No. 11830

# Supreme Court of Illinois

Mills

vs.

Harris

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William H. Mills et al
vs
John S Harris
1858

127 V.
11830

1858

Julia Lucas & al
vs
John H Harris

In the Supreme Court April Term 1858

Argument for Plaintiff in Error
by
Weed and Williamson

The mortgage sought to be foreclosed in this case purports to have been made on the 12th day of May 1837, and never was acknowledged — It was recorded on the 8th of Nov 1855, more than 18 years after it bears date

The land covered by the mortgage was again mortgaged to Harlow Mills on the 13th day of January 1839, which mortgage was recorded on the 2d day of March 1839

Again, on the 17th of February 1842, the land was conveyed in fee to Harlow Mills, subject to the prior mortgage to him, This conveyance was recorded soon after it was executed,

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All the material allegations of the Bill were denied and three of the defendants were infants

The Mortgage describes a Note as follows "according to the tenor of a certain Note "of hand bearing date 9th Sept 1836 "drawn by the said Edwin Mills and payable "to the said John E Harris" Page 5. of Record

This Note was not produced on the trial, nor is there any allegation that it was lost or mislaid, or that it had not been paid, or that it is yet due

The plaintiff in order to prove the execution of the Mortgage took the testimony of Edwin Mills, the person who it is alledged gave the Note and Mortgage, and who was one of the defendants in the suit

We contend 1st that he was interested, and therefore incompetent 2° that his deposition could not be used unless an order of Court was was first had authorizing it to be taken, and 3°. That it did not prove

the execution of the mortgage even if it was legal & competent evidence, and

I 1st He was directly in interest. If the debt to Harris was paid by a sale of the land, he would be exonerated from paying it. It was his debt. He Edwin Mills gave the note & mortgage (if they were ever given) and he afterwards sold & deeded the land. If the land paid the debt, he would not have it to pay. It therefore became a matter of the greatest consequence to him to establish the existence and legality of the mortgage. He was made a party to this suit by publication He testifies in his deposition that it is his impression that his brother knew of the mortgage and agreed to pay it off. Now if it is paid off by sale of the land, then he is released He is directly cancelling his own debt by his testimony. Instead of paying it in cash, he pays it by swearing! ~~It must be remembered that this debt is barred by the statute~~ of

It seems to me also that there is
one

2. In the Answer of Edwin Mills to the 6th interrogatory (Page 48) he says that he is not acquainted with the hand writing of the witness, but he resides in New Orleans. It is submitted that this is not sufficient proof of the Execution of the Mortgage. The hand writing of the witness should be proved.

He states in Answer to the 7th interrogatory (Page 48) that the Mortgage has never been paid. He does not say any thing about the Note or debt, and in his answer to the 1st Croft interrogatory (Page 49) he says - "I have not "stated that it has not been paid. I only "stated that I had not paid it. It has "never been paid to my knowledge"

This is strange language, and when taken in connection with the fact, that the Note was not produced, that the alledged Note was executed more than 20 years before the time when his deposition was taken, it leaves an irresistable impression upon the mind, that something is wrong. Consider too that

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Harlow Mills had been dead several years, that he was the only person who could know any thing about the matter, if it was not a lien on the land, and that during the 21 years that the Note had been in existence no demand of payment upon either Harlow Mills or Edwin Mills has been proved. Is there any probability from these facts, that the debt was a legally subsisting debt? If so, where is the Note? Why was it not produced? Is it not a fair presumption that Harlow Mills had paid it, if he knew of its existence? Recollect that Harris the complainant lived in Tazewell County not more than 50 miles from the land, and Harlow Mills lived in Marshall County near the land Harlow Mills was claiming the land was paying taxes thereon, and while he lived no demand whatever was made upon him for this debt. Edwin Mills his brother, who gave the Note, and who lived all the while in the vicinity of the City of New York, had not paid the Note himself, but whether any one else had or not, he does not know.

It is alledged in the Bill that Harlow Mills admitted the existence of the Note, but that is not proved. We say that under all these circumstances

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even if it be admitted that Edwin Mills was a competent witness, the case fails to show that the note was not paid. It is not pretended in the Bill that either Edwin Mills or Harlowe Mills were not solvent & able to pay

The following cases show that after the lapse of 2nd de time and delay in the collection of the debt a Court of Equity will not assist a creditor
Mc Knight vs Taylor 1 Howard 161
Bowman et al vs Wathen et al 1 do 189
2 Story Equity Jurisprudence Sec 1520 P 981 and the notes there referred to
Giles vs Baremore 5 Johnson Chy 548

In the case of Jackson vs Sackett et al 7 Wendells Rep 94 it was decided that ~~where~~ the debt was the principal thing & the Mortgage the incident, that where the debt was barred by the Statute of Limitations, it was presumed to be paid & no recovery could be had on the Mortgage

7 Wendells Rep 94

Our statute of Limitations is 16 years & the debt in this case was clearly barred. Besides our more recent statutes bar an action of Ejectment after Seven years in certain cases & by analogy, this Mortgage should be barred —

But the note was not produced on the trial nor was its absence accounted for. No explanation is offered in the bill for the non production of the Note. Nothing whatever is said about it. Now, all notes are negotiable, and when endorsed or assigned, carry with them all the interest of the Mortgagee in the premises. If the note in this case has been assigned, then the assignee ought not to recover — if it has not been assigned it should be produced, or its absence accounted for. There is not excuse for not producing it, and the fact that it is not produced, taken in connection with the lapse of time, the neglect to record the Mortgage until 18 years after it was made, the near neighborhood of the parties, the doubt of ~~the~~ its existence, and the payment of taxes by Harlow Mills, should be sufficient to justify a Court of Equity in interfering.

In Hilliard on Mortgages Vol 2. Page 22. Sec 66. it is said "The non production of the personal security, in connection with great lapse of time will operate

" as a bar to a suit upon a Mortgage
" to recover the land"

II 1. It is alledged that Harlow Mills had notice of this Mortgage, but this is not proved

On the 17th January 1839 Edwin Mills mortgaged the land to Harlow Mills to secure the payment of Mo thousand dollars

On the 7 February 1842 the same Edwin Mills sold the land to Harlow Mills, subject to the prior mortgage between them

Edwin Mills testifies that
" Last year the complainant called upon
" me on the subject of the mortgage
" & my impression then was that my brother
" knew of its (the land) being mortgaged
" to the complainant and that my
" brother was to see to it, and pay for it
" & under such impression he wrote

a letter to Mr Willson &c Page 48

William R Greene testifies Pages 56 & 57. That at the time Harlow Mills was going to get his deed recorded (the deed of 1842) he said that if Harris had not got his deed recorded, he ~~Harris~~ Harlow Mills would get his recorded first, and that would make his title good In answer to 1st Cross Interrogatory Page 58, Green says this conversation occurred in 1842, and in his re examination he says that he <u>understood</u> from the conversation &c that Mills knew of the existence of the Harris Mortgage from the time it was first given

Now Edwin Harris speaks of his <u>impression</u>, and Green speaks of his <u>understanding</u>, or rather of an <u>inference</u> drawn from what Harlow Mills actually said. Neither of these are sufficient, they do not prove Notice. Harlow Mills never said or acknowledged to any one that he had notice either on the 19th of Jany 1839 or on the 7th of February 1842

4 Sumner 123 & 246

1 Gilman 317.

* The title of the owner of land, which appears of record, ought not to be

made to depend upon the impression of one man, or the inference of another. It must be recollected that the talk with Green was had after the purchase of 1842, and of course it does not show that he had notice before his purchase

The talk he had with Green was after he had obtained his last deed from Edwin Mills. Admit then that Harlow Mills had notice of the ~~Deed~~ Mortgage to Harris after he had purchased from his brother as Green swears, and what does it amount to. Simply nothing He must have had notice before his purchase

There is also another principle by which Courts of Equity are governed that should induce the Court to dismiss this Bill. It is the fact that no attempt has been made to collect this debt ~~off~~ from Edwin Mills No demand has ever been made upon him, and for aught that ap=

pears be able and willing to pay. Equity ought not to permit a resort to the land now held and owned by the heirs of Harlow Mills, who never had any notice of the Mortgage, until Harris the complainant has used proper diligence to collect from Edwin Mills. There may be no remedy for foreclosing the Mortgage & the Complainant ought to be permitted in Equity to do so unless it is the only way to collect his debt. He who ask Equity, must himself act Equitably

It is alledged by defendant that the objections to the Deposition of Edwin Mills were not made in the Court below, & it is too late to make them now. To this we reply that three of the defendants are infants, and that their rights are not waived by the neglect to take objections in the Court below

Weed & Williamson
for Plaintiffs in Error

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John H. Harris
ads.
Julia Lucas et al

} In Supreme Court

Argument of Defendant –

The plaintiffs counsel contends that Edwin Mills who made the Mortgage sought to be foreclosed in this case is an incompetent witness for the Mortgagee, to prove the Execution of the Mortgage, and non payment of the Mortgage money,

It is not perceived how he can have any legal interest in our favor. The testimony that we ask of him is directly against his own interest – We ask him to swear whether he did not owe a certain debt, and if so whether it has ever been paid, whether he did not Execute a certain Mortgage, and whether the money apparently due thereon or any part of it, has been paid.

Is it the interest of the witness to swear in our favor, admit the making of the Mortgage &

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the existence of the debt; or in favor of the Defendants, he being one of them, and deny the debt and Mortgage, or swear that it has been paid?

I have always understood the law to be, that a Witness is not incompetent, unless he has an interest to testify in favor of the party offering him. Now if the Defendants had offered this ~~witness~~ Witness to prove the payment of the debt, or Satisfaction of the Mortgage, we might justly & legally Object to his competency, because his interest would then be to swear for the Plaintiff and against us.

But, the Plaintiff says, he is interested to make the land pay the debt. Is that such an interest as will disqualify a Witness? If he had sold the land by a Warranty deed and with Covenants against incumbrances, whoever pays the incumbrance has a full Claim to be indemnified — and if he permits the Money to be made out of the land, he is directly liable to his grantee or his assigns upon his covenants.

The only Effect of his entire evidence is to charge himself with a debt — and to establish his liability to pay, Either to Defendant or the Plaintiffs. So far as liability is concerned between himself and the Several parties, he stands indifferent between them. He owes the money and must pay it either to the one or the other. His deed to Harlow Mills under our Statute contains, an implied Covenant of Warranty against incumbrances. It contains the words, "Grant bargain, Sell" without any Special Covenants. The witness is competent, and the evidence he gives is against his interest, and the only interest he can possibly have is to swear against Harris and in favor of himself and the other Plaintiffs in Error.

There is another and a plain reason why if true, this objection can not now be made; The deposition was taken upon due notice, under a commission upon interrogatories by both parties, was read in Evidence without objection or Exception.

a decree is rendered — and this Objection is first interposed, On the 2nd February 1858. at a subsequent term of the court.

The decree is rendered Oct 9. 1857. p. 67
A Motion to set it aside Oct 23rd without any reasons filed. p 69. Record
The Reasons are filed February 2. 1858. p. 70. Record.

If any legal objection existed to the competency of the testimony of Mills it should have been made at least before the decree —

I pass the 2nd point with the brief remark, that I think the man who makes a mortgage knows quite as well whether he did it or not; as a subscribing witness who lives out of the state, and that whatever strictness was formerly required in proof of the execution of an instrument to which there is a subscribing witness, is now sufficient evidence of its execution that it is admitted by the maker.

It is contended that this mortgage is presumed to have been satisfied, because the note referred to in the mortgage is not produced at the hearing, because a long time has elapsed since it was made, and it may have been negotiated or paid.

It is true the recital in the mortgage speaks of a note bearing even date. There is no averment in the bill that such a note was in fact given, and no evidence to show whether it was or not.

It often happens that mortgages are given without notes, and not

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Infrequently the printed form of the Mortgage contains the same provision there is in this, when no note in fact accompanies it.

Now in this connexion let us inquire whether, if this Mortgage had in fact been given without any accompanying note or obligation, and suit had been brought to foreclose it by scire facias, any question could possibly have been made, in relation to the lapse of time or the Statute of limitations. Or is there any stronger presumption of payment arising because it is secured by a note or other personal obligation?

There is no Statute of limitations which will bar the foreclosure of a Mortgage in this State — There is a presumption of payment arising at the end of twenty years — And there is no presumption to be indulged that a Mortgage is satisfied or the note accompanying it paid till the expiration of that period.

1)

There is not much force in the argument that the parties Mills & Harris lived in the Same State 50 miles apart and that it does not appear from the Record that Harris demanded this money during the life time of Mills — If Mills ever paid it he would probably have taken it up & cancelled it — or taken a Receipt; But it does seem necessary to me, that Harris should prove how often he called for the money & failed to get it.

When we shew clearly that the Mortgagor never paid it, there is no legal presumption that any one else did. It would be asking to much of us to require us to prove affirmatively that no body Else ever did pay it.

Upon the question of Limitations See Hilliard on Mort. Vol 1. 74 to 80
" " Vol 2. 1 to 23.

There can be no doubt from this evidence that Harlow Mills had notice of the existence of this mortgage before he purchased from Edwin

Grant's testimony upon that point is full and explicit and can leave no reasonable doubt upon the. Harlow, was going to get his deed recorded, he knew Harris had a mortgage on the land, but did not know whether it was or not recorded, he found that it was not, and concluded therefore when he got his deed recorded first that the thing was all safe.

The mortgage when proved is conclusive evidence of the existence of the debt, therein contracted or covenanted to be paid. The undertaking on the part of the Mortgagor is to pay Seven hundred dollars on or before the 9th day of Sept 1838. <u>See Mort. p. 5.</u> of the Record.

The sum is liquidated, and interest is properly chargable from the time payment is to be made.

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It is for the defendants to shew that they or the Mortgagor have complied with the terms of the contract

Until this is shewn Harris's right to collect his debt out of the Mortgaged premises can not be questioned.

W H Pugsley
Asst Solicitor

That a Mortgage is Evidence of a debt
See Hilliard on Mort, Vol 2. 104. 164-5
Cam v. Wade 1 Spenc (N.J) R. 291

| | |
|---|---|
| William H Mills & John L Mills who sue by their next friend Julia Wilson and Julia Lucas and James P Lucas | State of Illinois |
| | In the Supreme Court April Term A.D. 1858 |
| vs | |
| John H Harris | Error to Marshall |

And now comes the said plaintiffs in error & say that in the record and proceedings aforesaid and in the judgment aforesaid, manifest error hath intervened to their injury in this

1. Said Court erred in rendering a Decree for the sale of said tract of land

2. Said Court received improper evidence on the part of the defendant in error

3. Said Court erred in rendering the Decree entered in said Court

4. Said erred in rendering said decree against the said plaintiffs in error, and in not dismissing the Bill as to them

For which great & grave errors said plaintiffs pray that said decree may be reversed annulled set aside & for naught held, & that they may be restored to all their rights of which they have been deprived by such decree

By Wood & Williamson
their Attorneys

And the said Defendant says that the record and proceedings aforesaid show no Error wherefore he prays that said Judgment may be affirmed

W M Pugh
Defts Solicitor

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William H Mills et al

vs

John H. Harris

Assignment of Error

Filed April 21. 1858
S. Leland
Clk.

Abstract made out Mar. 31/58

1

Proceedings in Chancery before the Honorable Circuit Court within and for the County of Marshall, in the State of Illinois, at a Term of said Court begun and holden at the Court-House in Lacon, in the County aforesaid, on Monday, the fourteenth day of April, in the year of our Lord one thousand eight hundred and fifty-six. Present, the Honorable Madison E. Hollister, judge of the Ninth judicial Circuit of said State; W. H. L. Wallace, Esq., State's Attorney; Abram Gardner, Sheriff; and G. L. Fort, Clerk.

| | |
|---|---|
| John H. Harris,<br>vs.<br>Edwin Mills,<br>Julia Wilson,<br>Julia Lucas,<br>James P. Lucas,<br>William H. Mills &<br>John Gale Mills. | In Chancery.<br>Bill to foreclose. |

[1830-26]

Be it remembered, that heretofore, to wit, on the 8th day of February, A. D. 1856, John H. Harris, the complainant in this cause, by his attorney, filed in the Clerk's office of the Court aforesaid the following Bill, to wit:

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Bill.

In the Circuit Court of Marshall County, April Term A.D. 1856.

To the Hon. M. E. Hollister Judge of the Circuit Court of Marshall County, in Chancery Sitting.

Humbly complaining sheweth unto your Honor your Orator John H. Harris of the County of Tazewell in the State of Illinois. That on the 12th Day of May A.D. 1837, One Edwin Mills of the City and County and State of New York being indebted to your Orator in the Sum of Seven Hundred Dollars for the purchase money owing by said Mills to your Orator for the purchase of the South East quarter of section Twenty seven (27) in Township Thirty (30) North of Range One (1) west of the third principal Meridian in Marshall County (then Putnam County) Illinois — Made, executed and delivered to your Orator a certain Deed of Mortgage, to secure the payment of the said sum of money so due and owing as aforesaid: which said Deed of Mortgage is in substance as follows.

" This Indenture made and entered into this twelfth day of May A.D. 1837 between Edwin Mills of the City of

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New York of the first part, and John H. Harris, of the town of Fremont, County of Tazewell and State of Illinois of the Second part, Witnesseth: That the said party of the first part for and in consideration of the sum of ——— Dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold and by these presents does grant bargain and sell unto the said party of the second part, his heirs and assigns all of those certain tracts or parcels of land known and designated as the South East quarter of section twenty township thirty north of Range One West, of the third principal Meridian Also Lots Nos 9, 19, — 9, & 19 in Block No 15 & 16 in the town of Lyons: All of the above property lying and being in the County of Putnam and State of Illinois, together with all and singular the privileges and appurtenances, thereunto belonging, or in any wise appertaining; to have and to hold the above described property, with the appurtenances, unto him

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the said John H. Harris, his heirs and assigns forever, and the said party of the first covenants to warrant and defend said tracts of land from the claims of him the said party of the first part, and from the claim or claims of all persons, whatsoever — Nevertheless the Condition of the above Obligation is expressly, this that if the above named Edwin Mills, his heirs or assigns shall well and truly pay unto the said John H Harris or Order the sum of Seven Hundred dollars on or before the ninth day of september 1838 according to the tenor of a certain note of hand bearing Date 9th ~~September~~ 1836 drawn by the said Edwin Mills and payable to the said John H. Harris, then the above Obligation to be void and null and void anything to the contrary herein contained notwithstanding.

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

Edwin Mills (Seal)

In presence of
Nathl G Wentworth "

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And then and there delivered the said mortgage deed so by him executed as aforesaid to the said John H. Harris your Orator: which said mortgage deed was on the 8th day of November A.D. 1855 duly recorded in the Recorder's Office of Marshall County in the State of Illinois aforesaid.

And your Orator charges that the said debt of Seven Hundred Dollars in said mortgage mentioned has never been paid, nor any part thereof nor any portion of the interest due thereon, but that the same with all the interest thereon from the ninth day of September 1838 is still justly due and owing and unpaid to your Orator, And your Orator refers to the said mortgage deed, and makes the same a part of this Bill & will produce and prove the same upon the hearing of this cause.

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And your Orator further charges that after the making and execution and delivery of the said mortgage deed as before stated, to wit on the 13th day of January A.D. 1839, for

a pretended indebtedness of Two Thousand Dollars alleged to have been due and owing from the said Edwin to his Brother, Harlow Mills, then a resident of the said City of New York, but recently a resident and citizen of Marshall County, Illinois And to secure such pretended indebt-edness, he, the said Edwin Mills and Eliza his wife then and there made executed and delivered to said Harlow Mills a Mortgage Deed upon the follow-ing described Real Estate - to wit -

The South East quarter of Section twenty seven, in township (30) thirty north of Range (1) One west of the third principal Meridian being the same land mortgaged to your Orator as before stated - Also the North East quarter of Section four (4) township twenty nine North Range One west as afore said - Also the North East quarter of Section Eight township twenty nine north in Range One west, Also the North West quarter of Section four in township twenty nine North and Range One west as aforesaid, And also of Lots

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No (19) in Block (23) and (30) Also Lots 20 in Block (23) and thirty Also Lots No. 18 in Blocks (15) and (16) Also Lots No 19 in Blocks 15 and 16 in the town of Lyons in the County of Marshall aforesaid. A copy of which said Mortgage duly certified is hereto attached marked "A." and made part of this Bill. The original is in the possession of the Defendants or some of them who are hereby notified to produce the same upon the hearing of this cause.—

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And your Orator further states that he is informed and believes and therefore charges that at the time the said Mortgage was made and executed by the said Edwin to the said Harlow Mills he the said Edwin was not in fact indebted to the said Harlow in the sum of Two Thousand Dollars nor in any sum of money whatever— but that the same was made and Execu=ted with an intention to hinder

delay and defraud your Orator in the collection of his just Debt – That although the said Mortgage was recorded on the 2nd Day of March A.D. 1839 in the Recorder's office of Marshall County, and before the recording of the Mortgage aforesaid to your Orator Yet your Orator charges that at the time of the recording and at the time of making and executing the same by the said Edwin to the said Harlow Mills, he the said Harlow Mills had full and actual notice and knowledge of the existence of your Orator's Mortgage aforesaid. And that the same was Due and unpaid and then and there and often afterwards promised the said Edwin Mills and your Orator that he would pay and satisfy the same And the said Harlow Mills then and there and often time afterwards in Conversations with various persons stated and admitted that at the times aforesaid when his said mortgage was made and

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recorded that he well knew of the existence and validity of your Orator's Mortgage. that the same was due and unpaid and that he had promised and agreed to pay the same.

And your Orator further charges that on the 17th Day of February A.D 1842 the said Edwin Mills and Eliza Ann his wife by their Deed of of that Date, in consideration as expressed in said Deed of Two Thousand One Hundred Dollars sold, granted, bargained remised
10 released confirmed and conveyed the land last before described in fee simple to the said Harlow Mills - But purporting to make said conveyance subject to the Mortgage of the said Harlow Mills held by him as aforesaid upon the lands aforesaid, executed by the said Edwin Mills as aforesaid and stating therein expressly that said Mortgage formed a part of the consideration for the said conveyance

And your Orator charges that at the time of the conveyance aforesaid and of the recording of the same the said Harlow Mills had full knowledge of the existence and validity of your Orator's Mortgage aforesaid and promised and agreed to pay the same - and then and there and often times before at and after the making of the said last mentioned Deed to the said Harlow Mills stated and admitted that he had promised and agreed to pay the same. A copy of the said Deed of Conveyance is herewith filed duly certified, Marked "B" and made part of this Bill the original your Orator cannot produce the same being in possession of the Defendants who are notified to produce the same upon the hearing of this cause.

And your Orator submits that the taking of the said Conveyance in fee simple by the said Harlow from the said Edwin Mills in Law and Equity operates as an extinguishment and merger of

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the said Mortgage by the said Edwin to said Harlow Mills before referred to. And your Orator charges that the said Harlow Mills departed this life intestate on or about the 20th Day of October A.D. 1845 and that Julia Mills his widow who was since intermarried with one John Wilson of the said County of Marshall was in due form of Law appointed Administratrix of his Estate. And the said John Wilson also died intestate on or about the year A.D. 1845. And your Orator charges that the said Harlow Mills at the time of his Death left the following named children born in lawful wedlock surviving him and who are still living and are all Minors under the age of twenty one years Viz. Julia now intermarried with James T. Lucas of the County of Woodford Illinois and William Henry & John Gale residents of the County of Marshall aforesaid his only legal representatives and heirs at law

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And your Orator Charges that the said heirs at Law and the said widow of the said Harlow Mills deceased are still the legal own-ers of the said land before described, mortgaged to your Orator and that in Justice and Equity they ought either to pay your Or-ator his said Mortgage money and the interest due thereon, or that the said land in the said Mortgage to your Orator described ought to be sold or subjected to the payment of the said Mortgage and interest & that your Orator's Mortgage ought in Justice and Equity to take precedence of and be paid out of the proceeds of the said Real Estate in prefer-ence to the Mortgage aforesaid from the said Edwin to the said Harlow Mills deceased —

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And your Orator further Charges that in fact no real or other Con-sideration either good or valuable passed between the said Harlow Mills and said Edwin Mills at the time of the Execution

of the said Deeds of conveyance aforesaid - and that the only Consideration for said Conveyance was the pretended Mortgage Debt of Two Thousand Dollars aforesaid mentioned in the said mortgage from the said Edwin to the said Harlow Mills aforesaid.

And your Orator charges that the said Edwin Mills and the said heirs & legal representatives of the said Harlow Mills wholly neglect and refuse to pay the said sum of money so due your Orator upon his mortgage aforesaid or any part thereof

14 All which actions and doings on their part are contrary to Equity and good conscience and and tend to the wrong and injury of your Orator in the premises.

For as much then as your Orator is remediless in the premises at Law and can only have redress in Chancery where such matters are properly relievable and cognizable he prays that the said Edwin Mills - Julia Wilson Administratrix

of the Estate of Harlow Mills deceased
Julia Lucas. James P. Lucas, William
Henry Mills and John Gale Mills
may be made defendants to this
Bill, that they may severally be com
-pelled to answer the same (but not
under Oath, the Oaths of the said
Defendants being waived) that a
Guardian ad litem may be appoint
-ed for said minors and that upon
the final hearing of said cause
a decree may be made and enter
-ed - that Defendants pay the amount
due on the said Mortgage and
interest - or that the Mortgaged prem
ises be sold for the payment of
the same & that the proceeds of
such sale be first applied in
payment of the principal and in
-terest due on your Orator's said
Mortgage, and for such other and
further relief as to Justice and
Equity shall appertain. He prays
also for the usual process of
Subpoena - and he will pray &c

Purple & Pratt
for Complainant

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State of Illinois }
Marshall County } ss

Affidavit of non-residence of Edwin Mills.

N. H. Purple being duly sworn says that he is informed and believe that Edwin Mills one of the Defendants in this suit is a nonresident of the State of Illinois and further saith not

N. H. Purple

Subscribed & sworn to before me this 8th Day of February A.D. 1856

G. L. Fort. Clerk

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Praecipe.

John H. Harris }
vs }
Edwin Mills }
Julia Wilson }
Julia Lucas }
James P Lucas }
William Henry Lucas }
& John Gale Lucas }

In the Circuit Court of Marshall County Term 1856 –

Issue subpoenas for Edwin Mills Julia Wilson and all other Defendants to sheriff of Marshall County and for Julia Lucas and James P Lucas to the sheriff of Bureau County. Returnable to next term. Advertise immediately as to Edwin Mills

Purple & Pratt for Complainants

February 1856

G. L. Fort Ex Clerk

The Exhibits referred to in said Bill, and made part thereof, are as follows:

Exhibit A.

Edwin Mills, to Harlow Mills. } Filed, 2d March, 1839. No. 2764.

This Indenture, made this thirteenth day of January, in the year one thousand eight hundred and thirty-nine, Between Edwin Mills, of the city of New York, Grocer, and Ann Eliza, his wife, of the first part, and Harlow Mills, of the same place, Grocer, of the second part,- Whereas the said Edwin Mills is justly indebted to the said party of the second part in the sum of two thousand dollars, lawful money of the United States of America, which said sum of two thousand dollars is to be paid as follows, viz: one third part with interest on the first day of Jany. 1840, one third part on the first day of January, 1841, and the remaining part with lawful interest on the first day of January, 1842,-

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Now this Indenture witnesseth, that the said parties of the first part, for the better securing the payment of the said sum of money, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or

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before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained and sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all of the following lots, pieces and parcels of land, lying and being in the County of Putnam and State of Illinois, and described as follows, viz: The South East qr. of Section twenty-seven, Township thirty and Range one, also the North East qr. of Section four, Township twenty-nine and Range one, also the North East qr. of Section eight, Township twenty-nine and Range one, also the North West qr. of Section four, Township twenty-nine and Range one; the whole containing six hundred and fifty-eight 28/100 (658 28/100) acres; Also the following described town lots, situated, lying and being in the Town of Lyons, in County and State aforesaid, viz: Lot No 19 in Block 23 & 30, also Lot Nos. 20 in Block 23 & 30, also Lot No. 18 in Block 15 & 16, also Lot No. 19 in Block 15 and 16. Together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate right, title, interest, dower and right of dower,

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property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same and every part and parcel thereof, with the appurtenances: to have and to hold the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, to his and their own proper use, benefit and behoof forever.

Provided always, and these presents are upon this express condition, that if the said parties of the first part, their heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned, and and the interest thereon, at the time and in the manner mentioned, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void; and the said Edwin Mills and Ann Eliza, his wife, for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the second part, his heirs, executors, administrators or assigns, the said sum of money and interest as mentioned above and expressed; and if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from

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thenceforth it shall be lawful for the said party of the second part, his executors, administrators and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same and all benefit and equity of redemption of the said parties of the first part, their heirs, executors, administrators or assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the said parties of the first part, for that purpose by these presents duly authorized, constituted and appointed, to make and to deliver to the purchaser or purchasers a good ~~a~~ sufficient deed or deeds of conveyance in ~~fee simple~~ the law for the same in fee simple; and out of the money arising from such sale to retain the principal and interest which shall then be due, with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase money (if any there shall be) unto the said parties of the first part, their heirs, executors, administrators or assigns; which sale so to be made shall forever be a perpetual bar, both in law and equity, against the said parties of the first part, their heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from or under these or either of them.

20

In witness whereof, the parties to these presents have hereunto interchangably set their hands and

seals, the day and year first above written.

Sealed and delivered in the presence of
All the parts of the mortgage relating to
a bond stricken out before signing,
witnessing or acknowledging.
W. K. Thorne.

Edwin Mills. L.S.
Anne Eliza Mills. L.S.

State, City and County of New York, ss.

I, William K. Thorn, a Notary Public duly admitted and sworn in and for the State of New York, dwelling in the City of New York, do hereby certify, that on this twenty third day of February, 1839, personally came and appeared before me Edwin Mills and Ann Eliza, his wife, known to me to be the individuals described in and who executed the within mortgage, and who severally acknowledged that they executed the same, for the uses and purposes therein mentioned; and the said Anne Eliza Mills being examined by me privately, and apart from her said husband, acknowledged that she executed the same freely and voluntarily, and without any fear or compulsion of or from her said husband; which is to me satisfactory evidence of the due execution thereof. In witness whereof, I have hereunto affixed my hand and seal of office, the said 23d day of February, 1839.

L.S.

Wm. K. Thorn, Notary Public, City N.Y.

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State of New York, City and County of New York, ss.

I, Joseph Hoxie, Clerk of the City and County of

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New York, and also Clerk of the Court of Common Pleas for the said City and County, do hereby certify, that William K. Thorn, whose name is subscribed to the certificate of proof a acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the City and County aforesaid, dwelling in the said City, commissioned and sworn; and further, that I am well acquainted with the hand writing of such Notary, and and further that I am well acquainted with the hand-writing of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgement is genuine. In testimony whereof, I have hereunto set my hand, and affixed the seal of the said Court and County, the 26 day of February, 1839.

22

L.S.

Joseph Hoxie, Clerk.

State of Illinois, } ss.
Marshall County }

I, Greenberry L. Fort, Clerk of the Circuit Court of said County, and thereby ex-officio Recorder of said County, do hereby certify, that the foregoing is a true copy of a Mortgage or Deed Trust from Edwin Mills and Ann Eliza Mills, his wife, to Harlow Mills, and the certificates of acknowledgment thereto, as found recorded in my office in Book No. "D," at pages 398, 399 & 400.

In testimony whereof, I have hereunto

set my name, and affixed the seal of said
L.S. Court, at Lacon, in said County, the
Eighth day of October, A.D. 1855.

Greenberry L. Fort, Clerk.

Exhibit B.

(Exhibit B.)

This Indenture, made the seventeenth day of February, in the year of our Lord one thousand eight hundred and forty two, Between Edwin Mills, of Astoria, Queen Co. & State of New York, Grocer, and Ann Eliza, his wife, of the first part, and Harlow Mills, of the City of New York, Grocer, of the second part, Witnesseth, that the said parties of the first part, for and in consideration of the sum of two thousand and one hundred dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all of the following lots, pieces and parcels of land, lying and being in the County of Putnam and State of Illinois, and described as follows, viz: The South East quarter of Section twenty-seven, Township thirty and Range one; Also North

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East quarter of Section four, Township twenty nine and Range one; Also the North East quarter of Section eight, Township twenty nine and Range one; Also the North West quarter of Section four, Township twenty nine and Range one; the whole containing six hundred and fifty-eight 28/100 acres (628 28/100 also the following described town lots, situated, being and lying in the Town of Lyons, County and State aforesaid, viz: Lots No. 19 in Block 29 & 30, also Lots No. 20 in Block 29 & 30, also Lot 18 in Block 15 & 16, also Lot No. 19 in Block 15 & 16. The said premises being subject to a mortgage to said Harlow Mills for two thousand dollars, the amount of which forms a part of the above consideration. Together with all and singular the tenements and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, with the appurtenances, unto the said party of the second part, his heirs heirs and assigns forever.

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In witness whereof, the said parties of the first

part have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in presence of Horace Holden. } Edwin Mills. (Ed) Ann Eliza Mills. (Ed)

City & State of New York, ss.

On the 18th day of April, 1842, Before came Edwin Mills, & on the 13th day May, 1842, Before me came Ann Eliza Mills, his wife, both of them to me known to be the same persons described in & who executed the within deed, and they severally acknowledged that they executed the same. And the Ann Eliza, ~~Mills~~ being by me privately examined, apart from her ~~said~~ husband, acknowledged that she executed the same freely, and without any fear or compulsion of her said husband.

25

Horace Holden,
Commissioner of Deeds.

State of New York, City and County of New York, } ss. I, Nathaniel Jarvis, Clerk of the City and County of New York, and Clerk of the Court of Common Pleas for the said City and County, do hereby certify, that Horace Holden, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgement, a Commissioner of Deeds for said City and County, dwelling in said City, commissioned and sworn, and duly authorized

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to take the same; and further, that I am well acquainted with the hand writing of such commissioner, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

(Seal.) In testimony whereof, I have hereunto set my hand, and affixed the seal of the said Court and County, the 17 day of May, 1842.

Nath. Jarvis, Clerk.

State of Illinois, } ss.
County of Marshall }

I, G. L. Fort, Clerk of the Circuit Court of said County, and ex-officio Recorder of said County, do hereby certify, that the above and foregoing is a true copy of a deed from Edwin Mills & Ann Eliza Mills, his wife, as found of record in my office, recorded in Book "B," at pages 248 & 249. Together with the certificate thereto belonging.

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(L. S.) In witness whereof, I have hereto set my name, and affixed the seal of said Court, at Lacon, in said County, this eighth day of October, A. D. 1855.

G. L. Fort, Clerk.

And afterwards, to wit, on the 10th day of March, A. D. 1856, the following writ of Subpoena was issued out of the Clerk's office of the Court aforesaid against the defendants in said cause, to wit:

Writ. The People of the State of Illinois, to the Sheriff

of Marshall County, Greeting: We command you to summon Edwin Mills, Julia Wilson, Julia Lucas, John P. Lucas, William Henry Mills and John Gale Mills to appear before our Circuit Court, on the first day of the next term thereof, to be held at Lacon, within and for the said County of Marshall, on the 14th day of April next, then and there, in our said Court, to answer the matters contained in a certain bill filed in said Court, on the chancery side thereof, by John H. Harris, to foreclose a mortgage. Hereof fail not, and make due return of your doings hereon. Witness, Greenbury L. Fort, Clerk of our said Court, and the seal thereof, at Lacon, this 10th day of March, in the year of our Lord one thousand eight hundred and fifty-six.

L. S.

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Greenbury L. Fort, Clerk.

And afterwards, to wit, on the 14th day of April, in the year last aforesaid, the said writ was returned to the Court aforesaid by said Sheriff, indorsed as follows, to wit:

Return. I have served the writ hereto attached by delivering a true copy of the same to said Julia Wilson, and also left with her true copies of said writ for William Henry Mills and John Gale Mills, it being at their usual place of residence, and said Julia Wilson being a white person and over the age of ten years, & informed her of the contents of said writs. Also

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left a true copy of said writ with Julia Lucas; also left with her a true copy for John P. Lucas, it being at his usual place of residence, and said Julia Lucas being a white person, & over the age of ten years, informing her of the contents of said writ; on the 26th day of March, 1856. Edwin Mills not found in my county.

Sheriff fees: service & copies, 3.50 — A. Gardner, Sheriff of
Mileage, 3.00 — Marshall Co., Ills.
$6.50

And afterwards, to wit, on the day and year last aforesaid, being the first day of the said April Term of the Court aforesaid, the following order was made and entered in said cause, to wit:

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John H. Harris vs. Edwin Mills et al. — Bill to foreclose mortgage.

Defendants' appearance entered.

Be it remembered, that this day comes the complainant, by N. H. Purple, his solicitor; and also come Ramsey and Fleming and enter the appearance of the defendants who are adults;

Order appointing guardian ad litem.

and it is ordered, adjudged and decreed by the Court that the said Samuel L. Fleming be and he is hereby appointed guardian ad litem for Julia Lucas, William Henry Mills and John Gale Mills.

And afterwards, to wit, on the 15th day of April, in the year last aforesaid, the said guardian ad litem filed in the Clerk's office aforesaid the following Answer, to wit:

Answer of guardian ad litem.

| | |
|---|---|
| John H. Harris<br>vs.<br>Edwin Mills,<br>Julia Wilson,<br>Julia Lucas,<br>John P. Lucas,<br>William Henry Mills,<br>John Gale Mills. | In the Circuit Court of Woodford County.<br>In Chancery.<br>The Answer of Samuel L. Fleming, guardian ad litem for Julia Lucas, William Henry Mills and John Gale Mills, minor heirs at law of Harlow Mills, deceased, to the |

complainants bill filed in this cause.

Said guardian, for answer to said bill, says, that he has no personal knowledge of the matters and things in said bill charged, and that said minors are ignorant of their rights in the premises, and he therefore, on their part and behalf, denies the statements, and each and every of them, in said bill contained, and calls for the proof thereof; and submits the case of the said minors to the care and consideration of the Court, and prays that he and they may be hence dismissed with their costs, &c.

Saml. L. Fleming, Guardian ad litem.

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Leave to withdraw appearance of Edwin Mills.

And afterwards, to wit, on the 18th day of April, in the year last aforesaid, being one of the days of the April Term aforesaid of said Court, the following order was made and entered in said cause, to wit:

John H. Harris vs. Edwin Mills et al. } Be it remembered, that this day come the defendants, by

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Ramsey and Fleming, and by leave of the Court the appearance of Edwin Mills is withdrawn, and the rule herein entered against said Mills for an answer is vacated, annulled and set aside.

And afterwards, to wit, on the same day and year last aforesaid, the said defendants, (except the defendant Edwin Mills,) by their solicitors, filed in the Clerk's office aforesaid the following Answer to said complainant's Bill, to wit:

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Answer of all the defendants except Edwin Mills.

John H Harris
vs
Edwin Mills
Julia Wilson
Julia Lucas
John P. Lucas
William Henry Mills
& John Gale Mills

In Marshall Circuit
Court, April term
A.D. 1856
In Chancery

The joint and several answers of Julia Wilson and John P. Lucas and Julia Wilson, William Henry Mills & John Gale Mills, five of the above named Defendants, to the Complainants bill of Complaint, filed in this Cause, Said Defendants saving and reserving to all manner of Exceptions to the many Errors and inconsistencies in said Bill Contained, for answer to the same or so much thereof as they are advised it is necessary for them to answer unto — Answering say: They do not admit but deny that One Edwin Mills on the 12th Day of May or at any other time owed or was indebted to the Complainant in the sum of Seven Hundred Dollars or any other sum as the purchase money of the South East quarter of Sec 27. in Township thirty north, Range One west

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of the 3rd principal Meridian, and said Defendants deny that said Edwin Mills on the said 12th Day of August or at any other time made to Complainant a Mortgage Deed as set forth in said bill to secure the payment of the sum of Seven Hundred Dollars or any other sum and Defendants charge that indeed if any mortgage was ever made by said Edwin Mills to said Complainant, there was no consideration whatever for said Mortgage. Sd Defendants admit that a certain paper claimed to be a Mortgage made by said Edwin Mills to Complainant was recorded in the Records Office of Marshall County on the 8th Day of November 1855 a Copy of which paper or pretended Mortgage is set out in said Bill. Said Defendants deny that the said Seven Hundred Dollars named in the Condition of said Mortgage or any other sum of Money, together with interest thereon ~~upon~~ from the Date of said pretended Mortgage remained due to the Complainant at the time of filing said Bill

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Said Defendants admit that on the 13th Day of January AD. 1839 said Edwin Mills and Eliza his wife, made

Executed and delivered to One Harlow Mills a Mortgage Deed on the South East quarter of section twenty seven (27) in Township Thirty (30) north, Range One West of the 3rd principal meridian and also on the other tracts of lands and lots named in said Bill, but said Defendants do not admit but deny the allegation in said Bill that said last named Mortgage was given to secure a pretend-ed indebtedness of two thousand dollars from said Edwin to said Harlow Mills but the said Defts charge and allege that the said consideration of two thousand Dollars named in said Mortgage was at the time of making said Mortgage just and Due said Harlow from said Edwin and that the same had been Due from and after the 28th Day of June A D 1837.

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Said defendants deny that said last named Mortgage was made for the purpose of hindering or defrauding the Complainant in the Collection of his just debt or of any debt against said Edwin Mills or any of the "rest of mankind".

2d Defendants admit that said mortgage was

recorded on the 2d day of March, A.D. 1839, in the Records office of Marshall County, but said defendants do not admit, but deny, that at the time of the recording and the making of the said mortgage the said Harlow Mills had notice or knowledge, either actual or constructive, or of any kind, of the existence of the said pretended mortgage from said Edwin to compt., or that anything was then or ever due on said pretended mortgage; and they deny that said Harlow Mills ever promised said Edwin Mills or the complainant to pay or satisfy the said pretended mortgage.



Said defendants do not admit, but deny, that said Harlow Mills ever, in conversation or in any manner, admitted a knowledge of the existence of said pretended mortgage, or of his having at any time promised to pay the same.

Said defendants admit that on the 17th day of February, A.D. 1842, the said Edwin Mills and Eliza Ann, his wife, by their deed that date, for the consideration of two thousand one hundred dollars, sold, granted and conveyed the land named in said mortgage of Edwin Mills to Harlow Mills, in fee simple, to said Harlow Mills, and that the said two thousand dollars named in said last named mortgage not only purported to be a part of the consideration for said deed, but these defendants charge the same to be true.

These defendants do not admit, but deny, that at the time of the making of said deed, or at any other time, the said Harlow Mills had any knowledge of the said compts. pretended mortgage, or that he ever promised or agreed to pay the same.

Said defendants admit that said Harlow Mills departed this life intestate on or about the 2d day of October, A.D. 1845, and that said Julia Mills, his widow, since intermarried with one John Wilson, of said County of Marshall, was in due form of law appointed administratrix, and that said John Wilson departed this life in the year 1855, and not in 1845. Said defendants admit that said Harlow Mills, at the time of his decease, left surviving him the children who are now living, as named in said bill, and that Julia intermarried with James P. Lucas.

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Said defendants admits that said heirs at law and the said widow of said Harlow Mills, deceased, are still the legal owners of the said land which the complainant claims to have been mortgaged to him by said Edwin Mills; and said defendants deny that in justice and equity they, the said heirs and widow, ought to pay the money and interest pretended to be due on said mortgage, or that the said land ought to be sold, or subjected to the payment of the same.

Said defendants deny that the said compts. mortgage ~~should~~ take precedence of the mortgage

made by said Edwin to said Harlow.

Said defendants do not admit, but deny, that no new consideration passed between the said Edwin and the said Harlow, at the time of the making of said deed. Said defendants charge that the consideration named in said deed of two thousand and one hundred dollars was good and valid, and due said Harlow from said Edwin at the time of the making of said deed. Defendants also charge, that the consideration named in said mortgage from said Edwin to said Harlow was, at the time of making said mortgage, was bona fide, valid and due the said Harlow, and that the same never was paid only by way of the said deed of conveyance made in 1842, as aforesaid.

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Said defendants charge, that not only in law, but that in justice and equity, the said tract of land described in said pretended mortgage of compt. belongs to the widow of said Harlow Mills and his heirs at law, free from any incumbrance, claim or demand by way of the said complainant's mortgage, or or any other claim of complainant; — that said defendants charge that said Edwin Mills never owed said compt. any sum of money whatever, or ever made, executed and delivered to said Harris any deed of mortgage whatever; that if indeed any such ever existed, the same was wholly unknown to the said Harlow Mills up to the time of his decease, and wholly

unknown to the said widow and heirs at law of said Harlow until the aforesaid paper or pretended mortgage to compt. was recorded in the Records office of Marshall County, last November, about nineteen years after said pretended mortgage purports to have been made; that if the same was made on the 12 th of May, 1837, then the said complainant, though living in a neighboring county with Marshall Co., the residence of said widow and heirs, for the first fifteen years, permitted and suffered the said Harlow in his life-time, and said widow and heirs since, to pay all taxes levied on said land since 1839, and never made known to said Harlow or his widow and heirs, or either of them, the fact (if any such existed) of his having a mortgage or claim to said land.

Defendants also charge that the said quarter section of land described in said pretended mortgage deed to complainant was vacant and unoccupied land in 1839, at the time of the making of said mortgage to said Harlow, and in 1842, when the deed aforesaid was made to him, and that the same still continues vacant and unoccupied, and never has been occupied. And said defendants charge that said Harlow Mills had a color of title to made in good faith, and also the legal title to said land, from and after the 17th day of February, A.D. 1842, until the time of his decease as aforesaid, and his widow and heirs aforesaid from and since the time

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of the decease of said Harlow as aforesaid; that the said widow and heirs at law of Harlow Mills aforesaid have paid all taxes legally assessed on said land for seven successive years last preceding the commencement of this suit, and also, together with said Harlow in his life-time, for fifteen ~~years~~ successive years next preceding the commencement of this suit; and by virtue of section 9 of chapter 24 of the Revised Statutes of the State of Illinois, the said widow and heirs of said Harlow Mills are the legal and absolute owners of said land, free from any and all claim or incumbrance to said complainant, or to any one else.

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Said defendants further charge, that if any indebtedness of seven hundred dollars was on the 12th day of May, A.D. 1837, due from said Edwin Mills to said complainant, which fact the said defendants do not admit, but deny, then said indebtedness charged in said bill consisted of a note of hand drawn by the said Edwin Mills, and payable to the said John H. Harris, under date of 9th September, A.D. 1837, and payable on or before the 9th day of September, 1838, as alleged in said bill of complaint; and that said indebtedness having accrued, and said note having been made, more than sixteen years before the commencement of this suit, the said defendants set up and insist upon the statute of limitations in such case made and provided by the laws of this

State, as a full defence to this suit.

Said defendants further charge, that at the time of the making of the said mortgage deed from Edwin Mills to Harlow Mills, on the 13th day of January 1839, all of said land described in said mortgage and the lots in Lyons together were worth in cash to exceed one thousand dollars, and that the value of the same had not increased any from that time up to the said 17th day of February, 1842, when the same was deeded to said Harlow by said Edwin; that from 1838 to the year 1850 the said quarter section of land named in compt's pretended mortgage would not have sold for cash for more than four hundred dollars; and that since the year 1850 said last named land has increased in value, and is, at the time of the commencement of this suit, was worth about ten dollars per acre.

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And having fully answered all allegations in said bill that they are advised it is material for them to answer unto, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

Julia Wilson,
Julia Lucas,
James P. Lucas,
Wm. Henry Mills,
& John Gale Mills,
By their Sols., Ramsey & Fleming.

And afterwards, to wit, on the 19th day of April, in the year aforesaid, being one of the days of said April Term of said Court, the said complainant, by his solicitor, filed in the Clerk's office aforesaid the following Replication, to wit:

Replication.

John H. Harris,
vs.
Edwin Mills,
Julia Wilson,
Julia Lucas,
James P. Lucas,
Wm. Henry Mills,
John Gale Mills.

In the Circuit Court of Marshall County.

In Chancery.

This complainant, for replication to the answers filed herein by the said Julia Mills, Julia Lucas, James P. Lucas, Wm. Henry Mills, John Gale Mills, says, that he will aver and maintain

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his said bill to be true, certain and sufficient, and the said defendants' answers are ~untrue~, uncertain, evasive, indevout and insufficient; and the said plaintiff prays as in and by his original bill he has prayed, &c.

Purple & Pratt, for compt.

And afterwards, to wit, on the same day and year last aforesaid, the following order was made and entered in said cause, to wit:

Order for Commission.

John H. Harris
vs.
Edwin Mills et al.

Be it remembered, that this day come the parties, by their solicitors, except the defendant Edwin Mills,

and upon motion of complainant's solicitor, it is ordered that the complainants be joined in a commission to take the deposition of Edwin Mills, one of the defendants herein, to be read as evidence in the trial of this cause, subject to all legal objections.

And afterwards, to wit, on the 13th day of August, in the year last aforesaid, the said complainant, by his solicitor, filed in the Clerk's office aforesaid the following Notice and Interrogatories, to wit:

Notice of application for Commission.

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| | |
|---|---|
| John H. Harris, vs. Edwin Mills, Julia Wilson, Julia Lucas, John P. Lucas, William Henry Lucas, John Gale Lucas. | In the Circuit Court of Marshall County. In Chancery. |

Take notice, that on the 25th day of August, 1856, the complainant will apply to the Clerk of the Circuit Court of Marshall County for a commission to be issued in this cause, to be directed to any judge, justice of the peace or commissioner authorized to take depositions, residing in the City and State of New York, to take the depositions of Edwin Mills and Nathaniel Montross, of said City of New York, upon interrogatories herewith filed.

Yours &c., Purple & Pratt,
Compts. Solicitors.

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Messrs. Ramsey & Fleming, Defts' Solicitors.
Aug. 12, 1856.

1st Interrogatory.

Interrogatories.

Are you acquainted with the parties to this suit, and if so, how long have you known them or either of them?

2. Look at the mortgage now shewn to you, marked "A," dated May 12, 1837, and state whether the same was executed by Edwin Mills, and whether the signature to said mortgage is in the hand-writing of said Edwin Mills, and what means you have of knowing that fact.

3. Where is your place of residence?

4. To Edwin Mills. Are you the person who executed the said mortgage?

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5. Where does Nathaniel Montross reside?

6. Are you acquainted with his hand-writing? if so, state your means of knowledge, and whether his signature as subscribing witness to said mortgage is genuine.

7. State whether said mortgage has ever been paid.

8. State whether you sold the land described in said mortgage, or any part thereof, or mortgaged the same, to Harlow Mills; and if so, when, or about what time; and whether, at such time you so mortgaged and sold the same, said Harlow Mills knew or had information that the same had been previously mortgaged to the complainant; and whether or not he agreed to see to, or take care of, said mortgage; and all that was said upon the subject.

9. To Nathaniel Montross. State whether you were a subscribing witness to said mortgage, and whether you saw the same executed by the said Edwin Mills.

Purple & Pratt, for compt.

Acknowledgment of service.

We admit service by copy.
August 19th, 1856.

Ramsey & Fleming, for defts.

And afterwards, to wit, on the 27th day of August, in the year last aforesaid, the said defendants filed in the Clerk's office aforesaid the following Cross-interrogatories, to wit:

Cross-interrogatories.

Cross-questions to be put to the witnesses named in the foregoing commission.

1. To Edwin Mills.

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If you give any answer to the 7th interrogatory, and state that said mortgage has not been paid, then state from whom you have your information, and whether from hearsay or not, and when you got said information.

2. Do you know of one hundred dollars, or any other amount, having been paid on said mortgage from you to complainant? if so, state as near as you can when the same was paid.

3. If you answer the 8th interrogatory in the affirmative, then state what the consideration was for the said mortgage and conveyance from you to your

brother, Harlow Mills, and whether the same was not a balance due on a settlement between you and said Harlow Mills, made on or about June 28th, 1837; if so, state the amount of said indebtedness as appears from said settlement.

4. Do you not know that said Harlow Mills did not agree to pay or assume the said mortgage from yourself to said complainant? and did you not always allege that said mortgage was void and illegal, and of no effect whatever? and state when said Harlow first knew of the existence of the pretended mortgage to Harris.

5. Do you know any other matter or thing tending to the interests of the defendants in this case? State the same as fully as though you were particularly interrogated thereto.

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6. Are you one of the defendants in this case?

By Ramsey & Fleming,
Sol^s for defts.

And afterwards, to wit, on the 25th day of August, in the year last aforesaid, the Clerk of said Court issued the following Commission, to wit:

Commission.

# STATE OF ILLINOIS, MARSHALL COUNTY, SS.

THE PEOPLE OF THE STATE OF ILLINOIS,

To any Justice of the Peace or Commissioner authorized to take depositions, residing in the City and State of New York,

; GREETING:

KNOW YE, that we, confiding in your ability, skill and fidelity, have appointed you, and by these presents do appoint, authorize and empower you, at a certain time and place, to be by you appointed for that purpose, to cause the witnesses whose names are mentioned in the caption of the annexed interrogatories, to come before you, and then and there diligently and faithfully to examine them on oath upon the said interrogatories, in the order in which they are propounded; and you will cause the answers of the witnesses thereto, to be reduced to writing, in the order in which they shall be proposed and answered; and you will then cause the witnesses to sign their names to the same in your presence. You will also annex a certificate, subscribed by yourself, at the foot of the depositions, stating that the same were sworn to and signed by the deponents, and the time and place when and where the same were taken. The depositions thus taken and subscribed, and all exhibits produced or referred to by the witnesses together with this commission and the annexed interrogatories, you will inclose, seal up and direct to the Clerk of the Circuit Court of the County of Marshall, in the State of Illinois, with the names of the parties litigant endorsed thereon.

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L. S.

WITNESS G. L. FORT, Clerk of the Circuit Court of said County of Marshall, and the seal of said Court being hereto affixed, this Twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty-six.

Greenberry L. Fort, Clerk.

☞ The return, if taken by a magistrate, should be accompanied by a certificate of his official character, under the great seal of the State of _____ or of the proper court of record of the county of which he is a resident.

☞ RETURN BY MAIL, POSTAGE PAID.

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And afterwards, to wit, on the 21st day of October, A. D. 1856, being one of the days of the October Term of said Court of the year aforesaid, certain depositions on the part of the complainant were opened under a general order of the Court, and filed in said cause, which said depositions were in the words and figures following, to wit:

Deposition of Edwin Mills.

The Deposition of Edwin Mills, of Astoria, of Queens County, and State of New York, a witness of lawful age, produced, sworn and examined, upon his corporal oath, on the eleventh day of September, in the year of our Lord one thousand eight hundred and fifty-six, at the office of Moses B. Maclay, 51, Liberty Street, in the City of New York, in the county of New York and State aforesaid, by me, Moses B. Maclay, a Commissioner of the State of Illinois, in the said City, to take depositions &c., duly commissioned and qualified, and by virtue thereof duly appointed by a Dedimus Potestatem or Commission issued out of the Clerk's Office of the Circuit Court of Marshall county, in the State of Illinois, bearing Teste in the name of G. L. Fort, Esq., Clerk of the said Circuit Court, with the Seal of said Court affixed thereto, and to me directed as such Commissioner, for the examination of the said Edwin Mills, witness in a certain suit, and matter in controversy, now pending and undetermined in the said Circuit Court, wherein John H. Harris is complainant,

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and Edwin Mills; Julia Wilson; Julia Lucas, John P. Lucas, William Henry Lucas and John Gate Lucas are defendants, in behalf of the said complainant, as well upon the cross-interrogatories of the defendant as on the interrogatories of the complainant, which were attached to, or inclosed with, the said Commission, and upon none others. The said Edwin Mills, being first duly sworn by me, as a witness in the said cause, previous to the commencement of his examination, to testify the truth as well on the part of the complainant as the defendant, in relation to the matters in controversy between the said complainant and defendant, so far as he should be interrogated, testified and deposed as follows:

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Interrogatory First: To the 1st direct interrogatory, he answers and says: I am acquainted with plaintiff and Julia Willson; I am also named as a defendant; others I don't know.

Interrogatory Second: To the second direct interrogatory, he answers and says: The said mortgage was executed by Edwin Mills, myself, and the signature to said mortgage is in my hand-writing. It is of course within my personal knowledge.

Interrogatory Third: To the 3d direct interrogatory, he answers and says: I reside in Astoria, in Queens County, in this State.

Interrogatory Fourth: To the fourth direct interrogatory, he answers and says: I am.

Interrogatory Fifth: To the fifth direct interrogatory, he answers and says: He resides at New Orleans, Louisiana, I have understood.

Sixth Interrogatory: To the 6th direct interrogatory, he answers and says: I am not acquainted with his hand-writing. I have never seen him write, to my ~~recollection~~, except the signature to the mortgage, and which I do not now remember, but have no doubt he did subscribe it.

Seventh Interrogatory: To the 7th direct interrogatory, he answers and says: It has not been paid to my knowledge.- I have never paid it.

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Eighth Interrogatory: To the 8th direct interrogatory, he answers and says: I mortgaged the land, January 13, 1839, to him, and sold it to him on the 17th day of February, 1842. I have these dates from certified copies of such papers under the hand of the Clerk of Marshall County, Illinois, and the Seal of such County, which I received last year from Mrs. Willson, one of the defendants. Last year the complainant called upon me, on the subject of the mortgage, and my impression then was that my brother knew of its (the land) having been previously mortgaged to the complainant, and that my brother was to see to it and pay for it; and at that time I addressed a letter to Mrs. Willson, one of the defendants, giving my impressions, which is hereunto annexed marked "L." In answer to this question, I am

unable to testify to any conversation, or declaration made by or between my brother and myself, particularly in consequence of the great lapse of time which has intervened. No communication was ever made to me on the subject, to my recollection, from the time I executed the deed to my brother until about a year ago. I therefore speak wholly from impression.

Cross-Interrogatories.

First: To the first cross-interrogatory, he answers and says: I have not stated that it has not been paid; I only stated that I had not paid it. It has never been paid to my knowledge.

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Second: To the second cross-interrogatory, he answers and says: I am unable to testify that I have ever paid anything upon the mortgage.

3. To the third cross-interrogatory, he answers and says: The consideration for the said mortgage to my brother was a supposed balance due by me to my brother on our copartnership matters. As to the time, I can't answer, neither do I recollect the amount of such indebtedness. What the consideration for the deed was, I am unable to say, excepting it was to take the place of mortgage to my brother.

4. To the 4th cross-interrogatory, he answers and says: I do not know that he did not agree to pay or assume said mortgage from myself to complainant. I have never alleged that said mortgage

was void and illegal, and of no effect whatever, at any time whatever, to my knowledge, recollection or belief. The consideration for the mortgage to complainant was for the payment of the land mentioned in the mortgage to complainant, which I had bought of him. I do not know when my brother knew of the existence of the mortgage to complainant.

5. To the 5th cross-interrogatory, he answers and says: I know of nothing further.

6. To the 6th cross-interrogatory, he answers and says: I see my name is in the title of the papers now before you (the Commissioner). And further deponent saith not.

Moses B. Maclay, Edwin Mills.

Illinois Commissioner in New York.

State of New-York, City and County of New-York, ss. I, Moses B. Maclay, of the City of New-York and State of New York, of the State of Illinois, to take depositions, and by reason thereof a Commissioner duly appointed to take the deposition of the said Edwin Mills, a witness whose name is subscribed to the foregoing deposition, do hereby certify, that previous to the commencement of the examination of the said Edwin Mills, as witness in the said suit between the said John H. Harris, complainant, and the said Edwin Mills, Julia Willson, Julia Lucas, John P. Lucas, William Henry Lucas and John Gate Lucas, defendants, Edwin

Mills was duly sworn by me, as such Commissioner, to testify the truth in relation to the matters in controversy between the said John H. Harris, complainant, and the said Edwin Mills, Julia Willson, Julia Lucas, John P. Lucas, William Henry Lucas and John Gate Lucas, defendants, so far as he should be interrogated concerning the same; that the said deposition was taken at my office, number 51, Liberty Street, in the city of New-York, in the State of New-York, on the eleventh day of September, A.D. 1856; and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness; and that thereupon the same was signed and sworn to by the said deponent, Edwin Mills, before me, the oath being administered by me, said Commissioner, at the place, and on the day and year last aforesaid.

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Moses B. Maclay, Commissioner.

L.S.

Commissioner's fees, $5.00

Witness " 1.00

$6.00

Pd by plff.

Moses B. Maclay, Comr.

The mortgage and letter referred to in said deposition, and filed therewith, are in the words and figures following, to wit:

Mortgage from

This Indenture, made and entered into this Twelth day of May A.D. 1837 between Edwin Mills

Edwin Mills to Harlow Mills, referred to in above Deposition.

of the City of New York of the first part, and John H. Harris of the Town of Tremont County of Tazewell and State of Illinois of the second part Witnesseth: That the said party of the first part for and in consideration of the sum of Dollars in hand paid by the said party of the second part the receipt whereof is hereby acknowledged has granted bargained and sold and by these presents does grant bargain and sell unto the said party of the second part his heirs and assigns all of those certain tracts or parcels of Land known and designated as the South East quarter of Section Twenty-seven, Township thirty North of Range one West of the third principal Meridian, Also Lots No. 9, 19, 9 & 19 in Blocks No. 15 & 16 in the town of Lyons— all the above property lying and being in the County of Putman and State of Illinois Together with all and singular the privileges and appurtenances thereunto belonging or in any wise appertaining. To have and to hold the above described property with the appurtenances unto him the said John H. Harris his heirs & assigns forever, & the said party of the first covenants to Warrant and Defend said tracts of Land from the claim of him the said party of the first part & from the claim or claims of all persons whatsoever Nevertheless the condition of the above obligation is expressly this that if the above named Edwin Mills his heirs or assigns shall

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well & truly pay unto the said John H. Harris or order the sum of Seven Hundred Dollars on or before the ninth day of September 1838 according to the tenor of a certain note of hand bearing date 9 Sept. 1836 drawn by the said Edwin Mills & payable to the said John H. Harris, then the above obligation to be ~~void~~ and null and void any thing to the contrary herein contained notwith.

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

In presence of } Edwin Mills. (L.S.)
Nath. Montross. } (L.S.)

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Certificate of Recording.

State of Illinois, Marshall County, ss.

I, G. L. Fort, Clerk of the Circuit Court of the said County of Marshall, and by virtue thereof ex-officio Recorder of said County, do hereby certify, that the Instrument of Writing hereto attached, and which purports to have been executed by Edwin Mills, to John H. Harris, was filed in said office for Record, on the 8th day of November, A. D. 1855, a 3 o'clock, P.M., and that the same was this day duly Recorded in Book I, at page 40.

In Testimony Whereof, I have hereunto set my name, and affixed the seal of said Court, at the City of Lacon, in said County, on this 8th day of November, A. D. 1855.

(L.S.)

G. L. Fort, Clerk.

On the back of said mortgage is the following note, to wit:
This is the mortgage shown to witness.

Moses B. Maclay, Comr.

Letter marked "L." referred to in above Deposition.

(L.)

Astoria Oct. 18th 1855.

My Dear Sister

I am surprised to learn that the mortgage to Mr. Harris on one of the quarter sections of land sold by me to my brother Harlow has never been paid.

I supposed that mortgage had been paid years ago, as my brother well knew of it, and it was deeded him with the understanding that he should take care of the mortgage of course.

Now I find that both the Mortgage and Deed are defective, and Mr. Harris claims of me (very justly I think) that which belongs to him - that is the land or the $700. and interest since 1839.

If you are willing, and have it in your power to settle the matter with Mr. Harris I shall be most happy to do all in my power to perfect your title.

Yours with much respect

Mrs. Julia M. Wilson. E. Mills

If Mr. Harris can help you in regard to your title he will gladly do so.

Your E. Mills.

This is the letter referred to by me in my deposition as marked L.
Moses B. Maclay Comr.
Edwin Mills.

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And afterwards, to wit, on the 31st day of October, A.D. 1856, the said complainant filed in the Clerk's office aforesaid a certain other Deposition, in the words and figures following, to wit:

Deposition of Wm. B. Green.

| | |
|---|---|
| John H. Harris<br>vs.<br>Edwin Mills,<br>Julia Wilson,<br>Julia Lucas,<br>James P. Lucas,<br>William Henry Mills,<br>John Gale Mills. | Interrogatories to Wm. B. Green, by complainant. |

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1st. Are you acquainted with the parties to this suit? and if so, how long have you known them severally?

2. Were you acquainted with Harlow Mills in his life-time? State whether he is now dead, and if so, about what time he died.

3. Are you acquainted with the land described in the mortgage now shewn to you, marked "A," dated the 7th day of May, 1837, attached to the deposition of Edwin Mills, filed in this cause?

4. Did you ever hear Harlow Mills, in his life-time, say anything about having a mortgage on said land, or some part thereof? and if so, state what you heard him say upon the subject, and when; who made said mortgage; about what time was it made.

State fully all your knowledge, and all the information you have derived from said Harlow Mills upon the subject.

5. Did or did not said Harlow Mills ever say anything to you in relation to his knowledge of the existence of the complainants mortgage before shewn you, at or prior to the time that said Edwin Mills had made the mortgage aforesaid to said Harlow Mills? State fully all you ever heard him say upon the subject, and the time and place when and where the said conversation or conversations took place.

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In answer to the 1st interogatory hereto annexed: I am acquainted with the parties to this suit; have known the complainant about 20 years, and have known the defendants about 13 years, except James P. Lucas, and have known him about 2 years.

In answer to the 2d interogatory hereto annexed: I was acquainted with Harlow Mills. I think he is dead, and that he died about the year 1844 or 1845.

In answer to the 3d interogatory hereto annexed: I am acquainted with the land described in the mortgage.

In answer to the 4th interogatory hereto attached: I do not remember of hearing Harlow Mills say that he had a mortgage on the said land, but did hear him say that he had a deed from Edwin Mills for the whole of it. At the time that Mills was going

to get his deed recorded, he stated that he would see if Mr. Harris had got his mortgage recorded on said land; that if he had not, he thought that he would have his deed recorded first, and that would make his title perfect to the land, or free from the mortgage. After he returned from getting his deed recorded - the next day after - he said that the mortgage was not on record, and that the land was now clear of the mortgage. Harlow Mills told me that John H. Harris' mortgage was given for a part of the purchase money, or the whole of the purchase money of the land, and that he got his deed recorded first, and that he thought that the land was not liable for the mortgage. There was something said about a mortgage from Edwin Mills to Harlow Mills, the particulars of which I can not now recollect. The conversation took place at my house in Marshall County.

In answer to the 5th interrogatory hereto annexed: I know nothing further than what is stated in answer to the 4th interrogatory.

Cross-examined by Silas Ramsey for the defendants.

Said witness further answering, states: That Harlow Mills, in the conversation alluded to in answer to the 4th interrogatory, said Edwin Mills, at the time of his failure, was indebted to him, Harlow Mills, for about 1900.00 dollars, and that he had given him

a mortgage, deed of trust, or assignment, to secure the same; and that the making of the deed alluded to in said answer was a final consummation of the mortgage, trust deed or assignment before spoken of. Said conversation took place sometime during the year of 1842; and that the mortgage, trust deed or assignment was upon the same land before alluded to.

Re-examination.

Witness further states: that he understood from the conversation with Harlow Mills before alluded to, that he knew of the existence of John H. Harris' mortgage, from the time that it was first given; and further deponent saith not.

58

William B. Green.

We agree that the foregoing deposition may be read in evidence, subject to all legal objections to the relevancy or competency of the testimony.

Oct. 31, 1856.

N. H. Purple.
S. Ramsey.

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Proceedings in Chancery before the Honorable Circuit Court within and for the County of Marshall, in the State of Illinois, a a Term thereof begun and holden at the Court-house in Lacon, in said County, on Monday, the fifth day of October, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the Honorable M. Ballou, Judge of the 23rd Judicial

Circuit of said State; George W. Stipp, Esq., State's Attorney; Henry L. Crane, Sheriff; and James Kescott, Clerk.

Be it remembered, that on the 7th day of October A. D. 1857, being one of the days of the said October Term of the Court aforesaid, the following record was made in said cause, to wit:

Cause submitted.

John H. Harris, vs. Edwin Mills et al. } Bill to foreclose.

Be it remembered, that on this day came the complainant, by Lorin G. Pratt, his solicitor, and the defendants by Silas Ramsey, their solicitor, and by agreement of the parties this cause is submitted to the Court for trial.

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And afterwards, to wit, on the same day and year last aforesaid, the said defendants produced in Court certain papers in the words and figures following, to wit:

Tax Receipts.

State of Illinois, Marshall County. } Collector's Office, Dec. 29, 1843.

Received of Harlow Mills fourteen Dollars and 40 cents, in full for State and County Taxes for 1843, on the following described Land, to wit:

| Description. | Sec. | Town'p. | Range. | Valuation. | Tax. |
|---|---|---|---|---|---|
| N.W.1/4 | 10 | 29n. | 1w | 480 | 2 88 |
| N.E.1/4 | 4 | 29" | 1" | 480 | 2 88 |
| S.1/2 N.E.1/4 | 8 | 29" | 1" | 240 | 1 44 |
| N.E.1/4 | 9 | 29" | 1" | 480 | 2 88 |
| S.E.1/4 | 27 | 30' | 1" | 480 | 2 88 |

| | | | | | | |
|---|---|---|---|---|---|---|
| S.½ S.E.¼ | 24 | 29. | 3" | 240 | | 1 44 |
| | | | | | | 14 40. |
| Also on his personal property, | | | | | | 48 |
| | | | | | | 14.88 |

James H. Long, Collector.

State of Illinois, } ss. Sheriff's Office, Lacon, Dec. 31st, 1844.
Marshall County. } Received of Harlow Mills the sum of 15 $\frac{86}{100}$ Dollars, the Taxes due the State of Illinois and County of Marshall for the year 1844, on the following described Lands, to wit:

| Acres. | Description. | | | State & Co. Tax. | R. Tax. | Total. |
|---|---|---|---|---|---|---|
| 160 | N.W. 10 | 29 | 1 | 480 | | 308 assess |
| 160 | N.E. 9 | 29 | 1 | 480 | | 288 fee 20 |
| 160 | N.E. 4 | 29 | 1 | 480 | | 288 |
| 80 | S½ N.E. 8 | 29 | 1 | 240 | | 144 |
| 160 | S.E. 27 | 30 | 1 | 480 | | 288 |
| 80 | S½ S.E. 24 - 29 - 3 | | | 240 | | 144 |
| | Also personal property | | | | | 126 |
| | | | | | | $15 86 |

Sheriff and Collector Marshall Co.

60

State of Illinois, } Sheriff's Office, Lacon, Jany. 17th 1846.
Marshall County. } Received of Harlow Mills the sum of seventeen dollars and seventy-six cents, the taxes due the State of Illinois and county of Marshall, on the following described Lands, for the year 1845.

| Acres. | Description. | Sect. | Town'p. | Range. | Valuation. | Tax. |
|---|---|---|---|---|---|---|
| 160 | N.W | 10 | 29 | 1 | $ 480 | 3.36 |
| 160 | N.E. | 9 | ——— | ——— | 480 | 3.36. |
| 110 | pt. N.E. | 4 | ——— | ——— | 330 | 2.31 |

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 80 | S.½ N.E. | 8 | ——— | | 2.40 | 168 | |
| 160 | S.E. | 27 | 30 | 1 | 480 | 3.36 | |
| 80 | S.½ S.E. | 24 | 29 | 3 | 240 | 1.92 | School Tax 24 |
| | Personal property for 1845 – 253 | | | | | 1.77 | |
| | | | | | | 17.76 | |

A. Ramsey, Sheriff and Collector M. co. Ill.

State of Illinois, Marshall County. } Sheriffs Office, Lacon, Feb. 4th, 1847.

Received of Harlow Mills the sum of sixteen dollars and eighty-eight cents, the taxes due the State of Illinois and county of Marshall on the following described Lands, for the year 1846.

61

| Description. | Sec. | Town. | Range. | Acres. | Val. | Tax. | |
|---|---|---|---|---|---|---|---|
| N.W. | 10 | 29 | 1 | 160 | 4.80 | 3.60 | 96 |
| N.E. | 9 | " | " | 160 | 4.80 | 3.60 | 96 |
| pt. N.E. | 4 | " | " | 110 | 3.30 | 248 | 66 |
| S.½ N.E. | 8 | " | " | 80 | 2.40 | 180 | 48 |
| S.½ S.E. | 24 | 29 — | 3 | 80 | 240 | 1.80 | 48 |
| S.E. | 27 | 30 — | 1 | 160 | 480 | 3.60 | 96 |
| | | | | | | $16.88 | 450 |

Addison Ramsey,

Sheriff and Collector M. co. Ill.

State of Illinois, Marshall County. } Sheriffs Office, Lacon, Feb. 24th, 1848.

Received of Julia M. Mills the sum of nineteen dollars and sixty-eight cents, the taxes due the State of Illinois and County of Marshall on the following described Lands, for the year 1847.

| Description. | Sec. | Town. | Range. | Acres. | Val. | Tax. |
|---|---|---|---|---|---|---|
| pt. N.E. | 4 | 29 | 1 | 110 | 3.30 | 2.70 |

| | | | | | |
|---|---|---|---|---|---|
| N.E. | 9 | | 160 | 4.80 | 3.94 |
| N.W. | 10 | | 160 | 480 | 3.94 |
| S.½ S.E. | 24 | | 80 | 2.40 | 1.97 |
| S.E. | 27 | | 1.60 | 480 | 3 94 |
| S.½ N.E. | 8 | | 80 | 2.40 | 197 |
| | | Personal tax for 1847 | | 1.69 | 122 |
| | | | | | 19 68 |

Road tax Refunded, $4.50 F.S.

Addison Ramsey,
Sheriff and Collector M. co. Ill.

State of Illinois, } Sheriffs Office, Lacon, February 2th, 1849.
Marshall County. } Received of Julia M. Willson G. G. Willson the sum of Sixteen dollars and ninety-eight cents, the taxes due the State of Illinois and County of Marshall on the following described Lands, for the year 1848.

62

| Description. | Sec. | Town. | Range. | Acres. | Val. | Tax. |
|---|---|---|---|---|---|---|
| pt. N.E. | 4 | 29n | 1w | 110 | 333 | 2.05 |
| N.E. | 9 | " | " | 160 | 480 | 3.00 |
| N.W. | 10 | " | " | 160 | 480 | 300 |
| S.½ S.E. | 24 | 29 | 3 | 80 | 240 | 1.25 |
| S.E. | 27 | 30n | 1w | 80 | 240 | 1.49 |
| | | Personal property | | | 150 | 1.29 |
| | | | | | | 19.98 |

H. L. Crane, Sheriff and Collector M. co. Ill.

State of Illinois, } Sheriffs Office, January the 3d, 1850.
Marshall County. } Received of John Willson the sum of twenty dollars and twenty cents, the taxes due the State of Illinois and County of Marshall on the following described lands, for the year 1849.

| Description. | Sec. | Town. | Range. | Acres. | Val. | State, | Co. | Road. | School. | Total. |
|---|---|---|---|---|---|---|---|---|---|---|
| pt. N.E. | 4. | 29 | 1W | 110 | 275 | 159 | 69 | 68 | — | 2.97 |
| N.E. | 9 | " | " | 160 | 500 | 290 | 125 | — | | 4.95 |
| N.W. | 10 | " | " | 160 | 320 | 186 | 80 | — | | 2.66 |
| S.½ S.E. | 24 | 29 | 3W | 80 | 240 | 139 | 60 | — | — | 1.99 |
| E.½ S.E. | 27 | 30N | 1W | 80 | 200 | 116 | 50 | 50 | 100 | 3.16 |
| W.½ S.E. | 27 | 30- | 1- | 80 | 200 | 116 | 50 | 50 | 100 | 3.16 |
| S.½ N.E. | 8 | 29- | 1- | 80 | 160 | 93 | 40 | | | 1.33 |
| | | | | | | | | | | $20.22 |

Henry L. Crane,

Sheriff and Collector M.C. Ills.

20.22

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State of Illinois, } ss. Collector's Office,
County of Marshall, } Town of Roberts, January, 1851.

Received from John Wilson four dollars, being in full for the tax due the State, County & Town aforesaid on the following described land, for the year 1850.

S.E. 27, 30N., 1W. – 160 acres. 400$ val. 4.00 Tax.

Abraham Green, Collector.

State of Illinois, } Collector's Office, Roberts Township,
Marshall Co. } February 10th, 1852.

Received of Wm. Green the sum of six Dollars and 63 cents, the Taxes due the State of Illinois, County of Marshall and Town of Roberts, on the following described Land, for the year 1851.

| Acres. | Description. | Sec. | Town. | Range. | Value. | Tax. |
|---|---|---|---|---|---|---|
| 160 | S.E. | 27 | 30 | 1W. | 616 | 6.63 |

Thomas Cowen, Collector.

State of Illinois, } Collector's Office, Lacon, Feb. 26
Marshall County. } Received of Mrs. Wilson the sum of Seven dollars and seventy-six cents, for taxes levied for State, county and township purposes, on the following described lands:

| Acres. | Description. | Town. | Range. | Value. | Tax. |
|---|---|---|---|---|---|
| 160 | S.E. 27 | 30 | 1W. | 560 | $ 7.76 |

Theodore Perry,
Treasurer of Marshall County, Ills.

State of Illinois, } Treasurer's Office, Lacon, March 9, 1854.
Marshall County. } Received of Mrs. Wilson, pr. O. Wallcott, the sum of Eleven dollars and fifty nine cents, for taxes levied for State, county and township purposes, on the following described lands, for 1853.

64

| Acres. | Description. | Town. | Range. | Value. | Tax. |
|---|---|---|---|---|---|
| 80 | E.½ S.E. | 27 | 30 | 1W. | 320 | 389 |
| 80 | W.½ S.E. | " | " | " | 320 | 389 |
| 80 | S.½ S.E. | 24 | 29 | 3W. | 320 | 381 |
| | | | | | | 11.59 |

Samuel Maxwell,
Treasurer Marshall Co., Ills.

State of Illinois, } Treasurer's Office, Lacon, Feby. 20, 1855.
Marshall County. } Received of Julia M. Wilson the sum of Twelve Dollars and fifty eight cents, the Taxes due the State of Illinois and the County of Marshall, on the following described Lands, for the year A. D. 1854

| Description. | Section. | Town. | Range. | Acres. | Value. | Year. | Amount Tax. | In whose name listed. |
|---|---|---|---|---|---|---|---|---|

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| S.E. | 27 | 30 | 1W. | 160 | 640 | 1854 | 784 |
| S.½ S.E. | 24 | 29 | 3W. | 80 | 320 | 1854 | 474 |
| | | | | | | | 12.58 |

Saml. Maxwell,
By W. E. Cook, Treasurer & Collector of Marshall County.

State of Illinois, } Treasurer's Office, Lacon, Feb. 25, 1856.
Marshall County. } Received of Mrs. Julia M. Wilson the sum of Twelve Dollars and Three Cents, the Taxes due the State of Illinois and County of Marshall on the following described lands, for the year 185_

| Description. | Section. | Town. | Range. | Acres. | Value. | Tax. |
|---|---|---|---|---|---|---|
| S.E.¼ | 27 | 30 | 1W. | 160 | 960 | 12.03 |

Saml. Maxwell, Treasurer Marshall Co.

65

State of Illinois, } ss. Collector's Office, City of Lacon,
Marshall County, } April 17, 1857.

Received of Mrs. Wilson the sum of Twenty six Dollars and seventy nine Cents, the Taxes due the State of Illinois and County of Marshall on the following described Lands, for the year 1856.

| Description. | Sec. | Town. | Range. | Value. | State and County Tax. | Town Tax. | Town School Tax. | Dist. School Tax. | Road Tax. | R.R. Interest Tax. | Total Tax. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 80 acres, S.½ S.E. | 24 | 29 | 3W. | 320 | 4.16 | .7 | ~~.XX~~ | 320 | | .64 | 8.07 |
| 160" S.E. | 27 | 30 | 1W. | 960 | 12.48 | 48 | 192 | | 1.92 | 1.92 | 18.72 |
| | | | | | | | | | | | $26.79 |

Saml. Maxwell, Collector.

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And afterwards, to wit, on the 9th day of October, A.D. 1857, being one of the days of the October Term aforesaid, the following Decree was made and entered of record in said cause, to wit:

Decree.

| | |
|---|---|
| John H. Harris | In the Circuit Court of Marshall |
| vs. | County, in the State of Illinois. |
| Edwin Mills, | In Chancery, to foreclose mortgage, |
| Julia Wilson, | at the October Term, A.D. 1857. |
| Julia Lucas, | |
| James P. Lucas, | And now on this day this |
| William H. Mills & | cause coming on to be heard |
| John Gale Mills. | upon the bill of complaint filed |
| | herein, and the answer of the |

defendants Julia Wilson, Julia Lucas and James P. Lucas, and the answer of William Henry Mills and John Gale Mills, by their guardian *ad litem*, filed herein, and the replication of the complainant filed thereto, and the evidence produced in Court as well on the behalf of the complainant as of the defendants; and it fully appearing to the Court that all the matters and things stated and averred in said complainant's bill are true; and the Court being fully advised in the premises; and it appearing to the Court that there is now due to the complainant upon his said mortgage the sum of fifteen hundred and one dollars and fifty cents ($1501.50), no part of which has been paid to complainant: It is therefore ordered, adjudged and decreed by the Court, that the said defendants pay to the complainant the said sum of fifteen hundred and one dollars and fifty cents, within twenty days from this date; and that in case said defendants fail to pay said mortgage debt within the time aforesaid, then on such default that said mortgaged premises in said complainants bill described, to wit: all those certain tracts or parcels of land known and designated as the South East quarter of Section Twenty-seven (27), Township No. Thirty (30) North, of Range One (1) West of the third principal meridian, also Lots Nos. 9 & 19 and 9 & 19, in Blocks No. 15 & 16, in the Town of Lyons, in Marshall County, State of Illinois, be sold at public vendue, to the highest and best bidder, for cash, at

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the front door of the court-house in the City of Lacon, in said County of Marshall, upon giving notice of the time, place and terms of such sale by advertisement to be published for four weeks successively in some newspaper published in said City of Lacon, and that out of the proceeds of such sale the commissioner hereafter appointed shall pay, first, the cost and expenses of said sale, and second, the said sum of fifteen hundred and one dollars and fifty cents, with interest thereon from this date, to the said complainant, and the rest and residue of all moneys arising from said sale shall be paid to said defendants, or to such of them as shall be legally entitled to receive the same.

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And it is further ordered, adjudged and decreed, that Greenberry L. Fort be and he is hereby appointed a commissioner of this Court to sell said described premises; and it is further ordered that he make report of his doings herein to the next term of this Court succeeding such sale; and that on such sale the commissioner execute and deliver to the purchaser or purchasers of said premises a certificate of purchase of like form, tenor and effect in law as certificates of purchase made by sheriffs on sale of land on execution at law.

It is further ordered, that in case said mortgaged premises shall not sell for a sufficient sum to satisfy the costs and expenses of said sale, and the

costs of this suit, which said defendants are hereby decreed to pay, that an execution may be issued for the balance due to complainant against said defendant Edwin Mills, of like form and in same manner as on a judgment at law.

And afterwards, to wit, on the 23rd day of October, in the year last aforesaid, being also one of the days of the said October Term of the Court aforesaid, the following ~~record~~ was made ~~in said~~ cause, to wit:

Motion to vacate Decree.

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| | |
|---|---|
| John H. Harris<br>vs.<br>Edwin Mills,<br>Julia Wilton,<br>Julia Lucas,<br>James P. Lucas,<br>William Henry Mills &<br>John Gale Mills. | Bill to foreclose.<br>This day came the defendants, by Ramsey and Fleming, their solicitors, and enter a motion to vacate the decree entered herein. |

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Proceedings in Chancery before the Honorable Circuit Court of Marshall County, in the State of Illinois, at a Term thereof begun and holden at the Court-house in Lacon, in said County, on Monday the 25th day of January, in the year of our Lord one thousand eight hundred and fifty-eight. Present, the Honorable Martin Ballou, Judge of the 23rd Judicial Circuit; George W. Stipp, Esq., State's Attorney; Henry L.

Crane, Sheriff; and James Wescott, Clerk.

Be it remembered, that on the 2nd day of February A.D. 1858, being one of the days of the January Term aforesaid of said Court, the said defendants, by their solicitor, filed in the Clerk's office aforesaid the following reasons for a rehearing of said cause, to wit:

Reasons for a rehearing.

| | |
|---|---|
| John H. Harris<br>vs.<br>Edwin Mills and others. | In the Marshall C.C.<br>Jany. T., A.D. 1858. |

The defendants in this cause having at a former term of this Court filed their motion for a rehearing herein, come now and file their reasons therefor, as follows:

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1st. Because the demand on which the mortgage and Bill were predicated in this cause, was barred by the statute of limitations.

2. Because the note alluded to in the bill and mortgage, and on which they were founded, was not produced on the trial, or used in evidence; and under such circumstances, sufficient time had elapsed to presume, and the Court ought to presume, that said mortgage debt was paid.

3. Because of lapse of time, the debt ought to be presumed to be paid.

4. Because the deposition of Edwin Mills was admitted by the Court as evidence, when the record shows that he was directly interested in having a

decree made for the sale of the land, and was also a party to the suit.

5. Because the evidence was insufficient to authorize a recovery in this case.

6. Because the note described in the mortgage was not produced in this case.

7. Because the decree was for too large a sum.

8. Because the bill is insufficient:

1. For it does not set out the note;

2. It does not show when the note was due;

3. It does not show what interest it bore, or whether any, nor when the interest commenced running.

9. No notice of the mortgage is proved to Harlow Mills before or at the time he took his mortgage upon the premises.

10. The land being vacant and unoccupied, and the respondents having paid taxes thereon for seven successive years, those facts were a bar to the complainants right to recover.

11. Because the bill does not allege, nor is it proved, that the debt could not be collected of Edwin Mills.

Edwards & Shaw.

And afterwards, to wit on the 6th day of February A. D. 1858, being one of the days of the said January

Term of the Court aforesaid, the following order was made and entered in said cause, to wit:

Order overruling motion to vacate Decree.

John H. Harris,
vs.
Edwin Mills,
Julia Wilson,
Julia Lucas,
James P. Lucas,
William H. Mills &
John Gale Mills.

Bill to foreclose.

This day this cause came on to be heard upon the motion of the defendants entered at the last term of this Court to vacate the decree heretofore made in this cause, and was argued by counsel; and the Court being now fully advised in the premises, it is ordered that said motion be overruled.

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State of Illinois, } sct.
Marshall County,

I, James Wescott, Clerk of the Circuit Court in and for said County, do hereby certify, that the foregoing Record, from page 1 to page 74 inclusive, is correctly copied from the papers and proceedings in the above-entitled cause.

In witness whereof, I hereunto set my hand and the Seal of said Court, at Lacon, in said County, this 16th day of March, A.D. 1858.

James Wescott, clerk

Clerk's fees:
Record, $15.90
Cert. & seal, .35
$16.25
Paid by Deft.

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William H. Miller et al.
vs
John S. Hunter

Transcript

Filed April 15, 1866
Detained
CCR

JULIA LUCAS ET. AL.
*vs.*
JOHN HARRIS.

IN SUPREME COURT.

ERROR FROM MARSHALL.

The defendant John Harris, who was complainant below, filed his bill in the Circuit Court of Marshall County on the 8th day of February, 1856, alleging that on the 12th day May, 1837, Edwin Mills, of the State of New York, was indebted to the complainant in the sum of $700 for the purchase money of S. E. 27, 30 N., 1 W., 3d P. M., and executed a mortgage to complainant for said premises and two other lots, dated may 12th, 1837, a copy of which is set out in the bill.

He avers that on the 8th day of November, 1855, the mortgage was recorded in the Recorder's office of Marshall county, being the county in which the land lay.

Avers that the debt of $700 mentioned in the mortgage has never been paid, nor any part of it, nor interest, and that the same became due on the 9th day of September, 1838, and that a note was given for the said debt, falling due Sept. 9, 1838.

He further charges that after the execution of the mortgage to complainant, to-wit, on the 13th day of January, 1839, the said Edwin Mills also executed a mortgage to his brother Harlow Mills, for a pretended debt of $2000, on the said quarter section of land and other lands, a copy of which is set out marked exhibit "A."

Charges that the said Edwin Mills was not at the time of the execution of the mortgage indebted to Harlow Mills in $2000 or any other sum, but that the same was made to hinder and delay complainant in the collection of his debt.

That the said mortgage to said Harlow Mills was recorded on the 2d day of March, 1839, and prior to the recording of complainant's mortgage.

Charges that said Harlow Mills had notice of the complainant's mortgage at the time of the making of the mortgage to him, and afterwards promised complainant to pay the same, and that said Harlow Mills frequently admitted to others that he knew of complainant's mortgage, and that the same was unpaid.

The complainant further charges that on the 17th day of February, 1842, the said Edwin Mills and Eliza Ann his wife, for the consideration of $2100 as expressed in their deed, executed a deed of that date to Harlow Mills, and purport-

ing to make the deed subject to the mortgage of Harlow Mills, and stating therein that the mortgage formed a part of the consideration of the deed.

He charges that at the time of the execution of the deed the said Harlow Mills had notice of complainant's mortgage, and agreed to pay the same. A copy of the deed is attached marked "B."

That Harlow Mills died intestate on or about the 20th day of October, 1845, and that his widow Julia Mills, since intermarried with one John Wilson, was appointed administratrix of his estate, and that the said John Wilson also died on or about the year 1845, and that Harlow Mills left as children and heirs at law Julia a minor, now intermarried with James P. Lucas, and William Henry and John Gale, also minors, and that said children and widow are yet the legal owners of the said quarter section of land.

Claims that the said quarter section should be subject to the payment of his mortgage, and have preference of the one executed to Harlow Mills, and that no good or valuable consideration ever passed for the execution of the deed except the pretended debt of $2,000 specified in the mortgage.

The bill prays that said widow and heirs of Harlow Mills be made parties, and that guardians be appointed and that the land be sold to pay off the mortgage and interest of complainant.

Publication was made as to Edwin Mills, and service on others.

At the April term, 1856, Julia Wilson, John P. Lucas, Julia Lucas, William Henry Mills and John Gale Mills answered the complainant's bill, denying that Edwin Mills on the 12th day of May or at any other time was indebted to the complainant in the sum of $700 or any other sum for the purchase money of said quarter. Deny that said Edwin Mills ever executed the mortgage to complainant, as charged in the bill, and that if any such mortgage was made to complainant it was without consideration. They admit that a certain paper claimed to be a mortgage was recorded on the 8th day of November, 1855. Deny that the sum of $700 or any other sum was due complainant at the filing of the bill.

They admit that on the 13th day of January, 1839, Edwin Mills and wife executed to Harlow Mills a mortgage on the land in controversy and other lands mentioned in the bill. They deny that the mortgage to Harlow Mills was for a pretended debt, and aver that the sum of $2,000 had been due and owing from the said Edwin Mills to said Harlow Mills from the 28th day of June, 1837.

They deny that the mortgage from Edwin to Harlow Mills was made to delay, hinder or defraud the complainant or any other person, and admit that the said mortgage to Harlow was recorded on the 2d day of March, 1839.

They deny that said Harlow Mills had knowledge in any manner of any mortgage to complainant, and deny that said Harlow ever promised to pay the same.

They deny that Harlow Mills ever acknowledged the existence of a mortgage to complainant as charged. They admit the execution of the deed on the 17th of February, 1842, from Edwin Mills and wife to Harlow Mills of the premises and others for the sum of $2,100, and deny any knowledge of complainant's mortgage by said Harlow at the time of the execution of the deed.

They admit that Harlow Mills died on or about the 2d day of October, 1845; that his widow intermarried with John Wilson, and that he died in 1855 and not in 1845, and that he left the children and heirs at law as mentioned in the bill, and that Julia is married to James P. Lucas.

They deny that there was no good and valuable consideration for the execution of the mortgage and deed, but that the same was bona fide and for valuable consideration.

They deny that said Harlow Mills ever owed complainant any sum of money whatever or made any mortgage whatever to said complainant, and if any ever was made deny that it was ever known to said Harlow Mills or his heirs.

That said complainant, living in a neighboring county with the one of defendants' residence, suffered the said Harlow Mills and his heirs to pay taxes on the same without making known the fact of his having any claim to the land.

The answer charges that the land was vacant and unoccupied in 1839 and has been ever since and still so continues. Charges that Harlow Mills had color of title made in good faith, and also the legal title to the land from and after the 17th of February, 1842, until his decease, and his heirs after him, and that the said Harlow and his heirs have paid all taxes legally assessed on said land since 1839.

They insist that the statute of limitations is a bar to the action, and also that the lapse of time bars any recovery on the mortgage.

That at the time of the execution of the mortgage and deed the lands conveyed in said mortgage and deed did not exceed $1000. The oath of the respondents was waived.

The complainant put in general replication. A guardian ad litem was appointed by the Court for the minors, and who filed his answer denying any knowledge of the facts charged in the bill, and calling for proof, and that the rights of the minors be protected by the Court.

At the April term, on the 18th day of April, 1856, the appearance of Edwin

Mills was withdrawn by leave of the Court, and on the 21st day of Oct., 1856, the complainant took his deposition, who testified as follows:

I am acquainted with the plaintiff and Julia Wilson. Am named as one of the defendants. The mortgage to complainant was executed by witness, and that witness resides in Astoria, Ill. Nathaniel Montross resides in New Orleans, La. Does not know of the mortgage being paid. Witness mortgaged the land January 13, 1839, to Harlow Mills, and sold to him on the 17th of Feb., 1842. Last year complainant called on witness about the mortgage and witness' impression then was that his brother knew of the land being previously mortgaged to complainant, and that his brother was to see to it and pay for it. I also addressed a note to Mrs. Wilson, stating my impressions. Am unable to testify to any conversation or declaration made by or between my brother and myself particularly. No communication was ever made to me on the subject, to my recollection, from the time I executed the deed to my brother until about a year ago. I therefore speak wholly from impression.

Cross-examination: I have not stated that it has not been paid: I stated that I had not paid it. I am unable to testify that I ever paid anything on the mortgage. The consideration of the mortgage from myself to my brother was a supposed balance due on our copartnership matters. As to the time, I cannot answer; neither do I recollect the amount. Am unable to say what the consideration of the deed was, except it was to take the place of the mortgage to my brother. I do not know that my brother did not agree to pay or assume said mortgage from myself to complainant. I never alleged that said mortgage to complainant was void or illegal at any time whatever to my knowledge. The consideration for the mortgage to complainant was for the payment of the land mentioned in the mortgage which I bought of complainant. I do not know when my brother knew of the existence of the mortgage to complainant.

The letter and mortgage referred to by witness are attached to his deposition.

William B. Green testified: Have known complainant about 20 years, defendants about 13 years—except James Lucas, have known him about 2 years. Knew Harlow Mills. Think he is dead, and that he died about the year 1844 or 1845. Am acquainted with the land in the mortgage mentioned. I do not recollect hearing Harlow Mills say he had mortgage on it. Did hear him say he had a deed from Edwin Mills for whole of it. At the time Mills was going to get his deed recorded he stated he would see if Mr. Harris had got his mortgage recorded on said land; that if he had not he thought he would have his deed recorded first, and that would make his title perfect, or free from the mortgage. The next day after he said that the mortgage was not on record, and that the land was now clear of the mortgage. Harlow Mills told me that Harris' mortgage was given for part of the purchase money or whole of it, and that he got his deed recorded

first; that he thought the land was not liable for the mortgage. There was something said about a mortgage from Edwin Mills to Harlow Mills. I don't recollect the particulars. The conversation took place at my house in Marshall county. I know nothing further about his knowledge of Harris' mortgage prior to taking his own further than stated above. Harlow Mills, in the conversation alluded to, said Edwin Mills, at the time of his failure, was indebted to him in about $1,900, and that he had given him a mortgage deed of trust or assignment to secure the same, and that the making of the deed alluded to in said answer was a final consummation of the mortgage trust deed or assignment before spoken of. The conversation took place some time during the year 1842, and that the mortgage trust deed or assignment was on the same land before alluded to.

Re-examination. (Copy of deposition.)

"Witness further states that he understood from the conversation with Harlow Mills before alluded to that he knew of the execution of John H. Harris' mortgage from the time that it was first given."

The defendants offered in evidence tax receipts for the years 1843, 1844, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857.

The case was submitted to Hon. Martin Ballou at the October term, 1857, who rendered a decree in favor of complainant for the sum of $1,501 50, and in default of the payment thereof within 20 days, that the mortgaged premises be sold to satisfy the same after giving 4 weeks notice by publication; and in case the said mortgaged premises should not sell for enough to satisfy the said amount of said decree that execution issue against Edwin Mills for the remainder, as on judgments at law.

At the October term, 1857, the defendants entered a motion to vacate the decree for the following reasons, and which motion was overruled at the January term, 1858:

1. The debt was barred by the statute of limitations.

2. Because the note was not produced in evidence, and under such circumstances the Court ought to presume the debt paid.

3. Because of the lapse of time the debt ought to be presumed paid.

4. Because the Court erred in admitting the deposition of Mills in evidence when he was a party to the suit and interested in having a decree rendered against the premises.

5. Because the evidence was insufficient to authorize a recovery.

6. Because the note described in the mortgage was not produced in the case.

7. Because the decree was for too large a sum.

8. Because the bill was insufficient, not setting out the note nor showing when it became due, nor what rate of interest it bore, if any, nor when interest commenced running.

9. No notice was proven to Harlow Mills before nor at the time he took his mortgage on the premises.

10. The payment of taxes was a bar to complainant's recovery, the land being vacant and unoccupied.

11. The bill does not allege, and it was not proven, that the money could not be collected of Edwin Mills.

WEAD & WILLIAMSON.

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Lineas
vs
Harris

Filed Apr 21. 1838
L Leland
Clerk

STATE OF ILLINOIS, } ss. **The People of the State of Illinois,**
SUPREME COURT,

To the Sheriff of the County of Tazwell — Greeting:

**Because,** In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Marshall County, before the Judge thereof, between John S. Harris

plaintiff, and William H. Mills & John G. Mills who sue by their next friend Julia Wilson, Julia Wilson, Julia Lucas & James P. Lucas

defendants, it is said that manifest error hath intervened, to the injury of the said Defendants,

as we are informed by their complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; **Therefore, We Command You,** That by good and lawful men of your County, you give notice to the said John S. Harris

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April ~~next~~ A.D. 1858, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John S. Harris notice, together with this writ.

**Witness,** The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 15th day of April in the Year of Our Lord One Thousand Eight Hundred and Fifty-eight.

S. Leland
*Clerk of the Supreme Court.*
by J. B. Rice Deputy

[11835-70]

The within named John S Harris
not found in my County April
23d 1888
C. Williamson S.H.C.

127
William H. Mills et al
vs
John H. Harris
Sci fac

Filed April 27, 1888
S. Leland
Clk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

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

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Marshall County, before the Judge thereof, between John S. Harris

plaintiff, and William H. Mills & John G. Mills who sue by their next friend Julia Wilson, Julia Wilson Julia Lucas & James P. Lucas defendants, it is said manifest error hath intervened, to the injury of the aforesaid Defendants

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April ~~next~~ A.D. 1858, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 15th day of April in the Year of Our Lord one thousand eight hundred and fifty-eight

S. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

[11830-71]

127

William H. Mills & others

vs

John S. Harris

Writ of Error

Filed April 15. 1858

S. Leland

Clk

This writ of Error is made a supersedeas and as such is to be obeyed by all concerned.—

May 13. 1858. S. Leland Clk

by J. B. Rice Depy

William H Mills &
John G Mills who
sue by their next friend
Julia Wilson
Julia Wilson &
Julia Lucas &
James P Lucas
vs
John H Harris

In the Supreme
Court April
Term A D
1838 3d Grand
Division
Error to Marshall

I Julia Wilson do hereby
enter myself security for cost in
the above entitled cause & acknowl-
edge myself bound to pay or
cause to be paid all costs
which may accrue therein either
to the opposite party or any of the
officers of this Court in pursuance
of law

Julia Wilson (Seal)
by Weed her Attorney
in fact —

The Clerk of the Supreme Court will
please send Scire facias to Sheriff
of Tazewell County forthwith

Weed & Williamson
Attys for Plfs

[11030-72]

127.

William H. Mills et al

vs

John S. Harris

Security for costs

Filed April 15, 1858

C. Leland

Clk.

**Know all Men by These Presents,** That Julia Wilson, Julia Lucas and James P. Lucas as principal, and Oliver P. Woolcott as security, are held and firmly bound unto John H. Harris in the penal sum of fifteen hundred dollars good and lawful money of the United States, for the payment of which, well and truly to be made, the said Julia Wilson, Julia Lucas & James P. Lucas and Oliver P. Woolcott bind themselves, their heirs, executors, and administrators, jointly, severally, and firmly by these Presents.

**Witness,** our hands and seals

at Lacon this 5th day of May A. D. 185 8

**The Condition of the above Obligation is such,** That, whereas, the above named John H. Harris did, at the October Term of the Circuit Court, held in and for the County of Marshall in the State of Illinois, A. D. 185 7 ~~recover a judgment against the above bounden~~ obtain a decree against William H. Mills & John G. Mills who sue by their next friend Julia Wilson and Julia Lucas and James P. Lucas in a certain Bill in Chancery to foreclose a Mortgage for the sum of fifteen hundred & one & 00 dollars & costs of suit to reverse which said judgment, the said William H. Mills, John G. Mills by their next friend Julia Wilson & Julia Lucas & James P. Lucas have sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State. Which writ of Error is made a Supersedeas. Now if the said William H. Mills, John G. Mills by their next friend Julia Wilson & Julia Lucas & James P. Lucas shall duly prosecute said Writ of Error, and pay, or cause to be paid, all judgments, costs, interest and damages which the said Supreme Court shall adjudge against them and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Julia M. Wilson [SEAL.]

James P. Lucas [SEAL.]

Oliver P. Wolcott [SEAL.]

[SEAL.]

[11830-73]

127

Lydia Wilson et al
vs
John H Harvey
Bond

Filed May 13, 1858
L. Leland
Clk

JULIA LUCAS ET. AL.
*vs.*
JOHN HARRIS.

IN SUPREME COURT.

ERROR FROM MARSHALL.

The defendant John Harris, who was complainant below, filed his bill in the Circuit Court of Marshall County on the 8th day of February, 1856, alleging that on the 12th day May, 1837, Edwin Mills, of the State of New York, was indebted to the complainant in the sum of $700 for the purchase money of S. E. 27, 30 N., 1 W., 3d P. M., and executed a mortgage to complainant for said premises and two other lots, dated may 12th, 1837, a copy of which is set out in the bill.

He avers that on the 8th day of November, 1855, the mortgage was recorded in the Recorder's office of Marshall county, being the county in which the land lay.

Avers that the debt of $700 mentioned in the mortgage has never been paid, nor any part of it, nor interest, and that the same became due on the 9th day of September, 1838, and that a note was given for the said debt, falling due Sept. 9, 1838.

He further charges that after the execution of the mortgage to complainant, to-wit, on the 13th day of January, 1839, the said Edwin Mills also executed a mortgage to his brother Harlow Mills, for a pretended debt of $2000, on the said quarter section of land and other lands, a copy of which is set out marked exhibit "A."

Charges that the said Edwin Mills was not at the time of the execution of the mortgage indebted to Harlow Mills in $2000 or any other sum, but that the same was made to hinder and delay complainant in the collection of his debt.

That the said mortgage to said Harlow Mills was recorded on the 2d day of March, 1839, and prior to the recording of complainant's mortgage.

Charges that said Harlow Mills had notice of the complainant's mortgage at the time of the making of the mortgage to him, and afterwards promised complainant to pay the same, and that said Harlow Mills frequently admitted to others that he knew of complainant's mortgage, and that the same was unpaid.

The complainant further charges that on the 17th day of February, 1842, the said Edwin Mills and Eliza Ann his wife, for the consideration of $2100 as expressed in their deed, executed a deed of that date to Harlow Mills, and purport-

ing to make the deed subject to the mortgage of Harlow Mills, and stating therein that the mortgage formed a part of the consideration of the deed.

He charges that at the time of the execution of the deed the said Harlow Mills had notice of complainant's mortgage, and agreed to pay the same. A copy of the deed is attached marked "B."

That Harlow Mills died intestate on or about the 20th day of October, 1845, and that his widow Julia Mills, since intermarried with one John Wilson, was appointed administratrix of his estate, and that the said John Wilson also died on or about the year 1845, and that Harlow Mills left as children and heirs at law Julia a minor, now intermarried with James P. Lucas, and William Henry and John Gale, also minors, and that said children and widow are yet the legal owners of the said quarter section of land.

Claims that the said quarter section should be subject to the payment of his mortgage, and have preference of the one executed to Harlow Mills, and that no good or valuable consideration ever passed for the execution of the deed except the pretended debt of $2,000 specified in the mortgage.

The bill prays that said widow and heirs of Harlow Mills be made parties, and that guardians be appointed and that the land be sold to pay off the mortgage and interest of complainant.

Publication was made as to Edwin Mills, and service on others.

At the April term, 1856, Julia Wilson, John P. Lucas, Julia Lucas, William Henry Mills and John Gale Mills answered the complainant's bill, denying that Edwin Mills on the 12th day of May or at any other time was indebted to the complainant in the sum of $700 or any other sum for the purchase money of said quarter. Deny that said Edwin Mills ever executed the mortgage to complainant, as charged in the bill, and that if any such mortgage was made to complainant it was without consideration. They admit that a certain paper claimed to be a mortgage was recorded on the 8th day of November, 1855. Deny that the sum of $700 or any other sum was due complainant at the filing of the bill.

They admit that on the 13th day of January, 1839, Edwin Mills and wife executed to Harlow Mills a mortgage on the land in controversy and other lands mentioned in the bill. They deny that the mortgage to Harlow Mills was for a pretended debt, and aver that the sum of $2,000 had been due and owing from the said Edwin Mills to said Harlow Mills from the 28th day of June, 1837.

They deny that the mortgage from Edwin to Harlow Mills was made to delay, hinder or defraud the complainant or any other person, and admit that the said mortgage to Harlow was recorded on the 2d day of March, 1839.

They deny that said Harlow Mills had knowledge in any manner of any mortgage to complainant, and deny that said Harlow ever promised to pay the same.

They deny that Harlow Mills ever acknowledged the existence of a mortgage to complainant as charged. They admit the execution of the deed on the 17th of February, 1842, from Edwin Mills and wife to Harlow Mills of the premises and others for the sum of $2,100, and deny any knowledge of complainant's mortgage by said Harlow at the time of the execution of the deed.

They admit that Harlow Mills died on or about the 2d day of October, 1845; that his widow intermarried with John Wilson, and that he died in 1855 and not in 1845, and that he left the children and heirs at law as mentioned in the bill, and that Julia is married to James P. Lucas.

They deny that there was no good and valuable consideration for the execution of the mortgage and deed, but that the same was bona fide and for valuable consideration.

They deny that said Harlow Mills ever owed complainant any sum of money whatever or made any mortgage whatever to said complainant, and if any ever was made deny that it was ever known to said Harlow Mills or his heirs.

That said complainant, living in a neighboring county with the one of defendants' residence, suffered the said Harlow Mills and his heirs to pay taxes on the same without making known the fact of his having any claim to the land.

The answer charges that the land was vacant and unoccupied in 1839 and has been ever since and still so continues. Charges that Harlow Mills had color of title made in good faith, and also the legal title to the land from and after the 17th of February, 1842, until his decease, and his heirs after him, and that the said Harlow and his heirs have paid all taxes legally assessed on said land since 1839.

They insist that the statute of limitations is a bar to the action, and also that the lapse of time bars any recovery on the mortgage.

That at the time of the execution of the mortgage and deed the lands conveyed in said mortgage and deed did not exceed $1000. The oath of the respondents was waived.

The complainant put in general replication. A guardian ad litem was appointed by the Court for the minors, and who filed his answer denying any knowledge of the facts charged in the bill, and calling for proof, and that the rights of the minors be protected by the Court.

At the April term, on the 18th day of April, 1856, the appearance of Edwin

Mills was withdrawn by leave of the Court, and on the 21st day of Oct., 1856, the complainant took his deposition, who testified as follows:

I am acquainted with the plaintiff and Julia Wilson. Am named as one of the defendants. The mortgage to complainant was executed by witness, and that witness resides in Astoria, Ill. Nathaniel Montross resides in New Orleans, La. Does not know of the mortgage being paid. Witness mortgaged the land January 13, 1839, to Harlow Mills, and sold to him on the 17th of Feb., 1842. Last year complainant called on witness about the mortgage and witness' impression then was that his brother knew of the land being previously mortgaged to complainant, and that his brother was to see to it and pay for it. I also addressed a note to Mrs. Wilson, stating my impressions. Am unable to testify to any conversation or declaration made by or between my brother and myself particularly. No communication was ever made to me on the subject, to my recollection, from the time I executed the deed to my brother until about a year ago. I therefore speak wholly from impression.

Cross-examination: I have not stated that it has not been paid: I stated that I had not paid it. I am unable to testify that I ever paid anything on the mortgage. The consideration of the mortgage from myself to my brother was a supposed balance due on our copartnership matters. As to the time, I cannot answer; neither do I recollect the amount. Am unable to say what the consideration of the deed was, except it was to take the place of the mortgage to my brother. I do not know that my brother did not agree to pay or assume said mortgage from myself to complainant. I never alleged that said mortgage to complainant was void or illegal at any time whatever to my knowledge. The consideration for the mortgage to complainant was for the payment of the land mentioned in the mortgage which I bought of complainant. I do not know when my brother knew of the existence of the mortgage to complainant.

The letter and mortgage referred to by witness are attached to his deposition.

William B. Green testified: Have known complainant about 20 years, defendants about 13 years—except James Lucas, have known him about 2 years. Knew Harlow Mills. Think he is dead, and that he died about the year 1844 or 1845. Am acquainted with the land in the mortgage mentioned. I do not recollect hearing Harlow Mills say he had mortgage on it. Did hear him say he had a deed from Edwin Mills for whole of it. At the time Mills was going to get his deed recorded he stated he would see if Mr. Harris had got his mortgage recorded on said land; that if he had not he thought he would have his deed recorded first, and that would make his title perfect, or free from the mortgage. The next day after he said that the mortgage was not on record, and that the land was now clear of the mortgage. Harlow Mills told me that Harris' mortgage was given for part of the purchase money or whole of it, and that he got his deed recorded

first; that he thought the land was not liable for the mortgage. There was something said about a mortgage from Edwin Mills to Harlow Mills. I don't recollect the particulars. The conversation took place at my house in Marshall county. I know nothing further about his knowledge of Harris' mortgage prior to taking his own further than stated above. Harlow Mills, in the conversation alluded to, said Edwin Mills, at the time of his failure, was indebted to him in about $1,900, and that he had given him a mortgage deed of trust or assignment to secure the same, and that the making of the deed alluded to in said answer was a final consummation of the mortgage trust deed or assignment before spoken of. The conversation took place some time during the year 1842, and that the mortgage trust deed or assignment was on the same land before alluded to.

Re-examination. (Copy of deposition.)

"Witness further states that he understood from the conversation with Harlow Mills before alluded to that he knew of the execution of John H. Harris' mortgage from the time that it was first given."

The defendants offered in evidence tax receipts for the years 1843, 1844, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857.

The case was submitted to Hon. Martin Ballou at the October term, 1857, who rendered a decree in favor of complainant for the sum of $1,501 50, and in default of the payment thereof within 20 days, that the mortgaged premises be sold to satisfy the same after giving 4 weeks notice by publication; and in case the said mortgaged premises should not sell for enough to satisfy the said amount of said decree that execution issue against Edwin Mills for the remainder, as on judgments at law.

At the October term, 1857, the defendants entered a motion to vacate the decree for the following reasons, and which motion was overruled at the January term, 1858:

1. The debt was barred by the statute of limitations.

2. Because the note was not produced in evidence, and under such circumstances the Court ought to presume the debt paid.

3. Because of the lapse of time the debt ought to be presumed paid.

4. Because the Court erred in admitting the deposition of Mills in evidence when he was a party to the suit and interested in having a decree rendered against the premises.

5. Because the evidence was insufficient to authorize a recovery.

6. Because the note described in the mortgage was not produced in the case.

7. Because the decree was for too large a sum.

8. Because the bill was insufficient, not setting out the note nor showing when it became due, nor what rate of interest it bore, if any, nor when interest commenced running.

9. No notice was proven to Harlow Mills before nor at the time he took his mortgage on the premises.

10. The payment of taxes was a bar to complainant's recovery, the land being vacant and unoccupied.

11. The bill does not allege, and it was not proven, that the money could not be collected of Edwin Mills.

WEAD & WILLIAMSON.

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Julia Lucas et al

vs

John Harris

Filed Apr 21, 1858

L. Leonard

Clerk