"	"	2	0	10	00
"	"	"	"	3	0	15	00
Nov.	18	"	"	5	1	38	32
Dec.	3	"	"	4	4	11	80
"	6	"	"	3	0	22	50
"	"	"	"			30	30
Jan.	3	/57	"	4	2	63	00
"	7	"	"	1	0	00	00
"	"	"	"		3	43	31
June	8	"	"			30	00
"	12	"	"	3	0	30	00
July	3	"	"	4	2	74	97
"	22	"	"		1	65	81
May	17	/58			6	29	16
				\$ 41 171 74			

See next page for credits.

Jan. M. Robertson in acc. with Prairie City Bank,

1855-56

June	12	By bank	1	332	29
Augt.	1	" proceeds 155 day bill in N.Y. 2000	1	944	00
July	16/50	" Deposit		207	78
"	18	" proceeds 6 mos. bill on N.Y. \$4550	4	342	22
Apr.	9	" " " " 4200	4	008	90
"	"	" " " " 3150	3	006	67
Nov.	18	" Deposit	5	138	22
Dec.	3	" do.		181	50
"	"	" proceeds 15 day bill on N.Y. \$4425	4	411	80
"	6	" " 6 mos. do 3000	2	863	50
"	24	" " 6 mos. do 4200	4	008	90
Jan'y	9/57	" Deposit,	1	596	12
June	8	" proceeds 6 mos. bill on N.Y. 3000	2	863	50
"	24	" Deposit	1	219	60
"	3	" do.		196	50
July	3	" proceeds 6 mos. bill on N.Y. \$3200	3	054	40
"	11	" Deposit		165	84
Dec.	15	" do.		630	00
			\$ 41 171 74		

now refers to the answer of the said Bank to the original bill herein, makes the statement therein his and makes it a part of this answer.

This respondent reserving to himself all right of exception and demurrer for want of equity in said amended bill demurring to so much of said Bill and amendment or insists that the contract with said Robertson are void for usury and as to the right of complainants to make a plea of usury without the consent of the defendant Robertson.

And having fully answered,*

Saml. S. Early, President,
State of Illinois

Nico County } Before the undersigned a
Notary Public in and for said County
the above named Samuel S. Early subscribed and made oath to the foregoing answer the 22nd day of April 1862.



Witness my hand & Notarial Seal
hereto affixed at Lerne Haute in
said County this said 22nd day
of April 1862. J. A. Peice,

Notary Public,

And on and at the filing the foregoing
answer of Samuel S. Early, to wit, April 25th
1862, the Prairie City Bank filed it answer.

in words & figures following, to wit:

"State of Illinois, Douglas County.

Douglas Circuit Court,

James S. Adams, Nelson M. Graham
John Buckingham & Ebenezer Buck-
ingham Against

James M. Robertson, Crannell W. Barlow,
Samuel S. Early, and the Prairie City Bank

In Chancery,

The answer of the Prairie City Bank
to the Bill of Complaint of the said
James S. Adams and others Complain-
ants

This Defendant now and at all
times hereafter saving and reserving all
exceptions &c. for Answer to so much of
said Bill as said defendant is admi-
ssed it is material to answer, answers
and says that the defendant knows no-
thing of the alleged indebtedness from
said Robertson to the said complai-
nants, but is informed, believes that
there was no indebtedness to said
complainant from said Robertson at the
time of the execution of said Deed and
calls for Proof thereof and is informed and
believes that the said Judgment rendered
the 26th day of October 1858, was for a debt

that was created subsequent to the time of the Execution of said Deed.

Defendant says that it is true that the said Robertson was and is indebted to the said Bank, and now refers to the answer of Samuel S. Early President of said Bank filed herein and says that it contains a true statement of the said debt, and further says that the amount due at the execution of said Deed has been reduced by some payments, leaving a balance now due and secured by said Mortgage of \$7,023.53 as shown in the said answer of said Early including the interest up to the present time, but not the statutory damages; That it is true the said Bank is a corporation organized and doing business in the City of Terre Haute, under the said act of the General Assembly of the State of Indiana, which act and statute is now expressly referred to and relied on.

That it is true the said Robertsons executed, a deed to Cromwell M. Barlow President of the Prairie City Bank on the 20th day of March 1856, but defendant says that the said Deed was made & executed and delivered by said Robertsons to the said Barlow then the President

as aforesaid, for the payments of said debt to the said Bank amounting at this time to about eleven thousand five hundred dollars, and not for the security of the complainants debt or alleged,

And Defendant denies that the said supposed written instrument was written and delivered at the time and simultaneously with the execution of said Deed as alleged in complainants, but he says that the execution and delivery of said deed to the said Barbon for the purpose aforesaid was single entire and complete and vests an actual right in the said Bank for the purpose aforesaid and that the said supposed instrument of defeasance was not executed until some hours afterwards and as a different transaction and was not intended to merge the Original transaction. But was delivered to said Robertson for the purpose of furnishing to him an evidence that the said deed was not absolute, that the names of said complainants were inserted inserted in said written memorandum without any consideration but with a distinct understanding between said Barbon and said complainants, that the debt to the said

Bank should be first secured and paid and that the said debt to complainants if there was any then existing was to be secured & paid of the proceeds of said land if sold, and after the debt to the said Bank was fully paid & and respondent says that the said written memorandum, was received and held by the said Robertson not as a defeasance but as a memorandum and evidence merely of the original transaction and verbal agreement aforesaid which was contemporaneous with the execution of the said deed, and entire, single and complete as aforesaid, And respondent says that if said memorandum or supposed defeasance contains any provisions or presumption or can be construed, ^{now or} to provide that complainant and this respondent should share and share alike in the security and proceeds of said Deed, that such provision, presumption or construction was inserted by mistake and against the orders and understanding and intending and intention of the parties to said transaction, Respondent further states that on other securities have been taken on account of said indebtedness, except the

Bill of Exchange taken in renewal of the original indebtedness, as stated in the said answer of said Early which is now referred to and made a part of this answer as aforesaid and Respondent declines to so much of the said Bill of Complaint or demands that the said Bank be compelled to resort to the said securities for the payment of said debt to the exclusion of its first claim upon the said land under the said deed, and having fully answered.



The said Prairie City Bank by
John S. Beach its cashier and au-
thorized agent hereunto subscribes his
name and sets the separate seal of
the said Corporation; Prairie City
Bank John S. Beach
cashier

State of Illinois, }
Douglas County, } John S. Beach cashier of
and authorized agent of the said Prairie
City Bank makes oath that the statements &
allegations in the foregoing answer contained
are true, to the best of his knowledge and
belief
John S. Beach cashier.
Sworn to April 25, 1862.

A. G. Wallace, clk.

And now on the 25th April 1862
at the Term of the Court aforesaid, the said

Complainants by Hookins, Thomas & Roberts &
file their petition for the appointment of a
Commissioner in this cause, to wit:

"State of Illinois

Douglas Circuit Court,
James S. Adams, and others,

vs. } Chancery
James M. Robertson & others.

To the Hon-
orable the Judge of the Douglas Ci-
cuit Court,

The Complainants in the above
entitled Cause respectfully represents
that Samuel B. Hagan Esquire former
Sheriff of the said County of Douglas
who was appointed Commissioner to
sell the Mortgaged premises under the
decree of foreclosure rendered in this Cause
and who has heretofore reported said
sale, has, as your petitioners are infor-
med and believe entered the army of
the United States and is absent from
the said County of Douglas in and
with the said army; And your pet-
itioners state that the period of fifteen
months from and after the sale of the
said Mortgaged premises having elapsed
the said lands, each and all of them
remain wholly unredeemed from said

sale, and that the purchasers are entitled to a deed of conveyance of said lands pursuant to said sale and that ~~such~~ deed cannot be procured from the said commissioner to be executed at this time & during this term in consequence of the absence of the said commissioner.

Now petitioner therefore pray that a master in chancery of this court or some other fit person may be appointed to make such conveyance
 Hookins, Thomas & Roberts,
 Sols. for complainants.

State of Illinois,
 Douglas County, } ss: Samuel B. Hookins
 being duly sworn says the matters and things stated in the foregoing petition are true as he is informed and verily believes
 S. B. Hookins,

Sworn to April 24 1862,

A. G. Wallace, clerk,

And now, to wit: on the 28th day of April, A. D. 1862, being the sixth day of the April Term A. D. 1862 of the Douglas Circuit Court, began and held before the Hon. David Davis on the 22nd day of April A. D. 1862, the following order,

and decrees of said Court not had
and entered of record, to wit:

"James S. Adams, et. al.

v.

James M. Robertson, et. al.

} Chancery,

the for

Come now
the parties by their solicitors and an
motion of the complainants, it is or-
-dered that the entries made in this
cause at the last term of this Court
of the report of Samuel B. Logan com-
-missioner to sell the mortgaged lands
and of the confirmation thereof for
a mistake in said entry be set aside
and it is now ordered as of the said
last term and of the date of the said
entry as follows, to wit:

"James S. Adams & others

v.

James M. Robertson & others

} Chancery,

Come now the
parties by their solicitors aforesaid and
A. G. Wallace the clerk of this Court ap-
-pointed at the August Term 1860 a
commissioner to make a conveyance in
this cause. makes his report accompan-
-ied by a deed, executed by him which re-
-port and deed are as follows,

(Report, see next page)

"State of Illinois
 Douglas County } ss:
 James S. Adams and others }
 vs. } Chancery
 James Robertson, and others }

The Undersigned

A. G. Wallace, Clerk of this Court and
 Commissioner appointed at the Au-
 gust Term 1860, to convey to Samuel
 B. Logan & Early that tract of Land
 described in said decree as a piece or
 parcel of Land sixty three rods in wide-
 th East and West by one hundred
 and thirty two and six hundredths rods
 in length North and South in the
 North East Corner of the South West
 quarter of of Section Twenty five (25)
 in Township Sixteen (16) North of R-
 ange Seven (7) East, in said County
 of Douglas if the same should not
 be conveyed by William Brian, within
 ten days from the date of the said
 decree, respectfully reports that the
 said William Brian having wholly
 failed to execute such conveyance
 the undersigned as such commissi-
 oner under and pursuant to said de-
 cree has executed a deed as required
 by said decree; which he herewith files

into Court and submit the same for
confirmation
Oct. 18-1861,

A. G. Wallace,
Commissioner"

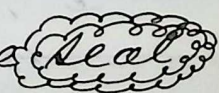
(Deed as above reported.)

"Whereas in a certain case pending
in the Circuit Court of the County of
Douglas in the State of Illinois at the
August Term 1860, wherein James
S. Adams, Nelson W. Graham, John
Buckingham and Ebenezer Buckingham
were complainants and James M.
Robertson, The Prairie City Bank,
Oranell W. Barber, Samuel S. Early
and William Brian were defendants
in chancery it was among other things
ordered, adjudged and decreed that
the said William Brian, within ten
day from the date of the said decree
convey to the defendant Samuel S.
Early, that certain tract or parcel
of land designated and known as
being sixty three rods in width East
and West, by one hundred and thirty
two and six hundredths rods in length
North and South, in the North East
corner of the South West quarter of
of Section twenty five (25) in Township
Sixteen (16) North, of Range Seven (7) East
in said County of Douglas, to have

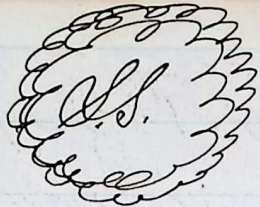
and to hold the same as the assignee and Mortgagee of the said James Mr. Robertson, and for the uses in the said decree specified, and that in default of such conveyance A. G. Wallace, the Clerk of said Court as a commissioner of the said Court make such conveyance on behalf of the said Brian. And whereas it was in and by said decree further decreed and declared that the said tract of land with others in the said decree mentioned was held in Mortgage in trust for the complainants and the Prairie City Bank, and subject to sale as the lands of the said James Mr. Robertson for the payment of certain debts due from the said James Mr. Robertson to the said complainants, and the Prairie City Bank as set forth in said decree, on failure to pay the same, by the said James Mr. Robertson, within the time in the said decree limited, and whereas the said William Brian has wholly failed to convey the said tract of land according to the terms of said decree

Now therefore in consideration

of the premises, and in obedience
to the said decree, I, A. G. Wallace
as such commissioner, do hereby
by these presents grant, assign,
convey and confirm unto the
said Samuel S. Early and his heirs
in trust as aforesaid the said tract
or parcel of land with its appur-
tenances, to have and to hold the
same to the said Samuel S. Early
and his heirs in trust for the uses
and purposes in the said decree
mentioned, In Witness whereof
I have as such commissioner here-
unto set my hand and seal this 18th
day of October 1861,

A. G. Wallace 

State of Illinois }
Douglas County } Before me John Chan-
dler Clerk of the County Court of
said County this day personally came
A. G. Wallace, who as commissioner
as named and described in the forego-
ing deed is personally known to me
as the grantor described in, and who
executed the same, and as such com-
missioner acknowledged the exe-
cution of said deed for the uses and
purposes therein mentioned.



Witness my hand and the
seal of said Court this 18th
day of October 1861,

John Leander, clk.

Endorsed on the back "Filed Oct. 18, 1861
Recorded in Record No. 1 Pages 3297330

A. H. Wallace, clk.

"Which Report and conveyance are
confirmed."

Jud. Entry,

"James S. Adams, et. al.

vs.

James M. Robertson, et. al.

In Chancery

Come now a-
gain the parties by their solicitors
aforesaid and Samuel B. Sagan the
Special Commissioner appointed at
the August term 1860, to make sale
of the mortgaged premises, makes his
report, which, with a stipulation of the
parties thereto appended is as follows

"Dauglar County Circuit Court,

August Term 1860.

"James S. Adams,

Kelson M. Graham

John Buckingham &

Ebenezer Buckingham

vs.

James M. Robertson,

The Prairie City Bank

In Foreclosure,

3
Cromwell W. Barbour,

Samuel S. Early

William Brown

State of Illinois Douglas County SS;

I Samuel B. Sagan Special Commissioner in Chancery in and for said County do hereby certify that in pursuance, and by virtue of the Order and decree of said Court in said Cause, made at the August Term A.D. 1860, I did on Monday December 17 1860, according to previous notice given as required in said decree offer for sale at public auction at the Court House in Lisle in said County, the lands and premises in said decree mentioned and involved, to the highest bidder for cash, and Samuel S. Early President of the Prairie City Bank of Terre Haute Indiana and for the said Bank, having bid therefor the sum of thirty four hundred and forty eight dollars and fifty cents and that being the highest bid at said sale, they were then and there struck off and sold to said Samuel S. Early, President and for said Bank as aforesaid, said premises are situated in said County of Douglas and State Illinois and known and described as

follows, to wit;

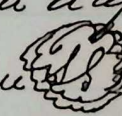
1/4 Sec. 35 T. 16 N. R. 7 East, 40 acres	\$810.00
1/4 Sec. 35 T. 16 N. R. 7 East, 40 acres	810.00
1/4 Sec. 36 T. 16 N. R. 7 East, 40 acres	810.00
1/4 Sec. 36 T. 16 N. R. 7 East, 40 acres	810.00
1/4 Sec. 36 T. 16 N. R. 7 East 40 acres,	810.00

Ten acres off the West side of the South East quarter of the North West quarter of Section 35, T. 16 N. R. 7 East,

202.50

The North East corner of the East half of the South West quarter of Section 35, T. 16 N. R. 7 East sixty three rods in width East and West by one hundred and thirty two & six hundredths rods North and South, containing fifty two acres, Now of said \$1196.00

Now if said premises, shall not be redeemed within fifteen months from said sale as allowed by the Statute in such case made and provided then the said Samuel S. Early, President of the Prairie City Bank of New Haute Indiana and for said Bank their assigns or legal representatives will be entitled to a deed for the same,

Witness my hand and seal in Duplicate at Luskola Illinois this 17th day of December A. D. 1865. Samuel B. Boyan 

Special commissioner"

The following is a stipulation attached to the foregoing report, to wit:

"It is agreed by the parties that the purchase by Samuel S. Early of the property in the foregoing report and certificate mentioned was in trust for the complainants, and the Prairie City Bank pursuant to the terms of an agreement made between the parties, dated October 14-1860, and heretofore filed and that the said certificate be so amended as to state truly the said trust Oct. 18-1861. J. P. Misher, Sol for P.C. Bank, Gookins, Thomas & Roberts, Sols for Cpts."

"Which said certificate was recorded in the 18th Decr. 1860. Test. A. G. Wallace, clk."

"Which Report as modified by the said stipulations is confirmed, and it is ordered that the said commissioner be allowed the sum of Twenty five dollars for his services herein, to be taxed among the costs in this cause, and this cause is reserved for such further directions equity may require."

(3rd entry Octr. Term 1861)

(Over.)

"James S. Adams, and others,

vs.

James M. Robertson and others

Chancery

Come now

again the parties by their solicitors af-
-resaid, and the defendants the Prairie
City Bank, Brownell W. Barlow and
Samuel S. Early with draw their mo-
-tion to reject the amendment to the
Complainant's bill, and the said de-
-fendants having filed their demur-
-er to the said amendment the Court be-
-ing sufficiently advised of the pre-
-mises overules said demur-er, And it
is ordered that they have leave to amend
their amendment to said bill, which
amendment is now made," and is as
follows, to wit: "And your Orators state
that by a Statute of the State of New York
in force, when said several bills and notes
were made and still in force it was and
is enacted that all bonds, bills, notes
assurances conveyances and all other
contracts and securities whatsoever wh-
-ever upon or whereby there should be re-
-served or taken any greater sum or
value for the loan or forbearance of any
money, goods or things in action than
seven dollars upon one hundred dollars

for one year, and after that rate for a greater or less sum, or for a longer or shorter term shall be void.

And your Orators charge that upon the said loans to the said James M. Robertson and the securities given for the same which were payable in New York a greater rate of interest than seven per cent as aforesaid was corruptly and unscrupulously reserved and taken by the said Prairie City Bank, and that the same were and are void."

"Amendment filed April 25th 1862.

A. H. Wallace Clerk."

"And it is ordered that defendants above named within 60 days from this date, file their answers to the original bill and amendments. And on motion of the said complainants it is ordered that they have leave to take deposition of the defendant Brownell W. Barlow, and this cause is continued until the next term of this Court."

(Entry No. 2, April Term 1862.)

James S. Adams, & others

v.

James M. Robertson & others

} Chancery

Came now the parties

and the complainants file their petitions setting

forth that Samuel B. Sagan the Commis-
 -sioner heretofore appointed to make sale
 of the mortgaged premises, and who sold
 the same, is absent, and that his further
 services as such Commissioner cannot
 be had, and that said mortgaged lands
 remain wholly unredeemed, from said
 sale, the period of redemption having ex-
 -pired, and praying that some suitable
 person may be appointed in stead of
 the said Samuel B. Sagan, a Commissioner
 to execute a deed to the purchaser, pur-
 -suant to said sale, It is therefore order-
 -ed, adjudged and decreed, that Andrew
 G. Wallace Esquire a Master in Chancery
 of this Court be and he is hereby appoint-
 -ed a Commissioner to execute a deed
 of the said mortgaged premises to the
 purchaser pursuant to said sale and
 that he report the same to this Court
 at the present Term, and now comes
 the said Andrew G. Wallace the Master
 aforesaid now comes and reports that in
 pursuance of the foregoing Order, reports
 that he has executed a deed in accord-
 -ance with said Order which he submits
 for the inspection of the Court, and the
 same is confirmed (D. Davis")

(Entry No. 3 April Term 1863)

James S. Adams, Nelson M. Graham
John Buckingham & Ebenezer Buck-
ingham, vs.

Chancery.

James M. Robertson, Cromwell M.
Barbour, Samuel S. Early President
of the Prairie City Bank, and
William B. Mann,

Comes the

Plaintiffs and file their written notice to take
the bill and amendments thereto for con-
fessed as against the defendants Early
and Barbour, and now comes the def-
endants Early President as aforesaid and
files his cross motion supported by affidavit
to extend the rule taken by the complainants
at the last term and for leave to amend his
answer herein which leave is granted and
rule extended, and the complainants now
here upon motion amend their bill of com-
plaint herein, and the said Early there-
upon files his answer to the said bill &
the amended bill, and the said Prairie
City Bank also files its answer, and this
cause by consent of parties is continued
until the next term of this Court, D. Davis"
(For cross motion, aff't to extend rule &c. & amendment see
ante in this record)

125 And now, to wit, on the 3rd. d. of May,
A. D. 1863, in vacation, comes the compla-

-ivants herein, and file with the Clerk of the Douglas Circuit Court and file in said Court their replication in words & figures following, to wit:

"State of Illinois

Douglas Circuit Court,
James S. Adams & others

vs. { In Chancery,
James M. Robertson & others }

The said complainants for replication to the answers of the defendants Samuel S. Early and the Prairie City Bank, say the said answers are untrue, evasive and insufficient to be replied to and that their bill is good and true, certain and sufficient, all which they will aver, maintain and prove as this Honorable Court may direct,

Gookins, Thomas & Roberts,
Sols. for Cpts."

And afterwards, to wit: at a Term of the Douglas County Circuit Court begun and held at Lenoir in the said County of Douglas on the second Tuesday (Monday having intervened without the appearance of the judge,) and fourteenth day of October in the year A.D. eighteen hundred and sixty two before the Hon. Oliver S. Davis, sole Judge thereof when

on the first day of said Term the defendant James M. Robertson files in said court his amended answer to the complainants Bill and amendments in words and figures following, to wit:

"State of Illinois

Douglas County } Douglas Circuit
Court Oct. Term A.D. 1860,

James S. Adams, Nelson W. Graham
John Buckingham and Ebenezer
Buckingham, Pffs.

vs.

James M. Robertson, George W.
Barbour, Samuel S. Early, Pres-
ident of the Prairie City
Bank, and William Brian, defts.

In
Chancery

The

amended separate answer of James M. Robertson to the Bill, and amended Bill of the said complainants,

The said deft, Robertson saving and reserving to himself now and at all times hereafter, all & all manner of benefit & advantage of exception &c. by way of amended answer to so much of said bill as he is advised it is material for him to answer answers and says, in addition to his former answer filed herein, that

on, or about the 20th day of March 1856
 he executed to Brownell W. Barlow pres-
 -ident, a deed for the land in the plead-
 -ings described, for the purpose of secu-
 -ring his indebtedness to the Prairie
 City Bank, evidenced then by four bills
 of exchange, amounting in the aggre-
 -gate to eleven thousand five hundred
^{fr and fifty} dollars, and afterwards to secure the
 complainant in his indebtedness to
 them if any, which security was given
 under the following circumstances
 to wit: This respondent being desirous
 to obtain a renewal of part of the said
 indebtedness to the said Bank, and
 the said Bank being unwilling to give
 such renewal without additional secu-
 -rity, executed & delivered the said deed
 to the said Barlow, President of the said
 Bank, to be held by him as security, first
 for the said indebtedness to the said
 Bank, and secondly, and afterwards
 as security for the said debt to compl-
 -aintants if any, The Property priority of
 the Bank in the security being dis-
 -tinctly understood, and by him express-
 -ed at the time, That after the execution
 and delivery of the said deed, and on

the same day - The respondent being about to return home from Lene Haute when the transaction was made, requested the said Barlow to give him a memorandum in writing of the said understanding, ~~wh-~~ ~~except~~ the said Barlow wrote the said Memorandum or instrument which is referred to in the said Bill of complaint and handed the same to respondent and this respondent being then hurried, took the same without reading it - and he now says that if the said Memorandum or instrument of ~~existing~~ ~~defeasance~~, does not set out the priority of the said Bank in the said security, it does not correctly state the indebtedness & agreement of the parties at the time of the delivery of the said deed, and is incorrect and erroneous, and through the haste, mistake or fraud of the said Barlow, with which this respondent was in any way privy. He says that the understanding and agreement at the time was clear, positive and distinct that the said deed was executed and delivered for the security of the said Bank debt first, and afterwards and secondly to be held as security for the complainant's debt, if any - And this

respondent therefore says that the claim of the said Bank, that the complainants are not entitled to participate in or to have any benefit from said security until the amount due the Bank shall have been fully paid as stated in the said bill is correct and so understood and intended at the delivery of the said Deed.

This respondent says that he believes the statement of his co. defendant Samuel S. Early in his answer filed at the last term of the amount and conditions of the indebtedness to the Bank to be correct, and this respondent expressly desires that the said bills of exchange were or were intended to be a shift or device to avoid the usury laws of the State of Indiana, or of the State of New York or that transactions, or any part of them were in any way unumous or intended to be unumous but says the sale and purchase of said bills of exchange and the renewals of them were in every way fair & bona fide, and were precisely what they represented, and that the said bills were taken and renewed at the fair and usual bank rates, and this respondent

ent say that he is unwilling that the plea of usury should be set up against the said indebtedness to the said Bank because he says that it is false and untrue and having fully answered, he says he prays at the hearing the Court may make such decree as will effectuate the true intent of the parties; and that the said Court will reform said instrument or decree so that the same may be made to express the true intent and meaning of the said parties, and he will ever pray &c. James M. Robertson.

The deft. James M. Robertson being duly sworn says that the matters & things contained in said answer so far as the same are stated from his own knowledge are true, & so far as the same are stated from the knowledge of others he believes to be true and further says nat.

Sworn to Oct. 14-1862 { James M. Robertson "
A. G. Wallace Clerk. }

And Now on this the second day of the Term of the said Court, to wit: on the 15th. day of October A.D. 1862, in open Court comes the complainants, and ple in said

Count their replication to the answer
of James M. Robertson next preceding
this replication in words & figures fol-
-lowing, to wit;

"State of Illinois

Douglas Circuit Court,

James S. Adams and others

v.

James M. Robertson & others

Chancery

The said
complainants for replication to the
amended answer of the defendant
James M. Robertson, saving & reserving
to themselves all advantage of excep-
-tion to the manifold insufficiencies
of said amended answer for replica-
-tion thereto say, they well are and
prove their said bill to be true, certain
and sufficient in law to be answered
unto, and that the said amended
answer of the said defendant James
M. Robertson is uncertain in law and
insufficient to be replied unto, without
this that any other matter in said
amended answer material or effec-
-tual to be replied unto, confessed
or avowed, traversed or denied is true
all which they will prove as this Court

shall direct and they may or in
lie, Hookins, Thurnor & Roberts,
Sols. for cpts.

And now, to wit: on the 15th day
of October A.D. 1862. in open Court the
defendant Samuel S. Early, comes &
files his supplemental answer to the
complainant's Bill & amendments, in
words and figures following, to wit:

State of Illinois

Douglas County } In the Douglas Ci. Court
In Chancery,

James S. Adams, Nelson W.
Graham, John Buckingham &
Ebenezer Buckingham

against
James M. Robertson, Cornwell
W. Barlow, Samuel S. Early, Pres-
ident of the Prairie City Bank
and William Brian,

The sup-
plemental answer of Samuel S. Early
President of the Prairie City Bank, to the
Bill and amended Bills of complainants.

This respondent by way of Supplement
to his original Answer and for a more
complete response to the interrogatories
and allegations of the said Bill saving
and reserving &c. for answer to so much

as he is informed it is material for him to answer, answers and says, that he knows nothing of the indebtedness of his co-defendants Robertson to the complainants that it is true the said Robertson ~~was~~ indebted to the said Bank at the date of said deed in the sum of Eleven thousand five hundred and fifty dollars as fully set out and shown in the former answer of this respondent, to which answer reference is now made.

That it is true that about the 20th day of March 1886, the said Robertson executed to his co-defendant Cromwell W. Barlow as President of the Prairie City Bank a deed for the lands in the pleadings described for the purpose of securing the said Indebtedness, and that it is true that the Prairie City Bank by its officers and agents deny that complainants are entitled to share equally and notably in the said security with the said Bank, and that it is true that they allege and contend that said complainants are not entitled to participate in, or to have any benefit from said security until their amount due to the said Bank shall have been fully paid, respondent states that the

said deed was executed under the following circumstances, to wit: The indebtedness of the said Robertson to the said Bank was at that time evidenced by four bills of exchange three of which have matured as shown in the said Answer and said Robertson being desirous to obtain a renewal of the bills then due, which renewal said Bank was unwilling to give without additional security he offered to give ~~xxxx~~ a deed for the said land as further security, which offer was accepted by the said Bank, whereupon he then executed to the said Barbour as President or officer of the said deed for the said purpose and in the presence of John S. Beach Esq. — That at the time said deed was executed there was some private arrangement between said Robertson and Barbour that if the said land should be more than sufficient to secure said debts to the said Bank and discharge the same that the residue might be applied to the security and payment of any indebtedness of said Robertson to the said complainant to which the said

Bank was not going and that soon after the said deed was executed the said Bills of exchange were renewed by the said Bank as agreed upon & as stated in the said answer, & upon the express understanding that the whole of said land was given for the security of the same and that the Bank had priority in the said security. That it is true that the said Barlow gave to said Robertson about the time the said deed was executed a memorandum in writing, which is filed  herewith marked three, acknowledging that the said deed was executed as a security & agreeing to reconvey upon certain conditions. But this Respondent denies that it was executed simultaneously with the said Deed, but says that several hours after the execution and delivery of said deed the said Robertson requested said Barlow to give him some written statement of the transaction, whereupon said Barlow wrote the said memorandum, which the said Robertson received without reading, or assenting to; And respondent says that by a mistake, accident or fraud of the said Barlow the said memorandum did

not fully set out the facts of the trans-
action and intention of the parties in
this, to wit: it did not and does not
set out the fact that the said deed
was executed and delivered by the said
Robertson, with the express understand-
-ing and condition that the said
deed should be held first for the se-
-curity and discharge of his said in-
-debtedness to the said Bank, and
that it should be held as security
for the said complainants only sec-
-ondary, subordinate to, and after the
said indebtedness, to the said Bank
should be fully paid and satisfied
which this respondent says was the
true fact of the transaction, and the
intention of the said Robertson, and
and this respondent expressly denies
that the said complainants are ~~indeb-~~
-entitled to share equally and
notably in the said security with the
said Bank as charged in their said
Original Bill, and respondent says
that it is true that the said Robertson
on the 25th day of February 1858, execu-
-ted to this respondent the deed men-
-tioned in the said Bill and for
the purpose aforesaid. ÷

Respondent now files as a part here of the two bills of exchange mentioned and described in his said former answer or the present evidences of the indebtedness of said Barok, Robertson to the said Bank marked respectively (one) and (two) which were the only securities except the said bond held for the said debts. And Respondent says that by inadvertence in his said former answer, the said Bills for \$3.000, marked (two) was described as having been drawn by the said Robertson, and endorsed by the said Restal when it should have stated that it was drawn by the said Restal and endorsed by the said Robertson, and he says that the parties to the said Bills the strict ~~strict~~ securities of the said Robertson, are each and all wholly insolvent except the indorser, H.E. Cowgill and he denies that the said Bank is bound in equity to resort to the said Bills of exchange to the end that complainant's demand may be fully paid and demand to so much of said Bill as requires such resort, And he denies to the last amendment of the complainant to their said Bill, which sets up the same law of the State of New York

because it is so pleaded without the consent of the said Robertson, and because such law cannot either at law or equity control or affect the validity of the said contracts, And respondent now expressly refers to and affirms the statements answer and allegations of his said answer and respondent further says that under the facts and circumstances of this whole transaction the complainants are estopped from setting up any claim to share ratably with the said Bank in the proceeds of the said security,

And having fully answered this respondent prays that at the hearing the whole of the equities in this case may be considered by the Court, that the proceeds of the said sale of the said land under the interlocutory order of the Court may be applied to the payment of the said indebtedness to the said Bank

And that the said Bank may not be deprived of any part of their remedy by the said mistake, accident or fraud of the said Barton, and for all such other general and equitable and further relief as in equity and good conscience the said Bank and this respondent ask

President of the said Bank may be en-
titled to, and he will ever pray &c.
Ballard Smith Sol. } Samuel S. Early President
for Def. Early } of the Prairie City Bank."

State of Indiana,

Vigo County. Before the under-
signed, David S. Donaldson, a Notary
Public in and for said County duly
commissioned and qualified and
authorized by the laws of the said State
to administer oaths, came this 13th
day of October 1862, Samuel S. Early
President of the Prairie City Bank
and made oath that the facts sta-
ted in the foregoing answer are true.



Witness my hand and Notarial
Seal at said County Court of-

-fice this 13th day of October 1862

D. S. Donaldson,

Notary Public."

And now, to wit: October 15th 1862 on
the filing the foregoing supplemental
answer of the said Samuel S. Early,
the complainants filed in said
Court their replication to said an-
-swer in words and figures following
to wit:

"James S. Adams, et al.

vs.

James M. Robertson, et al.

Chancery

incurred for want of payment of the said Draft.

This done and protested in the city of New
York aforesaid, in the presence of John Doe
and Richard Roe, witnesses.

In Testimonium Veritatis,

J. S. Park,

Notary Public for Union Bank.

Endorsed on the back
of the said Bank
from valuation or appraisement I am to
C. A. Morford & Co. John Vestal
New York, 142

Barney Allen, A. J. McKay, W. E. Congell
James M. Robertson, Pay to the order of C. A.
Morford & Co. John S. Beach Esq.

To which said Bill of Exchange was
appended the following Protest, to wit:

"State of New York,
United States of America ss. On the Thirtieth
day of December in the year of our Lord
one Thousand Eight Hundred and fifty-seven
at the request of the Cashier of the Mercantile
Bank, in the City of New York, I, Joseph
Spencer York, Notary Public duly admitted
and sworn, dwelling in the City of New York
did present the Original Draft hereunto
annexed, to a proper person at the place of
business for the Drawee, and demanded pay-
ment of the same which was refused.

Whereupon, I the said Notary, at the
request aforesaid, did protest, and by these
presents do publicly and solemnly Protest
as well against the drawer and Endorser
of the said Draft as against all others
whom it doth or may concern in exchange
or re-exchange and all costs, damages and
interests already incurred and to be hereafter

Commissioned and Sworn, did present the original Bill for \$3000, huncuto annexed to one of Chas. A. Morford & Co. on whom the same is drawn; and demanded payment who refused to pay the same, = Whereupon I, the said Notary, at the request aforesaid, did Protest, and by these presents do publicly and Solemnly Protest as well against the Drawer and Endorsers of the said bill as against all others whom it doth or may concern, for exchange, re-exchange, and all costs damages and interest already incurred and to be hereafter incurred, for want of payment of the same,

Thus Done and Protested in the City of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses

W.S. In Testimonium Veritatis,

H. L. Westervelt,

Notary Public.

Bill of Exchange No. 2, referred to aforesaid, to wit:
Exchange for

\$3. 200⁰⁰/₁₀₀, } Tenne Hants, June 37-1857,

(The drawer and Endorser disburse with non-acceptance & non-Payment of this bill & Protest to be evidence of presentment)

Six Months after date of this Limit of Exchange, second unpaid, pay to the Order of Barney Allen, Acceptance waived, Thirty two Hundred Dollars, value received without any

The following is a copy of the bill of exchange marked "No. one and No. two," as referred to in the foregoing answer of Samuel S. Early, President of the Prairie City Bank, to wit,

No. One,
 "Exchange for \$3000. ^{or} _{per} ¹⁰⁰ ₁₀₀ Lene Haute June 7th. 1859,
 (The drawer & endorser disburse with notice of Non-Acceptance & Non-payment of this bill & protest to be evidence of presentment)

Six Months after date of this First of Exchange second unpaid pay to the order of A. J. McCoy, Three Thousand Dollars, value received without any relief from valuation or Appraisalment Laws to Chas. A. Morford & Co. John Vestal,
 New York,

Endorsed on the back thus,

A. J. McCoy,

Barney Allen

James M. Robertson, pay to the order of C. A. Morford & Co. Geo. S. Beach Bar.

(In print, "Credit C. A. Morford & Co.")

To which bill of exchange was appended a protest in the words and figures following, to wit:
 "United States of America
 State of New York } ss.
 City and County of New York } On the 10th day
 of December 1859, at the request of the Merchants
 exchange Bank I, Hannan Westervell a
 Notary Public of the State of New York duly

The said complainants for repli-
 -cation to the supplemental answer of
 the defendant Samuel S. Early saving
 and reserving to themselves all ad-
 vantage of exceptions to the manifold
 insufficiencies of said supplemental
 answer, for replication thereto say they
 will aver and prove this said bill
 to be true, certain and sufficient in
 law to be answered unto, that the said
 supplemental answer of said defend-
 -ant Samuel S. Early is uncertain
 untrue and insufficient to be replied
 unto, without this, that any other
 matter in said supplemental an-
 -swer material or effectual to be
 replied unto, confessed and av-
 -owed, traversed or denied is true
 all which they will aver and prove
 as this Honorable Court shall direct
 and they pray as in Bill.

Hookins, Thurman & Roberts
 Sols. for cpts."

The following is the order of the Court as
 to the foregoing supplemental answer
 of S. S. Early and the replication thereto
 to wit: "James S. Adams, et al.

vs. } Foreclosure
 James M. Roberts & M. Brian } This day

came the parties by their solicitors and the respondent by Smith their solicitor move the Court for leave to file herein a supplemental answer which is granted by the Court, to which the complainants except.

And now again at the term of Court aforesaid, to wit: October Term 1862 of the Douglas Circuit Court this further order of said Court was entered, to wit:

"James S. Adams et al.

v.

James M. Robertson, and

William Brian

{ Foreclosure,

{ On motion

of the defendants by their solicitors. leave is granted for the examination of James M. Robertson, subject to all exceptions, and the respondent C. W. Bailorin being three times solemnly called and coming not, by himself or counsel, it is ordered a decree pro confesso be entered against him."

And afterwards, to wit: at the term of the Douglas Circuit Court as aforesaid, this other and further proceeding, order and decree of said Court was entered to wit:

"James S. Adams & others

v.

James M. Robertson & others

{ Chancery,

Came now the parties by their solicitors and counsel, and an motion of the defendant Samuel S. Early, it is ordered that he have leave to examine the defendant James M. Robertson as a witness in this cause, subject to all just exceptions, and the defendant Cornwall Mr. Barlow, having wholly failed to answer the complainant's bill an motion of the complainant, it is ordered that the said bill, be taken as confessed by and against the said Barlow and this cause is now set for hearing upon the pleadings & exhibits and proofs, and the evidence being heard, and reduced to writing and duly certified, and the Court not being sufficiently advised of and concerning the premises, this cause is taken under advisement and continued until the next term.

A. S. Davis?

And at the Term aforesaid of the Court aforesaid, the complainant by Hookins & others their solicitors on the eighth day said Term, it being the 2nd day of October A. D. 1860, filed their bill of exceptions, duly signed by the Judge of said Court

in words & figures following, to wit:

"State of Illinois

Douglas Circuit Court

October Term 1862.

James S. Adams, et. al.

v.

James M. Robertson, et. al.

} Chancery

Be it

remembered, that on the trial of this cause the complainants called as a witness Brunnell M. Barlow, who being duly sworn testified as follows

"My name is Brunnell M. Barlow, my age is 53, I am a farmer and reside in Vigo County Ind.

On the 20th March 1856, I was President of the Prairie City Bank and continued to be such for a year or 18 months, at Terre Haute, it was a bank doing business under the general Banking law of Indiana,

Original deed shown to witness, This deed was executed by me, Robertson (Deed and defeasance given in evidence, see exhibits to Early Answer) after I had written the deed before it was signed or acknowledged by me, Robertson. Mr. Robertson said to me he wanted something to show for what this deed

was given, it being a clear deed to me
There had been a previous understand-
-ing between Robertson, Graham and
myself in reference to the matter ab-
-out a month or more previous, the
terms of this arrangement were agreed
upon then, and a memorandum was
made in writing, Mr. Graham was a di-
-rector in the Bank & Stockholder, Mr.
Graham made out a memorandum of
the terms, I had that before me when
I drew the ^{defeasance} ~~deposition~~ was drawn in
accordance with that understanding
a part of that understanding, a part
of was this, which does not appear in
the papers, It was that he was to give
personal security to the satisfaction
of the Bank, that was a part of the
original agreement, after Mr. Robertson
made this request for something to
show he took the deed and went out
to get it acknowledged, while he was
gone I drew up this instrument of
defeasance, He returned the deed and
took the instrument of defeasance, It
was done in the Prairie City Bank
there were no persons present but
Mr. Robertson, Mr. Beach and myself
at the time it was done, Mr. Beach

was Cashier of the Bank, I received the deed and delivered the defeasance at the same time, I had been President from the time the Bank went into operation, Prior to my being President of the Bank I had practiced law for some 14 or 15 years,

Cross examined by deft. Early, Mr. Beach I think was present he was cashier, Robertson was gone perhaps an hour or two, I have no recollection of any convention or meeting of the Board of Directors, a week or two after, to the effect that the deed was first to secure the Bank, I can state that at one meeting of the board I cannot say how soon after a member of the board asked me if the defeasance was in writing, I could not recollect without reference to the books of the Bank, the date of the renewals. We regarded the paper offered for renewal as good at the time, the Gentlemen were in the habit of consulting Mr. Harbaugh of Greensboro Ind. said the paper was good, They, the endorses had some of them been in Bank before, I do not think there was any statement to the board that this had been taken to the

Bank on the faith of which there was a renewal of the paper, I do not recollect ever to have exhibited the defeasance to the board of directors, there was a rough draft of the defeasance drawn up, that I afterwards saw in the Bank, and it was there when I left, I cannot recollect as to time of renewal of Bills, Graham is my Brother-in-law, he asked for some thing to show the terms upon which the deed was given, Robertson took the deed & went out and returned & took the paper, I am confident of that fact, I think the paper corresponded with the memorandum. Mr. Graham had left, it was signed by ^{one} me, and my recollection is it corresponds with it substantially, Mr. Graham was a director and he and his partner owned a majority of the stock, Graham had no authority from the Bank that I am aware of to make this arrangement, & I wrote to him at New Orleans as soon as Robertson made default, to come up and he was the principal negotiator in making the arrangement, Mr. Graham was not a stockholder at the commencement of this suit, and is not now, he had sold his interest two or three years

at the ...
previous.

Re & d by Cpts.

When Robertson went after his hogs he requested ~~us~~ ~~to~~ us not to protest his paper, Mr. D. Williams & Co. were on the paper and we had let them off, by failure to give written protest. Robertson did not bring his hogs in but sent them elsewhere. I then wrote to Graham that Robertson had made default, Graham came up & Robertson was sent for and the arrangement was made, Graham claimed a priority that did not correspond with my recollection. The matter of priority was not in my mind for we had security on the bills which we regarded abundantly good.

I was at Mr. Robertson's house about Jan'y. 1858, for the express purpose of getting a copy of this defeasance. It was with a good deal of persuasion & difficulty that I obtained it, at that time he made no objections to the terms of it whatever.

From June 12-1855, to Dec. 15 1857, exchange was from 1 to 1 1/4 per cent premium in favor of New York against Gene Haute, sometimes during the peak season it might be at par, but the above was the usual rate. I cannot say

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that I recollect that at any time during the period mentioned, sight exchange was at par. The Bank usually charged a small premium.

Examined by def. Early. I

I think the discussion I have spoken of occurred about a year after the making of the deed. I don't recollect that I claimed that the Bank had priority I resisted Mr. Graham's claim of priority - The ^{proceeds} proved the paper, and that sustained me, and I considered that I had triumphed. I have since called Mr. Bick's attention to it, I do not think from nature of the transaction that I could have claimed priority for the Bank but I did resist Graham's claim. I was then President of the Bank, it was in the evening by candle light.

Cannot state the day positively, a year after the execution of the deed.

2. What was the market price at that time of bills at that time on N.Y. (objected to by complainant^{ans. waived}) Ans. 60 day bills on N.Y. we usually took 6 per cent int. off - 90 day bills we were taking $7\frac{3}{4}$ of 1 per cent off, this was the Bank notes at Leve Haute. - I took a copy

of the appearance at Robertson's home
some 2 or 3 years after the paper was
executed, I took 2 or 3 copies at the
the discussion at the Bank, Beach,
Graham & myself were present.

The Bank-Saw 1 R. S. Ind. of 1852
p. 158, S. 24 read in evidence, The whole
law to be considered in evidence, and
either party to refer to such parts thereof
as they may choose, Also S. 20 on page
156 given in evidence

Revised Statutes of New York, 2
Vol. p. 181, 2, Sec. 1, 2 & 5 on the subject of
interest given in evidence.

Chlts. Rest,

Defts. offer in evidence S. 23 of the
free Banking law, P. 157.

Act concerning interest on money,
Sec. 1 & 4 page 343, 344, the whole act
considered in evidence.

Sec. 13, Act incorporating the old State
Bank of Ind. given in evidence

James M. Robertson called by depts.
Early,

Pff. objected to Mr. Robertson as a ~~competent~~
witness on the ground of interest, admitted
subject to objection - said Robertson being
sworn testifies, "I reside in Douglas County
Illinois, I am the mortgagee, I had been

getting money from the Prairie City Bank to a considerable extent in the latter part of 1855. In the beginning of 1856, I was embarrassed in financial matters to the amount of \$11,500, to the Prairie City Bank in the month of Jan'y. I tried to get a renewal of all the paper that lay over in said Bank.

I had two or three consultations with Messrs. Barlow, & Farnington of the firm of H. D. Williams & Co. & Mr. Turner, I think after relating all my circumstances to Mr. Farnington, Farnington & Turner being directors & Barlow Pres. they refused to renew my paper, unless I would make a liberal payment. I think it was in Feby 1856, that they sent for me to come down to Seneca & ante the Bank sent I suppose I went there had a consultation with Mr. Barlow & Mr. Graham, It was agreed that I should give a Mortgage or deed to the Prairie City Bank on 260 acres of land in Coler County Ills. and they would renew the Bills by my giving personal security, the Board would renew the paper.

It was the agreement that I should give the land and personal security
 155 I had not the deeds to all the land

Consequently it took me about 3 or 4 weeks to get back there, according to the date of the deed it was on the 20th day of March 1856, the agreement was this, that they would renew my paper, I was to pay them \$4500 the following June and another payment the next Dec., probably the balance one year thereafter or thereabouts, I was there about the 20th March and made the deed.

I went down with the deeds as far as I had them, Mr. Barlow wrote the deed, he then went with me one or two blocks afterwards the Justice of the Peace a short distance from the street we went up, I acknowledged it then before the Justice of the Peace, we then went back to the Bank, then went to dinner, after which I went back to the Bank and asked Mr. Barlow for a memorandum of an agreement, he wrote it, and handed it to me, I went home, put it away with other papers pertaining to land. In January following I gave a mortgage on all my Illinois lands except those above spoken of and placed

and placed the papers in the hands
of Mr. Williamson of Green Castle an
attorney: during 1857 the Bank wished
to know what that paper consisted
of or what it was, I hunted for the
paper & couldnt find it. After I
came to Ills. 25th Dec. 1857, Mr. Barlow
came to my house to see the papers
He searched for it and couldnt find
it. I wrote to Mr. McCoy of Indiana
to go to Mr. Williamson office, and
see if such a paper couldnt be found
among those other papers, Mr. McCoy
came out in a short time and brought
the paper with him. I went to Terre-
= Haute a short time afterwards and
made this amended deed that you
have on record here, amended deed
or perfected deed to Samuel S. Early
as president of the Prairie City Bank
and gave them a copy of this paper
called the defeasance, at the time I
received it from Mr. Barlow, my re-
ollection is that he wrote it I im-
=mediately left for home and put it
away, did not see it any more or I
recollect Well I will state this that
I never read it that I recollect of
I know I didnt in fact, I simply

wrote on the back of it L. W. Barlow's agreement and put it away with the other papers. The original agreement with Messrs. Graham & Barlow and the Directors as far as I consulted them was, that I was to secure the Bank with this land & give them security for their money & if at any time should be any thing due Graham & Buckingham after the Bank was paid, they were to have a security in the land. I think that I had packed with W. D. Williams & Co. some 2200 or 2300 hogs to be shipped to Graham & Buckingham at New Orleans, this was done I think this was done in Dec. 1854 I think of 1855. If pork remained at the price it was when we had our conversation of \$18. per barrel there would be nothing going to them. If it should fall before that time would be an indebtedness (Q. Explain how were you in their debt) Ans. I understood that Mr. Graham was connected with the Bank deeply.

The bargain between Mr. Graham & I in June or July 1855, and W. D. Williams & Co. was this, I was to

12 pack 2000 hogs with them to be shipped to Graham & Buckingham at New Orleans, Mr. Graham agreeing I think to advance \$5. on the 100 lbs for pork. He advanced that and I failing to put in as many hogs by one or two hundred or three about, I will state this, that they were to be sent to Graham & Buckingham free of the packing bill, free of charge.

My understanding and intention at the time I delivered the deed was to secure the Bank first, and it then should be a debt to Mr. Graham & Buckingham that they were to have security in the Land; I, was the deed executed with the intention of carrying out the original agreement of the parties? (Objected to by Cplts.)

Ans. It was, Graham stated that if Land went down there would be a debt due him, I contended that it would remain about what it was then, I did not think there would be any thing due him, and if there should be any thing due him I was willing he should share a portion of the securities, but at the same time understood that the Bank was to be

seemed in the first place, this \$4,500 was paid in June 1850, I paid it to Mr. Graham for the Bank, It went to the Bank, the bills of exchange were renewed, I was informed a short time after the deed was made.

Two bills of exchange were shown witness, exhibits 1 & 2 to Early answer,

They look as though they were correct I, was the principal in those bills and those other bills gentlemen were securities.

Bills offered on evidence I cannot state whether they are solvent or insolvent,

I was during this time engaged in farming and buying hogs & cattle and shipping to New York.

Q. What circumstances have fastened the recollection of the facts upon your memory,

Ans. When I received this instrument of defeasance as you call it and read it I did not think it set forth the full contract in detail as agreed upon.

Q. When did you first read it,

Ans. - I presume it was in February 1858, I have made statements and been acting all the time upon a def-

-ferent basis,

Q - What do you mean by a different basis?

Ans. - I had stated to Dr. Conzill one of my securities that the Bank held a clear deed for that land as a deed you may say for the land same question repeated.

Ans. I meant that I had made statements that the Bank had a clear deed to the land for that money.

Q. How far within your knowledge was the renewal of the bills to the Bank bound upon the giving of the security to the Bank?

Ans. - They agreed to renew until this was done.

Q. - Are there any circumstances that you have not stated that impress upon your mind the fact that there was any difference at time between the delivery of the deed to Barlow and the defeasance to you?

There was but one circumstance that I can think of, After we returned from having it acknowledged, and reflecting at dinner that the deed was absolute, I thought it would be best to go back and have the

agreement, as I did not desire to lose the land.

I gave them a copy of the defeasance when I went back and corrected the deed, Mr. Samuel Early took the copy, Mr. Barlow got it there if he got it at all, he did not get it at my house, that is certain.

Cross Examined,

Mr. Graham's son came for me in February 1856, to come to the Bank that night. He delivered the message to me at my house, my house was seven miles South of Green Castle Ind. He probably stated that his father was there, or, that the Bank wished to see me or something to that effect. When I arrived at the Bank I met Mr. Barlow & Mr. Graham, Mr. Graham then and there charged me with having sent the hogs elsewhere, and told them, that he had advanced the money to me, and to the extent of what I have stated 150 or 200 hogs. He did not tell me then and there that I had got to secure him, In talking of the debt to the Bank he spoke of that as a considerable debt

And if perk should go down — there might be an other debt; I in consideration that that was a considerable debt, and that there might be an other debt.

What did he claim of you?

Ans. — The great trouble was to make the Bank secure,

Q — Do you mean to say that because you had sent your keys elsewhere, incurring the liability of a large debt, the great trouble with him was to make the Bank secure
Answer — Mostly so it seemed to be

Q — Can you read?

Ans. — Yes a good hand.

Q — Can you write?

Ans. — I can write a little, I write letters in corresponding with others upon matters of business.

Q — Transacting important business such as securing the title to valuable lands is it customary for you to ~~take~~ make contracts without reading them?

Ans. — It is not very common

Q — Have you employed counsel in this case?

No Sir, I haven't.

Q. Who put in your answer filed yesterday?

Ans. — I think Judge Bouzill did it.
Q. Why do you think Judge Bouzill did it?

Ans. — He said he thought it was proper to do so, I did not ask him to do it.

For whose benefit was that answer put in?

I presume it was done that it might benefit his brother. The security I have no interest in the land, it has been sold from me a long time, I presume his interest runs in that way.

Q. Have you not told his brother frequently that he was to be protected in this land? (Not answered)

Q. Has he ever been out to see you about it?

Ans. — No Sir, he had a suit with the bank and came out to take my deposition.

He has written to me and talked to me about this business.

Q. Has he not been very urgent about it?

Ans. If things were as represented by your party he had been misled, He states that to me, He has asked me a number of times on the subject.

Q. — Are you not especially desirous to satisfy his mind about the matter.

Ans. I have desired to satisfy him

You stated that you had not got deeds to all the land, What part had you not deeds to?

Ans. — The Brian tract that you was interested in & I did not in that 3 or 4 weeks get that deed from Brian.

Q. — What did you do about getting that deed from Brian?

Ans. — He promised for two or three years to make the deed, did not do it, then you applied for it here and made him make it. It might have not been entirely that that detained me 3 or 4 weeks. It required a trip to Ills. & I came here.

Q. — Had you never thought of wanting any evidence of your right to receive the land until it came to you while at dinner?

Ans. — That much of the bargain was

overlooked at the present time, it lacked that much of being completed

It was agreed that I was to have a writing setting forth to that effect,

Q. — When was that agreement made
I would think about in February
I would think about 4 weeks before
the deed was made,

Why did you not demand the writing, when the deed was made, if that was the bargain?

I think it was dinner time of day
I might not have thought of it at that moment,

(Re-examined by Deft. & Arly.)
Who made the first proposition of giving
the security?

Ans. — Mr. Farrington one of the
directors of the Bank,

Q. How long was it before the
meeting with Graham? It was from
the first of Jan'y. somewhere between
the first of Jan'y. and the time of making
of the deed, I did not want
them to blame it on me, Did not
want any securities sued, nor to be
sued myself,

I, When and where was the deed delivered to Mr. Barlow,

Ans. my impression is that it was either in the Justices office, or at the Bank or on the way back from the office of the Mayor, public or Justice of the peace,

B. W. Barlow, recalled by Cpts.

I went to Robertson for the express purpose of procuring the copy of the defeasance,

Showing a copy of the defeasance to witness, When was that paper written. Ans. - As for where this paper was written I cannot say, I took one copy at Mr. Robertson's 2 story farm house near here and I made three copies of it, one for the Bank, one for Graham and one I kept myself, of these facts I have not the least doubt,

I never was at Robertson's home but the one time,

I cannot state the difference between the original draft and the defeasance delivered to Robertson, I made some interlineations & erasures, and then made fair copy, I remember that I afterwards thought the original draft

fairly expressed the contract.

I never went with Robertson to Hoopers. It was out of my way. I usually did my business before Nelson, a Notary Public who was nearer. I may have gone to dinner before the papers were delivered, the deed was delivered to me in the Bank.

Examined by def. Daily.

I reached Robertson's house the same day. I think I left home the same day I know it was in the winter as I headed round a slough to get to his house, and there was ice in it. Robertson was some time finding the paper, and did not like to let me have a copy for fear that some advantage would be taken of him, that was the way he expressed himself. It rather seems to me that I was not President of the Bank at that time. Can't say whether Robertson knew it, he may have been aware of it.

I say I don't recollect of insisting that the Bank had priority. I knew what Graham claimed, my impression

is that I did not claim a priority.
Mr. Beach found the original
memorandum, and when it was
found I ^{corrected} I had triumphed
in the matter of recollection.

Examined by complainants,
Graham came up within 2 or 3
weeks after I notified him of Rob-
ertson's making default on deliver-
ing the hogs. The consultation with
Robertson occurred immediately after
Graham came up. Graham was at
New Orleans when sent for.

We regarded that as an important
and busy season of the year to those
engaged in trade ~~operations~~, Graham
had no other business up that I
know of.

I was in the Bank when the
payment of \$4,500 was made by
Robertson in June 1856. Robertson
wanted to pay that money to H. D.
Williams & Co. an account of pork
packing. He insisted that he should
pay it to the Bank, on this debt
assuring him that he would dis-
count H. D. Williams & Co.'s paper with
his endorsement if they wanted
money. Mr. Graham may have re-

-ceived it, he sometimes assisted Mr. Beach in the duties of Cashier when he was present, not often though.

Examined by Deft. Early, Graham left in a few days after he came up. His stay was short, I could not say just when he returned from N. O. probably in June, he did not stay there in the sickly season, June would have been an average time for his coming North, I do not remember how long he stayed, during that summer, I sometimes acted for Graham and Buckingham in making advances, I think probably my connection with the Bank as president ceased in the fall of 1857.

By Cpt. Mr. Early succeeded me as President, Early was not there during these transactions, he had previously been a director, I never went into the Bank and took a copy of the deprecience after I left it, I am now a stockholder in the Bank I own the Bank about \$1100, I have stock that cost me about \$2500, par, worth now about 50 cts. to the dollar.

John Conzill called by defts.

When the bill of exchange I, reside
in Green Castle Putnam County
Ind. I know John Nestal & A. L.
McBay & Barney Allen and H. E.
Crogill, he is my Brother McBay &
Barney Allen & H. E. Crogill, reside
in Putnam County, Nestal resided
there until within 2 or 3 years Nes-
tal resides in this co. I think now
McBay and B. Allen are publicly re-
cognized to be insolvent, Dr. Crogill
is not in as pretty good circumstances
Nestal was broke up in our County
He left 2 years ago, don't know
his circumstances now,

Cross examined by Counsel.

Was the bank brought suit on one
bill, It is tried, Judgment against Dr.
Crogill, it was in the district Co-
urt, of the United States for the dis-
trict of Indiana

R. S. Ind 1843 R. 580, 581, S. 230

29 given in evidence by def. Early.

John S. Beach for def. Early
being duly sworn testifies as fol-
lows, as complainant's examina-
tion — I am not a stockholder
in the Prairie City Bank, I have
been a stockholder in that Bank

I owned 68 shares of the Stock, I have been negotiating for two or three weeks, for the sale of them and consummated the transfer on Monday last, I sold to Samuel S. Early, I sold at 50 cents on the dollar, he has paid for it, There is no understanding arrangement between him and myself that the stock will be re-transferred.

6pts. app in evidence on the question of Witness' liability, 1 P.S. Ind. p. 157 S. 21 and p 158, S. 35;

The Prairie City Bank is a Bank of deposit, there are deposits in the Bank now, and was when the stock was transferred by me.

The Compts, read in opposition to the admissibility of Mr. Beach the case of Gentry & Alexander, Post. 16th Ind. repts. page 471.

Andrew G. Wallace called and sworn for depts. Early.

I have receipted for the costs of this case in full up to the 16th inst.

John S. Beach, on depts. examination testified as follows,

I reside at Terre Haute Ind.
I am cashier of Prairie City Bank
I have been connected with the
Bank from its organization to year
1855, as clerk & Book Keeper at which
time I was elected cashier of the bank
I have been so ever since. The in-
debtedness of James M. Robertson
to the Bank March 20-1856, was
about \$11,500, and the same about
Feb. 20 1856. The indebtedness con-
sisted of four bills of exchange, one
falling due Decr 18, 1855 for \$2,000
drawn by John Vestal on James
M. Robertson New York endorsed
by A. F. McElroy, and accepted by
Robertson at 135 days after date.

An other bill drawn by Robert
Allen on James M. Robertson, New
York endorsed by W. D. Williams &
Co. and accepted by Robertson, at
4 months, for \$3000, due Jan'y. 1856.

An other Bill drawn by Robertson
on himself at New York, and ac-
cepted by him, endorsed by W. D. Wil-
liams & Co. at 30 days, for \$2000, falling
due Jan'y. 1-1856. An other Bill drawn
by James M. Robertson, on Adams
& Buckingham New York accepted

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ance varied, endorsed by John
Arestal and A. T. McCoy at 6 months
for \$4550, falling due June 24, 1856.
These were purchased from James M.
Robertson the first two and last
were purchased at interest and
one quarter of one percent per month
off, the 30 day bill at interest off.

The firm of Adams & Buckingham
of which Mr. Graham was a member
owned a majority of the stock, and
Mr. Graham was a director. Mr. Rob-
=ertson was very anxious to increase
his credit in the Bank and being
unable to meet these bills brought
new bills to the Bank to renew
but the Bank was not satisfied
to take the bills for so large an am-
=ount without his first reducing
the debt or bringing additional se-
=curing (objected to) or stating a reserve
instead of giving the language,
I mean by the word "they" the board
of directors.

Mr. Robertson failed to get
money to reduce the debt or satisfac-
=tory personal security.

The directors were aware that
he had lands, and insisted that

should give the land as a security
 for the indebtedness agreeing with
 him, that if he would do so they
 would renew those bills that were
 past due the proposition was
 presented to the Board by the Pres-
 -ident of the Bank, and the Bo-
 -ard of directors, instructed the Pres-
 -ident to take from Mr. Robertson a
 deed for this land, and the deed
 was so taken, C. M. Barlow was
 President at the time, this instruction
 was given to Barlow in February
 1856, Mr. Graham was a member
 of the Board of directors, and was
 present at the time in February
 when the subject of Mr. Robertson's
 indebtedness was discussed by them
 I cannot give any expression of Mr.
 Graham's on the subject. He was a
 member of the board, was very anxious
 to have this debt secured, It was
 customary in matters of this kind
 to have a vote by the board, and
 Mr. Graham as a member of that
 Board voted in the affirmative, there
 was nothing at all said about a
 debt of Robertson to the complain-
 -ants - there was no mention made

of a debt from Robertson to the complainants.

The deed was executed at the Prairie City Bank on the 20th of March 1850, on the 31st of March 1850 there was a meeting of the Directors, and Mr. Robertson represented that he had taken a deed agreeably to the understanding, and I was instructed by the Board to renew the bills.

On the following day or the day after, I entered up the same and surrendered the old bills to Robertson, This was the deed in controversy in the suit, Mr. Graham was not present at the time last mentioned meeting of the board of directors there was nothing said at the time touching the deed being taken in part security of a debt to the complainants. The first and third of the old bills were embodied in one Bill, they were of \$2000 each, this new bill was drawn by James M. Robertson on Adams & Buckingham New York, acceptance waived, endorsed by H. E. Congill & A. D. Hanks - note at 6 months for \$4,200.

It became due June 21-1856, Another Bill drawn by James M. Robertson on Adams & Bushnighans New York, acceptance waived endorsed by J. Gilmore & Barney Allen at 6 months for \$3150, this became due July 4-1856.

I think the name of W. E. Longell was added as an endorser on these bills after they were first presented to the Bank. I think it was some time in January these Bills were before the Board at the time Mr. Graham was there.

Mr. Robertson, Mr. Barlow and myself were present when the deed was executed. - By the Court,

I - When were the new Bills executed and - They were presented in blank to the Bank some time in Jan'y. They were executed I suppose on the 31st March when they were discounted by the Bank.

I mean that at that time they became the property of the Bank. I will explain to the Court, that these bills were dated in December and January.

Mr. Robertson executed the deed & delivered it to the Bank. I can't tell how long after but some time after

the delivery of the deed, Mr. Robertson came in the Bank and said he would like to have some writing to show the nature of the transaction. Mr. Barlow wrote ~~him~~ something on a piece of paper and handed it to him, I knew nothing of the contents of the paper, I did not see it, I do not know that I can give any precise language that was employed by Robertson & Barlow at the time of the execution of the deed, it was understood by myself and Mr. Barlow that this was to be an absolute deed for the security of the Bank debt, There was nothing said about the complainant's debt, I knew nothing of that debt at the time Mr. Graham when at home assisted me in the Bank during my absence he acted in my capacity, On the 27th June 1856, on my return from dinner he showed me some money he had received, and stated that Mr. Robertson had paid this bill that had matured of \$4,500 & that he had made the proper entries on the Books in favor of the Bank.

About a year after the execution

of the deed to the Bank a question arose between Mr. Barlow and Mr. Graham in regard to these lands. Mr. Graham then claimed for the first time that I held a share in the land which claim Mr. Barlow stoutly denied. Mr. Barlow claimed that the Bank was to be paid before Mr. Graham should share in the land. Mr. Graham contending that he was to share pro rata with the Bank, Mr. Barlow insisted on his view of the case that the Bank was to be first paid, and then if there was any thing over ~~the~~ Mr. Graham should have benefit of it. This conversation was a very animated one, and Mr. Graham failed to impress upon Mr. Barlow's mind his understanding. He seemed greatly vexed at Mr. Barlow, and as I thought yielded to the force of circumstances. Mr. Robertson was present at this conversation. Mr. Graham's son was Back Street in the Bank in February 1856.

The Bank bought the complainants' stock in the Bank, on April or May 1857.

The Bill becoming due

June, 21, 1856, was renewed by a bill drawn by James M. Robertson on himself at New York, and accepted by him endorsed by A. T. McCoy, John Vestal, and H. E. Corzill at 6 months for \$4200, payable Dec. 24-1856.

That Bill was renewed by a bill drawn by James M. Robertson on Adams & Buckingham New York acceptance waived, endorsed by A. T. McCoy, John Vestal & H. E. Corzill at 6 months for \$4,200, Matured June 27-1857, at Maturity there was \$1000 paid on it and a new bill given drawn by James M. Robertson on C. A. Munford & Co. New York acceptance waived, endorsed by Barry Allen, John Vestal, A. T. McCoy and H. E. Corzill at 6 months for \$3,200 this bill matured Dec. 30, 1857 was returned from New York, protested for non payment, a payment to the Bank of \$629¹⁴ was applied on the bill, Notice of the protest was given to each of the parties was given, the Bill of \$3150, matured July 4 1856, after payment on it of \$150, was renewed by a bill drawn by Robertson on himself at New York

and accepted by him endorsed by Barney Allen and J. Pyneason at six months for \$3000 due Dec. 4, 1856, this bill was renewed by a bill drawn by Robertson on Adams & Buckingham New York, acceptance waived, endorsed by John Vestal and A. J. McCoy, at six months for \$3000 due June 7, 1857, This Bill was renewed by a bill drawn by John Vestal on C. A. Morford & Co. New York, acceptance waived, endorsed by A. J. McCoy Barney Allen and Robertson at six months for \$3000, This bill matured Dec. 10, 1857, and was returned from New York, protested for non payment and notice given to each of the parties, the last of the two series of renewals are the bills referred to & made exhibits 1 & 2, to the supplemental bill answer of S. S. Early

All these renewals were taken at the Bank at the interest and a quarter per cent per month off.

Question, - What was the usual bank rates at Levee Haute at the time these several bills were taken, for bills of that description on New York (Objected to by complainants) Received

subject to objections) ~~But~~

Answer - It was interest and a quarter of one per cent per month.

Question - What was the exchange or premium for bills of that description in the City of Terre Haute, upon the City of New York, at the time said several bills were taken. (Objected to by Compts. and admitted subject to objection.)

Answer - Interest and a quarter of one per cent exchange, by exchange I mean discount,

Q. Was there any difference and what was there between the ~~prices~~ at which sight bills were taken upon the City of New York, and at which time bills were taken on said City by the several Banks in the City of Terre Haute.

(Objected to by Compts. & read with objection.)

Answer - There was a difference & sight bills were generally worth a premium. The price varied for sight exchange on New York, ranging about that period from a quarter to one per cent.

Question - At whose instance were the original bills purchased by the Bank

Answer, I don't know that I can say that.

Were you present at all the meetings of the Board of directors, of the Bank in February or March 1856?

Answer - I was.

Question by depts. - Was any thing said by Graham or any one else, either of those meetings in reference to the deed being taken in part for complaints claimed?

Answer - Not to my knowledge was there any thing mentioned.

I - At the time the said deed was presented to the Board by Barlow March 30 or 31 - 1856 what representations were made by Barlow as to the purpose for which said deed was taken? (Objected to by complainants)

Mr. Barlow answered to the Board that he had taken this deed to secure the Bank debt,

(Cross examined by complainants.)

You have stated that Mr. Graham was present and voted on a proposition what was that proposition?

Answer - to accept the deed as security for the Bank debt.

Who then constituted the board

806
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of directors

C. W. Barlow, James Farrington
A. M. Graham, John H. O'Bayle
James H. Turner, W. D. Griswold
Daniel A. Jones, James M. Hanna
and Lewis Rice,

I cannot state positively who
of them were present. I was not
at that time a member of the board
I was then a stockholder, I was
acting as clerk of the Board.
Q. In what form was the qu-
-estion put?

The matter had been talked of
among the directors outside of the
Board, and when the terms were a-
-greed upon the motion was put,
on taking the security and renew-
ing the security paper.

Q. What terms or propositions
were involved, or proposition in
the motion?

Ans. — When the question of taking
the security for the Bank debt, the
proposition was upon taking this
as security for the Bank debt. The
terms were, that if the security was
given the bills should be renewed.
Q. — Was the motion submitted in

anything?

Ans. — It was not,
Q. — Was there any record made of
the note,

Ans. — No Sir,

Q. — How much money did Mr.
Robertson borrow, from the Bank
on the Bills you have mentioned?

Ans. — The bills were \$11,550. It
is customary for the Bank to take
the discount out at the time of
the discount,

I wish to correct a statement
I made yesterday. I then stated
that the rate of discount was
interest and a quarter of one per-
cent per month, at the time of the
original discount, that time the
rate was interest and one eighth
of one per cent per month, that is
the rate that was taken on these bills.

How much money did Mr. Robertson
borrow from the Bank on these bills?

Ans. — He borrowed the amount of
the bills less the discount, What I
mean by borrowed is he ~~should~~ sold
these bills and got the proceeds of
them.

Q. — Was Robertson the owner of the bills?

Yes sir, so far as we knew,
 Q. — What was the relation of the
 other parties to the bills?

Ans. — We requested them as securities

Q. — Did the Bank regard them as goods
 and sufficient securities?

Ans. — Well no sir — They did not
 want to hold so large an amount
 of their paper without additional
 security.

Q. Was Robertson present before the
 Board when they acted on his propo-
 sition for security?

Ans. — No sir he was not.

Re-examined by depts.

I sold my stock to Mr. Early. The
 day on which I transferred it was
 Oct. 13-1862. At the time that these
 bills were taken Robertson's business was
 that of dealing in cattle & hogs, and
 shipping them to New York, market
 These bills were based upon shipments
 of cattle and hogs.

Re-cross-examined by Cplts.

Have you any expectation that you
 will ever again own stock in the Pr-
 airie City Bank?

Answer, — I don't know that I have
 sir.

Q. — What was the object of taking the bills payable in New York?

Ans. — It was expected that the bills would be paid there when we took them, that cattle would be sold there to meet these bills.

Q. — Was there no other object?

Ans. — There was no other object on the part of the Bank.

Q. — Did not the Bank consider money in New York as a fund on which to draw for sight & exchange worth more than money in Terre Haute?

Ans. — Yes Sir.

Q. — Did they not take bills payable in New York for the express purpose of providing themselves with sight & exchange in New York?

Ans. — Well, they preferred New York bills to home paper, they considered them worth more to them.

Stipulations of August 28th 1860 and Oct. 18-1861, offered by Deft.

Deft. offers in evidence Sec. 24- of the free Banking Law of Indiana, It is now stipulated and agreed by the parties that the several Statutes of Ind. and New York, and parts of the same given in evidence by the parties respectively

shall be referred to in the printed volumes in this or the Supreme Court, if the case shall go there, without setting them out at large, in this bill of Ex-
ceptions in the same manner and with like effect, as if they were written out therein in full.

James M. Robertson recalled & dep.
I was present at the Bank about a year after the giving of this deed at a discussion between Mr. Barlow and Mr. Graham touching this security, Mr. Beach and myself, Mr. Barlow and Graham were present, Mr. Graham and Mr. Barlow were talking about this memorandum which I hold, that is called a defeasance, Mr. Graham insisted that he had an equal right with the Bank and Mr. ~~Graham~~ Barlow denied it, Mr. Barlow contended that it never was the understanding that he was to have a pro rata or something to that effect, but that the Bank was to be first paid. The substance of the conversation between Graham and Barlow and myself at the Bank at the meeting in February, 1856, of which I have spoken amounted to this, that the Bank was

to be secured by the additional security of this land, that they would then renew my paper and the Bank being secured if there should be any thing due Mr. Graham that then he might come in or was to come in or share a part in it, or something to that effect. The substance of it was that the Bank was to be secured by this land.

I did not understand that they were to share alike, but that Mr. Bank was to be first paid. That was the substance of the conversation.

There was not any thing due to the complainants from me at that time
Re-cross-examined by Complainants.

Q. Who have you been talking with about your testimony since you were first examined on this case?

Ans. — Judge Smith asked me a question or two how it was, I believe he only referred to this subject that we have been discussing now.

Q. — When was the mistake in the first deed discovered?

Answer — It was in 1859, at the date of last deed, the corrected deed

Q. who discovered the mistake?

Ans. — Samuel S. Early, then President
of the Bank.

Q. — How did ~~he~~ find it out?

Ans. — He asked me if the lands all
lay together, I drew off a rough plot
showing how I understood them to
lie, He then said there was a mistake
that Mr. Barbour had made a mis-
-take in the drawing of the deed.

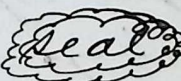
Complainants rebut,

Complainants give in evidence Sec. 7,
1 R. S. Ind. P. 345.

The defendants give in evidence the
whole interest law, and the whole Bank
Law of Indiana, the first on pages
343, 1 R. S. Ind. the 2nd on page 152 same
Vol. also the entire law of 1843 Art.
3 title interest of money, Ind R. S. 1843
Page 580.

The foregoing was all the evi-
-dence given in the cause,

Signed Oct. 22-1862,

A. S. Davis, 

And afterwards, to wit: at an other
Term of the Douglas County Circuit
Court, in the 27th Circuit of the State
of Illinois, on Tuesday the twenty first
day of April A. D. eighteen hundred
and sixty two, before the Honorable

Olive S. Davis, sole Judge thereof,
 (Monday the 30th, April 1863, the day set
 apart for the commencement of court
 having passed without the appearance
 of the said Wm. Judge in Chancery,
 sitting and continued from day to day
 until Thursday the third judicial
 day of said Term when the following
 order, judgment and decree of said
 court was had and entered of
 record, in words & figures following
 to wit:

“James S. Adams,
 Nelson W. Graham,
 John Buckingham
 & Eleazer Buckingham
 vs.

In Chancery.

James M. Robertson,
 Samuel S. Barby,
 President of the
 P. City Bank & others

Come parties by
 counsel and this cause having been
 heretofore submitted to the court upon
 the bills and answers, exhibits stipulations
 and evidence of the respective rights
 and equities of complainants and
 the Prairie City Bank in the distri-
 -bution of the proceeds of the sale of

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The Mortgaged lands.

And having been fully argued & the Court being now advised, " It appearing to the satisfaction of the Court that at the time of negotiation and of the execution of the deed from defendant Robertson to Bailorn, and of the defeasance in the Bill of complaint mentioned, it was the agreement and intention of the parties, and parties in interest that the indebtedness of said Robertson to the said Bank should be first secured by the said deed, and that after the payment of the said bank debt the residue was to be applied to the payment of the indebtedness to complainants, and that the said deed and defeasance were respectively executed and delivered with such intention and understanding,

and it appearing from the report of the special commissioner in this case that said land was by him sold under decree of the Court at public sale at and for the sum of \$544.⁵⁰ to the defendant Early President and for said Bank, which sale was afterwards confirmed by the Court,

And it appearing that there now remains due to the Bank on account of

the said indebtedness of the said Robertson secured as aforesaid by the said deed the sum of \$6800 including including interest a sum more than sufficient to absorb the whole of the proceeds of the said sale,

And the Court being satisfied that the said Bank is entitled to the priority in the said security, and that its rights and equities are superior to the rights and equities of the complainant, and that the complainant cannot set up the plea of usury as against the said indebtedness of the said Robertson to the said Bank, and that there is insufficient proof that said indebtedness secured as aforesaid or any part of it is usurious.

It is therefore by the Court, adjudged and decreed, that ^{with} all of the said sum of \$5448⁵⁰ the costs of this suit be first paid, and that the remainder thereof be applied to the payment and discharge of so much of the said indebtedness of the said Robertson to the said Bank."

And the complainant now by counsel may an appeal to the Supreme Court which is granted and

Sixty days is given to file appeal bond in the penal sum of five hundred dollars with sufficient security to be approved by the Clerk of this Court, Q. S. Davis?

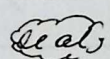
And afterwards, to wit, on the second day of June A. D. 1863, comes into the Clerk's office of the Douglas Circuit Court and files with the Clerk thereof, James S. Adams, Jno. Buckingham, E. Buckingham, N. W. Graham & A. Buckingham and their Bond in words & figures as hereinafter follows, to wit:

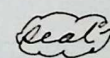
"Know all men by these presents that we, James S. Adams, Nelson W. Graham, John Buckingham, Ebenezer Buckingham and Abrah Buckingham are held and firmly bound unto Samuel S. Early, President of the Prairie City Bank in the sum of five hundred dollars to the payment of which, we bind ourselves, jointly and severally by these presents, Sealed with our seals and dated this twenty fifth day of April A. D. 1863

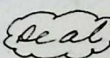
The Condition of this obligation is such, that Whereas, the said James S. Adams, Nelson W. Graham, John Buckingham and Ebenezer Buckingham, have prayed an appeal to the Supreme Court of the State of Illinois

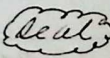
from a Decree of the Douglas County
Circuit rendered against them in favor
of the Prairie City Bank, at the April
Term 1863, of said Court, Now if the
said James S. Adams, Nelson W. Gra-
ham, John Buckingham and Ebezer
Buckingham shall well and truly pro-
-ecute the said Appeal and abide by
and perform the said decree and all
costs, if the said decree shall be affir-
-med, then this obligation shall be
void, otherwise the same shall be and
remain in full force,

James S. Adams 

Jno. Buckingham 

E. Buckingham 

N. W. Graham 

A. Buckingham 

The foregoing bond is filed this 2nd day of
June 1863, and approved by me.

A. G. Wallace, Clerk.

State of Illinois, {
Douglas County, { ss. I, A. G. Wallace
Clerk of the Douglas Circuit Court, hereby do
certify, that the foregoing is a true and
perfect transcript of the same then set
forth as the same now appears of record
and on file in my office,

Witness my hand & the seal of said
Court at Lenoir Ill. October 27th
A. D. 1863, A. G. Wallace Clerk



State of Illinois,

Supreme Court, 2^d Division

January Term 1864

James L. Adams, Nelson W.
Crosby, John Buckingham
and Ebenezer Buckingham

Error to the
~~Appeal from~~
the Douglas,
Leicant Court,

James M. Robertson, Cromwell
W. Barlow, Samuel S. Early
and the Prairie City Bank

Come now the said appellants by
Gookin Thomas and Roberts, their attorneys
and say: that in the foregoing record and
decrees manifest error hath intervened
in this to wit:

1 The said Douglas Leicant Court
erred in ^{deciding and} decreeing that the Prairie
City Bank was entitled to be paid ^{in full} the
debt in its favor against the defendant
James M. Robertson, out of the proceeds
of the sale of the mortgaged premises ~~to~~
before the ^{appellants} ~~complainants~~ should partici-
pate in or receive any part of the
said proceeds.

2, The said Douglas Leicant Court
erred in excluding the ^{appellants} ~~complainants~~ from
any participation in the mortgage security
in the bill mentioned by its decrees

3. The said Leicant Court erred in permit-

ting in and by its decree, the ~~said~~^{said}
~~appellee~~
~~defendant~~ the Prairie City Bank to
participate in or receive any of the pro-
ceeds of the mortgaged premises, until
the debt due to the appellant was
fully paid.

So the said Circuit Court erred
in deciding and decreeing that the
security of the said Prairie City
Bank were not usurious, and in
decreeing them to be valid.

Wherefore they pray that the said
decree may be reversed.

Goodwin Thomas Roberts
attorney for appellants.

The Defendants Samuel S. Early, and the Prairie
City Bank by Ballard Smith their attorney come and
say that in the foregoing record and decree there is
no error.

Samuel S. Ballard Smith
attorney for Early and the Prairie City Bank

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James L. Ado
by
James M. Robt

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Record, Ems. Jones

1864

14562

Filed Mch 23^d 1864.
L. Deland
Clerk.

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Miss Jan 8/34
Watson
Ca