No. 14806

Supreme Court of Illinois

Chickering et al

vs.

Faile et al

71641

STATE OF ILLINOIS.

SUPREME COURT,

THIRD GRAND DIVISION.

No. 207

J. W. Middleton & Co., Stationers, 196 Lake St.

In Supreme Court of Illinois
3 Grand Division
April Term 1864

Williams et al
- Alt

Answers

John W. Chickering
& James Luddington
vs
Thomas A. Faile surviving
Executor, Ann D. Lee widow
of David Lee Deceased
Abby M. Murry & Augustus C. Murry her
husband, Anna P. Lee, Josephine L. Dwachter
& Augustus Dwachter her husband, Mary E.
Lee & David B. Lee heirs at Law
of David Lee Deceased

Circuit
Court
Cook
County
Illinois
In
Chancery

The joint & several answer of
Thomas A. Faile Survivor of Caleb C. Halstead
deceased & surviving Executor of David
Lee deceased, Ann D. Lee widow of the
same. Abby M. Murry & Augustus C. Murry
her husband Anna P. Lee. Josephine L.
Dwachter and Augustus Dwachter her
husband Mary E. Lee & David B. Lee
heirs at Law of said David Lee de-
fendants to the bill of complaint of
John W. Chickering & James Luddington
Complainants —

These defendants now and
at all times hereafter saving & reserving
to themselves all manner of benefit
and advantage of exception to the many
errors and insufficiencies in the com-
plainants said bill of complaint

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contained for answer thereunto or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say -

They admit the seizin of Josiah E. McClure on or about the 15 day of July A.D. 1836 of the undivided interest or shares in their parcels of Land & also in Lot Eight in Egans Subdivision as specified in the introductory State-ment of said bill -

They also admit the execu-tion of a mortgage by said Josiah E. McClure to Elijah K. Hubbard for the consideration therein expressed of Nine Thousand Dollars on or about July 15th 1836 as mentioned in the next succeeding clause of said bill -

They also admit the release by E.K. Hubbard of a part of the prem-ises from the lien of said mortgage by a release dated Oct. 28th 1836 and that on the same day the said Josiah E. McClure Executed another mortgage of the date last named to said Elijah K. Hubbard as mentioned in the next article of said bill but whether the said last mortgage

was in consideration of the aforesaid release that defendants have no knowledge and are wholly uninformed and therefore leave the Complainants to their proof thereof—

They also admit the death of said Elijah K. Hubbard as stated in said bill & that said Wm. H. Brown and H. Griswold Hubbard proved said will and assumed & took upon themselves the executorship & trusteeship and letters testamentary were issued to them as stated in said bill.

They also admit the filing of a bill in the Circuit Court of Cook County Illinois on or about the 26th of April 1847 by David Lee charging a trust as stated in said Complainants bill & a decree obtained therein under & in pursuance of which said Executors of E. K. Hubbard deceased conveyed to said D. Lee on or about 31st July 1847 certain premises as stated in said Complainants bill.

They also admit a second bill filed by said D. Lee about the 19th day of March 1849 setting up a like trust & a decree in that suit in virtue of which the Executors of said E. K. Hubbard on or about

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the 30th day of June 1849 made an other con-
veyance of real estate to said Lee as state
in said Complainants said bill.

These defendants admit the issuing of a
writ of scire facias on or about the 6th of
July A.D. 1842 in favor of said Wm. H. Brown
& N.G. Hubbard as Executors as aforesaid
for the purpose of foreclosing the equity of
redemption of the said Josiah E. McClure
upon the mortgage executed by him to
E. K. Hubbard, bring the mortgage last
mentioned in the Complainants bill in
this cause upon which a judgment
was recovered in said Circuit Court
and execution issued thereon & a sale
to the said David Lee of the property in
that behalf mentioned in said Complain-
ants bill in this cause But these defend-
ants deny that any facts or circum-
stances Existed in reference to said suit
on scire facias in the proceedings to
judgment or in the sale upon Exe-
cution thereon issued either by way of
things done or omitted to be done by
reason whereof the said judgment o
Sale thereon became or was void in law
as subsequently charged in Com-

plainants bill in this behalf and on the contrary thereof these defendants insist & claim that the said judgment so recovered was in all respects good and valid in law and that the sale upon Execution issued thereupon was and is effectual to all intents & purposes upon non redemption by the defendant or other creditors having liens, and upon the sheriffs deed in that behalf executed to the said David Lee the purchaser of the premises on said sale to transmit the title to the real estate so mortgaged & sold & conveyed clear from any Equity of redemption effectually & forever

These defendants also admit the death of said David Lee, as stated in said bill, testate & that Thomas H Faile & Caleb O. Halstead (since deceased) were duly appointed Executors and that said deceased left surviving him the widow and heirs at law mentioned in the complainants bill in this cause and defendants in this suit —

These defendants further state that they have no knowledge with respect to payments made by Josiah E. McClure to Elijah K. Hubbard in his life time

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upon the mortgages mentioned in complainants bill nor as to the balance said to have been due thereon not exceeding $3900 on the 10th day of March 1847 and they therefore deny the statements made in that behalf made by the complainants in their said bill of complaint.

These defendants further answering say that they have no knowledge of any conveyance of the premises or any part thereof by Josiah E. McClure to Henry Fake or by the said Henry Fake to John S. Fake or by the said John S. Fake to the complainants in this suit or by the said Josiah E. McClure to the said Wm Raymond or of his the said Wm Raymonds Mortgage back to said McClure for $1700 or any other sum or that said indebtedness of Wm Raymond or the mortgage back to McClure had become the property of complainants at any time whatever & they therefore deny all and singular said conveyances & mortgage and the ownership of complainants as stated in said bill

These defendants further answering say that they have no knowledge whatever touching the facts and statements in said complainants bill set forth regarding the Bankruptcy of the said Josiah E. Mc Clure his discharge as a Bankrupt under the laws of the United States, his assignment to Daniel H. Richards on such discharge or the title derived by the Complainants from such assignee & they therefore deny the same & every part & parcel thereof and they also deny the necessity thence arising in case of any such bankruptcy assignment & discharge as alleged by the said complainants, that said Daniel H. Richards as such assignee should have been made a party defendant on the foreclosure by bill or scire facias of either of the mortgages executed by the said Josiah E. Mc Clure to the said Elijah H. Hubbard in his lifetime in order effectually to foreclose the Equity of redemption of the said Josiah E. Mc Clure or of any holding under him of the real estate mentioned in said Mortgages in manner & form as stated claimed & asserted by the complainants in their said bill of complaint.

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These defendants also admit the partition stated in complainants bill in the above cause between William S. Johnston & the executors & heirs of said David Lee deceased of that part of the premises mentioned in said bill and also the partition mentioned in ~~said bill~~ the next succeeding clause of said bill, between the said David Lee & Wm S. Johnston on bill filed by them against other part owners as stated in said bill in that behalf.

These defendants admit that the heirs & executors of said David Lee or some of them have been in possession of the lands & premises for the first years mentioned in the complainants bill in this behalf but they deny that prior to that time the premises aforesaid were vacant & unoccupied But on the contrary thereof they state & insist that for more than seven years ~~next before~~ next before the assertion of claim to the premises by complainants & for more than twenty years next before the commencement of this suit the said executors and the heirs of David Lee, deceased & the said David Lee personally prior to his decease under whom the said heirs claim the same by descent had been in actual possession of the premises claimed to be

redeemed by the complainants in this suit & they the said executors & heirs or the said David Lee before then had for said whole period of seven successive years & more held the said lands & tenements in actual possession under claim & color of title made in good faith & continued in such possession & had also during all of said time of seven years & over paid all taxes legally assessed on said lands & tenements & therefore by the Statute of this State they are to be held & adjudged to be the legal owners of said Lands & tenements to the extent & according to the purport of their paper title others to that is to say in fee. They also admit that the defendants in this suit are not residents of the state of Illinois but reside in the City County & State of New York.

These defendants further answering say that they deny all and singular the statements in said complainants bill touching the offer of the complainants to redeem the premises mentioned in Complainants bill from the several mortgages under which the defendants as heirs of David Lee deceased claimed to own & hold said premises & they also deny that the said Complainants had or could have at the time or times of any such pretended offer to redeem

any right of redemption whatever of and in said premises or any part thereof —

These defendants further answering say that the title of the heirs at Law of the said David Lee to all & singular the premises contained & described in the bill of complaint in this Cause & wherein & whereof the complainants assert & claim by said bill a right of redemption is perfect & indefeasible and not subject to any such right of redemption, by & through the two mortgages of Josiah E. McClure to E.K. Hubbard one dated 15th July 1836, the other dated 28th Oct. 1836 & due legal proceedings had & taken by the said Executors of said E.K. Hubbard deceased after his decease to foreclose the equity of redemption on said mortgages respectively that is to say by a strict foreclosure in the Cook County Court of the first mortgage above mentioned a decree for which purpose was entered in said Court in favor of said Executors against the said Josiah E. McClure and other defendants in said foreclosure suit on the day of A.D. 18 by virtue of which decree the title of said Wm. H. Brown & H. Grinnell Hubbard as executors of in & to the undivided ½ of

S. 16 1/4 Sec 20 Town 39 North Range 14 East & also of in & to an undivided 1/3 of E 1/2 of N.E. 1/4 of Sec 20 Town 39 N. Range 14 East became vested absolutely in said Brown & Hubbard as Executors free & clear of any equity of redemption under & through said Mortgage either in said Josiah E. McClure or in any person or persons claiming or to claim by under or through him and the defendants further state that said Brown & Hubbard as Executors and Trustees of said E.K. Hubbard deceased by two Deeds by them executed subsequently one on the 31st day of July 1847 the other on the 30th of June 1849 & both in pursuance of decrees of the Circuit Court of Cook County in Chancery sitting for that purpose entered & made at the instance of the said David Lee on his bill filed therefor & said decrees requiring such conveyances did convey the two several last mentioned parcels of land to the said David Lee in his life time in fee & these defendants insist that the title so acquired by the said David Lee in his lifetime was perfect & indefeasible & free & clear of & from the Equity of redemption which had been legally & fully foreclosed as aforesaid. And these defendants expressly deny that for any of the causes of complaint or exception there to taken by the complainants in said bill the said decrees is or can

be held by this court to be erroneous void or voidable but on the contrary these defendants insist that the said decree cannot be held or taken as erroneous void or voidable in this suit or by any collateral suit or proceeding wherein the same original parties are not before this court but on the contrary the said decree is to be held to all intents valid & effectual in law until properly reversed by a suit or proceeding instituted by & in favor of the parties thereto whose rights might be injuriously affected by the same —

And these defendants further insist that the title of the said David Lee deceased in his life time became perfect & indefeasible & clear of the Equity of redemption as to the rest & residue of the real estate whereof the complainants in this suit assert & claim a right of redemption by the legal proceedings or suit by scire facias in the Circuit Court of Cook County Illinois commenced & prosecuted by the said Wm. H. Brown & N Griswold Hubbard as Executors of E.K. Hubbard deceased upon the second Mortgage executed by said Josiah E. McClure & on the purpose of foreclosing

the equity of redemption thereof, in which
suit said Josiah E. Mc Clure & others were
duly made parties & on Judgment there-
upon obtained & execution duly award
ed by the court the remaining premises
aforesaid were bid off by & conveyed to
the said David Lee by the Sheriff of Cook
County by deed dated and these de-
fendants express deny that for any
of the causes of complaint or exception
to said suit by Scire facias or the pro-
ceedings therein, taken by the complainants
in said bill or for any act or omission
charged by said complainants in their said
bill none of which are hereby admitted
but denied the said suit & judgment
execution sale & Deed of the sheriff became
or was or were ineffectual for the purpose
intended to be accomplished thereby
but on the contrary thereof the said pro-
ceedings Judgment sale & sheriffs deed
thereon were & are effectual & valid
in law to foreclose the equity of redemp-
tion under said mortgage & to vest &
did vest the title to the lands affected
& conveyed thereby or purporting to be
in the said David Lee his heirs and
assigns forever free & clear of any
equity of redemption in any person

or persons whomsoever and they deny that either the decree of foreclosure or the judgment on scire facias can be impeached or inquired into or disannulled in or by any collateral suit or proceeding whatever. And they insist that there was and could be no necessity resulting from the proceedings in Bankruptcy of the said Josiah E. McClure (if any such shall be proved on the part of complainants) that his assignee should be made a party to any suit or proceeding upon said two mortgages in this State inasmuch as no record of those proceedings was had or made in this State & it is not pretended or set up in said Complainants bill that the plaintiffs or complainants in the several foreclosure suits had any actual or personal notice within this State of any such proceedings in Bankruptcy -

These defendants also further answering insist & say that all & every claim to redeem the premises as the complainants by their said bill claim to do is barred and effectually precluded by the great length of time elapsed since

the accruing & perfection of the title of these defendants & those they claim under and the consequent staleness of all counter claims including that set up by the complainants in this suit the fact being as shown by the complainants bill & this answer that one of the mortgages made by the said Josiah E. McClure was foreclosed in 1842 & the other in 1846 during all which period since elapsed the complainants & all under whom they claim have been lying by & acquiescing in the continued possession title & ownership of said David Lee & his heirs & personal representatives and after such great length of time elapsed as only of late served to intervene in consequence of great rise in the market value of the property and the uncertain chances of a speculative nature arising therefrom—

And these defendants further answering insist & say that even if the complainants should succeed in establishing the fact or facts set up in complainants bill touching the Bankruptcy assignment and discharge of the said Josiah E. McClure under the act of the Congress of the United States approved August 19th 1841 entitled

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"an act to establish a uniforms system
of Bankruptcy throughout the United States"
yet these defendants insist that the claim
to redeem set up in Complainants said
bill is totally barred & precluded by the
Statatory limitation enacted & provided in
the eighth section of the same act it-
self wherein it is provided among other
things that "no suit at law or in Equity
"shall in any case be maintainable by or
"against such assignee" (referring to the
"assignee of a bankrupt in any case) "or by
"or against any person claiming an ad-
"verse interest touching the property and
"rights of property aforesaid in any
"Court whatsoever unless the same shall
"be brought within two years after the
"declaration and decree of bankruptcy
"or after the cause of suit shall first
"have accrued" and these defendants
insist that the claim to redeem said
mortgages now being prosecuted by
the Complainants in this suit is a claim
by them asserted set up & being prosecu-
ted under said assignee or pretended
assignee in Bankruptcy by them the
complainants claiming an adverse
interest adverse to these defendants

touching the property and pretended rights of property of said bankrupt or his assignee and is also a claim set up asserted and prosecuted by them against these defendants who also claim an interest touching the same property adverse to the claim of redemption so set up by the complainants in either view whether the said complainants if at all entitled at any time as to claim or prosecute were bound to have brought their said action within two years after the declaration & decree of bankruptcy or after the cause of suit shall first have accrued; and these defendants say that the cause of action if any now set up & being prosecuted in this suit first accrued to the bankrupts assignee immediately upon his appointment in the year 1842 since which and before the commencement of this suit more than eighteen years have elapsed.

These defendants further answering insist & say that in one year from the 12th day of July 1856 that is to say on the 12th day of July A.D. 1857 the whole debt and interest secured by both of the mortgages first above mentioned

executed by Josiah E. McClure to Elijah K. Hubbard became due and payable & by non payment or default so made by said Josiah E. McClure his estate of in the said mortgaged premises in both mortgages mentioned became and was forfeited & vested absolutely in the mortgagee & his assigns from which period to the time of the commencement of this suit more than twenty two & nearly twenty three years elapsed during all which period no claim was asserted or set up to redeem said premises from either mortgage by the said mortgagor or any person claiming from by through or under him notwithstanding the said mortgagee or those holding & claiming under him & by & through said mortgages have been during all of said long period so elapsed visibly & notoriously & busily engaged in exercising acts of control & ownership in & over said mortgaged premises paying taxes upon the same as upon their own for said whole period, managing laying out fencing & improving the same selling & transferring the same as their own foreclosing mortgages thereupon & exercising various acts

of different kinds at different times as owners of property are wont to do, no one molesting disturbing or interfering with them therein in all which respects & thereby the staleness of the claim set up by complainants in their said bill to redeem said premises from their ancient mortgages becomes the more unreasonable & illegal & the complainants are thereby barred & precluded from redeeming said mortgages at this late date.

These defendants admit the execution of the deed by Josiah E McClure to Brown & Hubbard which was done by procurement of said Brown but they deny the imputation of fraud or misrepresentation on the part of said Brown as well as the want of consideration.

And these defendants further answering say & insist in bar of the right of redemption set up & claimed by the complainants that by the statutes of this State passed as early as the year 1827 & in force during all the intermediate period by repeated enactments of the Legislatures of Illinois since that time it was & is provided by an act Entitled

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"An act for the limitation of actions and
avoiding vexatious Law Suits" approved
February 10, 1827 § 6 "That no person who
"now hath or hereafter may have any
"right of entry into any lands tenements
"or hereditaments shall make entry there-
"in but within twenty years next after
"such right shall have accrued and
"such person shall be barred from any
"entry after words"

§ 7. "That every real possessory au-
"ctoral or mixed action or writ of right
"brought for the recovery of any lands
"tenements or hereditaments shall be
"brought within twenty years next after
"the right or title thereto or cause of such ac-
"tion accrued & not after"

And these defendants insist that by the established rules & practice of all Courts of Equity these & like Statutes of limitations have been by analogy adopted & acted upon for the government & guidance in cases in Equity and in analogy to the rules governing Courts of Law. Courts of Equity have uniformly held the right of redemption in mortgage cases to be effectually barred by lapse of twenty years time & neglect or omission

to make such redemption by the Mortgagors or those claiming under them and these defendants insist that the complainants in this case are thus barred & precluded from the redemption claimed and set up by this bill in this cause.

These defendants also insist that the complainants bill in this cause is Multifarious in many respects & especially by setting up the redemption of different Mortages in the same suit & placing the right of redemption on different and diverse grounds.

These defendants also insist that many of the objections & points of defence above made by them or made in this answer would be good and available to them as grounds of Demurrer to Complainants bill in this cause and they hereby claim the same advantage thereof as if they had for the same causes or any of them demurred to said bill.

These defendants also insist that they have title to the premises and the defendants are barred & precluded from asserting title or any right of redemption by the fact which these defendants affirmatively allege that they & those under them

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whom they hold & claim have paid all taxes
legally assessed upon the premises for more
than seven successive years to wit for
twenty years & over they the said defend-
ants and those under whom they claim
all of said period having & holding under
color of title made in good faith which
fact by the statutes of this State in force
during all of said period constitutes a lim-
itation to the bringing of any actions or
asserting & exercising any right of redemp-
tion in mortgage cases -
Added at this place by way of amendment
on 21st Dec. 1860 the words following -
"by virtue of the second section of the act en-
titled "an act to quiet possessions and
confirm titles to lands" approved March
2: 1839 & also by virtue of the Revised Stat-
utes of Illinois of 1845 chapter 24 (sec 9) En-
titled "Mortgages" the said lands being
vacant & unoccupied -

And these defendants deny all un-
lawful combination & confederacy in
said bill charged without that that any
other matter or thing material or ne-
cessary for these defendants to make
answer unto & not herein or hereby

well & sufficiently answered unto confessed or avoided traversed or denied is true to the knowledge or belief of these defendants.

All which matters & things these defendants are ready to aver maintain & prove as this honorable Court shall direct & humbly pray to be hence dismissed with their reasonable costs & charges in that behalf most wrongfully sustained

Thomas H. Faile
Survivor of Caleb O. Halstead
deceased & as such Surviving Executor
of David Lee deceased,
Ann D. Lee Widow of
David Lee deceased,
Abby M. Murry & Augustus C.
Murry her husband,
Anna P. Lee, Josephine L. Dwachter
and Augustus Dwachter
her husband,
Mary E. Lee & David B. Lee
heirs at law, of
David Lee deceased.

Slather & Sapp Solicitors
& of Counsel
for Defendants

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a petication to the foregoing answer
in the usual form was duly filed

Complainants
Testimony

The complainants as testimony on their behalf introduced -

A promissory note and a draft of said C. McClure assigned to complainant for principal and interest to the sum of $3500 - 00 dollars, to the introduction of which evidence the defendants solicitor objected, the court overruled the objection, and admitted the evidence, to which decision of the Court the defendants solicitors then and there excepted -

The deposition of said C. McClure & the parties and effect that the indebtedness mentioned in the promissory note described in the complainants Bill are and the same indebtedness - (Viz)

The mortgage "Exhibit A" of July 13. 1836 (same attached to the Bill) was executed by me to secure the purchase money of the premises therein mentioned & covenanted to be by said Husband & I would to sell the premi-

of the premises released by the Marquis of the said Mortgage and Hubbard Mowbray not release except in condition of Mary giving the Mortgage of date Nov. 3d 1836 marked Exhibit B. to secure (as therein recited) the Last notes mentioned in the first Mortgage $3000 each at Six and 12 Months respectively —

A deed of conveyance from Josiah C. McClure to Henry Fake dated April 11th 1837 recorded same day for the undivided one eighth part of the East half of the South East quarter of Section No 10 Township No 39 North of Range No 14 East in the County of Cook & State of Illinois —

A deed for the same premises from Henry Fake to John D. Fake dated November 17th A.D. 1837 recorded the same day —

A deed for the same premises from John D. Fake to Complainants dated August 30th A.D. 1859 recorded September 9th A.D. 1859.

A deed from Josiah C. McClure to William Raymond dated August 14

A. D. 1837 - Recorded August 2nd A. D. 1837
for the undivided fourth part of the
West West quarter of Section No 20 - in
Township No 39 North of Range No 14
east of the 3d Principal Meridian, subject
to payment by Raymond of one half
of the last payment due upon the Clines
Mortgage to C. R. Hubbard of July 13
1836"

A mortgage ~~deed~~ upon the last mentioned
premises to secure a part of the
purchase money thereof - $1750 viz
two notes payable 1/2 in 2 years & 1/2
in 3 years from date from William
Raymond to J. C. McClure dated
August 1st A. D. 1837
Recorded August 17 A. D. 1837

An exemplification from the Records of
the Supreme Court of the Territory of
Wisconsin from which it appears
that on the 16th day of May A. D. 1842
Joseph C. McClure was declared and
decreed a bankrupt pursuant to the
act of Congress entitled an act to
establish a uniform system of
Bankruptcy throughout the United
States passed August 19th A. D. 1841 and

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Samuel A. Richards was then & there appointed the Assignee to settle the estate of said bankrupt according to said statute."

Upon exemplifications from the Records of the District Court of the United States for the District of Wisconsin — bearing date & to the point as follows —
dated May 16th A.D. 1859 ordering Samuel A. Richards assignee of Joseph C. McClure a bankrupt to sell all the real estate of said bankrupt remaining unsold — said sale ordered to be at public auction in the city of Milwaukee Wisconsin
dated July 7th A.D. 1859 — showing that Samuel A. Richards reported to the Court that in pursuance of the former order he had sold the real estate of Joseph C. McClure a bankrupt — and that Peter W. Chickering & Frances Ledding ton had become the purchasers of the property mentioned in the advertisement a portion of which in the Answer is described in complainants bill, & also the above mentioned Mortgage

made by William Raymond the aggregate amount of the purchase Money thereof being 1871. As follows. for Lot 8 in Con 1 Sec 181 Panel 10 and in Sec 36 R 5 So. in N.C of Sec 20 & So. So. in S.W. of 20 R 5 Mortgage of Raymond R10 Raymond's mort. R5 and that thereupon such deposit was cancelled and the said Daniel A. Richards as such assignee be & is hereby ordered and directed to execute & deliver to John W. Chickering & James Lendingham the purchasers at such sale a deed of conveyance for the Lands & premises so sold to them — dated August 4th A.D. 1859 ordering Daniel A. Richards assignee as aforesaid to sell all personal assets in his possession belonging to the estate of Josiah C. Mc Clure a bankrupt —

Dated August 14th A.D. 1860 — Confirming the sale of Daniel A. Richards of his sale of personal assets of Josiah C. Mc Clure in pursuance of the last order among which is contained the evidence of indebtedness secured by the aforesaid Mortgage of William Raymond to Josiah C. Mc Clure —

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Deed of Conveyance from Samuel H. Richards assignee of Josiah C. McClure & Complainants — of the Lands & premises described in Complainants bill and the above mentioned Mortgage of William Raymond "together with all the right title & interest which the said McClure had therein and thereto at the time of his filing his petition in Bankruptcy as aforesaid as well as the after acquired title" which the said grantor had therein Consideration therein stated $95 — Deed recites the Decree of Bankruptcy & Appointment of assignee at full length — Dated July 8th A. D. 1859
Recorded July 9th A. D. 1859

Deed of assignment dated December 2d A. D. 1859 from said Richards assignee &c Complainants — for the indebtedness secured by the aforesaid Mortgage of William Raymond to McClure

The deposition of Frederick White to the purport & effect that at New York on the 18th day of August A. D. 1859 Complainants presented to

Added to Mss under dispensation

Extract from the Schedule of Judd & McClure a part of their bankrupt pro-
= ceedings which are in evidence

(Among the property Scheduled is the following)

"Undivided 1/4 of East half of the North east quarter of Sec 20 Town 39 Range 14 Containing 20 acres also an undivided 1/2 of South west 1/4 of Sec 20 T39 R14 Containing 80 acres Conveyed to petitioner by Elijah H. Hubbard and wife of Chicago by deed July 15th 1836 Consideration $9000 - incumbered by a Mortgage for the same given to secure the purchase money on which there is due $3000 and interest from July 15th 1836 after Ten acres giving and including the first tract were released by said Hubbard from the effect of said Mortgage & Conveyed by petitioner to Hunter Penn & Storey of Montreal LC

Halstead & [illegible] [illegible]
note for ten thousand dollars
as a basis for the redemption of certain
mortgages" - Halstead said he made
no objection to the check as such" -
"Strike said he did not admit the
right of Chickering & Sedgwick
to make any tender -

Subsequently upon request of Complainants
he presented the named check to
defendant Halstead - he refused
to receive it and admitted a tender
of $10.000 from Chickering and
Sedgwick -

Complainants proved the decease of
William Raymond about the year
1856 - & his leaving a widow and
one daughter his heirs at Law -

The defendants as testimony on their behalf introduced the Record of a judgment on scire facias to foreclose Mortgage in the Circuit Court of Cook County Illinois accompanied by the files in the cause produced by Mr Greenleaf Deputy Clerk who was sworn as a witness, from which it appeared that Judgment was rendered April 1st 1848 in a cause wherein Mrs N. Broome & Henry Greenleaf Hubbard as executors of Elijah K. Hubbard deceased were plaintiffs and Josiah E. McClure was defendant. This judgment was for $3000 principal $1055 interest & $16 12/100 costs. The mortgaged premises affected & described in this Sci. fa. & judgment and in all the proceedings in the suit, were those described in the Record of McClures mortgages a copy whereof is given as Exhibit D. accompanying the Complainants bill & admitted in the answer. The premises against which said proceedings were had and judgment rendered were described as Lot Number Eight (8) in Egans Subdivision of part of block forty seven (47) in the School

Section Addition to Chicago. Also one Equal undivided fourth part of the East half of the North west quarter of Section Number thirty six (36) in Township Number thirty nine (39) North of Range Number Thirteen (13) East of the third principal meridian in Cook County Illinois containing twenty acres of land. Scammon & Ludd were attorneys on record for the plaintiffs. The Sci. fa's. were in due form & the return on each was as follows -

First Tested July 6th 1842

Returnable on the 5th monday after the 4th monday of August next

Endorsed

" Sept. T. 1842

W. H. Brown & N. G. Hubbard Executors &c

vs

Josiah E. Mc Clure

Sci. fa. to foreclose

Issue Alias

Scammon Atty. S & Ludd

Second Tested 12th Oct. 1842

Returnable 7th day of November 1842

Return Endorsed

March T. 1843

Wm H Brown & N. G.

Hubbard Executors &c
vs
Josiah E. McClure

Als. Sci. fa. to foreclose
Josiah E McClure not found
Nov 7th 1842
Return $\frac{\text{Nihil}}{\text{Cook Co. Ills}}$ 12½
S. S. Lowe Sheriff

Fee 20/
S. & Judd

Third Tested 18th Janry. 1843
Returnable 1st Monday of March next
Return Endorsed

March Term 1843
Wm H. Brown
vs H.G.

Hubbard
vs
Josiah E. McClure

Als Sci. fa. to foreclose
Fee 16/

The within named Josiah
E McClure not found
March 25th 1843
Return $\frac{\text{Nihil}}{\text{Cook Co. Ills.}}$ 12½
S. S. Lowe Sheriff

S. & Judd

The judgment record recites that two separate Scire facias had been returned Nihil

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2 A Special Execution issued from the Circuit Court of Cook County aforesaid under the seal thereof upon said judgment on Scire facias directed to the Sheriff of said County Dated 3rd May 1843 for the sale of the premises above described.

3 The return of said Sheriff to said execution endorsed thereupon to the purport & effect following "that he had levied said Execution upon the premises above described on the 15th day of May 1843 & that on the 17 day of August 1843 after advertising according to Law he had sold the premises aforesaid to David Lee for the sum of One Hundred Dollars being fifty dollars for Each tract & certificate given"—

4 The certificate of sale above mentioned was also given in Evidence dated 17th August 1843 Recorded in the Recorders Office of Cook County—

5 The Deed of conveyance executed by said Sheriff Saml. D. Lowe to David Lee for the premises above described, upon said sale, dated May 1. 1845 Recorded March 7th 1846 in the Recorders office of Cook County —

6 The original mortgage of Josiah E. Dille Clure to Elijah K. Hubbard on which said judgment on Scire facias was grounded which was among the files in said cause - Date July 13. 1836 —

7 The defendants next offered in evidence a Deed of Conveyance executed by Wm. H. Brown & Henry Griswold Hubbard as Executors and Trustees of Elijah K. Hubbard deceased to David Lee bearing date 31 July 1847 Said Deed recites the filing of a bill of complaint by David Lee in the Circuit Court of Cook County Illinois against the said Executors & Trustees with others the Widow and heirs of said Elijah K. Hubbard praying the Court by its decree to order and direct a conveyance to said Lee of a certain tract of land

next hereafter mentioned & described in said bill mentioned. The deed also recites the entry by said Court of a decree of said Court subsequently entered by which it is ordered, adjudged and decreed that said Executors and Trustees do by a good and sufficient deed convey to the Complainant the undivided half of the South west quarter of Section twenty in Township Thirty nine North Range fourteen East. The decree is set out at length and the deed purports to convey the said premises accordingly to said David Lee & to his heirs & assigns forever. This deed was duly acknowledged and was recorded 4th January 1848 in the Recorders office of Cook County aforesaid.

Acknowledgement of Brown Dated Nov. 18, 1847
Do. Do of Hubbard Dec 16. 1847

8 The said defendant next gave in Evidence another deed of Conveyance by the same grantors to the same grantee in fee bearing date 30th June 1849 duly acknowledged 30th July 1849 & 21st Idem Recorded 30th August 1849. This deed also recites the filing of a bill by said Lee in the same Circuit Court praying for a decree to order

the conveyance of the premises to said Lee by said grantors & the deed purports to convey to said David Lee in pursuance of the decree in that behalf made "an equal undivided Eighth part of the East Half of the North East quarter of Section Twenty (20) in Township Thirty nine (39) North Range Fourteen East of the third principal Meridian

9 The defendant next says in Evidence a quit claim deed of conveyance Executed & duly acknowledged by Josiah E. McClure to Wm. H. Brown & Henry Griswold Hubbard as Executors of E. K. Hubbard dated 14th May 1849 Recorded 26th June 1850 conveying an undiv. ½ of the S.W. ¼ of Sec 20. T. 39 N. R 14 E and an undiv. ⅛ of E½ N E ¼ of same Section. This deed recites the decree of foreclosure in County Court in favor of Brown & Hubbard as Executors & $1.00 cash paid, as consideration & recites also that the decree of foreclosure required said McClure to give such deed.

40

10 The defendants next gave in Evidence an Exemplification from the Records of the Cook County Court in Chancery from which it appeared that said Brown & Hubbard as Executors of E. K. Hubbard deceased on the 24th of July 1846 filed a bill for the foreclosure of the first mortgage executed by Josiah E. McClure to E. K. Hubbard on the 15th day of July 1836, making said McClure & a large number of his creditors & grantees parties thereto as defendants including John F. Fake & Wm Raymond but not including David H Richards the assignee of McClure under the decree in bankruptcy obtained by McClure in 1842 in the Territory of Wisconsin upon the filing of which it appeared that a summons was issued returnable at the then next term and a publication notice published directed to non resident defendants for their appearance and answer in said Suit. In this proceeding on the tenth day of March 1847 Brown & Hubbard as Executors of Hubbard obtained a decree for strict foreclosure against the premises remaining unreleased on said first

Mortgage being the undiv. 1/2 of the S.W. 1/4 & the undiv. 1/8 of E 1/2 of N.E. 1/4 of Sec. 20. T. 39. N. R. 14 E. This decree is founded on the last of McClures 3 notes mentioned in the mortgage being the note for $5000 payable in twelve months, the amount appearing due by the masters report being $3737 50/100 — Said note appeared with the original mortgage among the files in the cause which were produced

The copy of the summons & return affidavit of non residence - publication notice proofs of the bill & the dress in the cause all appear as fully stated in an Exemplified copy or transcript of the record & proceedings in said foreclosure suit which is annexed hereto & made a part of this Record

11 The defendants next introduced the record and files of the Circuit Court of Cook County Illinois produced and sworn to by Mr Brownlee Deputy Clerk from which it appeared that on the 26th of April 1847 David Lee filed a bill in Chancery in said Circuit Court against said Brown & Hubbard as Executors of E. K. Hubbard with others the widow & heirs at Law of said

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E. K. Hubbard ~~with others the~~ ~~writers~~ as
defendants charging that said E. K. Hub-
bard in his life time purchased the prem-
ises i.e. the und. ½ S.W. ¼ of Sec 20 T. 39
N. R. 14 E. with the money of said Lee
& for his use & benefit taking a title deed
there of in his own name of E. K. Hubbard,
that after a sale thereof to Josiah E. Mc
Clure & a mortgage taken back to said
Hubbard for the purchase money said
Brown & Hubbard as executors of E. K.
Hubbard deceased had filed a bill
in Equity in the Cook County Court for
the foreclosure of said mortgage & had
thereupon obtained a Decree against
said Mc Clure the mortgagor of
said land & other defendants that said
land should belong to said Executors
by strict foreclosure divested of all
Equity & praying that the said Brown
& Hubbard as executors be decreed
to make a deed of conveyance of
said premises to said David Lee in
pursuance of the resulting trust
whereby in Equity he claimed to be the
owner thereof. Process was duly issued
in said cause & all the parties defendants
appeared & answered & afterwards a
Decree was entered in said Cause

on the day of 1847 requiring said Deed of conveyance to be executed by said Brown & Hubbard as Executors to said David Lee according to the prayer of said bill. Alfred Cowles was Solicitor for said Lee in said Suit-

12 The defendants next gave in evidence the record & files of the same Circuit Court of Cook County proved in the same manner as the case last above stated showing the filing of a bill by the same complainant David Lee against the same defendants last above named making a like complaint touching the Und 1/8 of E 1/2 N.E. 1/4 of the same Section 20 T. 39 N R 14 E. & claiming & praying for a like deed of conveyance of said last described premises to said Lee by said Executors of E. K. Hubbard on the same ground as above set forth of a like resulting trust in Lees favor.

The said Record & proceedings ~~showed~~ showed like process appearance pleadings & decree as in the case above stated whereby said Brown & Hubbard were decreed

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on the 30th day of June 1849 to deed & convey said last described premises to said David Lee.

13 The defendants next above saw in evidence an Exemplification of the records of Cork County Court of Common Pleas which were also set out in the complainants bill in this cause & admitted in the answer the proceedings & decrees in two partition suits in that Court. The first of said suits & the decree therein was between David Lee & Wm S. Johnston as complainants & Newberry & Brand & others as defendants bring a suit in partition for division & partition among the several joint owners of the E½ N. E.¼ of Section 20 above specified. Said decree was entered March 30 1852 & gave to Lee (as owner of an undivided ⅛ thereof) in severalty certain Lots & Blocks or parts of Blocks as set forth in complainants bill in this cause & admitted in the answer which corresponds to the description of property upon which the taxes have been paid as hereinafter shown

3½ Case

The second decree was entered July 14. 1854 being a partition suit between the Executors & heirs of David Lee, dependants in this suit & Wm. S. Johnston as joint owners of the S.W. ¼ of Sect. 20 aforementioned By this decree certain blocks therein named numbered & described were set in Severalty to the Estate & heirs of David Lee deceased as stated in the Complainants bill in this case & admitted in dependants answer. There also corresponding with ~~later paid thereon by said Executors & heirs after the partition as herein after stated~~ the description of the property upon which the taxes have been paid as herein after Stated

14 The dependants then read in Evidence the deposition of William H. Brown a witness in the case to the purport & effect following

That he was of the firm of Brown & Fowler of Chicago from 1841 to 1847 inclusive, perhaps earlier, dissolved the thought Same time of New York in 1849, that he was agent for David Lee, in his life time & from 1842 to the early part of 1855, was not legally appointed as agent &, that Lee was a friend of his & he acted more as a matter of grace than for Compensation during which time witness kept up a continual Correspondence with said Lee respecting his property

45

That as Executor of Elijah K Hubbard deceased (who died in May 1839 witness learned from his books that David Lee had furnished Hubbard with money to invest in lands & lots in and about the city of Chicago & that with said Money of said Lee Hubbard purchased the following lands to wit
Nwd ½ S.W. ¼ Sec 20 T 39 N.R. 14 E
Nwd ⅛ E ½ N.E. ¼ Same Sect. Town & Range
Lot 8 in Egan Sub. part Block 47 School Section Addition to Chicago
Nwd ¼ E ½ N.W. ¼ Sec 36 T 39 R 13 E
with other property in & near Chicago of all which Lee was fully advised & understood

That myself paid the taxes & assessments on said Lands & Lot mentioned & described as follows
For the year 1842 I paid the State & County taxes $3.75 upon Nwd ½ W. ½ S.W ¼ of Sec 20 T 39 N R 14 E.
In 1843. I paid taxes as follows State & Co taxes on Nwd ½ S.W. ¼ Sec 20 T 39 N. R 14 E $2.80 & upon Nwd ¼ N.W. ¼ Sec 36 T 39. N 13 E. 42 cents being the State & Co taxes for 1843.
For the year 1844 I paid State & Co. taxes on Nwd ½ S.W. ¼ Sec 20. T 39 N R 14 E. $2.80 The taxes upon the Nwd. ¼ N.W 36 T 39. N. R 13 E. having been paid by some person unknown to me
For 1845 I paid State & Co. taxes upon nwd ½ of

S.W. ¼ Sec 20 T. 39 N. R 14 E $3.52 and $1.28 State & Co. taxes upon Mud. ¼ of N.W. ¼ Sec. 36 T 39 N R 13 E

For 1846 I paid State & Co taxes upon Mud ½ of W ½ of S.W ¼ Sec 20 T 39 N R 14 E $8 52/100 and $1 36/100 being same taxes upon S ½ of E ½ N.W. ¼ Sec 36 T. 39 N R 13 E

For 1847 I paid the State County & City taxes upon the Mud. ½ S.W. ¼ Sec 20 T 39 N R 14 E $13 20/100

For 1848 I paid State Co. City taxes $25 20/100 upon Mud ½ S.W. ¼ Sec. 20. T. 39 N. R 14 E. also State & Co. taxes for same year $2. 09/100 upon mud ¼ N.W. ¼ Sec. 36 T. 39 N. R. 13 E. also city taxes $1 83/100 upon mud ⅛ of E ½ N.E. ¼ Sec 20 T 39 N. R. 14 E.

For 1849 I paid the State Co. & City taxes $41 38/100 upon mud ½ S.W. ¼ Sec 20 T. 39 N. R 14 E. and the Mud ⅛ E ½ N.E. ¼ Sec 20 T 39 N. R. 14 E. & also the State & Co taxes $0 65/100 upon mud ¼ E ½ N.W. ¼ Sec. 36 T 39 N R 13 E.

For 1850 I paid the State Co. & City taxes $34 28/100 on mud ½ S.W ¼ Sec 20. T. 39 N. R. 14 E. & same taxes $4 64/100 on mud ⅛ E ½ N.E. ¼ Sec 20 T. 39 N R 14 E. also State & Co taxes $2.91 upon Mud ¼ E ½ N.W. ¼ Sec 36. T 39 N R 13 E

For 1851 I paid State Co. & City taxes $73 41/100 on Mud. ½ S.W ¼ Sec 20 T. 39 N. R. 14 E and mud ⅛ E ½ N.E. ¼ Sec 20 T 39 N. R. 14 E = also State & Co. taxes $1 06/100 upon mud ¼ E ½ N.W ¼ Sec 36 T 39 N R 13 E.

For 1852 I paid State Co & City taxes & a drainage

tax $289 38/100 upon mud ½ S.W¼ Sec 20 T. 39 N. R. 14 E. (Drainage tax was $144.) and upon 8 Blocks Nos. 2. 19. 28 S½ 6 & N¼ 15 of Brands Sub. of E½ N.E. ¼ Sec 20 T. 39 N. R 14 E Idaho $2 88/100 being State & Co tax upon mud ¼ of E½ of N.W.¼ Sec 36 T. 39 N.R. 13 E

For 1853 I paid $229 29/100 State & Co taxes & $136 City taxes upon mud ½ S.W¼ Sec 20 T 39. N. R 14 E.

State & Co taxes $4. 49/100 upon mud ¼ E½ N.W. ¼ Sec 36 T. 39 N. R. 13 E

State & Co taxes & City taxes $41 94/100 upon Blocks Nos 2. 19. 28 S½ 6 N¼ 15 in Brands Subd. of E. ½ N.E. ¼ Sec 20 T 39 N. R 14 E and also City tax for grading 12 St. upon said Blocks $4 84/100 and also $68 61/100 being a drainage tax upon mud. ½ S.W. ¼ Sec 20, T 39 N. R. 14 E. The whole for 1853 $495 28/100

For 1854 I paid as follows $40 76/100 for regrading Knowles avenue assessed upon mud. ½ S.W ¼ Sec 20. T 39. N. R 14 E.

also City taxes for 1854 $53 78/100 upon Blocks 19. 28 S½ 6 N¼ 15 in Brands Subd. of E½ N.E. Sec 20. T. 39 N R 14 E

Idaho paid on account of City taxes for year 1854 on Dave Lees property above mentioned $305 16/100 as appears from Entry on my Day Book, One receipt for said taxes of 1854 being lost or mis laid all which Witness States not from recollection merely

4 can

last from receipts before me & produced

Witness says during the life time of David Lee he paid said taxes in Lees name & after his death in the name of the Executors of said Lee & for them That he paid Same at the implied request of said Lee & of his Executors

That he paid Said taxes & charged them in account to David Lee & Sent in his account per Settlement & it was paid. The same course was pursued with the Executors of Lee

In the early part of the time witness received rents for David Lee from the property then that mentioned more than Sufficient to pay them That witness never knew of said Lee having any other agent or depending on any body else except witness & he had therefore no doubt Said Lee understood that Witness was his agent upon whom he depended to do this business as well as his other business in Chicago. That witness & Cowles were practising Lawyers together at the times above stated in Chicago from 1841 to 1847

That witness had before him when he went to pay David Lees taxes a full description of the four pieces mentioned & paid the Same as far as the books would allow him, witness intended to pay all the taxes & did so far as they appeared upon the assessors book Except the Cale Special assessments of the City corporation for sidewalks alleys & Streets which the books

were so kept that it was next to an impossibility to find out said special assessments That as to 1842 & 1846 & as to property being by him stated as on W ½ of Nw ¼ S.W. ¼ Sec 20 &c Witness says that according to the best of his recollection the E ½ of S.W. ¼ Sec 20 T 39 N R 14 E. was not assessed for taxes of 1842 & as to 1846 he could not state That witness has no doubt he paid all the taxes from 1848 to 1854 both in clusive on the several parcels above specified except the State & Co taxes for 1854 & the City taxes on Block 2 in Brands Subd.

That Brands addition or subdivision was composed or made up from the E. ½ of N. E. ¼ of Sec 20 T 39 N. R 14 E wherein David Lee owned one undivided eighth originally But upon partition his undivided interest became merged in his owning as his share in severalty Blocks Nos 2. 19. 28 S ½ 6 & N ¼ 15.

The witness then stated that the statement which was signed by him & attached to the deposition marked "Exhibit A." is a full & pair Statement of the taxes paid by him for David Lee or his estate & of the lands upon which they were paid

That David Lee in his life time or his executors after his death either advanced to

witness the money paid for taxes aforesaid
or refunded it to witness after payment
Cross examination of complainant 5
Witness Stated that he was once of the
Executors of E.M. Hubbard deceased
That he did not pay any thing to J. E. McClure
as consideration of McClures Deed to him
& W. Griswold Hubbard as executors; has
no recollection that McClure made any
objection against that Deed; he did not
want or ask to submit it to Counsel
nor did he take it from witness for
that purpose as he recollected,
That witness was cashier or agent for
the State Bank of Illinois in years 1842. 1841
& 1843. Has no recollection of hearing of
the Bankruptcy of McClure at any time
until Some years after he took it
That he (witness) paid the taxes of 1854
testified to between Nov 24th & Dec 5. 1854
meaning the part that witness did pay
for that year
That as to executors of Lee reimbursing
him Witness says Neither of Executors
paid witness any thing, But Mr. Lee
had four brick houses here rented
the rents whereof witness received & after
paying the Amount of taxes a balance
or excess of $219.74 cents was left in witness
hand which he paid over to Respondent his Executors in
the course

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Witness Swore that he had a distinct recollection of paying the taxes but he could not state the kind of taxes or the amounts without the aid of his books & receipts (The tax receipts for the taxes paid by the witness & stated in his schedule were produced in Court, and were offered in evidence in the cause and being handed in by the witness)

That the whole transaction in relation to the purchase & Sale of the Lands by E.K. Hubbard was before his death That witness never advised Lee any thing on the Subject, That witness supposed Lee knew all about his transactions with Hubbard & that he doubtless knew of the Sale of the Lands & Lot by said Hubbard if they were Sold

Witness dont know when Lee became acquainted with the matter between himself & Hubbard as to these Lands, but he became acquainted with them — I should think as early as 1840 or 1841. Hubbard Died in May 1859

That witness always understood that E.K. Hubbard had an equitable interest in the Lands, that the legal title was in Hubbard They had been Sold & the mortgages Stood in Hubbards name. That witness supposed Hubbard held them as Trustee per Lee

That witness has no distinct recollection as to for whose benefit the foreclosure by Sci. fa. was conducted but supposes it must

5 Can

have been for the benefit of Daniel Lee
That he has no recollection who paid the
costs, tho' he presumes Lee did
That witness has no recollection as to
who paid the costs of proclamation in
1847 & 1846 but presumes Lee did
Witness finds Lee charged in his books
Dec 1842 $96 07/100 paid Scammon & Judd
for legal services — also find Lee charged
with $25 Dec 14, 1847 Cash paid
A Cowles which he supposed
to be for legal services as he knew of
nothing else it could be for
That the reason why he supposes & presumes Lee
made the several payments last above referred to
is that there were large interests in real estate
purchased by E. K. Hubbard in his life time
for devisees personal; when those interests were
fully ascertained his estate being insolvent the
parties were left to themselves to assert their
rights at their own expence & all Lee owing
the rest. That witness has no recollection
as to Lee or any agent of his ordering the suits
referred to & does not mean to say so; but he
presumes that Lee or some agent of his directed
the proceedings, that witness supposes that Lee
must have directed them as Lee's agents
That witness has no recollection as to whether
any of the costs fees or expenses of either the proceedings

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on Seine paccian or in the foreclosure suit
was paid by the estate of E.C. Hubbard
but has no doubt that Hubbards estate never
paid any costs any way
That witness has no recollection about any cor-
espondence with David Lee in his lifetime with
regard to his interest in these lands & the various
legal proceedings that had been conducted
with regard to them, has no letter book but
has no doubt that all that was done by witness
as Lees agent in regard to the lands, was done by
his direction. That witness during the
Continuance of his agency had personal interviews
with said Lee in New York but has
no distinct recollection of them talking about
his interest in these lands but presumes he did
That the several parcels of land in Sections
20 & 36 mentioned in witness' testimony
which witness had charge of them & K
was paying taxes thereon as above stated
were all vacant & unoccupied lands
In explanation of what witness before
said about Hubbards equitable interest in the purchase
of the lands in question witness says he
supposed the lands were bought on Specu-
lation & that Hubbard had a right to have
an interest in the profits but that witness
knew nothing about it, he presumed it
That witness paid the city taxes mentioned in

his testimony in the fall of the year when they were payable & the State & County taxes generally in the winter or Spring following. The date of the receipts will show or nearly so.

The schedule of taxes paid by this witness & the dates upon which paid as "Exhibit A" above referred is inserted with the Reports Schedule at the Close of this testimony. Witness never paid any taxes on Lot 8 of Egans Subdivision of Block 47 School Section addition to Chicago

15 The defendants next introduced Sam. H. Kerfoot as a witness who was duly sworn and deposed in said cause as follows

That his age was 37 years & was engaged in business as a Real estate agent residing in Cook county Illinois

That he was agent for the heirs & personal representatives of David Lee late of the city of Dan-ville deceased in charge of his real estate in & about Chicago from February 1855 up to the present time & still am such agent

That said agency was transferred to witness in Feby 1855 from Wm. H Brown, to the firm of Reed & Kerfoot of which firm witness was a member & having personally the charge of the tax paying department, & upon the dissolution of Reed & Kerfoot the same agency was transferred to the firm of S. H. Kerfoot & Co of which witness was & is a member having in charge the

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same tax paying department
That in February 1855 witness received from
Wm. H. Brown papers & lists relating to the property
of David Lee lying in & about Chicago
& at once paid the balance of the City taxes for
the year 1854 then remaining unpaid on
Sixth Lot 8 of Lots 7 & 8 Block 47 School
Sect. Addition to Chicago also on Blocks
Nos 2. S ½ 116 N. ¼ 115 whole of Bl. 19 & 28
of Brander addition to Chicago being a
Subdivision of the E ½ N. E. ¼ Sec 20
T. 39 N. R. 14 E. also on Blocks Nos
1. 3. 5. 7. 9. 11. 13 & 15 of S. W ¼ Sect. 20
T. 39 N. R. 14 E. Said balance of City taxes
amounting to $57.60/100 — also paid $222.32/100
as the State & County taxes of 1854 on all
the lands above mentioned & also on the W. ½ of N. E.
¼ of N. W. ¼ Sec 30 T. 39 N. R 13 E.
The State City & County taxes were paid on the 27th
day of February 1855 And from that time
Witness has paid all the taxes assessed upon
the property of Lees Estate in controversy in this Suit
according to the annexed Schedule marked
Exhibit A. at the times & dates Specified upon the Lands Specified
& Supposes that I have paid all the taxes of every
kind levied or assessed on said property up to the
present time from the commencement of my
agency — That by saying "I suppose"
witness does not mean to express any

6 case

doubt as to whether he paid all the taxes That he examined all the tax warrants, City Hall & County to ascertain the property in question for the purpose of discovering the taxes to be paid & having paid all the taxes touching said property as given in such warrants witnesses full conviction is that he has paid all the taxes of any kind whatever levied or assessed on the said premises & property during the time of his agency

That the extent of his duty as such agent was unlimited as far as his instructions went Witness had entire charge of all the real estate in Cook County belonging to the estate of David Lee for the purpose of paying taxes, collecting rents & taking the general supervision of the same That he also paid all the special assessments levied or assessed on the property in question in the City of Chicago from the commencement of his agency to the present time

That he made these payments for the Executors of David Lee in their name ~~for them~~ on behalf —

In explanation of the redemptions of $58 63/100 and $87 83/100 appearing in Exhibit A aforementioned Witness says, That the first redemption of $58 63/100 was from a sale made Dec. 7. 1854 of the N. 1/4 of Block 15 of Brands Addition for a special assessment for planking Maxwell Street in the City of Chicago. The second redemption of $87 83/100 was from a sale made Dec 7. 1854

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of the S½ of Block 6 in Brands addition for a special assessment for planting Maxwell Street in the city of Chicago
That the third redemption mentioned in the said schedule was $187 90/100 from a sale made Dec 1. 1854 of Block 143 in the S.W. ¼ of Sec. 20 T. 39 N. R 14 E. for a special assessment for planting Blue Island avenue in the city of Chicago.
That witness has resided in Chicago Precinct 9 years upwards & has been acquainted with these premises about eighteen years, That his full impression is that the said premises were vacant & unoccupied when I first knew them That they continued in that condition until within two years before the present time, at which time that part of the property in Brands addition and also that part lying in the S.W. ¼ of Sec 20 in question was enclosed by with cedar posts & a 5 board fence, this was done by me as the agent of the executors of the estate of Dan Lee, but nothing was done to the property in Sec. 36. That remains vacant & unoccupied still —

Cross examined

That none of the lands in question were sold for taxes, during the period of witnesses agency Except the tract in Sec. 36 opposite

question

said, Sold 11 June 1855 for tax of 1854. I redeemed that by payment of $18.50/100. The sale was for a State & County tax. This with the redemptions explained in direct examination is all the redemption made by me or by Reer & Hoppast as far as I recollect

Bunz asked if he has a distinct recollection and do you know that you personally examined every warrant for taxes & assessments upon each parcel of the lands in question during your agency Witness answers That is my impression Same question repeated — Same answer That witness during the period of his agency & during the 12 years testified to by him has never resided away from Chicago at all nor ever been absent over four months at any one time

That witness saw all the tracts & the Lot in question in the winter of 1852. 3 & saw the lands specifically in the Spring of 1855

That the Lot 8 in Eggans Subd. of part of Block 47 School Section Addition to Chicago is situate on north side of Adams Street between Clinton & Jefferson streets in Chicago (Witness refers to a map of Chicago before this answer) That he knew (without looking) to map on which side of Adams Street it lay but was uncertain until he looked on to which street exactly it was between

50

That said Last named lot is occupied by a house. Wit. dont know when the house was put there, thinks it was there in 1855 Saw it there in 1856 he thinks

Direct examination resumed

In explanation as to redemptions

That the Sales & redemptions Spoken of by witness in the direct examination were for Special assessments and not for taxes — the one spoken of on cross examination regarding part of Sec 36 was for State & County taxes as above explained & is the only one of that description shown on my schedule

The schedule marked A. annexed to deposition is a full statement of all the taxes & assessments paid by me on the property I have within the last week examined the Collectors tax books & warrants for City taxes for the City of Chicago for the year 1854 & find that the amount $57.60 as reported by me on the said schedule as the balance of City taxes for the year 1854 when added to the Amount of city taxes of 1854 as reported by Wm H. Brown as paid by him on that year makes the aggregate of all city taxes assessed on the warrants for that year against the property in question —

In explanation of witness expression "it is my full impression that the land speculators

I can

vacant & unoccupied within says
I mean by "My full own knowledge" that from
my knowledge of the premises in question
I am fully convinced that they have for the last
Eight years been vacant & unoccupied. I can
testify positively that they have been vacant &
unoccupied during the whole time of my agency
except as stated within the two years last past &
when I caused the fence to be built
That the dates given in written Schedule of tax
payments show the times at which the taxes
were paid by me. If the dates of the receipts
differ from the dates in the Schedules it is
because the receipts were prepared a few days
before the payment was made
The written orders produced and depositions appended
in evidence the Semral tax receipts for the taxes mentioned in
in his testimony & also in his Schedule of payments
thereof

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16 The defendants also read in evidence the deposition of George W. Clark who was duly sworn & testified that he was a Civil Engineer, aged forty Nine years residing in Chicago Cook County Illinois, Since 1838 Had resided in Chicago nearly all of that period, Surveyed along the line of the Ills. & Mich.n Canal That he knew the parcels of Land mentioned in the bill of complaint in this cause Situated in
The E ½ of N. E. ¼ Sec 20 Town 39 N. Range 14 East and
In S. W ¼ of Same Section and
In E ½ of the N. W. ¼ of Sec 36 T39 N R 13 E.

Was known these lands near 20 years Witness bought two quarter Sections from the Canal about Twenty years ago in the Same neighborhood & during the time I have known these lands in Controversy in this cause they have been vacant lands & unoccupied lands

I Speak of the whole quarters of Sections of the which the lands Specified are parts

Cross examined

The lands bot by me of canal are
The N.E. ¼ Sec 25 T. 39 N R 13. &
S.W. ¼ Sec 13 T. 39 N R 13 E
By vacant I mean occupied as opening & there

Lands I mean without buildings residence or cultivation

Witness said he was absent from Chicago at one time nearly two years about 1849 & 1850. At the time had been absent short period

Direct examination resumed

Being asked whether or not the lands opened & as vacant & unoccupied had been enclosed or fenced? witness answers I believe they have not been fenced or enclosed

The whole of the foregoing testimony as to the aforesaid lands and each parcel thereof being vacant & unoccupied was objected to by Complainants Solicitor - as the Same was opened & the objections overruled by the Court & the Same was admitted & Exception taken to Such order

(52)

The defendants on the 21st of December 1860 moved the Court on affidavits filed for leave to amend their answer by adding near the close before the denial of confederacy the references to the Sections of the Statute & that the lands and premises were vacant & unoccupied

The court allowed the amendment and the Complainants took no exception thereto — The court then fixed a time for hearing of argument both parties being ready

Exhibit A

Statement of State County & City taxes paid by W. N. Brown upon David Leon property mentioned in my answer to the Bill of Complaint

Years	Tract	St. & Co.		City		Miscellaneous	
		Dollars	cts	Dollars	cts	Dollars	cts
1842	Und. ½ W. ½ S. W. ¼ Sec. 20 T. 3 S. R. 14 E	$ 3	75			$ 3	75
1843	Und. ½ S. W. ¼ Sec 20. T 3 S. R. 14 E	$ 2.	80				
	Und. ¼ N. W. ¼ Sec 36. T. 3 S. R 13 E.	$	42			$ 3	22
1844	Und. ½ S. W. ¼ Sec 20. T. 3 S. R. 14 E	$ 2	80			$ 2	80
1845	Und ½ S. W. ¼ Sec 20. T. 3 S. R. 14 E.	$ 3	52				
	Und. ¼ N. W. ¼ Sec 36 T. 3 S. R. 13 E	$ 1	28			$ 4	80
1846	Und ½ of W. ½ S W ¼ Sec 20 T. 3 S. R 14 E.	$ 8	50				
	S. ½ E. ½ N. W. ¼ Sec 36 T 3 S. R 13 E.	$ 1	36			$ 9	86
1847	Und. ½ S. W. ¼ Sec 20. T. 3 S. R 14 E	$ 12	00	$ 1	20	$ 13	20
1848	Und ½ S. W. ¼ Sec 20. T. 3 S. R 14 E	$ 15	40	$ 9	80		
	Und. ¼ N. W. ¼ Sec 36 T 3 S R 13 E	$ 2	09			$ 29	12
	Und. ⅛ E ½ N. E. ¼ Sec 20 T. 3 S. R. 14 E.			$ 1	83		
1849	Und ½ S. W. ¼ Sec 20. T. 3 S. R 14 E	$ 21	96	$ 12	60		
	Und ⅛ E ½ N. E. ¼ Sec 20 T 3 S. R. 14 E	$ 3	92	$ 2	25	$ 41	38
	Und. ¼ E. ½ N. W. ¼ Sec 36. T 3 S. R 13 E	$	65				
1850	Und ½ S. W. ¼ Sec 20. T. 3 S. R. 14 E	$ 24	48	$ 9	80		
	Und. ¼ E ½ N. W. ¼ Sec 36. T. 3 S. R 13 E	$ 2	91				
	Und ⅛ E. ½ N. E. ¼ Sec Sec 20. T. 3 S. R 14 E	$ 4	08	$	56	$ 41	83
1851	Und. ½ S. W ¼ Sec 20 T 3 S. R. 14 E	$ 42	14	$ 20	80		
	Und ⅛ E. ½ N. E. ¼ Sec 20. T 3 S R 14 E	$ 5	27	$ 5	20		
	Und ¼ E ½ N W ¼ Sec 36 T 3 S. R 13 E	$ 1	06			$ 74	47
1852	Und. ½ S W. ¼ Sec 20 T 3 S. R. 14 E	$ 66	55	$ 51	20		
	Und ¼ E ½ N. W. ¼ Sec 36. T 3 S R 13 E	$ 2	88				
	Blocks Nos 2: 19: 28 S ½ 6 Vol ¼ 15						
	Rands Sub of E ½ N. E. ¼ Sec 20 T 3 S. R 14 E	$ 17	83	9	80		
53	Und ½ S. W. ¼ Sec 20 T. 3 S R 14 E Drainage tax	$ 144	00			$ 292	26

1853	Und ½ S.W. ¼ Sec 20 T. 39 N R 14 E.	$ 239	20	$ 136	00
	Und ¼ E½ of N.W. ¼ Sec 36 T 39 N R 13 E	$ 4	49		
	Brands addition E ½ N.E. ¼ Sec 20 T 39 N. R 14 E Block Nos 2. 19. 28 S. ½ 6. & N ¼ 15	$ 28	84	$ 13	10
	Und ½ SW ¼ Sec 20 T 39 N R 14 E Drainage tax	$ 68	61		
	Block in Brands sub. of addition of E ½ N.E. ¼ Sec 20. T 39 N. R. 14 E for grading 12th Street Chicago			$ 4	84
				$ 495	08
1854	Und ½ S.W. ¼ Sec 20 T. 39 N R 14 E Regrading Hoover Avenue			$ 40	76
	Brands Addition E. ½ N.E. ¼ Sec 20 T. 39. N. R. 14 E Except Pl 2			$ 53	78
				$ 94	54
	Bal of city taxes paid by me per 1854			$ 305	10
				$ 305	10

W. H. Brown

Exhibit A.

Taxes & Special Assessments paid by S. H. Kerfoot as a member of the firm of Reed Kerfoot & S. H. Kerfoot & Co. per acct of Estate of D. Lee

Special Assessments			City taxes		State and County taxes	
		1854				
		Sub Lot 8 of Lots 7 & 8 Block 47 of School Section addition to Chicago				
		State & County taxes of 1854 - paid Feb	27. 1855		$ 2	58
		Blocks 2 South half of Block 6. North quarter of Block 15 and the whole of Blocks 19 & 28 of Brands addition to Chicago	State & City taxes of 1854	do.	$ 13	02
		Blocks 1. 3. 5. 7. 9. 11. 13 & 15 of the South West quarter of Section 20 Town 39. North of Range 14 East	State & County taxes of 1854	do.	$ 206	72
		Balance of city taxes of 1854 unpaid on the above described property	Feb. 27. 1855	$ 57	60	
		Blocks 5. 7. 9. 11. 13 & 15 of the South West quarter of Section twenty (20) aforesaid	Special assessment			
$ 655	00	for the planking of Blue Island ave. paid apl 14. 1855				
		Blocks 2 the North quarter of Block 15 and the South half of Block 6 of Brands addition to Chicago and Blocks 1 & 3 of the South West quarter of Section 20 aforesaid	Special Assessment			
$ 189	05	planking Blue Island ave. pd Nov 5. 1855				
		The north quarter of Block 15 of Brands addition to Chicago. Redemption Made January 16. 1856 from sale made December 7th 1854 for	Special			
$ 58	63	Assessment Planking Maxwell Street				
54		The South half of Block 6 Brands				

Special Assessments

			City taxes	State & County taxes
		1854		
		addition to Chicago Redemption made		
		same day from same sale as next preceding		
$ 87	83	being Special Assessment for planking Maxwells		
		Blocks 143 of the South West quarter of Section		
		20 aforesaid Redemption made May 24. 1855 from		
		sale made Dec. 1. 1854 for a special assessment		
$ 187	96	for Planking Blue Island Avenue		
		1855		
		Block 2 of Brands addition to Chicago laying		
$ 48	50	Side walks being Special assessment paid May 24. 1855		
		Blocks 1. 3. 5. 7. 9. 11. 13 & 15 of the South West		
		quarter of Section 20 aforesaid. Special Assessment		
$ 195	00	Constructing R R Crossings & Sewers paid Octr 24. 1855		
		Same property last above named Grading Assess-		
$ 361	83	ments being Special paid Janry. 16. 1856		
		Regular city taxes for 1855 on all the property		
		herein before named paid Janry 30. 1856	$ 396	20
		Regular State & County taxes for 1855 on all the		
		property herein before named & also on the West half		
		of the North East quarter of the North West quarter		
		of Section 36. Town 39. North Range 13 East of 3rd PM		
		paid Janry 16. 1856		$ 523 35
		1856		
		Block 2 Brands addition to Chicago Special		
$ 11	90	Assessment constructing Culverts on 12th St paid Aug 13. 1856		
		Block 6 Brands addition to		
		Chicago Side walks being		
$ 58	80	Special Assessments paid Dec 31. 1856		

Regular city taxes of 1856 on all the prop-
erty herein before named lying within the limits of
the City of Chicago save the sw ¼ Lot in Block 47 of the
School section add'n to Chicago paid Jany 20 1857 $595 20

Regular State & County taxes of 1856 on all the property
as stated in the entry last above made and also on the
West half of the north East quarter of the North West quarter
of section 36 Town 39 North of Range 13 East paid March 31. 1857 $483 72

On June 26. 1856 Redeemed the West half of the North East
quarter of the North West quarter of Section 36 Town 39 North
of Range 13 East of 3rd Pr from Sale made June 11. 1855 for State
& County taxes of 1854, tax being $8.24 Surrendered
the tax certificate July 3. 1856 $16 50

This redemption supplies the payment of State
& County tax of 1854 on the piece of Land mentioned
at proper place herein before

1857

The regular city taxes in 1857 on all the property
herein before named lying within the limits of the
City of Chicago Paid Jany 4. 1858 $784 50

The regular State & County taxes of 1857 on all
the property herein before named including premium
paid for specie ($14.56) paid Jany 4. 1858 $561.08 June 18 1858. $9. 18- $570 26

Blocks 54 13 of the South West quarter of Section 20
$ 59 95 Town 39 North of Range 14 East Grading Assessment. paid Jany 5. 1858 & 25. 1859

1858 Regular City taxes of 1858 on all the
property herein before named lying within the City of Chicago saving & excepting the sub Lot in
Block 47 School section addition to Chicago & Regular State & County taxes of 1858 on the aforesaid property $868 37 Pd. Jany 5 & 25. 1859

as last described & also on the West half of the North East quarter of
the north West quarter of Section 36 Town 39 North of Range 13 East
of 3rd P.M. pd Jany 5. 1859. $537.08 & April 19. 1859 $22.05 $559 13

55

Blocks 11 & 13 in the South West quarter of Section
20 aforesaid being a grading assessment Also
South half Block 6 & North quarter Block 15
23 33 Brands addition for same assessment Issued Jany 5. 1859 $25
South half of Block 6 North quarter of Block fifteen
(15) & South half of Block 28 of Brands addition to
Chicago Special Assessment & Construction Cul
55 20 verts Issued Jany 5. 1859
Redeemed June 7, 1858 from sale made Sept 8.
1856 for a Special Assessment for widening 12th Street
the North half of Block 2 Brands addition Certif.
icate Surrendered and Cancelled June 10. 1858 the tax
63 43 being $31.71

1859

The Regular City taxes of 1859 on all the property
herein before described lying within the limits of the City of Chicago
saving & excepting the Sub Lots in Block 45 School Section
addition to Chicago Issued Jany 18. 1860 $646 90
The regular State & County taxes of 1859 on all the property
herein before mentioned saving & excepting the Sub Lots herein
before named including the Special Assessm (# 5.68)
Issued Jany 18. 1860 $385.29 March 24. 1860 $6.58 $391 87
Block 2 Brands addition to Chicago Side Walks
76 16 being Special Assessment Issued April 14. 1859

1860

The regular City taxes of 1860 On all the property
herein before mentioned lying within the City Limits
paid
December 17. 1860 $471 74

The Regular State & County taxes
for 1860 on all the property hereinbefore
described saving & excepting the West half
of the north East quarter of the North West quarter
of section 36 herein before described in Cook
County Specie premium $19.93
Paid Decbr 17. 1860 $399.74

The property herein before alluded to is described in brief as follows
Sub Lots 8 of Lots 7 & 8 Blk 47 School Sec addition to Chicago
Block 2 South half Blk 6. North quarter Block 15
whole of Block 19 & 28 of Brands addition to the City of
Chicago being a Subdivision of the E ½ of N. E. ¼ of
Sec 20. Town 39 North Range 14 East
Blocks 1. 3. 5. 7. 9. 11. 13 & 15 in the S.W. ¼ Sec
20 Town 39 North Range 14 East
West half (W ½) of North East quarter (N. E. ¼) of the
North West quarter (N. W. ¼) of Section 36. Town 39
North Range 13. East

Sam. H. Hempstead

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The following is a copy of a Stipulation Filed in Said Cause in the Circuit Court before the hearing and argument — on the 11th day of January 1861

John W. Chickering &
Dennes Luddington
vs
Thomas N. Faile
Surviving Executor &c et al

Cook County
Circuit Court
In Chancery

It is hereby Stipulated and agreed by and between the parties to the above cause that all formal objections to the taking and introduction of testimony are waived — that all objections to the time of taking testimony are waived — the objection to the testimony of William N Brown on the ground of Interest is waived — that all objections to the form of interrogatories are waived — all objection to the introduction of certified copies of records of deeds instead of the originals are waived — all objections to the authentication of Judicial and other records are waived — Objections on the Score of acknowledgment of Deeds are waived — The due execution by Josiah C. McClure is admitted of the two negotiable instruments offered in Evidence by Complainants

Jany. 11th 1861 John W. Chickering for Complt
Mathews & Dapt Solr for
Deft.

Filed Jany 11th 1861

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Copy of Record referred to above

Cook County Court
February Term A.D. 1847.

State of Illinois
County of Cook } ss.

Be it remembered that before the Honorable Hugh T. Dickey, Judge of the Cook County Court of the County of Cook and State of Illinois, at a term thereof begun and held at the Court House in the City of Chicago in the County and State aforesaid, on the first Monday being the first day of February in the year of our Lord one thousand eight hundred and forty seven, and of the Independence of the United States the seventy first.

Present the Hon. Hugh T. Dickey, Judge
Patrick Ballingall States Attorney
Isaac Cook Sheriff
Attest James Curtiss Clerk.

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Be it remembered. that heretofore. to wit. on the 24th day of July in the year of our Lord One thousand eight hundred & forty six. came William H. Brown & Henry G. Hubbard Executors of E. K. Hubbard. Dec'd & filed in the office of the Clerk of the Cook County Court. their certain Bill of Complaint in the words & figures following. to wit:

In Chancery

Before the Cook County Court
August Term 1846.

To the Honorable the Judge of the Cook County Court of the State of Illinois in Chancery sitting

Humbly complaining sheweth unto your Honor. your Orators. William H. Brown. and Henry G. Hubbard, who are Executors of all and singular the goods and chattels, rights and credits which were lately of Elijah K. Hubbard late of Chicago in the County of Cook and State of Illinois deceased. And who bring into Court here for the inspection of your Honor. and pray that

the same may be taken as part of their bill.
their letters testamentary. That one Josiah
E. McClure who your Complainants make
Defendant to their said bill of Complaint
at Chicago in the County of Cook aforesaid.
made. Executed and delivered to Elijah
K. Hubbard your Orator Testator then being
in full life his certain deed of Mortgage
bearing date the day and year last aforesaid
which is now here with exhibited, and prayed
to be taken as part of this said bill of Com-
plaint. of two certain tracts or parcels of land
lying and being in the County of Cook and
State of Illinois of which the said defendant
was seized, or pretended to be seized and de-
scribed in said Mortgage. One undivided
fourth of the East half of the North East quar-
ter of Section twenty. Township thirty nine
North Range Fourteen East 3d Principal
Meridian containing twenty acres more or less.

The other parcel of land described as the
undivided half of the South west quarter
of Section twenty, Township thirty nine
North Range Fourteen East third principal
Meridian containing eighty acres. being the same
lands conveyed by said E. K. Hubbard unto
said McClure.

59 To Have and to Hold to the said Elijah

K. Hubbard and his heirs forever the said mortgaged premises - And your Orator further state that the consideration of said mortgage was nine thousand dollars to be paid by the said Josiah E. McClure according to the time prescribed in three several promissory notes, for three thousand dollars each. made by the said McClure and bearing date the twelfth day of July in the year 1856. One of said notes payable to the order of L. J. Jamison & A. Garrett at the Chicago Branch Bank in three months from the date thereof. and by said Jamison & Garrett endorsed to said Elijah K. Hubbard, and the other two notes payable to your Orator one payable in six months, and the other in twelve months from their respective dates.

And your Orators further shew that it was conditioned in said mortgage deed that if the said Josiah E. McClure should well and truly pay the above described promissory notes according to the tenor and effect of them then the said deed should become void, otherwise to be and remain in full force and effect.

Which said promissory notes your Orator have ready to be produced in your Honorable Court when so required.

And your Orators further stating shew that two of the said promissory notes have been fully paid: but that the note payable to your Orators testator at twelve months has not been paid either the interest or principal: And your Orators testator as well as your Orators have been greatly damaged, by the inequitable withholding the payment of the said last mentioned promissory note.

And your Orators further stating shew that after the execution, delivery and recording of the said Mortgage, and on or about the 28th day of October in the year of our Lord eighteen hundred and thirty six, your Orators Testator at the instance and request of the said Josiah E. McCord did by an endorsement or writing on the Map in of the Records of Deeds for Cork County under his hand, relinquished the lien created by said deed, on the undivided half of the undivided quarter of the East half of the North East quarter of said Section Twenty described in said Indenture of Mortgage and no more or other part or portion of the Lands described in the said Indenture. The part or portion so released from the lien created by the said Mortgage

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being one undivided half part of the tract or parcels of lands first mentioned and described in said Indenture of Mortgage - and as more -

And your Orators further shew to your Honor, that by reason of the non payment of the said Debt mentioned in said deed of Mortgage except the part so as aforesaid released hath become an absolute estate in Law.

And your Orators further stating alledge that the said Josiah E. McClure since the making and delivering of said Mortgage hath been in possession of the said premises taking to himself all the rents issues and profits arising therefrom.

And your Orators charge that the said Mortgaged premises are a clear and adequate security for the said indebtedness.

And your Orators further stating shew to your Honor, that on or about the 25th day of October in the year of our Lord Eighteen Hundred Sixty Six the said Josiah E. McClure by a certain deed of Indenture of that date sold and conveyed unto one Sutton Penn of the City Montreal and Province undivided one eighth part (being two acres) of the said East half of the South East quarter of Section twenty in Township thirty nine

north Range Fourteen East of 3d pr Meridian which deed was duly recorded.

And your Orators further shew that one John F. Fake claims title or some interest in the one equal undivided eighth part (or ten acres) of the East half of the North East quarter of Section Twenty Town 39. N.R. 14 East aforesd which said title or claim is derived from the said McClure by or through a conveyance executed by D. McClure to H. Fake and by him to said John F. Fake subsequent to your Orators Testators Mortgage.

And your Orators further shew that on or about the first day of August in the year of our Lord eighteen hundred thirty four the said Josiah E. McClure duly executed indenture or deed of that date, sold and conveyed to one William Raymond one equal undivided one fourth part of the South West quarter of Section Twenty township 39 N. R 14 East 3d pr Meridian containing forty acres subject to the payment of one half of three thousand dollars secured by the Testators Mortgage aforesaid which said last mentioned Indenture was recorded by the Recorder of said Cook County, on or about the 2d day of August in the year last aforesaid

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in Book V page 34.

And your Orators further stating shew that the President Directors Company of the State Bank of Illinois, William Jones. John M. Harris & William Chauncy William Churchill. John Callamer Jun & Benjamin A. Mulford. John W. S. Moore & John S. Henry

Richard J. Hamilton late School Commissioner

Nathaniel Pitt Henry Pitt & Henry H. Barnes William Teal Gurdon S. Hubbard, George Suby. William H. Brown John S. W. Moore and John H. Henry some of your Orators Testator by judgment Creditors in the County of Cook of said Josiah E. McClure and subsequent incumbrancers of your Orators Testator by judgment liens.

And your Orators further state that the said Josiah E. McClure has often and in a friendly manner, been requested to pay the said sums of said unpaid promissory note and the interest accrued thereon to your Orators. but the said defendant has under various pretences omitted & do forsake your Orators Testator, or to shew what is equitable and just in the premises but combining and confederating with divers

persons at present unknown to your Orators but when discovered your Orators pray may be made parties Defendants to this bill with proper and apt words to charge them in the premises / to cheat and defraud the said Testators estate, and hinder and defraud the said Testators creditors, have as yet withheld payment of said Mortgage debt. - Wherefore your Orators pray your Honor to award the people writ of subpoena returnable to the next term of your Honorable Court. whereby the said Josiah C. McClure Justus Penn John F. Fake. William Raymond the President Directors & Company of the State Bank of Illinois. John W. Harris and William Chancey. William Teale. William Churchill. John Williams Junr. Benjamin A. Mulford. John W. S. Moore. and John F. Henry. Richard L. Hamilton late School Commissioner Nathaniel Wm. Henry Reed. Henry A. Barnes William Teal Gardner S. Hubbard George Seeley. William H. Brown. I. W. S. Moore, and John F. Henry. Admr of Wm Darby may be summoned to appear in your Honors Court and make upon their corporal oaths true and perfect answers to all and singular the matters charged in the Complain-

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unto bill as fully as if the same interrogated and that upon a full hearing of the matters charged in said bill, and proof of the truth thereof — Your Honor will order and decree that the said Defendants be forever debarred and foreclosed of all right of equity of redemption in and to the said Mortgaged premises, and that the said Mortgaged premises be sold, and out of the proceeds of said Mortgage property if so much there be, to pay Your Orators their debt, and the costs of this proceedings — or in some other way grant relief in the premises And your Orator as in duty bound. will ever pray &c.

Wm H. Brown
H. G. Hubbard Esq of
Brown & Cowles Solrs. Tho L. Hubbard

And afterwards, to wit, on the day and year aforesaid, Alfred Cowles files in the office of the Clerk of said Court, his certain affidavit, in the words & figures following to wit:

Wm H. Brown &
Henry Grinnell Hubbard
Executors of C. K. Hubbard
as
Josiah C. McClure
Sutton Penn
John F. Lake
Wm Raymond
Wm Teade
John W. Harris
Wm Chancey
William Churchill
John Calloway Jr.
Benjamin A. Mulford
John W. S. Moore
John F. Henry
Nathaniel Reed
Henry Reed
Henry W. Barnes
William Teal
John H. Nenny
John W. S. Morris Adm of Wm Dudley
impleaded with the
President Directors & Company of
the State Bank of Illinois
Richard L. Hamilton
Gurdon S. Hubbard
George Dudley &
William H. Brown.

In Chancery in the
Cook County Court
August Term 1846.

Alfred Cowles being duly sworn says he is informed & believes that the above named defendants except those implead with them, are not residents of the State of Illinois, but reside out of the same.

Subscribed & sworn to
before me this 24th day
of July A.D. 1846
James Curtiss Clk

Alfred Cowles

And thereupon, to wit, on the 13th day of August in the year aforesaid, there issued out of and under the seal of said Court, the People's Writ of Summons, which said writ with the endorsements thereon written are in the words & figures following, to wit:

State of Illinois
Cook County ss

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command you that you summon Josiah E. McClure, Tarlton Penn, John F. Lake, Wm Raymond, Wm Peake, John M. Harris, Wm Causey, Wm Churchill, John Callaner & Benjamin W. Mulford, John W.

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S. Moore. John F. Kemp. Nathaniel Wed. Henry Wed. Henry W. Barnes. William Teal. John F. Kemp & D. W. S. Moore administrators of Wm Darby. The President Directors & Co of the State Bank of Illinois. Richard J. Hamilton. Gurdon S. Hubbard. George Suly & William H. Brown. if they shall be found in your County, personally to be and appear before the Cook County Court of said County, on the first day of the next term thereof, to be holden at the Court House in the City of Chicago, in said County, on the first Monday of November next. to answer unto a Bill of Complaint filed in said Cook County Court in the Chancery side thereof by William H. Brown & Henry Grinwold Hubbard Executors of Elijah K. Hubbard deceased.

And have you then and there this writ with an endorsement thereon, in what manner you shall have executed the same.

Witness the Honorable Hugh T. Dickey. Judge of our said Court, and the Seal thereof. at the City of Chicago, in said County, this thirteenth day of August A.D. 1846.

James Curtiss Clerk.

Seal

Endorsed. We hereby accept of Service of this writ.

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& pray the Court to enter our appearance accordingly.

W. H. Brown
G. S. Hubbard
For the State Bank of Illinois
W. H. Brown Agent &c.

I do hereby accept of service of this writ Oct 19th 1846. and ask the Court to enter my appearance in the case.

Rich'd J. Hamilton.

And afterwards, to wit, on the 20th day of October in the year aforesaid, there was filed in the office of the Clerk of said Court, a certain notice of publication, which said notice with the certificate thereto attached is in the words & figures following, to wit:

County Court of Cook County.

State of Illinois, In Chancery
Term of August, 1846.

William H. Brown and Henry Bisnow Hubbard Executors of E. K. Hubbard.
Vs.

Josiah C. McClure, Fenton Penn, John F. Fake, William Raymond, William Pease, John Harris and William Chauncey, William Churchill, John Callamer Jun: Benj. A. Mulford, John W. S. Moore, John F. Henry Nathaniel Pred, Henry Pred, Henry W. Barnes, William Peak, John H. Henry, and John W. S. Moore, Administrators of William Conley impleaded with the President, Directors and Company of the State Bank of Illinois: Richard J. Hamilton Gurdon S. Hubbard, George Seeley, and William H. Brown.

The above defendants will take notice that the Complainants have filed their affidavit stating that Josiah C. McClure, Fenton Penn, John F. Fake, William Raymond Wm Peas, John W. Harris and William Churchill: John Callamer Jun., Benjamin A. Mulford, John W. S. Moore, John F. Henry, Nathaniel Pred, Henry Pred, Henry W. Barnes, William Peak, John H. Henry and John W. S. Moore Administrators of William Conley, impleaded with the President, Directors &c. of the State Bank of Illinois and others, are not residents of the State of Illinois, and that subpoena is issued returnable to the November Term

1846. of said Court. And unless the said Defendants appear at said term and plead or answer the Complainants bill. the same will be taken as for confessed.

Brown & Corbin
Solicitors

James Curtiss Clerk.

I, B. F. Worrell publisher of the Western Herald a newspaper printed and published in the City of Chicago Cook County, do certify that the annexed advertisement was inserted four successive weeks in the above mentioned paper, Commencing in No 21. 15 Aug. 1846. and ending in No 25 23 Sept 1846. of the same Paper. Oct 21st 1846.

Benj F. Worrell
Publisher

And afterwards. to wit, on the day of next aforesaid, said day being one of the days of the October Special Term of said Court. the following among other proceedings were had and entered of record in said Court. to wit:

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William H. Brown & N. Grinnold
Hubbard Ex^rs of E. K. Hubbard dec^d
vs.
Josiah E. McClure et als

Bill Complaint

This day come the said Complainants by Brown & Cowles their Solicitors and make due proof of the publication of notice of the pendency of these suits, and thereupon

On motion of Complainants Solicitors it is ordered that these causes be continued to the next term of this Court.

And afterwards to wit, on the 2^nd day of February in the year of our L^rd one thousand eight hundred and forty seven. Said day being one of the days of the February Term of said Court the following among other proceedings were had and entered of Record in said Court. to wit:

William H. Brown & H. Grinold Hubbard
Executors of C. K. Hubbard deceased

vs

Josiah C. McClure. The President. directors Company
of the State Bank of Illinois. Tinton Penn. John F. Jake
William Raymond. William Teale. John W. Harris
William Chancey. William Churchill. John Collamer Jr.
Benjamin A. Mulford. John W. D. Moore. John F. Henry
Richard J. Hamilton. Nathaniel Wed. Henry Wed
Henry W. Barnes. William Teal. Gordon S. Hubbard
George Dudley. William H. Brown. John W. D. Moore &
John H. Henry administrators of William Dudley

This day come the said Complainants by Brown & Cowles their Solicitors and the said Defendants Josiah C. McClure Tinton Penn. John F. Jake. William Raymond William Teale. John W. Harris. William Chancey. William Churchill. John Collamer Jr. Benjamin A. Mulford. John W. D. Moore John F. Henry. Nathaniel Wed. Henry Wed. Henry W. Barnes. William Teal. John H. Henry & John W. D. Moore administrators of William Dudley being duly and solemnly called come not nor any one for them, but have made default, and it appearing that due notice of publication has been made in this cause it is ordered that said default be

entered of record and the bill together with the matter and things therein set forth be taken as confessed against said now resident defendants.

And afterwards on the 12th day of the month & year aforesaid said day being one of the Days of the said February Term of said Court. The following among other proceedings was had and entered of record in said Court to wit:

William H. Brown & N. Girrold
Hubbard. Exrs of C. K. Hubbard deceased
vs
Josiah E. McClure

Bill of Complaint

This day came the said Complainants by Brown & Cowles their Solicitors and on their motion it is ordered that the said defendants plead answer or demur to said Complainants Bill by Monday morning next.

And afterwards on the 2d day of the month and year aforesaid. said day being one of the days of the said February Term of said Court. the following among other proceedings were had and entered of record in said Court. to wit:

William H. Brown. H. Grimsley Cubbard Exr of C. K. Hubbard dec'd
vs
Josiah C. McClure et als
Bill of Complaint

This day came the Complainants by Brown & Cowles their Solicitors, and the said defendants having failed to plead, answer or demur as required by an Order of this Court entered at a former day of this term it is ordered by the Court that the said bill of Complaint be taken as confessed.

And afterwards. to wit on the 10th day of March in the year aforesaid. the bill of Walker & Howell was filed in the office of the Clerk of said Court. which said bill is in the words & figures following. to wit:

6.

Messrs Brown & Cowles

To Western Herald Dr

To Chancery Notice of W. H. Brown & H. G. Hubbard & Co. vs Josiah McGuire & others 4 insertions } $2.50.

And afterwards, to wit, on the day & year last aforesaid, said day being one of the days of the said February Term of said Court the following among other proceedings were had and entered of record in said Court to wit:

William H. Brown & W. Gilrold Hubbard Executors of Elijah K. Hubbard deceased

vs

Josiah E. McGuire, Tarlton Penn, John F. Tate, William Raymond, William Teade, John M. Harris, William Chauncey, William Churchill, John Collamer Jr, Benjamin H. Mulford, John W. S. Moore, John F. Henry, Nathaniel Reed, Henry Reed, Henry H. Barnes, William Teade, John F. Henry, J. W. S. Moore Administrator of William Daley, The President, directors and Company of the State Bank of Illinois, Richard J. Hamilton, Gordon S. Hubbard, George Daley & William K. Brown

In Chancery

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And now at this day come the Complainants by Brown & Cowles their Solicitors, and it appearing from the return of the Subpoena in this case that William H. Brown, Gurdon S. Hubbard Richard J. Hamilton, and the President Directors and Company of the State Bank of Illinois, residents of the State of Illinois have entered their appearance as Defendants in said Cause, and as to Josiah E. McClure, Linton Gem. John F. Fake, William Raymond, William Pease, John W. Harris, William Chauncey, William Churchill, John Calhoun Jr. Benjamin A. Mulford, John W. S. Moore, John F. Henry, Nathaniel Pitt. Henry Pitt. Henry W. Barnes, William Teal, John W. Henry, John W. S. Moore Administrators of William Ousley & George Seeley non residents of this State. the Complainants moved proof to the satisfaction of the Court of notice to the said non resident Defendants to appear in said Cause and demur plead or answer the Complainants bill. the said Complainant having moved that said defendants file their answer on or before the 23d day of February A. D. 1847. and the said defendants having failed to comply with the order of this Court and made

default. It is ordered that the defendants be called which being done the said defendants made default. Then the Court now here proceeding to hear the said cause upon the proofs of said Complainants finds that the said Josiah E. McClure executed the Mortgage and promissory note in said bill described and that the money due thereon is unpaid. The Court refers the said Note and Mortgage to Computo what is due thereon for principal and interest to the Master of this Court. who reports that there is due for principal and interest thereon a
$3737.50 large sum to wit. the sum of three thousand seven hundred thirty seven dollars fifty cents for principal and interest to the ninth day of March A.D 1847. the time of entering this decree which report is accepted and ordered to be filed. The Court therefore orders and decrees that unless the said Josiah E. McClure the debtor in said Mortgage, or some other of the said defendants Judgment creditors of said Josiah E. McClure do pay on or before the first Monday of May next the sum so found due and reported to this Court together with the costs of this proceeding to the said Complainants that they and each of them be forever foreclosed and debarred of all right of equity in and to the said

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Mortgaged premises and every part and parcel thereof and that the said Josiah C. McCord do bring and surrender up for the use of the said Complainants or their assigns all the deeds, patents and muniments of title to the said foreclosed premises.

State of Illinois }
Cook County } ss

I Walter Kimball Clerk of the Superior Court of Chicago. (formerly Cook County Court) within & for the County of Cook & State of Illinois do hereby certify the foregoing to be a full true & Complete transcript of all the papers on file in my office, all proceedings had & final decree made & entered of Record in said Cook County Court in a certain cause wherein William H. Brown & Henry Griswold Hubbard Executors of Elijah K. Hubbard deceased. were Complainants and Josiah E. McClure et als Defendants.

Witness my hand & seal of the said Superior Court of Chicago. at the City of Chicago in said County this 20th day of December A.D. 1866.

Walter Kimball Clk

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State of Illinois
Cook Circuit Court ss.

Of October Term
A.D. 1860

John V. Chickering et al
vs
Thomas N. Faile
Survivor &c et als.

In Chancery

Replication &c —

These repliants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the aforesaid joint and separate answers of Thomas N. Faile et als. defendants in this cause for replication thereunto say they will aver and prove their said bill to be true certain and sufficient in Law to be answered unto and that the said answer of the said defendants Faile et als is uncertain untrue and insufficient to be replied unto by these repliants, insomuch this that any other matter or thing not answered in the said answer contained material or effectual in the Law to be replied unto, confessed and avoided traversed or denied is true all which matters and things these repliants are and will be ready to aver and prove

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as this Honorable Court shall direct. And pray as in and by their said bill they have already prayed.

John W. Chickering
James Laddington
Compts.

Circuit Court of Cook Co
Of the January Term 1861

January 11th A.D. 1861

John H. Chickering & James Suddington
2gt
vs
Thomas N. Dailey Survivor &c. Anna
D. Lee. Abby M. Murry. Augustus
C. Murry. Anna. P. Lee, David B.
Lee. Mary E Lee Augustus Dwachter
and Josephine Dwachter

In Chancery
Bill

This cause coming on this day to be heard upon the pleadings filed therein, the evidence contained in Depositions and exhibits on file and produced on the hearing, as well as that of witnesses produced and examined on the hearing, and Messrs. Chickering and Larned of Counsel for said Complainants, and Messrs Martin & Dafft of Counsel for the said Defendants having been heard, and the Court not being sufficiently advised in the premises takes said cause under advisement.

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March 1861

Of the March Term

John H. Chickering & James Suddington
vs
Thomas N. Fails. Sumner & Co, & Thal

In Chancery

Bill

This day again come the said parties by their Solicitors, and thereupon, all and singular the premises being duly considered, the Court doth find that the said Complainants are not entitled to the relief prayed for in, and by their said Bill of Complaint.

It is therefore Ordered, Adjudged and Decreed that the Complainants said bill of complaint be dismissed out of this Court for want of equity, and the same hereby is dismissed accordingly at the costs of the said Complainants to be taxed, and that said Defendants have execution for their costs.

Whereupon the said Complainants except to the finding & decree of the Court in that behalf and pray an appeal therefrom to the Supreme Court of the State of Illinois, which is granted on condition that the said Complainants execute and file their appeal bond therein within days in the penal sum of five hundred Dollars without ~~security~~, conditioned according to the statute in such case made and provided.

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State of Illinois,
COUNTY OF COOK. } S. S.

I, **WILLIAM L. CHURCH,** Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the final order & decree in a certain cause lately pending in said Court on the Chancery side thereof, wherein John R. Chickering et al were Complainants and Thomas N. Hale Sawyer & Co et al defendents & I further certify that the appeal bond in said cause was duly executed & filed in accordance with the decree

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Eighteenth day of April A. D. 1861

W. L. Church

Clerk.

State of Illinois /

Supreme Court &c

Assignment of Errors

And now come the said Chickering & Ludwig the appellants by their counsel and say that there is in the foregoing record and proceedings manifest error to the prejudice of the said appellants for which the decree rendered therein ought to be reversed and annulled that is to say

1st The Court below erred in dismissing the Complainants Bill of Complaint

2nd The Court below erred in not rendering a decree for the Complainants as prayed for in their said Bill of Complaint

3rd The Court below erred in rendering a decree in favor of the defendants

and this they are ready to verify

Wherefore they pray from this Honorable Court the same relief as by their aforesaid Bill of Complaint they prayed in the Court below.

Daniel Lee for
Samuel Goodenough
Chickering & Ludwig for Complts

Joinder in Error

And hereupon aforesaid, to wit, on the
day of April A.D. 1861, at
the April Term of said Court, the said
Appellees by Matter & Zapf, their
attorneys, come into Court here,
and say, that there is no error,
either in the record and proceedings
aforesaid, or in rendering the decree
aforesaid; and they pray that the
Supreme Court of the State of
Illinois, before the aforesaid justices
thereof, now here, may proceed
to examine as well the record and
proceedings aforesaid, as the
matters aforesaid above assigned
for error, and that the decree
aforesaid, in manner aforesaid
rendered, may in all things be
affirmed, &c.

Matter & Zapf
attys for appellees.

John W. Chickering
& James Luddington
vs
Thomas H. Hale
Survivor of Caleb C.
Dalstead, & Surviving
Executor of David Lee
Deceased & others

In the Supreme
Court of Illinois
In Chancery
On
Appeal

State of Illinois
City of Chicago
County of Cook } ss

John W. Chickering
and Miriam F. Mather, being severally
& duly sworn say the former that he is
one of the appellants in the above cause
& the latter that he is one of the attorneys
& Solicitors for the appellees and each
of them say that the matter presented
by the record in said cause were litigated
in good faith about a matter in actual
controversy between the parties and that
the opinion of the Supreme Court upon said
is not sought with any other design than
to adjudicate & settle the Law relative to
the matter in actual controversy between
the parties to the record

Subscribed & Sworn to severally
& this 10th day of 1861 before me
Norman Williams Jr.
Notary Public

J. W. Chickering

Miriam F. Mather

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John W. Chickering
& James Lindayton
vs
Thomas N. Hale
Surviving Executor
of David Lee Deceased

In the Supreme
Court of Illinois
on appeal
from Champaign

It is hereby Stipulated that the above
Cause is to be heard & decided by
the Supreme Court of Illinois on
appeal upon the record to which this
is annexed & all matters of form & technicality are waived
Subject to correction
& amendment by either party in case
any errors or omissions shall be discovered
deemed material shall be discovered

Dated April 1861

J. W. Chickering
for Compts - appellts.

Mather & Dapt for appellees

~~207~~ 207

John W. Chickering

vs

Thomas H. Faile

Record

Filed April 18. 1861

L. Leland

Clerk

John M Chickering

v

Thomas H Hailes et al

The Clerk of the Hundred Court Division is authorised and directed to amend the final order in this case as follows "The ~~bill is dismissed~~ decree dismissing this ~~bill~~ cause is affirmed without prejudice to any future proceedings"

J D Caton

P. H. Walker

"

Springfield 15th Jany 1863

Sidney Breese

"

~~260~~ 207

Checkering

vs

Faile

Order of the Court

Filed January 16. 1883

L. Leland

Clerk

N. B.

This order has

been entered

Book 8 page 331

John W Chickering
& James Sinclair
vs
Thomas W. Faile Survivor
of Caleb A. Halsted deceased
and others

In the Supreme
Court of the
3d Grand
Division

State of Illinois
Cook County } Ss. John W. Chickering one of the
complainants in the above cause being duly
Sworn says that the decision & decree of the
Circuit Court of Cook County dismissing
the Bill came within ten days prior to the
first day of the present April Term of the
Supreme Court Sitting at Ottawa and
that in Conjunction with the Solicitors
& Counsel for Complainants he has been diligently
at work in preparing the record and
abstracts for appeal to the Supreme Court
with the bona fide intention of having the
same ready for argument at the present
term but owing to the great amount
of documentary & other proofs introduced by
both parties it will be impossible to
get the same done & the printing of the
abstracts so without the extension of time
by said Supreme Court for filing of the
Record on appeal until for the Space
of about one whole week beyond the ten

days ordinarily allowed in such cases
& further Saith not

Subscribed & Sworn to
April 10. 1865 before me
H. D. Mather Master
in Chancery of the Supreme
Court of Chicago

J. W. Chickering

We concur in the above and Solicit that
the time may be extended as requested
in the above affidavit of Mr Chickering

Mather & Dyer
Sols for Defts

Arrington & Dent,
Sols. for W. S. Johnston, Intf.

207 167

Thickens

vs

Fairs

Mo. to Affidavit

Filed April 12. 1865

L. Leland

Clerk

Received and
submitted in matter
aforesaid

APR 12 1865

John W. Chickering & al
vs
Thomas H. Faile & al

To the clerk of Supreme Court Illinois
Please Docket the above cause
April Term 1865
J.W. Chickering &
John Rodman for complainants
Mathews & Dent
T. Dent
O.C.A. Hutchinson } for Defts

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Note for Clk

Clerking Case

State of Illinois
Supreme Court of Appeals
3rd Grand Division A.D. 186

John W. Chickering & James Ludington vs. Josiah E. McClure & others

In Chancery
On appeal
from Cook

Original Bill in Chancery.

STATE OF ILLINOIS, } ss.
COOK COUNTY,

TO THE

HONORABLE GEORGE MANIERRE,

JUDGE OF THE SEVENTH JUDICIAL CIRCUIT,

SITTING IN CHANCERY FOR THE SAID COUNTY OF COOK.

Respectfully representing, show unto your Honor. Your orators, John W. Chickering, of Chicago, in the county of Cook, and State of Illinois; and James Ludington, of the city and county of Milwaukee, in the State of Wisconsin, that heretofore, to wit: on or about the thirteenth day of July, in the year of our Lord one thousand eight hundred and thirty-six, one Josiah E. McClure was seized in his demesne as of fee, of and in the lands, tenements, and hereditaments situate, lying and being in the county of Cook and State of Illinois, known, designated, and described as follows, to wit:

The undivided one-half of the south-west quarter of section number twenty, in township number thirty-nine north, of range number fourteen east, of the third principal meridian.

Also, the undivided one-fourth part of the east half of the north-east quarter of the same section, number twenty, in township number thirty-nine north, of range number fourteen east, of the third principal meridian.

Also, one undivided fourth part of the east half of the north-west quarter of section number thirty-six, in township number thirty-nine north, of range number thirteen east, of the third principal meridian.

Also, lot number eight in Egan's subdivision of a part of block number forty-seven, in the school section addition to Chicago.

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And your orators further shew unto your honor that the said Josiah E. McClure, whom your orators make a defendant to this their bill of complaint, being so seized in fee of the premises aforesaid, on or about the day and year last aforesaid, by a deed of mortgage of that date, made between the said Josiah E. McClure, of the one part, and Elijah K. Hubbard, of the other part, for a consideration therein expressed of nine thousand dollars, the said McClure did give, grant and bargain to the said Elijah K. Hubbard, and to his heirs and assigns, a certain portion of the above described lands and premises, to wit: The undivided one-half of the south-west quarter of section number twenty, and the undivided one-fourth part of the east half of the north-east quarter of section number twenty, both in township number thirty-nine north, of range number fourteen east, of the third principal meridian, with this condition thereto underwritten, that the said deed should be void upon the payment of certain amounts of money therein mentioned, as in and by the said deed of mortgage, a copy whereof is hereunto attached and made a part of this bill of complaint as "Exhibit A." reference being had thereto will more fully and at large appear.

And your orators further shew unto your honor that afterwards, and on or about the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and thirty-six, the aforesaid Elijah K. Hubbard released the lien created by the said mortgage upon the undivided half of the undivided quarter of the east half of the north-east quarter of section number twenty in the aforementioned township number thirty-nine, north of range number fourteen, east of the third principal meridian. Whereupon, and in consideration of the above mentioned release, * the said Josiah E. McClure, on or about the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and thirty-six, by an indenture of mortgage that day made and acknowledged, but bearing date the twenty-eighth day of November in that year, between the said Josiah E. McClure of the one part, and the said Elijah K. Hubbard of the other part, wherein is expressed the consideration of one dollar; and to secure the indebtedness therein mentioned the said McClure did grant, bargain, sell, and convey to the said Elijah K. Hubbard, and to his heirs and assigns, the remainder of the first hereinbefore described lands and premises, to wit:

Lot number eight in Egan's subdivision of part of block number forty-seven, in the school section addition to Chicago, and the undivided fourth part of the east half of the north-west quarter of section number thirty-six, in township number thirty-nine north, of range

* and to secure the same indebtedness or some part of the same indebtedness as that secured by said first mentioned mortgage & upon the same & no other consideration —

number thirteen east, of the third principal meridian, conditioned that the said indenture last mentioned should be absolutely null and void, upon the payment of certain amounts of money therein expressed, as in and by the said indenture of mortgage, a copy whereof is hereunto attached as "Exhibit B." and made a part of this bill of complaint, reference being had thereto will more fully and at large appear.

And your orators further shew unto your honor, that afterwards, to wit: on or about the twenty-sixth day of May, A. D., 1839, the said Elijah K. Hubbard departed this life, testate leaving a widow and children surviving him, and appointing by his last will and testament, William H. Brown, S. D. Hubbard, and H. Griswold Hubbard the executors thereof, and trustees of the property of which he should died siezed, of whom the said William H. Brown and H. Griswold Hubbard duly qualified and took upon themselves the duties of such executorship and trusteeship, and to them letters testamentary in accordance with such last will and testament were granted by the Probate Court of Cook County, State of Illinois, as by the records and proceedings therein remaining fully appears.

And your orators further shew unto your honor, that afterwards, to wit: on or about the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and forty-seven, David Lee exhibited in the Circuit Court of Cook County, State of Illinois, on the chancery side thereof, his bill of complaint against the above mentioned trustees and executors of the aforesaid Elijah K. Hubbard, together with the heirs at law of the aforesaid Elijah K. Hubbard, stating and charging in substance that the above named William H. Brown, and H. Griswold Hubbard, as executors of the aforesaid Elijah K. Hubbard, had obtained, by judicial proceeding against the aforesaid Josiah E. McClure, the title to a portion of the above described tracts of land and premises, to wit: the undivided half of the south-west quarter of section number twenty, in township number thirty-nine north, of range number fourteen east, of the third principal meridian; and the said last mentioned tract of land was obtained by the aforesaid Elijah K. Hubbard, in his lifetime, by money furnished him by the said David Lee, and praying that the aforesaid trustees and executors should be decreed to convey to him, the said David Lee, the last mentioned lands and premises, and such other proceedings were had in and by the said Court in the aforesaid matters, that afterwards a decree was therein rendered in accordance with the aforesaid prayer of the said bill of complaint.

Whereupon, and afterwards, in pursuance of the aforesaid decree, the above mentioned William H. Brown, and H. Griswold Hubbard, executors of the last will and testament, and trustees, as aforesaid, of the above mentioned Elijah K. Hubbard, and on or about the thirty-first day of July, in the year of our Lord one thousand eight hundred and forty-seven, by their certain deed of that date, did convey to said David Lee the lands and premises last above mentioned and described, to wit: the undivided half of the south-west quarter of section number twenty, in township number thirty-nine north, of range number fourteen east, of the third principal meridian.

And your orators further shew unto your honor, that afterwards, to wit: on or about the nineteenth day of March, in the year of our Lord one thousand eight hundred and forty-nine, the aforesaid David Lee exhibited in the Circuit Court of Cook County, State of Illinois, on the chancery side thereof, his bill of complaint against the above mentioned executors and trustees of the aforesaid Elijah K. Hubbard, and also against the heirs of the same, stating and charging, in substance, that the above mentioned William H. Brown and H. Griswold Hubbard, as executors and trustees aforesaid, had obtained by judicial proceedings against the said Josiah E. McClure, the title to that portion of the above described tracts of land and premises, described as follows, to wit: ten acres, being one undivided eighth part of the east half of the north-east quarter of section number twenty, in township number thirty-nine, north of range number fourteen, east of the third principal meridian, and that the same was obtainned by the aforesaid Elijah K. Hubbard, in his life-time, by money furnished him by the said David Lee, and praying that the aforesaid trustees and executors should be decreed to convey to him, the said David Lee, the last mentioned tract of land and premises, and such further proceedings were had in and by the said Court, in the last mentioned matters, that a decree was afterwards therein rendered in accordance with the aforesaid prayer of the last mentioned bill of complaint.

Whereupon, and afterwards, in pursuance of the last mentioned decree, the aforesaid William H. Brown and H. Griswold Hubbard, executors as aforesaid, and trustees of the aforesaid Elijah K. Hubbard, on or about the thirtieth day of June, in the year of our Lord one thousand eight hundred and forty-nine, by their certain deed of that date, did convey to the aforesaid David Lee the lands and premises last above described, to wit: the equal undivided eighth part of the east half of the north-east quarter of section number twenty, in township number thirty-nine, north of range number fourteen, east of the third principal meridian.

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And your orators further shew unto your Honor that on or about the sixth day of July, in the year of our Lord one thousand eight hundred and forty-two, for and in behalf of, and at the instigation of the aforesaid David Lee, the aforesaid William H. Brown and H. Griswold Hubbard, as executors and trustees as above mentioned, sued out of the Circuit Court of Cook County, State of Illinois, a certain writ of said Court, called a writ of *scire facias*, upon the last mentioned mortgage, and for the purpose of foreclosing the equity of redemption of the aforesaid Josiah E. McClure therein, and to the lands and premises therein described, and such proceedings were in and by the said Court therein had, that judgment was rendered against the said Josiah E. McClure therein, and the premises in the said mortgage were ordered to be sold under a special writ of *fieri facias*, which was then and there, by the said Court, ordered to be issued upon such judgment, and afterwards, and in alleged pursuance of such judgment, the lands and premises last aforesaid, to wit: lot number eight in Egan's subdivison of block number forty-seven, in the school section addition to Chicago, and one undivided fourth part of the east half of the northwest quarter of section number thirty-six, in township number thirty-nine, north of range number thirteen east, of the third principal meridian, were sold by the sheriff of Cook County, and the aforesaid David Lee became the purchaser thereof for the nominal price of one hundred dollars, and the said David Lee subsequently received a deed therefor from the sheriff of the said County of Cook.

And your orators further shew unto your Honor, that afterwards, and on or about the thirtieth day of January, in the year 1853, the said David Lee departed this life, testate having by his last will and testament appointed Thomas H. Faile and Caleb O. Halstead, whom your orators make other defendants hereto, the executors thereof, and also leaving Ann D. Lee, his widow, and Abby M. Murry and Augustus C. Murry her husband, Anna P. Lee, Josephine L. Lee, since then intermarried with Augustus Dwachter, David B. Lee, and Mary E. Lee, whom your orators make other defendants hereto, his heirs at law; and in whom the estate and title to all the above described lands and premises of, and to which the said David Lee at the time of his decease, as aforesaid, was possessed and vested, still remains, and which is the same estate and title as was conveyed by the said Josiah E. McClure to the said Elijah K. Hubbard by the deeds and indentures of mortgage as hereinbefore set forth.

And your orators further shew unto your honor, that the said defendant, Josiah E. McClure, made payments to the said Elijah K.

Hubbard in his life-time, of the larger part of the sums of money secured to be paid by the above mentioned mortgages, and that there remained due and unpaid thereon, for both principal and interest, on the tenth day of March, in the year of our Lord one thousand eight hundred and forty-seven, an amount not exceeding the sum of thirty nine hundred dollars, as your orators are informed and believe.

And your orators further shew unto your Honor, that by deed dated the 11th day of April, in the year 1837, and duly executed and acknowledged, and recorded in the office of the recorder of deeds for and in Cook County, State of Illinois, in Book S, page 112, on the 11th day of April, A. D. 1837, the said defendant, McClure, sold and conveyed to one Henry Fake, the above described one-eighth part of the east half of the north-east quarter of section number twenty, in township number thirty-nine, north of range number fourteen, east of the third principal meridian.

And the said Henry Fake afterwards sold and conveyed the same tract of land, by deed dated the 17th day of November, in the year 1837, duly executed and acknowedged, and recorded in the same office, in Book V, page 414, on the 23d day of November, A. D. 1837, to one John S. Fake, who afterwards, by his deed duly executed and acknowledged, bearing date the 30th day of August, A. D. 1859, sold and conveyed to your orators the same tract of land as last mentioned.

And your orators further shew unto your Honor, that by deed dated the first day of August, in the year 1837, duly executed and acknowledged, and recorded in the office of the recorder of deeds for and in the County of Cook, State of Illinois, in Book V, page 34, on the 17th day of August, A. D. 1837, the said defendant McClure sold and conveyed to one William Raymond, one undivided fourth part of the said south-west quarter of section number twenty, in township number thirty-nine, north of range number fourteen, east of the third principal meridian; taking at the same time from the said William Raymond, a mortgage thereon to secure the unpaid purchase money therefor, amounting then to the principal sum of seventeen hundred and fifty dollars, besides which the said William Raymond then assumed and agreed to pay the sum of fifteen hundred dollars, a part of the aforesaid mortgage upon the said land, made by the said McClure to Elijah K. Hubbard, as hereinbefore set forth; which aforesaid indebtedness of the said Raymond to the said McClure, (the whole amount thereof being due and unpaid) and the aforesaid mortgage securing the same, together with the equity of redemption therein and thereto of the said Raymond, have become the property of your orators, who are now the owners thereof.

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And your orators further shew unto your Honor, that on or about the twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-two, the said defendant, Josiah E. McClure, filed his petition in the Supreme Court, of the *then* Territory of Wisconsin, to be declared a bankrupt under, and by virtue of the then existing law of the United States of America, entitled, "an act to establish a uniform system of bankruptcy throughout the United States, passed August 19th, A. D. 1841," and such proceedings upon the said petition were in and by the said Court had, and determined that afterwards, to wit: on or about the sixteenth day of May, in the year last aforesaid, the said defendant, Josiah E. McClure, was duly by the said Court declared a bankrupt, and in pursuance of the aforesaid law of the United States of America, Daniel H. Richards was then and there, and by the said Court appointed assignee in bankruptcy of the said defendant, Josiah E. McClure, and duly qualified, and assumed the duties of such appointment, by reason whereof he, the said Daniel H. Richards, became seized in fee of the unsold lands and premises hereinbefore described, subject to the aforesaid mortgages thereon, and in him became vested the equity of redemption to the whole thereof, by operation of the law aforesaid.

And your orators further shew unto your Honor, that afterwards, and on the fifth day of July, in the year of our Lord one thousand eight hundred and fifty-nine, in pursuance of the order and direction of the District Court of the United States of America for the district of Wisconsin, the said Daniel H. Richards made sale, after due notice thereof, of all the lands, tenements and premises hereinbefore mentioned, and of all the right, title and interest of the said Josiah E. McClure therein and thereto at the time of his above mentioned bankruptcy, and all the right, title and interest therein and thereto acquired by and vested in the said Daniel H. Richards as the assignee in bankruptcy of the said Josiah E. McClure, as hereinbefore mentioned, and your orators then and there became the purchasers thereof, and afterwards, and upon the seventh day of the same month, such sale was duly confirmed by the aforesaid Court, and the said Daniel H. Richards then and there, and thereby ordered and directed to make a deed to your orators of the aforesaid lands and premises in pursuance of the sale aforesaid, and afterwards, and upon the payment by them to him of the purchase money therefor, the said Daniel H. Richards, in conformity to the aforesaid order and direction of the said District Court of the United States for the District of Wisconsin, executed and delivered to your orators a deed

of conveyance of the lands and premises hereinbefore described, the date whereof is the eighth day of the month and year last mentioned, by means whereof all the estate, right, title, interest and claim in and to all of the above mentioned lands, tenements and premises in which the said defendant, Josiah E. McClure, was seized as aforesaid, or had or was entitled to, either at law or in equity at the time of his said bankruptcy were vested in, and became the property of your orators, who thus, and by virtue of the above mentioned deeds of conveyance, became seized in fee of the same, subject only to the aforesaid mortgages thereon, and the right and equity of redemption as hereinbefore set forth, to all of the lands, tenements and premises, became vested in your orators.

And your orators further shew unto your Honor, that after the decease of the said David Lee, upon petition or bill filed on or about the 23d day of November, A. D. 1853, for that purpose, by William S. Johnston, a part owner of the tract, such proceedings were had in and by the Cook County Court of Common Pleas, that partition was made between the said defendants, executors, and heirs at law of the above named David Lee as, and claiming to be the other owners of the south-west quarter of section number twenty, in township number thirty-nine north, of range number fourteen east, of of the third principal meridian, that the blocks in the aforesaid quarter section, numbered one, three, five seven, nine, eleven, thirteen, fifteen, as the same appear upon a plat thereof recorded in Book I, page five hundred and thirteen of the records of the said Cook County Court of Common Pleas, were allotted to the legal heirs of the said David Lee, to be held by them in severalty, as in and by the records of the said cause in the Court last aforesaid, remaining reference thereto being had will more fully and at large appear.

And your orators further shew unto your Honor, that upon a bill filed for that purpose by the said David Lee and William S. Johnston, part owners of the east half of the north-east quarter of the aforesaid section number twenty, in township number thirty-nine north, of range number fourteen east, of the third principal meridian, in the Cook County Court of Common Pleas, State of Illinois, such proceedings were had in and by the said Court that partition was made between the several owners of the said last named tract of land, and the following blocks and parts of blocks therein, as the same appears upon a plat thereof upon the records of the said Court, in Book G., page 439, were allotted to the said David Lee, to be held by him in severality, to wit: the whole of blocks

numbered two, nineteen, and twenty-eight, the south half of block number six, and that part of block number fifteen bounded as follows: commencing at the north-west corner of said block, and thence running south one hundred and two 41-100 feet, thence east to a point on the east line of said last mentioned block one hundred and two 38-100 feet south from the north-east corner thereof, thence north to said north-east corner, thence west to the place of beginning, as in and by the records of the said cause, now in the said last mentioned Court remaining; reference being had thereto will fully and at large appear.

And your orators further shew unto your Honor, that the said defendants, the heirs and executors of the said David Lee, or a part of them, have for some five years been in possession of the above described lands and premises, (before the time of which possession they were vacant and unoccupied) and in the receipt of the rents and profits thereof, and that they are not residents of the State of Illinois, but that they reside in some place to your orators unknown, without such State; and your orators have frequently offered the said last mentioned defendants to redeem the above described lands and premises from the lien thereon of such mortgages as aforesaid, by paying the amount due thereon for principal and interest, and on the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-nine, your orators tendered to the said defendants, Caleb O. Halstead and Thomas H. Faile, the sum of ten thousand dollars, which is more than the entire sum due upon the aforesaid mortgages for principal and interest.

And your orators have ever been, and still are willing to pay, and would have paid to the said defendants, and they now again offer so to do, all that may be due to them the said defendants, upon or by virtue of the aforesaid mortgages, together with all taxes, assessments and charges that the said defendants have been compelled to pay upon the said lands and premises, so soon as your orators can ascertain the amount theref, when, and as this honorable Court shall direct; but what precise sum is so due to the said defendants, the legal representatives of the said David Lee, your orators have been unable to ascertain up to this time.

And your orators hoped that the said defendants, Thomas H. Faile, and Caleb O. Halstead, executors as aforesaid, and Ann D. Lee, Abby M. Murry, Augustus C. Murry, Anna P. Lee, Josephine L. Dwachter, Augustus Dwachter, David B. Lee, and Mary E. Lee, would have permitted your orators to redeem the aforesaid mortgaged premises by paying the amount due thereon, for the liens as aforesaid, as they ought to have done.

But, now, so it is, may it please your Honor, the said last mentioned defendants (combining and confederating together, and with divers persons at present unknown to your orators, but whose names, when discovered, your orators pray they may be permitted to insert herein, with apt words to charge them as defendants hereto) refuse such rersonable request of your orators, and under various pretences they seek to injure your orators in the premises, and with that intent sometimes they pretend that they hold and have title to such of the above described lands and premises as are situate in the south-west quarter and the north-east quarter of section number twenty, in township number thirty-nine north, of range number fourteen east, of the third principal meridian, under, through, and by virtue of a title acquired under a decree of foreclosure rendered in and by the Cook County Court, in favor of the said William H. Brown and H. Griswold Hubbard as complainants, and against the said defendant, Josiah E. McClure and others defendants, wherein and whereby the equity of redemption remaining in the said defendants, McClure, John S. Fake, and William Raymond, was, as they allege, foreclosed, and they thereafter debarred from all right to redeem the premises in that mortgage mentioned. And by virtue of the aforesaid conveyance, by the said Brown and Hubbard to them; whereas, your orators charge that they are in no wise affected by such decree, nor is their right to redeem the last mentioned lands and premises from the mortgage thereon, as hereinbefore set forth, in anywise impaired or prejudiced by such decree, inasmuch as previous to the institution of the proceedings upon which the same was rendered, the mortgagor, the said Josiah E. McClure, had been declared a bankrupt, as hereinbefore set forth, and thus the said defendant, McClure, had then no right, title, or interest, in or to the aforesaid lands, tenements, and premises, and all the right, title, privilege, estate, and interest of the said defendant, McClure, therein and thereto had become vested in Daniel H. Richards, his assignee in bankruptcy as hereinbefore mentioned, through whom, as hereinbefore set forth, your orators claim their right to make redemption of the last mentioned lands and premises, and the said Daniel H. Richards was not made a party to such legal proceedings, nor had he any notice thereof, and the same were commenced after the said defendant, McClure, had been declared a bankrupt, as hereinbefore stated, and on or about the eleventh day of July, in the year of our Lord one thousand eight hundred and forty-six, and notwithstanding the said William H. Brown and H. Griswold Hubbard, executors, etc., and the said David Lee had due

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and legal notice of all such proceedings in bankruptcy, at and before the said decree of foreclosure. And your orators further charge that the aforesaid decree was erroneous, and it was oppressive in its terms, and contrary to the usual practice of Courts of Chancery of this State, in such cases, inasmuch as while the bill of complaint prayed that the mortgaged premises therein mentioned might be sold and the money arising from such sale might be applied in satisfaction of the said mortgaged debt, so far as the same might be necessary therefor, whereas the decree was for a strict foreclosure, and that unless the amount due upon the mortgage was paid by the defendants within a short period of time therein specified, the defendants therein should be forever debarred of their right and equity of redemption in the mortgaged premises, and that decree was rendered, notwithstanding the aforesaid mortgaged premises at that time far exceeded in value the balance of the lien thereon due by virtue of the mortgage.

And your orators further charge that the aforesaid decree of foreclosure, and all the proceedings by the said Court in the cause preceeding such decree are erroneous and utterly void, and inoperative as to the said defendant, McClure, and his rights and interest, and the rights and interests of his said assignee, Daniel H. Richards, and the rights and interests of the said John S. Fake, and of the said William Raymond in and to the lands and premises therein mentioned, and the said Court had then and there acquired no jurisdiction of the said Josiah E. McClure, Daniel H. Richards, John S. Fake, and William Raymond, to enable the said Court to render that or any other decree in the premises, nor had it at the time of the rendition of such decree acquired jurisdiction over the persons, or over the rights of the said defendant, McClure, and of the said William Raymond, John S. Fake, and Daniel H. Richards, inasmuch as no service of process was had upon them in said cause, nor was their appearance entered therein, but the bill of complaint in the said cause was taken as confessed against the defendants therein upon a pretended notice of publication of the pendency of the said suit, when in fact no notice of the pendency of said suit in the said Court had been published in terms, and to the purport, and as required by law, nor had there been filed with the clerk of the Court an affidavit of the non-residence of the said defendants therein, McClure, Fake and Raymond, or an affidavit that on due inquiry they could not be found, or were concealed within this State so that process could not be served upon them. Nor was any exertion made by the sheriff of

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the proper county, or of any county in this State to serve a summons in such cause upon the said McClure, Richards, Raymond or Fake, nor was any such summons lodged with the sheriff in order to be served, nor is there any return made by any sheriff or other officer upon any summons issued in such cause, that the said McClure, Richards, Raymond, or Fake, were not found, nor is there any return of any kind by such officer as to the said McClure, Richards, Raymond, and Fake, or either of them, as in and by the records of said cause now in the said Court remaining, reference being had thereto will fully appear, and no order of the said Court has been made confirming said decree of foreclosure. At other times the said defendants pretend they hold the balance of the above described lands and premises, and that part of them as above described, situate in section number thirty-six, in township number thirty-nine north, of range number thirteen east, of the third principal meridian; and, also, lot number eight in Egan's subdivision of a part of block number forty-seven, in school section addition to Chicago, under, through, and by a title to the same, acquired by the aforesaid David Lee, by virtue of the deed to him by the sheriff of Cook County, State of Illinois, as hereinbefore mentioned; whereas, your orators charge that such sheriff's deed vested no title in the said David Lee, as the judgment under which such sale was made as aforesaid was null and void, as the said Court then and there had no jurisdiction to render such judgment, it being a fact that no notice of the proceedings whereon the same was founded was ever given to the said Josiah E. McClure, the mortgagor and defendant therein, nor in fact was there a return of *nihil* upon the two writs of *scire facias*, as is by the statute prescribed to warrant such judgment when the writ is not served personally upon the defendant, and although the judgment aforesaid recites that there had been two such returns of *nihil*, yet in truth and in fact, and so the records and proceedings of the said Court in the case, shew there was only a return of *nihil* upon one such writ of *scire facias*, nor was the aforesaid Daniel H. Richards the assignee of the said defendant, McClure, made a party to such last mentioned proceedings, notwithstanding the said David Lee had due notice of such proceedings in bankruptcy, besides in equity the said defendants ought not to be permitted to interpose such a purchase at a mere nominal price, to the prejudice of the aforesaid assignee in bankruptcy of the said defendant, Josiah E. McClure, in whom, at the time of such proceedings was vested all the right, title and interest of the aforesaid mortgagor, to and in the lands and premises as is hereinbefore last

set forth, and to the prejudice of your orators, so as aforesaid deriving and holding title to such lands and premises through and under him, the aforesaid assignee.

At other times they pretend that they hold and have title to a portion or all of the above described lands, tenements, and premises, by virtue of and under a certain deed of conveyance made and executed by the said defendant, Josiah E. McClure, conveying the same to the said William H. Brown, and H. Griswold Hubbard; whereas, your orators charge that such deed was, and is, and should be deemed inoperative to pass any title or interest to or in the lands therein described, the same having been made on or about the eleventh day of May, in the year of our Lord one thousand eight hundred and forty-nine, and after the said McClure had been declared a bankrupt, as hereinbefore set forth, and after, in consequence of such declaration of bankruptcy, all his right, title, and interest in and to such lands, had by operation of law become vested in the said Daniel H. Richards, his assignee in bankruptcy, as hereinbefore set forth, and after the said McClure had sold and conveyed a portion of such lands as is hereinbefore set forth, and of which the said Brown and Hubbard had due and legal notice.

And your orators further charge that such deed was made and executed by the said defendant, McClure, to the said Brown and Hubbard, without any good or valuable consideration whatever inducing the same, but, on the contrary, the said William H. Brown induced and procured the said defendant, McClure, to execute and deliver such deed by misrepresenting to him that in the aforesaid decree of foreclosure the Court had ordered him, the said McClure, to make such deed; whereas, in fact, the Court had made no such order.

At other times the said defendants pretend that your orators aforesaid right of redemption under the mortgages hereinbefore mentioned, are barred by some statute of limitation, or by the lapse of time; whereas, your orators charge the contrary to be the truth and fact, inasmuch as the said trustees and executors of the said Elijah K. Hubbard have admitted the two mortgages hereinbefore mentioned, and have stated an account of the amount claimed to be due to them thereon from the said McClure, within the time allowed by the principles and practice regulating Courts of Chancery, and within which they allow the relief herein sought. By the proceedings of the said executors and trustees in the suits by them instituted and prosecuted to foreclose one of the said mortgages in chancery, and the other by *scire facias*, as is hereinbefore set forth.

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At other times they give out and pretend that in this behalf your orators are mere speculative grantees of the real estate aforesaid, and for that reason they should not be favored in this Honorable Court; whereas, (without admitting that if such were the fact it would prejudice or impair your orators' right to the relief hereinafter prayed) your orators charge that they are creditors of the said defendant, McClure, and hold his indebtedness to a large amount of money, for the payment and satisfaction of which they have no means or resource except the above mentioned mortgaged lands and premises. All of which aforesaid actings, doings and pretences of the said defendants are contrary to equity and good conscience, and tend to the wrong and injury of your orators in the premises.

In consideration whereof, and forasmuch as your orators are remediless at law, and can only have adequate relief in a Court of Chancery.

To the end, therefore, that the said defendants, and each of them may without oath, which is waived, full, true, and perfect answer make to all and singular the matters hereinbefore alleged against them, and that the aforesaid decree of foreclosure, and the aforesaid judgment of foreclosure may, for the reasons, and under the circumstances hereinbefore mentioned be set aside by this Honorable Court, and be declared, as to your orators, null, fraudulent and void, and that an account may be taken of what, if anything is now due to the said defendants, the executors and the heirs of the aforesaid David Lee for the principal and interest upon the said mortgages, and that an account may also be taken of the rents and profits of the said mortgaged premises, which have or might have been received by the said defendants, as well as the charges and taxes they may have been compelled to pay out upon account of the same, and the balance thereof charged against or credited upon the said mortgages, as the same may be.

And that your orators may be at liberty to redeem the said mortgaged premises on payment of the principal and interest, if any remains due, on the aforesaid mortgages, together with the taxes and other charges which the said defendants may have been compelled to pay upon said mortgaged premises, and that the said defendants may be decreed upon the payment to them of such principal and interest, taxes and charges, to convey to your orators by a sufficient deed therefor, all of the above described lands, tenements, and premises, and also to deliver the possession thereof to your orators.

And that your orators may have such other and further relief in

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the premises as to your Honor shall seem meet, and in accordance with equity, and as the circumstances of this case requires.

May it please your Honor to grant unto your orators the writ of summons in Chancery, issued out of and under the seal of this Honorable Court, to be directed to the said defendants, Caleb O. Halstead, Thomas H. Faile, Ann D. Lee, Abby M. Murry, Augustus C. Murry, Anna P. Lee, David B. Lee, Mary E. Lee, Josiah E. McClure, Augustus Dwachter, and Josephine L. Dwachter, commanding them, and each of them, to be and appear before your Honor, in this Honorable Court, on the first day of the next term thereof to be holden, and then and there, full, true, perfect and direct answers make to all and singular the premises, and further to stand to, perform, and abide by, such further order, direction and decree therein, as to your honor shall seem meet, and in accordance with equity and good conscience.

And your orators will ever pray, etc.

JOHN W. CHICKERING,
JAMES LUDINGTON,
Complainants.

LARNED & GOODWIN,
Of Counsel for the Complainants.

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I hereby relinquish the lien created by the within mortgage on the undivided half of the undivided quarter of the east half of the north-east quarter of section twenty, as described, and no more or other of the within described land.
CHICAGO, October 28, 1836.
E. K. HUBBARD, [L. S.]

"EXHIBIT A."

To all people to whom these presents shall come, greeting: Know ye, that I, Josiah E. McClure, of Chicago, in the County of Cook, and State of Illinois, for the consideration of nine thousand dollars, received to my full satisfaction of Elijah K. Hubbard, of said Chicago, do give, grant, bargain, sell and confirm unto the said two certain tracts of land lying and being in the County of Cook, and State of Illinois; one piece known and described as an undivided fourth part of the east half of the north-east quarter of section twenty, township thirty-nine north, of range fourteen east, of the third principal meridian, containing twenty acres, more or less. And, also, one other piece of land, situated in said County of Cook, and described as the undivided half of the south-west quarter of section twenty, township thirty-nine north, of range fourteen east, of the third principal meridian, containing eighty acres, more or less, being the same premises as conveyed to me by deed of E. K. Hubbard and wife, of this date. To have and to hold the above granted and bargained premises, with the appurtenances thereof, unto him the said Elijah K. Hubbard, his heirs and assigns forever, to him and their own proper use and behoof. And, also, I, the said Josiah E. McClure, do for myself, my heirs, executors and administrators, covenant with the said Elijah K. Hubbard, his heirs and assigns, that at and until the ensealing these presents, I am well seized of the premises as a good, indefeasable estate in fee simple, and have good right to bargain and sell the same in manner and form as above written, and that the same is free of all encumbrances whatsoever.

And, furthermore, I, the said Josiah E. McClure, do by these presents bind myself and my heirs forever to warrant and defend the above granted and bargained premises to him the said Elijah K. Hubbard, his heirs and assigns, against all claims and demands whatsoever.

In witness whereof I have hereunto set my hand and

seal, this 13th day of July, Anno Domini one thousand eight hundred and thirty-six.

Signed, sealed, and delivered in presence of

The condition of the above obligation is, however, on condition that if the said Josiah E. McClure shall well and truly pay the following notes of hand, according to their tenor, to wit: one note dated July 12, 1836, signed by the said J. E. McClure, and made payable to the order of L. Y. Jamison and A. Garret, and payable at the Chicago Branch Bank in three months from the date, for three thousand dollars, and by the said Jamison and Garret endorsed. Also, one other note signed by the said J. E. McClure, dated July 12, 1836, payable to the said Elijah K. Hubbard, or order, in six months from the date, for three thousand dollars. Also, one other note signed by the said J. E. McClure, dated July 12, 1836, payable to the order of Elijah K. Hubbard, in twelve months from the date, for three thousand dollars, then this deed is to be void, otherwise valid and in full force in law.

Signed, sealed, and delivered in presence of Sidney Abell.

J. E. McCLURE. [L. S.]

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"EXHIBIT B."

This indenture, made the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and thirty-six, between Josiah E. McClure, of the town of Chicago, Cook County, and State of Illinois, party of the first part, and Elijah K. Hubbard, of the same town, county and State aforesaid, party of the second part. Witnesseth, that, whereas, the said party of the first part is justly indebted to the said party of the second part in the sum of six thousand dollars, secured to be paid by his two certain promissory notes, bearing even date, the twelfth day of July, in the year one thousand eight hundred and thirty-six. Now, therefore, this indenture witnesseth that the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of said promissory notes above mentioned; and, also, in consideration of the further sum of one dollar to him in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, all the following described property, or parcels of land, to wit: that certain lot or parcel of land known and described as number eight (8) in Egan's subdivision of part of block forty-seven (47), in the school section addition to Chicago, the said lot being twenty-six (26) feet in front by one hundred and thirteen feet, more or less, as will appear by reference to the record at the Recorder's office in Chicago. Also, one equal, undivided fourth part of the east half of the north-west quarter of section number thirty-six (36), in township number thirty-nine (39) north, of range number thirteen (13) east, of the third principal meridian, in Cook County, Illinois, containing twenty acres of land. To have and to hold the same, together with all and singular the tenements, hereditaments, privileges and appurtenances thereunto belonging, or in any wise appertaining. And, also, all the estate, interest and claim whatsoever, in law as well as in equity, which the party of the first part hath in and to the premises hereby

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conveyed unto the said party of the second part, his heirs and assigns, and to their only proper use, benefit and behoof; provided, always, these presents are upon this express condition, that if the said party of the first part, his heirs, executors or administrators shall well and truly pay, or cause to be paid to the said party of the second part, his heirs, executors, administrators or assigns the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above mentioned promissory notes, according to the tenor, true intent and meaning thereof, that then and in that case these presents, and everything herein expressed shall be absolutely null and void.

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

Sealed and delivered in presence of Thomas K. Hubbard

J. E. McCLURE. SEAL.

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To

Defendant, etc. :

You are hereby notified that a suit has been commenced by us in the Circuit Court of Cook County, State of Illinois, on the chancery side thereof, against yourself, and the other defendants named in the foregoing bill of complaint, and the bill herewith delivered to you is a true copy of that exhibited against yourself and others in the said suit, and now on file in the aforesaid Court wherein the suit is pending.

The term of the said Court at which you are required to appear and make defence to such suit, commences upon the third Monday of the month of February, in the year of our Lord one thousand eight hundred and sixty, at the Court House in Chicago, in the said County.

Yours, Respectfully,

J. W. CHICKERING,
JAMES LUDINGTON,
Complainants.

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State of Illinois
Supreme Court; April Term 1862
3d Grand Division Ss.

John W. Chickering &
James Ludington
vs
Thomas N. Faile Surv.
Executor of David Lee Dec'd
& others the Wm & heirs & Devisees
of David Lee Dec'd

In chancery
on appeal
from
Cook
Circuit
Court

By agreement of parties the following is to be taken and considered as the records in this cause

It is a continuation of the cause heretofore submitted to this court by and between the same parties argued at April Term A.D. 1861 but not decided until December 1861 and the records and abstract thereof of ~~that~~ cause (or copies thereof) are to be taken and considered in this cause; together with the subsequent proceedings in the same cause in the circuit court herein after stated to wit;

The complainants filed in the court below a remittitur of this cause from this court under the seal thereof

Continued reading from the old record

Page 56 the same being an exemplification of the final order therein now on record in this court accompanied by a copy of the Opinion of the Supreme Court by Mr. Justice Walker which was also certified by the clerk of this court at Ottawa

And thereupon filed their motion that the Cook Circuit court should as is in the motion alleged in accordance of the mandate enter a decretal order for the complainants to redeem the mortgage upon those portions of the land in controversy Situate in Section No 20 Town 39 N. Range 14 East of the 3d Principal Meridian and to refer the cause to the master in Chancery to take an account of the amount due the defendants upon said mortgage

The defendant Thomas H. Faile Surviving Executor &c thereupon filed at the same time in the Circuit Court a motion for leave to file a supplemental or amended answer in the cause which answer was drawn up & Sworn to accompanying the motion & a copy Served upon the Complainant. The said motion was based upon Several affidavits and the petition of said Faile which was Sworn to asking leave to file said answer and give in evidence the proofs & Certain

the same, viz the Last will and testament of David Lee deceased copies of all which papers had been duly served upon the complainants prior to the hearing in Court on said motion - and to which the complainants objected

The following are copies of the affidavits petition & amended & Supplemental answer last referred to above

John W. Chickering
and James Laddington
vs
Thomas H. Faile Survivor
&c and Surv. Exec. of
David Lee, deceased

In the Circuit Court
of Cook County
In Chancery

State of Illinois }
Cook County } ss. Hiram F. Mather one of the attorneys for the defendants in the above cause being duly sworn says that during all the period occupied by the proceedings in the above cause and while the same was before the supreme court of this State on appeal this deponent and his law partner L. B. Tefft had never seen the last will and testament of David Lee and neither the Executors of said Lee nor any other person had given to deponent or his said law partner any information as to the particular contents thereof.

Since reading the opinion of the Supreme Court it is discovered to be all important to the defence in said cause that said will should be put in evidence inasmuch as by said will it appears distinctly that the whole estate of Mr Lee real & personal wheresoever & whereosoever was thereby vested in the Executors therein named or such of them as should act as such

or the survivor there to remain and be until the youngest heir David B. Lee should come of the age of twenty one years: This deponent is well informed as to the age of David B. Lee who was present in the Circuit Court when the argument in said cause was first moved in said Court though his information is not such as to be legal evidence and deponent is therefore able to state, he has no doubt with approximate accuracy that he the said David B Lee came of age about the time of the commencement of this suit.

Deponent now for the first time has in his possession an authenticated copy of said will and by the facts therein offering to the investment of the fee of his real Estate in said Executors, when duly brought before this Court by proofs it will clearly appear to the Court on the basis of the Supreme Courts decision and in perfect accordance with the principles therein Established that the tax payments by said Executors in this cause after the death of Mr Lee (which were rejected by the Court solely because the proofs as they then stood failed to show that the Executors held the Color of title) were in fact justly allowable and with the payments before Mr Lees death made much more

than seven successive years tax payments and further saith not

H. F. Martin

Subscribed & Sworn to
Day 28th 1862 before
Asa Scott
Master &c.

John W. Chickering
and James Lockington
vs
Thomas H. Faile Surv.
of Caleb O. Halstead and
Surv'g Exec. of David Lee decd.
and others the heirs & devisees
of David Lee deceased.

In the Circuit Court
of Cook County.

State of Illinois }
Cook County } ss. Hiram F. Mather and Levi B. Tafft
Solicitors for the defendants in the above cause being
duly sworn say that on the argument of this Cause
before the Circuit Court which occurred in De-
cember 1860 and January 1861 and occupied
nearly a whole week the matter of tax pay-
ment for seven years and over under the
ninth Section of the Conveyance act (which
was set up and mainly relied upon in a
defence on the part of the defendants and
the sufficiency of said tax payment (not
including however the question of Color of
title in good faith) was admitted by the
complainant and counsel on said argument
and therefore no discussion was had thereon
in said circuit Court in any part of the
argument in said Cause which fact or
facts as deponents insisted on making up
the record for the Supreme Court ought

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to have so appeared in the record But in settling and making up the record for the Supreme Court on which Mr Chickering was Engaged with Mather & Taft a large part of the time for several weeks (he frequently consulting thereon with Mr Learned as he said) said Chickering refused to have it so stated and so to appear in the record and insisted on the defendants Evidence on that point going instead of said admission which as the only alternative left Mather & Taft even forced to consent to inasmuch as the previous admission was not in writing but parol only: In consequence whereof Mather & Taft insisted on their oral argument before the Supreme Court that on this point if the Supreme Court should be of opinion that the objection of Complainants that the tax payments by executors did not concur with the color of title was good and tenable that then they should also take notice that the objection thus stated for the first time was a surprise upon the defendants and if on that ground the Supreme Court should deem it necessary to reverse the decree as to the two parcels of land on Section twenty in dispute in this cause that such reversal should be only sub modo and the cause remanded for further proceedings so as to give the defendants an opportunity to put that matter in its true light which they the counsel for the defendants insisted to the Court could

and would be done and they Expressly insisted to the Court and averred that on such view of the law by the Supreme Court the trial or argument already had was only a mistrial or like a mistrial at law; accordingly Mr Mathis stated to the Judges on argument in the Supreme Court (the Court aforesaid) that immediately after the argument they would supply the Court with an affidavit showing all the facts as above stated to sustain their suggestions and the request and claim so made that the Court would remand the cause in such case for further proceedings and not send it back to be finally disposed of as it stood: With this view such affidavit was immediately drawn up and handed to Judge Walker upon the bench showing distinctly and fully all the facts and circumstances as above stated with the views above stated. The Court was understood to assent to receive such affidavit by way of suggestion when mentioned by Mr Mathis on the argument, and the affidavit having been previously prepared before the argument under the advice and upon consultation with Mr. Wm. C. Gordy then at Court (who suggested that he considered an oral suggestion amply sufficient for the purpose but that an affidavit could do no hurt) was handed to Judge Walker at the close of the argument or within a very short time thereof. Also when subsequently the reply printed by defendants Counsel to Mr.

Page 62 Larned's printed argument for complainants (the fact being that Wm. Larned requested leave at a subsequent day to send up a printed argument which was granted on condition of his submitting it to defendants counsel who were to have leave to reply) was forwarded to the Judges, Special attention of the Court was called to the above suggestions H. F. Mathes

Subscribed & Sworn to L. B. Tafft.
Feby. 10. 1862 before me
Wm. L. Church Clk.

Circuit Court

Chas Kerrin & et al

vs

Fairbanks et al

Affidavit

Read copy of this
affidavit. day 10. 1862
F. W. Childs Com'r

Copy

Filed Feby 10. 1862
Wm. L. Church Clk

(The original is on file)

Mathes & Tafft Solrs.

John W. Chickering &
James Luddington
vs.
Thomas H. Faile surviving Executor
Ann O. Lee widow of David Lee
deceased Abby Murry & Augustus C.
Murry her husband Anna P. Lee, Josephine
L. Drachter & Augustus Drachter her hus-
band Mary E. Lee & David B. Lee Children
and heirs of David Lee deceased

In the Circuit Court
of Cook County
State of Illinois
In Chancery.

To the Honorable George Manierre Circuit Judge
in & for the Seventh Judicial Circuit

Your petitioner respectfully showeth that he is
sole surviving Executor of David Lee late of the City
of New York deceased and as such is one of the de-
fendants in the above suit which at first also
included as and the defendant Caleb O. Halstead
his associate Executor since deceased; that this pe-
titioner has had the principal and almost the
sole charge of Employing and corresponding with
Solicitors and Counsel and directing the defence
in said suit tho. his associate Executor aforesaid
was consulted by petitioner and gave his Consent
and approbation to petitioners proceedings but de-
parted this life before answer was filed by Mother
& Capt. on the part of defendants.

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Page 64 The answer aforesaid was an unsworn answer and was not signed by any of the defendants personally but by Mather & Taft as their Solicitors and petition-Er has learned by information received from said Solicitors that the decree of the Circuit Court in the above cause has been in part reversed on the ground of want of proofs on part of defendants that the title to the two parcels of land in Contest in Sect. 20. 39. 14 E. on color of title Concurred for the Statutory period of tax payment set up in the former answer in the name person or persons who paid the taxes, the Supreme Court of Illinois in their opinion for reversal, in that part, at the same time declaring never the less in the words following "Had it appeared that payment was "continued after the death of Lee by the persons holding "the color of title in his stead or devised to them "by Lee whether as trustee or in their own right then "it would have sufficed"

Your petitioner further states and shows to this Court that in matter of fact and truth the very identical case then stated Subjunctively by the Judges of the Supreme Court and by them then pronounced sufficient, if it had appeared, was the Exact and true State and Condition of the case and the facts therewith connected: The last will and testament of David Lee aforesaid did actually and fully vest the title to the lands in question in the Executors the

survivor or survivors of them and such of them as should act for the time being in Trust with full power in trust to receive and distribute rents and profits and to convey the same on sale which is made their duty and the said trust yet remains in full force and Effect the property in question yet un sold and managed and under sole Control of said Executors and Trustees or survivor Ever since who have regularly continued Ever since the tax payments of all taxes Ever since testators decease as their duty under the will, and the Estate of the Children and heirs of Mr Lee by said Will is made to consist in and of shares given them by the will bid to be desired and recieved in money wholly from the Executors and trustees after sale of the real and personal Estate and the conversion of the whole into money which said Executors and Trustees are authorized and required by the will to do.

But it is not so stated and Explained in said answer nor was the will of said Lee offered in Evidence before this Court in any stage of the cause hitherto, the reason for which omission this defendant state as follows: This defendant shortly after the commencement of this suit went from New York City where he resides to Chicago Illinois for the purpose of assisting to the defence of the suit and Employed Messrs. Mather & Taft. to attend to the same for the defendants including the Children and heirs of testator

The said Children and heirs had at no time

Page 66 had or hitherto have ever had any care of Management or oversight of the property in dispute in this case and they were at the time to the best of his recollection and belief absent from the United States.
And the property in question remained still in charge of Executors and trustees aforesaid, but this deponent did not on that occasion nor on any occasion give any information whatever to Master & Taft respecting the will of said David Lee or its contents or the investiture of title in said Executors and Trustees in trust as aforesaid nor did he ever show them said will or any copy thereof and this petitioner has every reason to believe and does believe that said Solicitors and Counsel were left in entire ignorance of said facts concerning said will and never were informed thereof in any manner whatever until as deponent has learned from them they were induced by the decision of the Supreme Court above referred to inquire for the will aforesaid and on inquiring and examination found the certified copy thereof in the County Clerks office of Cook County Illinois and the same then recorded.

Petitioner further states to the Court that he had no knowledge that it was in any wise necessary or important to impart to Messrs Master & Taft any information respecting said will or its Contents or the mode in which the Estate was vested in the Executors in trust as above stated for the purposes

A.

of the answer, or the proof of the defence of said cause notwithstanding petitioner was, at all the time referred to, acting under a very strong and even oppressive and burdensome feeling of desire and will to do and discharge his whole duty in the premises and to and in behalf of the Estate and the Children of said David Lee the testator and to be therein vigilant and guilty of no laches or neglect; and this petitioner has always believed and still believes from the promptness & fulness & frequency with which said Solicitors and Counsel have always communicated with him that they were also acting in good faith with the same endeavor to be equally vigilant and faithful in all matters pertaining to the defence of this suit both in the Circuit and in the Supreme Court but it appears obvious to the mind of petitioner that said Solicitors fell in to the very natural Error of supposing the real estate in question to have descended to Mr Lees children directly and not to be vested in Executors in trust as aforesaid for want of information from petitioner respecting the will of Mr Lee and the Contents thereof.

Petitioner further shows to this Court that he is neither a Lawyer nor to any considerable extent acquainted with Law but has been devoted nearly all his life to mercantile pursuits and he verily believes that a great wrong and great injustice may be suffered by the Children of Mr Lee the testator unless he be

permitted to amend the answer heretofore filed in this cause or to file a supplemental answer therein and to open the proofs in said cause so as to let in the appropriate proofs under said amended or supplemental answer as well as the original.

Petitioner has therefore prepared an amended or supplemental answer in said cause which he prays may be received and filed therein and the proofs opened in said cause generally so as to admit proofs appropriate to the amended or supplemental answer as well as the original as modified.

Mather & Lapsley Solicitors Thomas H. Faile

and of Counsel for defendants —

City County & State of New York ss. Thomas H. Faile of said city being duly sworn says he has read the foregoing petition signed by him & knows the contents thereof and that the same is true of his own knowledge except as to matters stated on information & belief and as to those he believes the same to be true Thomas H. Faile

Subscribed & Sworn to before me in due form of law this 12th day of March 1862 witness my hand and official seal John Bissell

Notary Public. 11 Wall St.

Seal.

John M. Chickering &
James Luddington
vs
Thomas H. Faile Surv'g.
Executor and others the Widow
and heirs of David Lee deceased

In the Circuit Court
of Cook County
State of Illinois
In Chancery

The defendant Thomas H. Faile by way of amendment or supplement to the answer heretofore filed in the above entitled cause wherein Anna S. Lee as widow of said Testator David Lee, together with Abby M. Murry and Augustus C. Murry her husband, Anna P. Lee, Josephine L. Dwachter and Augustus Dwachter her husband David B. Lee and Mary E. Lee and Caleb O. Halstead the other Executor of said testator in his life time, since deceased were co-defendants, by leave of the Court for this purpose first had and obtained says that the said David Lee at his death left a last will and testament by him duly executed dated Nov. 8th 1848.

Whereby after giving to his widow certain real estate in the City of New York for life, certain personal property absolutely and certain annuities for life, which provisions she has accepted and enjoyed ever since testators decease, all in lieu and in

bar of dower; next proceeded to give to his Executors therein after named the survivor or survivors of them and such as should act for the time being all the rest and residue of his Estate both real and personal whatsoever and wheresoever In trust for certain uses and purposes therein particularly specified among which trusts is a duty to distribute the rents, income and profits of the residuary Estate including that of the realty in question to and among the testators children until David B. Lee (one of them) should come of lawful age of twenty one years with certain limitations over in case of his decease: And upon further trust on said David B. Lee coming of lawful age or earlier decease which ever should first happen, to convert said residuary Estate into money and to distribute the proceeds to the said David B. Lee and other children and the descendants of any deceased child in proportions therein stated (among which the proportion of said David B. Lee in case of living to the age of twenty one is the largest of the five by the sum of Fifteen Thousand dollars) with various other provisions for

investment and payment in parts at different times to the several Childrew or their descendants.

That to said Executors named therein the survivor or survivors and such as should act for the time being was given by the will for the purposes of the trust full power of sale of all such real Estate and to give conveyances therefor;

That of the four persons named as Executors in said will the said Thomas H. Faile and Caleb O. Halstead in his life time, only acted, that they proved said will before the Surrogate Court of New York City and took letters testamentary and entered upon and ever since discharged the duties of Executors and Trustees till the death of the said Caleb O. Halstead as suggested by the Complainants upon the record since the Commencement of this suit and since which time the said Faile has been and is sole Executor and Trustee and said will having been duly authenticated certified and copied with proofs and Letters testamentary was subsequently recorded pursuant to law in the office of the Clerk of the County Court of Cook County Illinois in Book 14. page 1. by

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C. B. Farwell clerk by order of the County Judge of said County (Recorded on the day of 185 to which record or a copy thereof duly authenticated this defendant refers and desires the same may be received in Evidence by the Court: That by the terms and provisions of said will the title to the real Estate in question in this cause with the Mass of Testators real estate was not vested in his said Widow or Children and heirs at law but in the said Executors the survivor or survivors or such of them as should act for the time being in Trust:

That immediately after the decease of testator the said acting Executors entered upon the charge of the real estate in question and to the present time they or said Faile as survivor has had sole Care and management of the same and have caused all the taxes to be duly paid thereon as owners and holders of the title by virtue of said will, that since the title accrued to said Daniels the payment of taxes by him during his life and by his said Executors and trustees acting under his will has greatly Exceeded the period of seven consecutive years:

That the said David B. Lee is still living and the property in question as yet unsold and unconverted by reason of this litigation and and other causes preventing the same hitherto but remains under the sole charge of said surviving Executors subject to the trusts and power of sale aforesaid to be Executed by him:

That payments of taxes on the land in question was made by and on account of David Lee as long as he lived and after his death by and for his Executors down to the death of Caleb O. Halstead and thereafter by and for said Thomas H. Faile as sole acting and surviving Executor and the said David Lee did not come of age until on or about 17th March 1856.

Thomas H. Faile

Mather & Taft
Solicitors & of Counsel
for the Defendants

City, County & State }
of New York } ss. Thomas H. Faile of said City being duly sworn doth depose and say that he has read the foregoing answer signed by him & knows the contents thereof & that the same is true of his own knowledge

Page 74 Except such facts as appear to be stated on information & belief & as to those he believes the same to be true.

Subscribed & sworn to before Thomas H. Faile
Me in due form of Law this 12th day
of March 1862. Witness my hand
& official seal. John Bispele
Notary Public 11 Wall st.

Seal

After argument and consideration the Court over ruled the complainants motion for an interlocutory decree and reference to a master and allowed the motion of the dependant Faile

Thereupon the complainant excepted to such orders of the court and Thereupon the dependant by leave of the Court filed the amended or Supplemental answer aforesaid to which the Complainant filed the following replication. and protest —

State of Illinois
Cook Circuit Court } of term of April
A. D. 1862.

Chickering & Ladd complts
vs
Thomas H. Lair et. als. } In Chancery

Replication to amended or supplemental answer of Thomas H. Lair defendant.

These repliants protesting against the right of the said defendant to make the said supplemental answer - and excepting to the order of the said Circuit Court allowing the same and saving and reserving to themselves all and singular all manner of advantage that by way of exception or other-wise they could or might take to the same and also to the manifold insufficiency, ambiguities and contradictions of the said answer - for replication thereto say that they will aver and prove their said bill to be true and sufficient to entitle them to the relief therein prayed & that the said supplemental answer of the said defendant is untrue, uncertain & insufficient - without this that any matter or thing whatsoever in the said supplemental answer contained material or effectual in law to be

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replied unto is true all of which these re-
pliants are ready to aver and prove as
this Honorable Court shall direct & pray
as in and by their said Bill they have
already prayed

J. W. Chickering &
James Luddington
by Chickering Solr.

Thereupon the cause came on for a hearing upon the evidence heretofore produced and fully appearing in the former Record which is made a part hereof. Together with the paper hereunto annexed purporting to be ~~being~~ an exemplified copy of the will of David Lee of the City of Newport deceased indorsed "Recorded in Doc. Rec. Book 14 Page 1 Nov. 28. 1856 C. B. Farwell Clerk" attached to or accompanying which is a copy of the order of H. L. Rucker Esq County Judge allowing & ordering the Same to be recorded certified by L. P. Hilliard Clerk This is admitted for both parties by Counsel without any formal objection instead of a copy of the will from the Records of Cook County Court where it is recorded - which admission is only a waiver of formal objections

The counsel for complainants objected to the admissibility of the Document as evidence in the Case on the ground of Competency & relevancy and upon its being admitted duly excepted

Be it Remembered that heretofore
to wit on the eighth day of February
in the year one thousand eight hundred
and fifty three Caleb O. Halsted and
Thomas D. Dale the Executors named
in the last Will and Testament of David
Lee late of the County of New York, de-
=ceased appeared in open Court before
Alexander W. Bradford Surrogate of the
County of New York and made application
to have said last Will and Testament
which relates to both Real and Personal
Estate proved. And on such application
the Surrogate did ascertain by satisfacto
=ry evidence who were the Widow heirs
and next of Kin of said deceased and
their respective residences and some of
them, appearing to be minors having no
general guardian residing in the State of
New York a Special guardian was ap
=pointed in due form of Law to take care
of their interests in the matter of proving
said Will by an Order duly entered for
that purpose by said Surrogate and said
Surrogate did thereupon issue a Citation
directed to the Widow heirs and next of
Kin and Special guardian by their re
=spective names stating their places of
Residence requiring them to appear before
said Surrogate at his office in the City
of New York, on the Twenty eighth day

of March then next in the year one thousand Eight hundred and fifty three to attend the probate of said Will and afterwards towit on the said twenty eighth day of March satisfactory evidence by affidavit was adduced and presented to said Surrogate of the service of the said Citation in the mode prescribed by law. And on that day no one appearing to oppose the probate of said Will such proceedings were thereupon had afterwards that said Surrogate took the proofs of said Will herein after set forth. And upon this twenty ninth day of March he adjudged said Will to be a valid Will of Real and personal Estate and the proofs thereof to be sufficient, which said last Will and Testament and proofs are as follows that is to say

I David Lee of the city of New York mer-
chant Do make publish and declare this my
Last Will and Testament in manner and form
following that is to say: First I order and direct
that all my just debts and funeral Expenses
be paid as soon after my decease as convenient
-ly can done. Item I give and bequeath un-
-to my beloved wife Ann D. Lee all my House-
hold Furniture plate linen wearing apparel
books and pictures which shall be at the time
of my death at my Dwelling House Number
Twenty seven Union Place in the city of New-
York as her own absolute property. Item I al-
-so give and devise unto my said wife Ann
D. Lee my said Dwelling House and Lot
of Ground Number Twenty seven Union Place in
the City of New York. To Have and to Hold
the same to her for and during her natural
life and I desire that so long as my said
wife shall live and my Daughters or any
of them shall remain unmarried that those
remaining unmarried shall reside with their
said Mother and have a Home in said House
and I give and devise said House
& Lot upon the decease of my said wife unto
my then living children and the issue of any
of my children that shall then have deceased
leaving lawful issue then living each then
living child of mine taking one equal share
thereof & the issue of any deceased child
taking by representation the share their parent would
have taken if living. Item I give and bequeath
unto my said wife the interest and income of the
sum of Sixty thousand dollars and I order

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and direct my Executors to invest the said sum of money on Bond and Mortgage on productive unincumbered Real Estate or in stocks of a permanent and productive nature and to receive the interest income and dividends thereof and to apply the same to the use of my said wife during her natural life halfyearly or as often as the same shall be received by my Executors upon her sole and separate receipt the principal to be and remain part of my residuary Estate and upon the decease of my said wife to be divided and distributed in the same manner as my residuary Estate is hereinafter directed to be divided and distributed. Item I will order & direct that all the foregoing devise bequest & provisions made in my Will for the benefit of my said wife are made by me & are to be taken & received by her in lieu & bar of her dower & right of dower in my Estate & not otherwise Item I give and bequeath unto my Executors hereinafter named the survivors and survivor of them and such of them as shall act for the time being all the rest residue and remainder of my Estate both Real and personal whatsoever and wheresoever In Trust nevertheless for the purposes hereinafter mentioned that is to say In Trust to receive the Rents issues and profits interest income and dividends thereof until the arrival at lawful age of my son David B. Lee if he shall live to arrive at lawful age or if he shall die under lawful age then until his death and to apply the the whole of such Rents issues profits interest income and dividends

(after deducting all necessary and proper charg-
-es & expenses) to the use of my five children Ha-
-nna P. Lee, Abby M. Lee Josephine L. Lee
David B. Lee Mary C. Lee and their lawful
-ful issue leaving the mode of appropriating
and apportioning the same among my children
and their issue to the discretion of my Executors
and in case any or either of my said children
shall marry prior to the time of distribution
hereinafter mentioned I authorize and di-
-rect my Executors to advance to such one so
marrying each the sum of fifteen thousand
dollars and to charge the same in the final
distribution hereinafter mentioned to the shares
respectively of such to whom such advances shall
be made And upon the further Trust on the
arrival at lawful age of Twenty one years of
my said Son David B. Lee (if he shall
live to arrive at the age of Twenty one years)
or upon his death if he shall die under the
age of Twenty one years which ever shall
first happen to convert my residuary Estate
so devised & bequeathed as aforesaid into
Cash & thereout to pay to my said Son David
B. Lee if he shall be then living the sum of Fif-
-teen thousand dollars and to divide the balance
or remainder of such residuary Estate into as many
shares as shall be necessary to appropriate to each
of my children then living one equal share thereof
and the issue of any deceased child one equal
share thereof And upon the further Trust to pay
over to my son David B. Lee if he shall then
be living one equal half part of one share

(less the amount if any that shall have been advanced to him upon his marriage as hereinbefore provided) and to invest the other equal half part of said share on Bond & Mortgage on productive unincumbered Real Estate or in stocks of a permanent and productive nature and to apply the interest income and dividends thereof as often as the same shall be received to the use of my said son David B. Lee until he shall attain the age of Thirty years and upon his attaining the age of Thirty years to pay over to him the said principal and all unappropriated income provided however that in case of the death of my said son David prior to the time of distribution leaving lawful issue him surviving such issue to take at the time of such distribution the whole of said share less the amount if any which shall have been advanced to him upon his marriage as hereinbefore provided. And in case of his death after such distribution and before he arrives at the age of Thirty years his lawful issue immediately upon his death to take the said half share which would have been payable to him on his arrival at the age of Thirty years and in default of issue then living to pay over distribute and divide said half share unto and among my then living children and the issue of any deceased child of mine that shall have deceased leaving lawful issue then living each then living child of mine taking one equal share thereof and the issue of any deceased child taking by

representation the share their parent would have taken if living. And upon the further Trust in case my said Daughter Anna P. Lee shall be living at the time of the distribution aforesaid to invest one other share thereof less the amount if any which shall have been advanced to her upon her marriage as herein before provided on Bond & Mortgage on productive unincumbered Real Estate or in Stocks of a permanent and productive nature to take and receive the interest income and dividends thereof and to apply the same to the use of my said daughter Anna P. Lee for and during her natural life and upon her decease to pay over distribute and divide the principal sum and all unappropriated income thereof unto and among such persons and parties and in such shares and proportions as my said daughter shall by any instruments in writing purporting to be a Last Will and Testament or instrument of appointment executed by her under her hand and in the presence of two or more credible witnesses appoint order or direct and in default of such appointment order or direction to pay over distribute and devise the same unto and among the then living issue of my said daughter each then living child of hers taking one equal share thereof and the issue of any deceased child if any taking by representation the share their parent would have taken if living. And in default of issue of my said Daughter then living to pay over distribute and divide the same unto and among my then

living children and the issue of any deceased child of mine that shall have then deceased leaving lawful issue then living each then living child of mine taking one equal share thereof and the issue of any deceased child taking by representation the share their parent would have taken if living. And in case my said daughter shall have deceased before the time of such distribution ~~leaving lawful issue living at the time of such distribution~~ upon the further Trust to pay over to the issue of my said daughter then living the whole of said share less the amount if any which shall have been advanced to her upon her marriage as herein before provided to be divided among them by representation as aforesaid And upon the further Trust in case my said daughter Abby M. Lee shall be living at the time of such distribution to invest one other share thereof less the amount if any which shall have been advanced to her upon marriage as herein before provided on Bond and Mortgage on productive unincumbered Real Estate or on Stocks of a permanent & productive nature to take and receive the interest income and dividend thereof and to apply the same to the use of my said daughter Abby M. Lee for and during her natural life and upon her death to pay over distribute and divide the principal sum and all unappropriated income thereof unto and among such persons and parties and in such shares and proportions as my said daughter Abby shall by any instrument in writing purporting to be a Last Will and Testament or instrument

of appointment executed by her under her hand in the presence of two or more credible witnesses appoint order and direct & in default of such appointment order & direction to pay over distribute and divide the same unto and among the then living issue of my said daughter each then living child of hers taking one equal share thereof and the issue of any deceased child of hers (if any) taking by representation the share their parent would have taken if living and in default of issue then living to pay over distribute and divide the same unto and among my then living children and the issue of any deceased child of mine that shall have then deceased leaving lawful issue then living each then living child of mine taking one equal share thereof and the issue of any deceased child taking by representation the share their parent would have taken if living And in case my said Daughter shall have died before the time of distribution leaving lawful issue living at the time of such distribution -- Upon the further Trust to pay over to the issue of my said Daughter living at the time of such distribution the whole of said share (less the amount if any which shall have been advanced to her upon her marriage as herein before provided) to be divided among them by representation And upon the further Trust in case my said Daughter Josephine L. Lee shall be living at the time of such distribution aforesaid to invest one other share thereof (less the amount if any which shall have been advanced to her

upon her marriage as herein before provided) on Bond and Mortgage on productive unincumbered Real Estate or in Stocks of a permanent and productive nature to take & receive the rents income and dividends thereof and to apply the same to the use of my said daughter Josephine L. Lee for and during her natural life and upon her decease to pay over distribute and divide the principal sum and all arrearages of unappropriated income thereof unto & among such shares and proportions as my said daughter shall by any instrument in writing purporting to be a Last Will and Testament or instrument of appointment executed by her under her hand in the presence of two or more credible witnesses appoint order and direct and in default of such appointment order and direction to pay over distribute & divide the same unto and among the then living issue if any of my said daughter each then living child of hers taking one equal share thereof and the issue of any deceased child taking by representation the share their parent would have taken if living and in default of issue then living to pay over distribute and divide the same unto and among my then living children and the issue of any deceased child of mine that shall have then deceased leaving lawful issue then living each then living child of mine taking one equal share thereof and the issue of any deceased child taking by representation the share their parent would have taken if living and in case my said daughter shall have died before the time of distribution

leaving lawful issue living at the time of such distribution Upon the further Trust to pay over to the issue of my said Daughter living at the time of distribution the whole of said share (less the amount if any which shall have been advanced to her upon her marriage as hereinbefore provided to be divided among them by representation. And upon the further Trust in case of my said Daughter Mary C. Lee shall be living at the time of said distribution to invest one other share thereof (less the amount (if any) which shall have been advanced to her upon marriage as herein before provided on Bond and Mortgage on productive Real Estate or in Stocks of a permanent and productive nature to take and receive the interest income and dividend thereof and to apply the same to the use of my said Daughter Mary C. Lee for and during her natural life and upon her decease to pay over distribute & divide the principal sum and all unappropriated income thereof unto and among such persons and parties or in such shares and proportions as my said Daughter shall by any instrument in writing purporting to be a Last Will and Testament or instrument of appointment executed by her under her hand in the presence of two or more credible witnesses appoint order or direct and in default of such appointment order or direction to pay over distribute and divide the same unto and among the then living issue of my said Daughter each then living child of hers taking one equal share thereof and the issue of any deceased child of hers (if any) taking by representation the share their parent would have taken if living and in

default of issue then living to pay over distribute and divide the same unto and among my then living children and the issue of any deceased child of mine that shall have died leaving lawful issue then living each then living child of mine taking one equal share thereof and the issue of any deceased child taking by representation the share their parent would have taken if living And in case my daughter Mary E. shall have died before the time of distribution leaving lawful issue living at the time of such distribution Upon the further Trust to pay over to the issue of my said Daughter living at the time of distribution the whole of said share (less the amount if any which shall have been advanced to her upon her marriage as hereinbefore provided) to be divided among them by representation. Item I order and direct that the interest income and dividend of the shares above directed to be invested for the benefit of my Daughters respectively shall not be subject to the control or interference of any Husband they respectively may have. Item Upon the death of my said wife I order and direct my Executors to sell and dispose of my said House & Lot number Twenty seven Union Place in fee simple and to give good and sufficient Deed or Deeds of Conveyance therefor to the purchaser or purchasers thereof and divide the net proceeds of said sale and the principal sum hereinbefore directed to be invested for the use of my said wife and all unappropriated income thereof unto and among my then living children and the issue of such of my children as shall then

have deceased leaving lawful issue then living each Son of mine then living taking one equal share thereof and the issue of any deceased child of mine taking by representation the share their parent would have taken if living and my Exe-cutors investing for each of my then living Daught-ers one equal share thereof and I direct that the shares so to be invested for each of my daught-ers shall be added to the principal part of the shares respectively above directed to be invested for their respective benefit and the income there-of to be applied and the principal divided and established as is in that behalf above directed Item I Hereby nominate constitute and appoint my friends Daniel S. Miller, Caleb O. Halsted and Thomas H. Faile of the City of New York merchants and William C. Watmore of said City Counsellor at Law Executors of this my Last Will and Testament and Guardians of the persons and Estate of my children during their minority Hereby authorizing and empowering them and the survivors and survivor of them and such of them as shall act for the time being to compromise & compound with my debtors to submit to ar-bitration all or any disputes & controversies that shall or may arise in the settlement of my Estate to sell and dispose of my Real Estate not here-in specifically disposed of and to give good and sufficient conveyances therefor and to execute all and every the Trusts hereinbefore directed. Lastly Hereby Revoking all former and other Wills by me made I declare this and this only to be my Last Will and Testament. In Witness whereof

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I have hereunto set my hand and seal this Eighth day of November in the year one thousand eight hundred and forty eight David Lee L.S. Signed sealed published and declared by the said Testator as and for his Last Will and Testament in our presence who at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses John Cryder No. 22 East 16th St. N York Lorin Rash No. 10 East 17th St. N. Y. Cornelius Smith No. 29 Union Place

In the matter of proving the Last Will and Testament of David Lee deceased as a Will of Real and personal Estate

Examination.

Of Witnesses sworn and examined in the above entitled matter County of New York towit: John Cryder of the City of New York, being duly sworn as a Witness in the above entitled matter and examined on behalf of the applicant to prove said Will says I was well acquainted with David Lee now deceased. I knew the above named decedent for over twelve years before his death. The subscription of the name of said decedent to the instrument now shown to me and offered for probate as his Last Will and Testament and bearing date the Eighth day of November in the year one thousand Eight hundred and forty eight was made by the decedent at the City of New York

in the presence of myself Lord Nash and Cornelius Smith the other subscribing Witnesses. at the time of making such subscription the said decedent declared the said instrument so subscribed by him to be his last Will and Testament and I thereupon signed my name as a Witness at the end of said instrument at the request of said decedent and in his presence. The said decedent at the time of so executing said instrument was upwards of the age of twenty one years and of sound mind memory and understanding and not under any restraint or in any respect incompetent to devise Real Estate. I also saw said Nash and Smith the other attesting witnesses sign their names as Witnesses at the end of said Will and know that they did so at the request of said decedent and in his presence

John Snyder

Sworn this 29th day of March 1853 before me
A. W. Bradford

In the Matter of proving the last Will and testament of David Lee deceased as a Will of real and personal estate

Examination of

Witnesses sworn and examined in the above entitled matter County of New York to wit: Cornelius Smith of the City of New York being duly sworn as a Witness in the above entitled matter and examined in behalf of the applicant to prove said Will says: I was well acquainted with David Lee

now deceased. I knew the above named deceased for about ten years before his dea. The subscription of the name of said deceden to the instrument now shown to me and offere for probate as his last Will and testament an bearing date the eighth day of November in the year one thousand eight hundred and forty eight was made by the deceased at the City of New York in the presence of myself John Snyder and Lora Nash the other subscribing witnesses at the time of making such subscription the said deceased declared the said instrument so subscribed by him to be his last Will and testament. And I thereupon signed my name as a Witness at the end of said instrument at the request of said deceased and in his pres ence. The said deceased at the time of so executing said instrument was upwards of the age of twenty one years and of sound mind memory and understanding and not under any restraint or is any respect incompetent to devise real Estate. I also saw said Snyder and Nash the other attesting Witnesses sign their names as witnesses at the end of said Will and know that they did so at the request of said deceased and in his presence

Sworn this 28th day of March 1853 before me
A. W. Bradford

Cornelius Smith

In the matter of proving the last Will and Testament of David Lee deceased as a Will of real and personal estate

Examination of Witnesses

Sworn and examined in the above entitled matter County of New York to wit: Nora Nash of the City of New York, being duly sworn as a Witness in the above entitled matter and examined on behalf of the applicant to prove said Will says I was well acquainted with David Lee now deceased. I knew the above named decedent for upwards of twenty years before his death. The subscription of the name of said decedent to the Instrument now shown to me and offered for probate as his last Will and Testament and bearing date the Eighth day of November in the year one thousand eight hundred and forty eight was made by the decedent at the City of New York in the presence of myself John Cryder and Cornelius Smith the other subscribing witnesses. At the time of making such subscription the said decedent declared the said instrument so subscribed by him to be his last Will and Testament. And I thereupon signed my name as a Witness at the end of said instrument at the request of said decedent and in his presence. The said decedent at the time of so executing said instrument was upwards of the age of twenty one years and of sound mind memory and understanding and not under any restraint, or in any respect incompetent to devise Real Estate. I also saw said Cryder and Smith the other attesting witnesses sign their names as Witnesses at the end of said Will and know that they did so at the request of said decedent and in his presence

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Page 95

Sworn this 28th day of Lora Nash
March 1853 before me
A. W. Bradford

County of New York ss: Recorded the preceding last Will and Testament of David Lee deceased as a Will of Real and Personal Estate together with the proofs & examinations taken and had in the Court of the Surrogate of the County of New York relating to said last Will and Testament which Record is hereby signed and certified by me pursuant to the provisions of the Revised Statutes the twenty ninth day of March in the year of our Lord one thousand eight hundred and fifty three

A. W. Bradford
Surrogate

The People of the State of New York, By the Grace of God Free and Independent To all to whom these Presents shall come or may concern Send Greeting: Know Ye

That at the County of New York on the Twenty ninth day of March in the year of our Lord one thousand eight hundred and Fifty three before A. W. Bradford Esquire, Surrogate of our said County the Last Will and Testament of David Lee deceased, was proved and is now approved and allowed by us, and the said David Lee

being at or immediately previous to his death an inhabitant of the County of New York by reason whereof the proving and registering of said Will and the granting administration of all and singular the goods, chattels and credits of the said Testator and also the auditing, allowing and finally discharging the account thereof doth belong to us, the administration of all and singular the goods, chattels and credits of the said deceased and any way concerning his Will is granted unto Caleb O. Halsted and Thomas H. Faile of the city of New York two of the Executors in the said Will named they being first duly sworn faithfully and honestly to discharge the duties of such Executors. In Testimony whereof We have caused the Seal of Office of our said Surrogate to be hereunto annexed.

Witness, A. W. Bradford Esquire Surrogate of our said County at the City of New York the Sixth day of April in the year of our Lord one thousand eight hundred and Fifty three and of our Independence the Seventy Seventh

L.S.

A. W. Bradford

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State & County of New-York,
Surrogate's Office, } ss.

I, ALEXANDER W. BRADFORD, *Surrogate of said County, and acting as Clerk of the Surrogate's Court, do hereby certify, that I have compared the foregoing copy of the last Will and Testament of David Lee, deceased, of the proofs thereof, and the Letters Testamentary thereon with the original record thereof now remaining in this Office, and have found the same to be a correct transcript therefrom, and of the whole of such original record.*

In Testimony Whereof, *I have hereunto set my hand, and affixed my seal of Office, this fifth day of November in the year of our Lord one thousand eight hundred and fifty one and of our Independence, the ~~Seventy~~ Eighty first*

Surrogate.

State & County of New-York,
Surrogate's Court, } ss.

I, ALEXANDER W. BRADFORD, *Surrogate of said County, and presiding Magistrate of the Surrogate's Court, do hereby certify, that the foregoing exemplification of the last Will and Testament of David Lee, deceased, of the proofs thereof, and the Letters Testamentary thereon granted is authenticated in due form.*

In Testimony Whereof, *I have hereunto set my hand, and affixed the Seal of the Surrogate's Court, this fifth day of November in the year of our Lord one thousand eight hundred and fifty one and of our Independence, the ~~Seventy~~ Eighty first.*

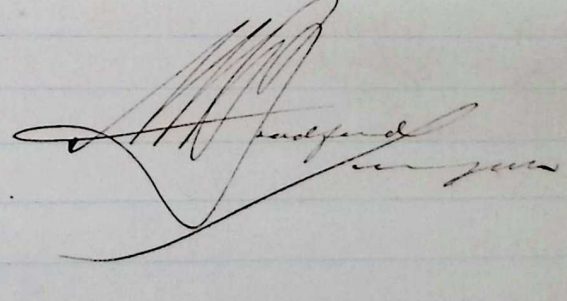
(Page 971)

Surrogate.

State and County of New York.
Surrogates Court

I Alexander W. Bradford Surrogate of said County and presiding Magistrate of the Surrogates Court. do hereby certify that the foregoing is a copy of the First Will and Testament of David Lee deceased and the Proof thereof and of the Letters Testamentary issued thereon to Caleb O. Halstead and Thomas H Feele therein named. are true copies severally thereof and that they are duly authenticated in pursuance of and agreeably to the Laws of the State of New York and I do further certify that such Letters Testamentary have been granted in pursuance of and agreeably to the Laws of the State of New York and that the same are not revoked by any decree now in force thereon.

In testimony whereof I have hereunto set my hand and affixed the Seal of the Surrogates Court this fifth day of November in the year of our Lord one thousand eight hundred and fifty two.



Form of Certificate

Book 16.
Probate Records
p 519 is
Record of
Judge Rudkin's
Order
allowing
this Will to be
Recorded

Certified Copy
Will, Proofs &
Letters Testamentary
Estate
of
David Lee, decd.

Recorded Doc. Rec. Book 14 page 1
Nov 28. 1856
C B Darnell
Clerk

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County Court of Cook County
November Term November 17th 1866
Present Hon. Henry S. Rucker. Judge
Charles B. Farwell Clerk
John L. Wilson, Sheriff.

Lee David
Estate of } Admitting to record of Authenticated
copies of Will & Letters Testamentary.

This day come into Court Caleb O. Halstead and Thomas H. Faile non resident executors, by their attorney Alexander C. Coventry and present to the Court authenticated copies of the last will and Testament of David Lee of the county of New York and State of New York, deceased, and of Letter Testamentary granted thereon to them the said Caleb O. Halstead and Thomas H. Faile, as executors of said Will, to have the same recorded, for the purpose of giving them the said Caleb O. Halstead and Thomas H. Faile authority, under the laws of this State, to sell, dispose of, and convey according to the provisions of said Will, Real Estate which was of said deceased, in this County.

And it appearing to the court that

Page 100 said copies are duly certified by Alexander

W. Bradford Surrogate and acting as Clerk of the Surrogates Court of the County of New York in the State of New York, under the seal of said Court, and it appearing by the certificate of Alexander W. Bradford Surrogate and presiding Officer of said Court, that said Letters Testamentary were granted in pursuance of and agreeably to the Laws of State of New York. Henry L. Rucker County Judge and presiding Officer of this our County Court of Cook County, did certify that said Will was duly authenticated under the provisions of an act of the Legislature of this State entitled "An act in relation to conveyances of Real Estate by Non-resident Executors" approved February 8th 1853, and it is

Ordered that said copies of Will and Letters Testamentary so authenticated be admitted to record, and it is further

Ordered that said Caleb O. Halstead and Thomas H. Faile or some responsible person in their behalf, enter into bond in the penal sum of two Thousand Dollars payable and conditioned according to the provisions

of said act, and the general provisions of the statute. And the said Executors by their said Attorney having produced the bond, with William H. Brown as their security, which is approved by the Court, the same is

Ordered to be recorded.

State of Illinois }
Cook County } ss I, Lauvin D. Hilliard, Clerk of the County Court of Cook County, do hereby certify that the foregoing is a true and correct copy of the record of said Court in the matter of the admission of authenticated copy of the last Will and Testament of David Lee, deceased, and authenticated copy of Letters Testamentary thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Chicago, in said County this seventeenth day of April A. D. 1862

L. D. Hilliard
Clerk

Page 103 The ~~annexed~~ following exhibit which is this is to be taken as the proceedings of the Cook County Court of Commonpleas In Chancery in the Case of Partition of the S.W. 1/4 of Sec 20 Town 39 N. Range 14 East of 3d Principal meridian and mentioned in the former abstract at pages 8 & 43 and is here inserted because it was not set out in full in the former Record and the same is a true Record of that cause and the proceedings thereon in that ~~cause~~ Court.

State of Illinois }
County of Cook } ss

Pleas before the Honorable John M Wilson Judge of the Cook County Court of Common Pleas within and for the County and State aforesaid at a Vacation term of said Court begun and holden at the Court House in the City of Chicago in said County and State, on the first Monday being the third day of July in the Year of our Lord One thousand eight hundred and fifty four and of the Independence of the United States the Seventy eighth

Present the Hon John M Wilson Judge
Cyrus P Bradley Sheriff
Walter Kimball Clerk

Attest.

Be it remembered that heretofore to wit on the Twenty third day of November in the Year of our Lord One thousand Eight hundred and fifty three. William L Johnston by H. G. Sherman his attorney filed in the office of the Clerk of the Cook County Court of Common Pleas his Certain Bill of Complaint and affidavit of Non residence in words and figures following to wit:

Bill

/

State of Illinois

In the Cook County Court
of Common Pleas.

To Honorable John M. Wilson
Judge of Cook County Court
of Common Pleas. In Chancery.

Humbly complaining shows unto your Honor your orator William S. Johnson of the city of Cincinnati in the State of Ohio.

That your orator and David Lee late of the city of New York in the county and State of New York deceased were in the lifetime of the said David Lee seized in fee simple of the South West Quarter of Section Number Twenty (20) in Township Number Thirty nine (39) North of Range Fourteen (14) East of the third principal Meridian situated and being in the county of Cook and State of Illinois containing one hundred and sixty acres of land according to the Government survey of said tract of land - the same being held as tenants in common.

That your orator is seized in manner aforesaid of one undivided half part of said tract of land and the said David Lee was prior to his decease, of the other undivided half thereof.

And your orator further shows unto your Honor

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and fifty three the said David Lee died leaving Ann D. Lee his widow and Anna P. Lee, Abbie M. Murray wife of Augustus Charles Murray, Josephine L. Lee, David B. Lee and Mary E Lee his Children and heirs at law him surviving, the said Abbie M. Murray being of full age - the said Josephine L Lee nineteen years of age, the said David B. Lee eighteen years of age and the said Mary E Lee fifteen years of age and that they are all residents of the said city of New York as your orator is informed and verily believes to be true.

And your orator further shows unto your Honor that his interest in said premises and property was acquired by by deed bearing date on or about twenty third day of May eighteen hundred & thirty eight executed by George W. Cassiday & wife and William Fithian to your orator which deed is recorded in the Recorders office of Cook County in the said State of Illinois in Book "N" of Deeds page 275 filed for record July 10th 1838 as will more fully and at large appear on reference to said deed or a certified copy thereof ready to be produced as this Court may direct.

And your orator further shows unto your Honor that as your orator is informed & believes to be true, the said David Lee prior to his decease made and executed his Last will and testament in and by which Thomas W. Foile & Caleb O. Halsted of the said city of New York were appointed the executors of the estate of the said David Lee and guardian of such of his said children as were under the age of twenty one years and that the said Executors have assumed

and entered upon the discharge of their duties as such Executors and guardians under said Will & there is no guardian of said Children in this State as your orator is informed and believes.

And your orator further shows unto your Honor that it is desirable and practicable as your orator is informed & believes to be true that partition should be made of said premises & property and that the part or portion thereof which shall be allotted to the said heirs of the said David Lee should be set apart to them in one parcel & subject to the right of dower of the said widow.

And your orator further shows unto your Honor on or about the 17th day of January A.D. 1858 by Indenture bearing date on that day your orator executed a mortgage upon an undivided half of said tract of land to Samuel Russell of the State of Connecticut to secure the payment of the sum of Four thousand Dollars in three years, which is still outstanding,

And your orator well hoped that a partition and division of the said premises and property could have been made without resorting to this court but, inasmuch as the said Josephine L. Lee David B. Lee and Mary E Lee are minors under the age of twenty one years and are on account of their respective minorities incompetent to make a voluntary partition of the same so far as they are severally interested therein and your orator is obliged to resort to this Court where matters of this sort are properly cognizable and relievable.

To the end therefor that the said Ann D. Lee Anna P. Lee, Augustus Charles Murray and Abbie W. Murray his wife, Josephine L. Lee David B. Lee

Mary E. Lee and Thomas H. Faile & Caleb O. Halsted Executors of the Estate of David Lee deceased and guardians of his minor children and Samuel Russell may true and perfect answers make to all and singular the premises, without oath (their answers on oath being hereby expressly waived) and that a partition may be made of the said tract of land among the parties entitled thereto according to their several and respective shares, rights and estates therein and that the said respective shares, rights and Estates of the said tenants in common and all others interested therein (in case any there should be) of in and to said premises may be judicially declared, ascertained and established by the decree of this Honorable Court in that behalf to be pronounced and that three commissioners may be appointed by this Court to make the said partition and division to & among the respective ~~tenants~~ in common agreeably to such shares, rights & estates and that all such further or other proceedings may be had agreeably to the course and practice of this Court & such as may be requisite and proper to render such partition valid and effectual, and that your orator may have such further or other relief in the premises as may seem proper and agreeable to equity and good conscience together with his reasonable costs and charges by him in this behalf sustained.

May it please your Honor to grant unto your orator the Peoples writ of Summons issuing out of and under the seal of this Court directed to the said Wm D. Lee Anna P. Lee, Augustus Charles Murray, Abbie M Murray, Josephine L. Lee, David B. Lee, Mary E. Lee and Thomas H. Faile & Caleb O Halsted Executors of the Estate of David Lee deceased and Guardian of

his minor Children and Samuel Russell commanding them and each of them to be and appear at at the term of this Honorable Court to be holden at the Court House in the city of Chicago on the first Monday of February next to answer all and singular the premises and to stand to and abide such order and decree therein as may seem meet and proper.

And your Orator will ever pray &c

H. G. Shumway
Solc for Compt

William S. Johnson
By James A. Reg. agent.

State of Illinois }
County of Cook } ss. On this 28th day of November A.D. 1853 before me personally appeared James A. Reed and made oath that he is the agent of the complainant in the above bill of Complaint, that he has heard the said bill of Complaint read & knows the contents thereof - that the facts & circumstances are true as therein stated except as to those matters therein stated to be on information & belief and as to those matter he believes it to be true - that the same are within his knowledge equally with the said complainant & that the said complainant resides in the city of Cincinnati in the State of Ohio.

Walter D Kimball Clk
Cook Co Ct Com Pleas.

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In Cook County Court
of Common Pleas
William S. Johnson
Compt.
vs.
Anna P. Lee
Augustus Charles Murray
Abbie M Murray
Josephine L Lee.
David P. Lee
Mary E. Lee &
Thomas H. Faile
Caleb O. Halsted
Executors of Estate of
David Lee Dec'd
Samuel Russell
" "

} Bill for Partition.

Please issue Summons
in this Suit to Sheriff of Cook County returnable to
February Term 1854 — Nov. 16 1853.

H. G. Shumway
Compts Solc.

In Cook County Court of Common Pleas

William S Johnston

vs

Anna P Lee Augustus Charles
McMurray, Abbie M McMurray
Josephine L Lee David B Lee
Mary E Lee & Thomas H Faile
& Caleb C Halsted Executors of
Estate of David Lee dec'd & Samuel Rumill

Comp't

Bill

State of Illinois }
County of Cook } ss. Horatio G Shumway of Chicago in said County being duly sworn deposes & says that he is the Solicitor for the Complainant in this suit, that he is informed and believes that all the defendants in this suit reside in the City and County of Chicago in the State of New York except the defendant Samuel Rumill and that he resides in the State of Connecticut and further says not.

Subscribed & Sworn to
the 23d day of November
1853 before me
Walter Kimball Clerk

H G Shumway

And afterwards to wit on the same day and year aforesaid there issued out of the office of the Clerk aforesaid, the People's Writ of Summons which said Writ with the Sheriff's return thereon endorsed is in the words and figures following to wit:

State of Illinois }
Lake County } ss

The People of the State of Illinois

To the Sheriff of Lake County

Summons

State of Illinois
Cook County } ss

The People of the State of Illinois
To the Sheriff of Said County — Greeting: ——
We Command You that You Summon Anna P Lee,
Augustus Charles Murray, Abbie M Murray,
Josephine L Lee, David B Lee, Mary E Lee and
Thomas H Fair and Caleb C Halsted Executors of
Estate of David Lee deceased and Samuel Russell
if they shall be found in Your County, personally to be
and appear before the Cook County Court of Common
Pleas of Said County, on the first day of the Term thereof,
to be holden at the Court House, in Chicago, in Said
County, on the First Monday of February next to answer
unto William S Johnston in his Certain bill of Com-
plaint for Partition filed in the Said Court, in the
Chancery side thereof.
And have You then and there this Writ, with an endorsement
thereon, in what manner You shall have executed the Same
Witness, Walter Kimball, Clerk of our Said
Seal Court, and the Seal thereof, at Chicago, in
Said County, this 23rd day of November
A D 1853

Walter Kimball Clerk

Sworn of the within named defendants found in my
County this 10th day of December 1853
C P Bradley Sheriff
By J H Norton Dept

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115 — And afterwards Viz: on the Tenth day of February in the Year of our Lord One Thousand Eight Hundred and Fifty four William S Johnstone by Shumway his Solicitor filed in the office of the Clerk aforesaid a Certificate of publication in words and figures following Viz:

Publication

Chancery Notice

State of Illinois }
County of Cook } ss

Cook County Court of Common Pleas
February Term A D 1871

William S Johnston, Compt

vs

Anna P Lee, Augustus Chas Murray
Abbie M Murray, Josephine L Lee
David B Lee, Mary E Lee,
Thomas B Faile and Caleb C Halsted
Executors of the Estate of David Lee
deceased and Samuel Russell

In Chancery

Affidavit having been made and filed in the office of the Clerk of the Cook County Court of Common Pleas, within and for the County of Cook and State aforesaid, that the above named defendants are not residents of the State of Illinois

Notice is therefore hereby given to the said defendants Anna P Lee, Augustus Charles Murray, Josephine L Lee, David B Lee, Mary E Lee, Thomas B Faile and Caleb C Halsted Executors of the Estate of David Lee deceased and Samuel Russell that the said Complainant William S Johnston filed his petition for partition of Real Estate in the office of the Clerk of said County on the twenty third day of November instant 1870 And that a Summons thereupon issued out of the Clerks

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office aforesaid in said Cause. Returnable on the first Monday of February next A D 1854 to the Term of said Court then to be holden at the Court House in the City of Chicago

Now unless You the said Anna P Lee. Augustus Hanby Murray. Josephine L Lee. David B Lee. Mary E Lee and Thomas H Faile and Caleb C Halsted Executors of the Estate of David Lee deceased and Samuel Russell shall then and there appear and plead, answer or demur to said Complainants petition the same and the matters and things will be taken as confessed against You. and the prayer thereof be granted

Walter Kimball Clerk

H G Summers Complainants Solicitor

Nov 28 - d 4 w

This is to Certify that the annexed notice was published in the Chicago Journal a Daily Newspaper printed in the City of Chicago, County of Cook and State of Illinois, & said, for four successive weeks, as follows; The first insertion on the 28th day of November 1853 in Vol 12 No 249 and Continued daily for the said term of four weeks of said Paper

Dated at Chicago Feb 10 1854

R L & C L Wilson & Co

Publishers Chicago Daily Journal

And afterwards to wit on the day and year last aforesaid, said day being one of the days of the February term of said Court the following among other proceedings was had in said Court and entered of record to wit

William S Johnston
vs
Anna P Lee, Augustus Charles
McMurray, Abbie M McMurray
Josephine L Lee, David B Lee
Mary E Lee & Thomas H Faile
& Caleb Halsted. Executors of
Estate of David Lee deceased
& Samuel Russell

In Chancery

Bill

And now at this day
comes the said Complainant by H G Shumway his
Solicitor, and it appearing to the Court that the said
Josephine L. Lee, David B Lee and Mary E Lee of the
above named defendants are minors under the age of
twenty one years, and on motion of said Solicitor it is
ordered by the Court that Walter Kimball be and he
is hereby appointed Guardian ad litem for the said minors
Josephine L. David B and Mary E Lee, in this cause,
and the said Complainants Solicitor files herein due
Proof of Publication of the Notice to the said above named
defendants of the Pendency of this Suit, and on motion
of said Solicitors, it is ordered that the said defendants

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Anna P Lee Augustus Charles Murray Abbie Bn Murray & Thomas B Faile & Caleb O Halsted Executors of the Estate of David Lee deceased and Samuel Russell plead Answer or demur to said Complainants bill filed in this Cause instanter, and no plea. Answer or demurrer being interposed, and they being three times solemnly Called in open Court Come not. nor does any person for them but made default. it is on motion of said Complainants Solicitor ordered that said Bill of Complaint be taken as Confessed against the said Anna P Lee Augustus Charles Murray, Abbie Bn Murray & Thomas B Faile & Caleb O Halsted executors of Estate of David Lee, second and Samuel Russell

And afterwards to wit on the Seventeenth day of February in the Year last aforesaid, Walter Kimball Guardian ad litem of said infant defendants filed herein his Custom answer in words and figures following to wit:

Answer
Dr R for pts

In C & R County Court of Com Pleas
In Chancery

The joint & Several Answer of Josephine L Lee
David P Lee & Mary E Lee infants under the
age of twenty one Years by Walter Kimball their
Guardian Ad litem Three of the defendants to the
bill of Complaint of William S Johnston against
these defendants and Anna P Lee Augustus Charles
Mcavay and Abbie M his Wife, and Thomas H
Poole & Caleb C Halsted Executors of Estate of Denis
Lee deceased & Samuel Purcell

These defendants severally answering by their
said Guardians say that they are strangers to all &
singular the Matters & things in the said bill of Complaint
Contained; that these defendants are respectively
infants under the age of twenty one Years & claim
such interest in the premises as they are severally
entitled to and severally submit their interests to
the protection of this Hon Court

Walter Kimball Guardian
ad litem of above named infant
defts

And afterwards to wit on the same day and Year
last aforesaid — Said day being one of the days of the
February Term of Said Court the following proceedings
was had in said Court and entered of record to wit

William S Johnston
vs
Anna P Lee, Charles Murray &
Abbie M Murray et als
} In Chancery
Bill

And now come Justinian
L Lee David B Lee and Mary E Lee Infant defend-
ants herein by Walter Kimball Guardian ad litem and
file their Answer herein, and on motion of said Com-
plainants Solicitor it is ordered that this Cause be re-
ferred to George McGuire Esq Master in Chancery of
Cook County to take Proofs of the material facts
and allegations in said bill of Complaint and that
he report the same to the Court.

And afterwards to wit on the Twenty first day of June
in the Year last aforesaid, said day being one of the
days of the June Vacation Term of said Court the
following among other Proceedings was had in said
Court and entered of record to wit:—

William S Johnston
vs
Anna P Lee et als
Complainant
Defendants
} In Chancery

On motion of
H G Shumway Solicitor for the Complainant in this
suit, It is ordered, that the bill of Complaint filed
herein be amended by inserting the words —

Ann D Lee his widow and" after the words "leaving" in the tenth line of Second Page, and by striking out the words "his widow" after the name of Anna P Lee in the same line so that that part of said bill shall read as follows:, leaving Ann D Lee his widow and Anna P Lee Abbie M Murray & C

And also by inserting the words Ann D Lee upon the words Anna P Lee. in the interrogating part of said bill and in the prayer for process. so that the said Ann D Lee widow of the said David Lee be made a party defendant throughout the said bill

John M Bibb

And afterwards to wit on the Twenty third day of June in the Year last aforesaid - Ann D Lee by W. H Brown her attorney and Solicitor filed herein her separate answer in words and figures following to wit:

Answer of Anna D Lee

In the Cook County Court of Common Pleas
In Chancery

The Separate Answer of Ann D Lee one of the defendants to the bill of Complaint of William Johnston against this defendant and Anna D Lee Abbie M Murray & Augustus C Murray & Thomas H Hall & Caleb C Halsted Executors of the Estate of Dana Lee deceased and Samuel Russell

This defendant Answering by William H Brown her Solicitor says that this defendant admits that the several allegations & Statements in said bill of Complaint Contained are true as therein stated & alleged and that she Consents to the order of reference to the Master in Chancery therein for entered in said suit & that such order or decree may be entered in said suit as may to the Court seem meet in the premises

Ann D Lee
by W H Brown
Atty & Solicitor

And afterwards to wit on the same day and term last aforesaid George Manierre Master in Chancery to whom was referred the facts and allegations set forth in the Complainants petition filed in the office of the Clerk aforesaid his Certain Report in these words and figures following to wit

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Master's Report

State of Illinois
Cook County } ss

Office of Master in Chancery
Chicago June 23rd 1854

In the Cook County Court of Common Pleas of the
June Term 1854

William S Johnston
vs
Ann D Lee Widow of David Lee } In Chancery
deceased & others his heirs at law

Hon John M Wilson, Presiding Judge
of said Court in Chancery. Sitting

In pursuance of an
Order made by said Court in the above entitled Cause
by which it was referred to me to take proof of the
material facts and allegations set forth in the Complai-
nants Petition and Report my opinion thereon.
I, George Manierre, Master in Chancery, of
said County, do hereby report, that on this the
23rd day of June 1854. the Complainant appeared
before me in person and by Greenaway Solicitor
at my office in the City of Chicago, at which time
and place the following examination was had and
proofs taken

William H Brown being first duly
sworn deposes says

I was acquainted with David

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Lee deceased late of the City of New York in his life time
He departed this life between one and two Years ago
He left a Widow Ann D Lee. and Anna P Lee aged
twenty four Years or thereabouts Abba M Murray wife
of Augustus C Murray, Josephine L Lee aged nine-
teen or thereabouts. David B Lee aged about 18 Years
and Mary E Lee aged about fifteen them surviving
as his sole heirs at law so far as I know. I have been
acquainted with Mr & Mrs Lee for the last fifteen Years
and from my belief and information the Persons named
in all the Children of said David Lee, Thomas H Faile
& Caleb C Halsted are the acting Executors of the said
David Lee. I have Communicated with them as
Executors and settled accounts with them as such
And in that Capacity. I know nothing about this
in any other way

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W. H. Brown

Sworn to & Subscribed before
me the 23d June 1851

George Mannen
Master in Chancery of Cor R Co Del

Edward P Towne being first duly sworn deposes
and says

I reside in Chicago. The annexed Exhibits
A and B are in my hand writing. The first Contains
a Copy of a deed dated May 23d 1838 between George
W Carriday and wife and William Fithian all of
Danville of the first part and William S Johnston
of the City of Cincinnatti, and the Second Contains a

Masters Report

Copy of a deed dated July 31 1847 between W. H. Brown & Henry C Hubbard Trustees & Executors of E. H. Hubbard dec'd of the first part, and David Lee

Three Copies were made by me from the books of record in the office of the Recorder of Cook County and have been Compared by me with the record, and the same are Correct Copies

E P Towne

Sworn to & Subscribed before me this 23d day of June 1854

George Manierre
Master in Chancery

Masters Report

On the foregoing evidence I do hereby report that on the 23d day of May 1838 the Complainant became seized in fee of an undivided one half part of the South West quarter of Section Twenty (20) Township Thirty nine (39) North Range fourteen East

I do further report that on the 31st July 1847 David Lee became seized of the other undivided half of the same quarter Section & being so seized afterwards died, about two Years ago departed this life leaving a Widow Ann D Lee and the following named Children; Anna R Lee age 24 Years, Abba M Murray Wife of Augustus C Murray, Joseph W Lee age 19 Years, David B Lee age 18 Years and Mary E Lee age 15 or thereabouts his sole and only Children and

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I do Hereby Report that the respective rights of the parties from the evidence are as follows
William S Johnston. Undivided half of the premises
Heirs & widow of David Lee Undivided half "
All of which is respectfully Submitted
George McCamey
Masters Fee $5.00 Master in Chancery

And afterwards to wit, on the same day and year last aforesaid - Said day being one of the days of the June Vacation Term of Said Court the following among other proceedings was had in said Court and entered of record. To wit

William S Johnston
vs
Ann D Lee widow of David Lee deceased, Anna P Lee Augustus C Murray & Abbie M Murray his wife Josephine L Lee, David B Lee and Thomas H Faile & Caleb C Haletts Executors of the Estate of David Lee deceased and Samuel Russell

In Chancery
Petition for Partition

and Mary E Lee

This Cause Coming on to be heard upon the Report of George McCamey Esq Master in Chancery, to whom it was referred to take proof of the material facts and allegations in the Bill of Complaint filed in said suit, which said report bears date the

twenty third day of June Eighteen Hundred and fifty four.

And it appearing from said Report of said Master that the said Complainant is the owner in fee of an undivided half part of the South East Quarter of Section Twenty (20) Township Thirty nine (39) North Range Fourteen (14) East, and that the Heirs & Widow of David See deceased are entitled to the other undivided half part of said premises (being the same premises of which partition is sought to be made by this suit) And it further appearing that partition can be made of the premises so sought to be divided, it is therefore on motion of Wm & G Shumway Solicitor for said Complainant

Ordered adjudged and Decreed that partition be made of the said South East Quarter of Section Twenty (20) Township Thirty nine (39) North Range Fourteen (14) East of the third Principal Meridian, and that Hazel Mosely, Andrew J Boom, and Nathaniel Wilder three disinterested freeholders of the County of Cook, and not of kin to any of the parties to this proceeding be and they are hereby appointed Commissioners to make partition of said premises between the said Complainant and the said Heirs of David See deceased share and share alike, and that they make Report of their proceedings in the premises to this Court

John M Wilson

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And afterwards to wit on the Twenty fourth day of June in the Year last aforesaid. The Complainant by H & G Shumway his Solicitor filed herein Exhibits referred to in said Master Report and marked Exhibits "A" & "B" which are in words and figures following to wit:

Exhibit A.

This Indenture made and entered into this 23d day of May in the year of our Lord one thousand eight hundred and thirty eight between George W. Cassiday and Delilah Cassiday his wife and William Fithian all of Danville in the State of Illinois of the first part and William S. Johnson of the City of Cincinnati of the second part

Witnesseth

That the parties of the first part for and in consideration of the sum of Three thousand five hundred Dollars to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged to have been made before the sealing and delivery of these presents the said parties of the first part have and by these presents do grant bargain and sell unto the said William S. Johnson the party of the second part and to his heirs and assigns for ever the following described tracts or parcels of land to wit the undivided half of the West half of the South East quarter of Section No four in Township Thirty nine north of Range fourteen East being forty acres - also the undivided fourth part of the East half of North East quarter of section No twenty in Township Thirty nine North of Range fourteen East being twenty acres - also the undivided half of the South West quarter of Section No twenty in Township no thirty nine North of Range fourteen East being Eighty acres and containing in all one hundred and forty acres of land all which said lands are situate lying and being in the County of Cook in the State of Illinois

To have and to hold the aforesaid granted bargains and

sold premises unto him the said William S. Johnson and his heirs and assigns forever free from all claim and demand of them the said parties of the first part their heirs or assigns. And the said George W Cassiday - Cassiday his wife & William Fithian do covenant for themselves their heirs and assigns to and with the said William S. Johnson his heirs and assigns that they are legally seized in fee simple of the aforesaid granted bargain and sold premises that they have full power and competent authority to sell the same and that they will and their heirs executors and administrators shall forever Warrant & Defend the aforesaid granted bargain and sold premises to the said William S Johnson and his heirs and assigns forever to and for the only proper use benefit and behoof of him the said William S Johnson his heirs and assigns forever.

In testimony whereof we the said George W. Cassiday. Delilah Cassiday his wife and the said William Fithian have hereunto set our hands and set our seals the day and year above written.

George W. Cassiday (Seal)
Delilah Cassiday (Seal)
William Fithian (Seal)

signed sealed and delivered
in presence of
Amos Williams.

State of Illinois
Vermilion County. ss. Be it remembered that on this 23d day of May in the year of our Lord 1838 personally came before me Amos Williams: Clerk of the Circuit Court in & for the County and State aforesaid the said George W. Cassiday Delilah Cassiday his wife and William Fithian the parties granting to

the fregoing Deed they being known to me to be the persons who signed said Deed of Conveyance and thereupon the said George W. Cassaday & William Feithian acknowledged that they had signed sealed and delivered said deed for the use and purposes therein mentioned and also come the said Delilah Cassaday wife of said George W. Cassaday and being by me made acquainted with the contents of said Deed and being by me examined seperate and apart from her husband she acknowledged that she had signed sealed & delivered said deed and that she relinquished her dower in and to the lands & tenements therein described freely & voluntarily and without any coercion or compulsion of her said husband.

In testimony whereof I have hereto set my hand and affixed the seal of my office at Danville Illinois the day and year above written.

L. S.

Amos Williams Clerk

Filed this 10th and Recorded the 12th July 1838.

Rich I. Hamilton Recorder.

Exhibit B.

Whereas David Lee of the city and County of New York in the State of New York filed his bill of Complaint in the Circuit Court in and for the County of Cook and State of Illinois against William W. Brown & Henry Griswold Hubbard Executors and Trustees of Elijah K. Hubbard late of said county deceased Samuel D. Hubbard Elizabeth L. D. Hubbard widow of said Elijah K. Hubbard deceased but now wife of Thomas Dyer, Thomas Dyer Elijah Hubbard and Louis De Koven Hubbard infant heirs of said Elijah K Hubbard praying the

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said Court by its decree to direct & order the said parties Defendants to execute to him a deed of conveyance of a certain tract of land in said bill mentioned.

And whereas the said parties Defendants entered their several appearances in the case aforesaid and filed their respective answers to the bill aforesaid, and at the June Term of said Court in the year one thousand eight hundred and forty seven such proceedings were thereupon had that the following order or decree was entered by the said Court upon the bill aforesaid as follows to wit.

"And now at this day comes the complainant by his solicitor Alfred Cowles and the Defendants by their solicitor having filed their several answers and the guardian ad litem of the said infants Defendants heretofore appointed having filed the answers of said infant Defendant and Heirs - And the Court now here (having) diligently inspected the allegations in said bill and the matters admitted in the answers of said Defendants and the evidence of the truth of the matters charged as shown by the will of the said Elijah H Hubbard deceased - doth find the matters charged in said bill to be true and doth thereupon order adjudge and decree that the said Defendants Trustees do by a good and sufficient Deed convey to the complainant the Undivided half of the South West Quarter of Section Twenty in Township Thirty nine North Range fourteen East on or before the first day of August 1847 according to the power confined upon them by the Will. And that the said infant heirs when they shall arrive at full age Do execute a release of all claims of title to the said

premises by a sufficient deed to the said Complainant or his assigns and have until the period of their majority to object to the validity of this decree and that the complainant pay the costs of his proceeding herein" as by the record & files of said Court will more fully and at large appear.

Know therefore whom it may concern that pursuant to the will & testament of the said Elijah K. Hubbard deceased and of the decree aforesaid and the further consideration of one Dollar to us in hand paid by the said David Lee the receipt whereof is hereby acknowledged We William H. Brown & Henry G. Hubbard Executors & Trustees of said Elijah K. Hubbard (the said Samuel D. Hubbard not having accepted his appointment in said will mentioned) have granted bargained sold confirmed & conveyed and hereby do grant bargain sell confirm & convey unto the said David Lee and his heirs forever.

All that certain tract or parcel of land lying in the county of Cork aforesaid and in the said decree mentioned to wit an equal undivided one half part of the South west quarter of Section twenty (20) in Township thirty nine (39) North Range fourteen (14) East of the 3d principal meridian.

And all the right title and interest of the said Elijah K. Hubbard in said tract of land heretofore vested in us by the will of the said Elijah K. Hubbard with all the rights privileges and appurtenances thereunto belonging

To Have and to Hold to the said David Lee his heirs and assigns forever.

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In witness whereof the said William H. Brown and Henry G. Hubbard Executors and Trustees aforesaid have hereunto set our hands and affixed our seals this thirty first day of July in the year of our Lord one thousand eight hundred and forty seven.

Sealed & delivered in presence of- - - - -
Henry Brown
Jonathan Barnes
Lydia Hubbard

William H Brown (seal)
Henry Grinnold Hubbard (seal)
Trustees & Executors of E K Hubbard dec'd.

witnesses for Henry G Hubbard

State of Illinois
Cook County } ss

I Henry Brown a Notary Public in & for said County in the State aforesaid do hereby certify that William H Brown personally known to me to be the same person whose name appears subscribed to the within Deed appeared before me this day in person & acknowledged that he signed sealed & delivered the same as his free & voluntary act as executor & Trustee of Elijah K. Hubbard deceased for the uses & purposes therein set forth.

In witness whereof I have hereunto set my hand & Notorial Seal this November 18th A.D. 1847

Henry Brown
Notary Public

(Notorial Seal)

State of Connecticut
County of Middlesex. ss Middletown

On this sixteenth day of December in the year of our Lord one thousand eight hundred and forty seven before me the undersigned Justice of the Peace in and for said County personally appeared Henry G. Hubbard known to me to be the person described in and who executed the foregoing deed as one of the Executors of Elijah K. Hubbard deceased and acknowledged the same to be his free act and Deed as such executor for the uses and purposes therein set forth.

Witness my signature and seal on the day and year aforesaid

Jonathan Barns (seal)
Justice of the Peace.

State of Connecticut
County of Middlesex. ss. I Elisha Spencer Clerk of the County Court for said County of Middlesex certify that the within & foregoing instrument is executed & acknowledged by H. G. Hubbard one of the parties thereto in all respects according to the laws of Connecticut to entitle it to be recorded therein - also that Jonathan Barns Esq before whom the acknowledgement of said Hubbard purports to have been taken was on the date of said acknowledgement viz Dec 16th 1847 a Justice of the Peace in & for said County duly qualified to take the same (as by commission on file in my office)

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and that I am well acquainted with his hand writing & verily believe his signature to the certificate of sd acknowledgement to be genuine

In witness whereof I have hereto set my hand and affixed the seal of sd Court at Middletown in Middlesex County this 16th Decr 1847.

County of Middlesex seal

Elisha Spencer
Clerk of sd County Court

Filed for record Jan 4th 1848.

Said afterwards Debit on the Fourteenth day of July in the Year last aforesaid — Said day being one of the days of the July Vacation Term of said Court the following among other proceedings was had in said Court and entered of record Debit.

William S Johnston

vs

Ann D Lee widow of David Lee deceased, Anna P Lee, Augustus C Murray, Abbie M Murray, Jos Thos L Lee, David B Lee & Mary E Lee heirs at law of said David Lee, Thomas H Hall & Caleb Halsted, Executors of the Estate of said David Lee deceased and Samuel Rowell

In Chancery

Bill for Partition

And now at this day Comes Edward Buckley, Nathaniel P Bilder and Andrew J Boorn, the Commissioners heretofore appointed by the Court to make partition of the lands premises and hereditaments sought to be divided by this Court, and make report of their doings in the premises in pursuance of the order heretofore made and entered in this Cause which report and the oaths taken by them respectively are as follows, viz:

Report of Com'rs

In Cook County Court
of Common Pleas.
William S. Johnston
vs
Ann O Gee. widow of
David Gee. deceased Anna
P Gee. & others.

Bill for Partition.

In Chancery.

State of Illinois
County of Cook } ss

We Flavel Moseley Nathaniel P Wilder and Andrew J Brown who have been appointed by the Judge of the Cook County Court of Common Pleas commissioners to make partition of the premises sought to be divided by this suit, do solemnly swear that we will respectively fairly and impartially make partition of such lands so sought to be divided in accordance with the judgement of the court as to the rights & interests of the parties of the same can be done consistently with the interests of the Estate.

Subscribed & sworn to.
this 26th day of June
A.D. 1854 Before me.
Walter Kimball
Clerk.

A. J. Brown
Flavel Moseley.
N. P. Wilder.

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In the Cook County Court of
Common Pleas.
In Chancery.

William L Johnston

vs.

Ann D Lee. Widow of
David Lee. deceased
Anna P. Lee. Augustus
Charles. Murray. Abbie
M. Murray. Josephine G.
Lee. David B. Lee. Mary
E Lee & Thomas H. Faile &
Caleb. C Halsted. Executors
of the Estate of David Lee
dec'd and Samuel Bonsell

Bill for
Partition

We Flavel Mosely. Nathaniel P Wilder
and. Andrew. J. Brown who have been
appointed by the Cook County Court of
Common. Pleas. Commissioners. to make
partition of the premises. and hereditaments
Sought to be divided by this suit
Do hereby in pursuance of the order. hereto-
fore. entered in the said above suit
certify and Report.

That after having first taken an
oath before Walter. Kimball Esq'r. clerk
of the said Court Severally fairly and im-

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partially to make partition of the lands and premises described in the bill of Complaint and of which partition is sought to be made by this suit in accordance with the judgment of the Court as to the rights & interests of the parties if the same could be done Consistently with the interests of the Estate. (which said oath is hereto annexed and made a part of this our report) wer went upon the premises described in said bill of complaint to wit the South West quarter of Section Number (20) Twenty in Township (39) Thirty nine North of Range Fourteen (14) East of the third principle Meridian situated in the County of Cook & State of Illinois containing one hundred and Sixty acres of land according to the Government Survey and made partition thereof.

And we do further certify and report that we found the said tract of land by a survey thereof made for the purposes of such partition to contain one hundred & sixty two acres and sixteen one hundredths of an acre and that the same was so circumstanced & situated that partition thereof could be made in accordance with the aforesaid judgment of the court and

being of opinion that a more just & equitable partition could be made by a subdivision of said tract of land into Blocks we caused the said premises to be surveyed and divided into Blocks with streets sixty six (66) feet in width running through the same as represented in the annexed Map or Plat of said survey and subdivision and with thirty three (33) feet taken off from and along the respective sides of said tract of land for the purpose of making one half of streets to run upon & along the North, South, East & West sides of said land as is also represented upon said map or plat hereto annexed as will more fully appear on reference to said map.

And we do further certify and report that we have marked the said map or plat as Exhibit A & annexed the same hereto and the same is hereby made a part and parcel of this our report that on the said plat the said Blocks are numbered from one (1) to Sixteen successively and the widths and lengths of the respective Blocks and parts of Blocks are given in feet and hundredths of feet and that the metes and bounda-

sies of the said Blocks are as the same are represented on the said Map or plat and that "Hoosier Avenue" a highway running through said tract of land cuts the same in the manner & at the point represented on said plat and is eighty feet wide.

And we do further certify and report to the court that we have allotted assigned and set apart and hereby do allot assign & set apart to the parties in interest in these proceedings respectively their respective shares & portions of said lands & premises (the quantity and quality having been duly considered and that part thereof belonging to the heirs of David Lee deceased being set apart to the said heirs undivided (as between them) and subject to the right of dower of Ann D Lee the widow of the said David Lee) as follows to wit=

To William S Johnston Blocks (numbered Two (2) Four (4) Six (6) Eight (8) Ten (10) Twelve (12) Fourteen (14) and Sixteen (16)

To Anna P Lee, Abbie M Murray, Josephine G Lee, David B Lee and Mary E. Lee the children and heirs at law of David Lee deceased (subject to the dower right of Ann D. Lee widow of said David Lee) Blocks numbered One (1) Three (3) Five (5) Seven (7) Nine (9) Eleven (11) Thirteen (13) and Fifteen (15)

To Have and To Hold the said parts and portions of said lands and premises above allotted and assigned to the said parties respectively in severalty as above specified and to their respective heirs & assigns forever.

In Witness whereof we have hereunto set our hands & seals at the City of Chicago in the County of Cook & State of Illinois this first day of July A.D. 1854.

Fees.

I Mozley $5.00
N P Wilder $5.00
A.J. Brown $5.00
Expense of Plat 2.50

Flavel Mozeley (Seal)
Nathl P Wilder (Seal)
Andrew J Brown (Seal)
} Commissioners.

State of Illinois
County of Cook ss. I Wm W. Stewart a Notary Public in said County & state do certify that Flavel Mozeley Nathaniel P Wilder & Andrew J. Brown who are personally known to me as the real persons whose names are subscribed to the foregoing instrument appeared before me this day in person & severally acknowledged that they signed sealed & delivered the said instrument of writing as their free & voluntary act as commissioners & for the uses & purposes therein set forth

Given under my hand & notarial seal

148 this 3d day of July A.D. 1854

(Seal)

Wm W. Stewart
Notary Public

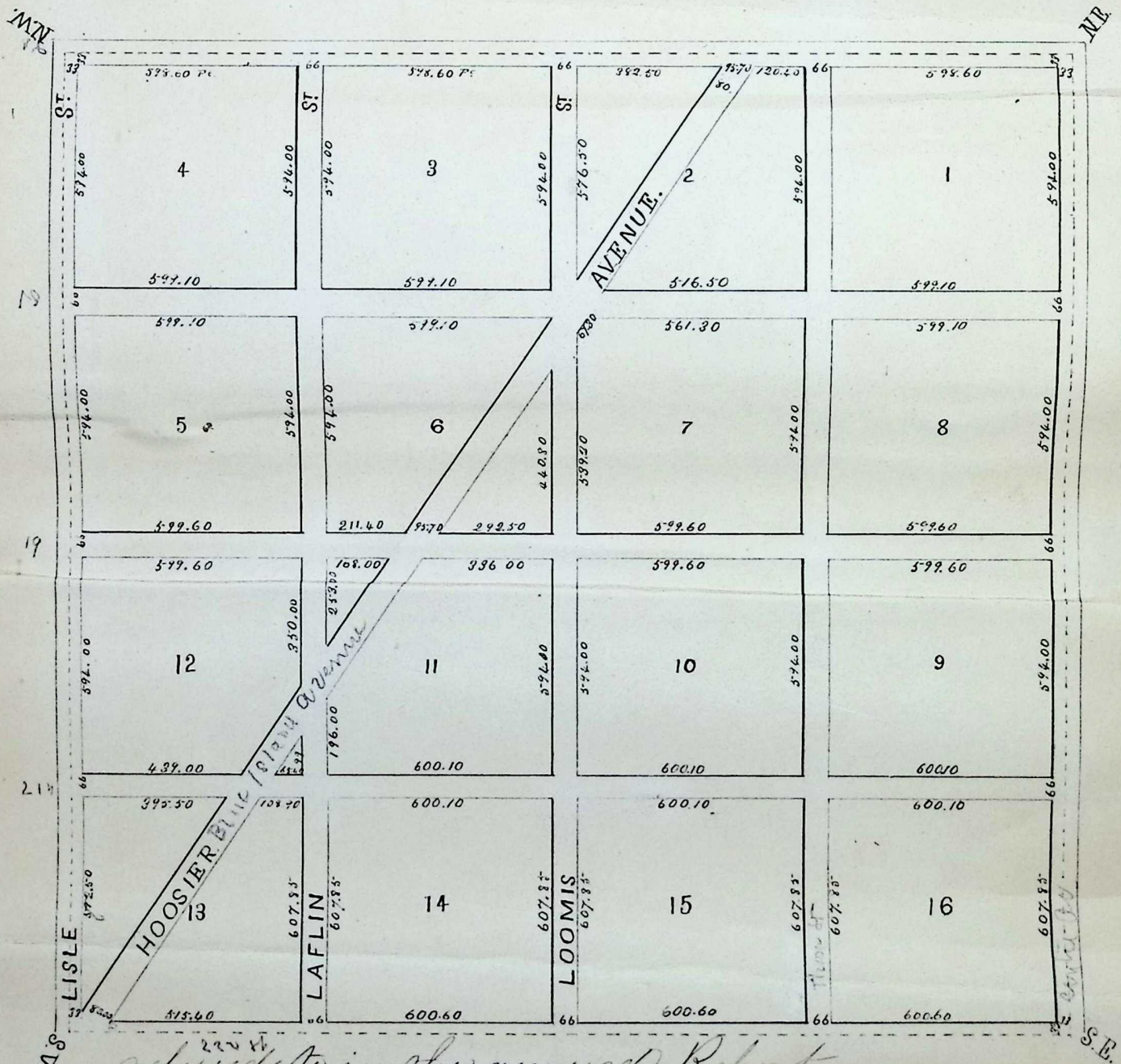
Exhibit "A"

SUBDIVISION.

OF

SW¼ SEC 20

T39 R14 E3rd PM.



referred to in the annexed Report

Travel Brouder
Math. P. Wilder
A. L. Brown
} Commissioners.

Seal

And this Suit being brought by a bill of Complaint
filed by Williams S Johnston as Complainant alleging
that the said Complainant and David Lee late of the
City of New York in the County and State of New York,
deceased at the time of the filing of said Bill of Complaint
were in the life time of the said David Lee seized in fee
simple of the South West Quarter of Section Twenty (20) in
Township Thirty Nine (39) North Range Fourteen (14) East
situated in the County of Cook and State of Illinois
Containing One hundred and Sixty Acres according to the
Government Survey thereof the same being held as Tenants
in Common, that said Complainant was so seized of one
undivided half part of said tract of land, and the said
David Lee previous to his decease of the other undivided
half part thereof, that on or about the first day of January
Eighteen hundred and fifty three. the said David Lee
died leaving Ann D Lee his widow and Amos P Lee
Abbie D. Dascomb wife of Augustus Charles Brinsmade
Josephine L Lee, David B Lee and Mary E Lee his
Children and sole at law him surviving, That the
said David Lee prior to his decease Made and
executed his last Will & Testament appointing the
defendant Thomas B Kaile and Caleb C Halstead
executors of his estate and Guardians of such of his
Children as were under age, and that the said
Executors had assumed and entered upon the discharge
of their duties as such Executors & Guardians and that
there was no Guardians of said Minor Children in the

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said State of Illinois, That the interest of said Complainant in said premises is subject to a Mortgage to the the defendant Samuel Russell of the State of Connecticut to secure the payment of the sum of Ten Thousand Dollars and praying that the right and interests of the said respective parties might be declared and partition made of said premises agreeably to such shares rights and interests, And the said bill of Complaint having been taken as confessed by all the said defendants therein named except as to the defendant Ann D Lee widow of Enos Dennis Lee deceased who by William H Bowne Esq her attorney and solicitor appeared and filed her answer to said bill admitting that the allegations in said Bill Contained were true and consenting that such order or Decree might be entered in said suit as might to the Court seem equitable and just as to her right and interest in said premises, And also except as to the said defendant Josephine L Lee. David B Lee and Mary E Lee infants under the age of twenty one years respectively and who by Walter Kimball Esqre duly appointed by the Court Guardian ad litem for such infants in said suit filed their joint and several answer denying that the said infants were strangers to and ignorant of the matters and things in said bill of Complaint Contained, That they were infants under the age of twenty one years and claimed such interest in the premises as they were severally entitled to and in and by such

Commissioner submitted their interest to the jurisdiction of said Court

And it appearing from the Report of George Mannin Esq Master in Chancery to whom it was referred to take proofs of the material facts and allegations in said bill Contained & filed in the Cause. That the said William S Houston the Complainant and the above named David Lee were in the lifetime of the said David Lee, and at the time of his decease seized in fee simple of the premises above mentioned and sought to be divided by this suit each owning an undivided one half part thereof by separate and distinct Conveyances and that the said David Lee died so seized & possessed of said undivided half interest. at or about the time of in said bill of Complaint alleged leaving Ann D Lee his widow and Anna B Lee Abbie W Mannay wife of Benjamin C Mannay Joseph Pim Lee Lee David B. Lee and Mary E Lee his Children and heirs at law him surviving, and that the defendant Thomas H Hale and Caleb C Hallett named by the last will and Testament of the said David Lee deceased executors of his estate in the manner alleged in said bill

And it satisfactorily appearing to the Court that the report of the said Commissioner to whom it was referred to make partition of said premises and the partition as by them made are in all respects equitable and just, and that the interest of said heirs

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at law of said David Lee should be set apart to them jointly subject to the rights of Dower of the Widow of said David Lee. It is therefore on Motion of Mr Summers Solicitor for the said Complainant Ordered adjudged and Decreed and this Court by virtue of the power and authority vested therein doth order adjudge and decree that the said Report of said Commissioners be and the same is hereby in all respects approved, ratified and confirmed, and it is further upon like Motion Ordered adjudged and Decreed that the said partition so made by the said Commissioners be firm and effectual forever, and that the said parties Complainant and defendants respectively and their respective heirs and assigns hold in severalty the Lots allotted and assigned by the said Commissioners to the said parties respectively as particularly specified and set forth in their said Report for and Clear of all right interest Claim or demand whatsoever of from the other party or any or either of them or their respective legal representatives or assigns. To wit Billings Johnston, Block numbered two (2) four (4) six (6) eight (8) ten (10) twelve (12) fourteen (14) and sixteen (16) as the said tract of land is subdivided by the said Commissioners and according to the plat thereof annexed to their said Report.

Anna R Lee. Abbie M Murray wife of Augustus C Murray Josephine L Lee. David B Lee and Mary

E Lee the heirs at law of the said David Lee deceased jointly subject to the life estate of the defendant Ann D Lee as & for her dower as the widow of the said David Lee, Block No numbered One (1) Three (3) Five (5) Seven (7) Nine (9) Eleven (11) Thirteen (13) and Fifteen (15) as the said tract of land is subdivided by the said Commissioners according to the plat thereof annexed to their said report

And it is further ordered & decreed on motion adjudged and decreed, that the interest of the defendant Samuel Purnell as mortgagee of the said Complainants be fixed and effectual against the said premises & property to set forth against the said Complainant and become a lien thereon and that that part of said premises to set apart and allotted to the said heirs of the said David Lee be free, clear and discharged of and from the lien of said mortgage. And the proceeding being intended for the mutual benefit of all parties interested, it is further ordered, adjudged and Decreed that the Costs of this proceeding of the said partition to be taxed and one hundred and fifty dollars to the Complainants Solicitor be paid in equal proportions by the said parties to this proceeding in manner following, viz. the said Complainant to pay one half part or moiety thereof and the said heirs of said David Lee the other half part or moiety thereof

And it appearing that the Costs accruing by the Clerk of said Court amounts to Two hundred and twenty four dollars and seventy five cents ($224.75)

State of Illinois
County of Cook } S. S.

I Thomas. B Carter Clerk of the Superior Court of Chicago within and for the County and State aforesaid. do hereby certify that the above and foregoing is a full true and complete transcript of all the papers on file in my office. and of all order and decrees made and entered of record in the Cook County Court of Common Pleas. as the same now remain on the files and records in my office.

In testimony whereof I hereunto subscribe my name. and affix the Seal of said Superior Court of Chicago aforesaid. at the City of Chicago. in said County. this 28th day of April A.D. 1862

Thomas. B Carter Clerk

L. 81

Thereupon upon argument & consideration the Court made a final decree in this cause dismissing the complainants bill & decreeing costs paid equally by either party

From which decree the complainants prayed an appeal to the Supreme Court of this State which was allowed without any appeal Bond the defendants waiving the same

And this cause is now brought into this Court in manner aforesaid by agreement of parties

Dated April 14. 1862

J. A. Pickering for Complts Solicitor for Defendants

Mather & Tapp Sols. for Defendants

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And the Complainant in Error comes and shews to the Court that in the record & proceedings aforesaid there is manifest error in this viz

1st The Court erred in overruling the complainants motion for an interlocutory decree & order for reference to a master to take an account

2nd The Court erred in allowing the defendant Slade to file his supplementary answer,

3rd The Court erred in dismissing the Complainants aforesaid Bill

4th The Court erred in refusing the relief prayed for in their said Bill by the Complainants so far as this Court saw fit to have decided that they were entitled to the same

5th The Court erred in allowing the defendants to introduce further proofs in the Cause

6th The Court erred in allowing the defendants to introduce in evidence in the Cause the document purporting to be the last will and testament of Daniel Lee

to all each of which said errors the said complainants pray that the decree herein should be reversed and set aside

and they receive in this Court the relief
herein sought prayed by them in their aforesaid
Bill of Complaint
All of which the said Complainants
are ready and prepared
to aver and prove as
this Honorable Court shall
direct and pray Judgment &c

J. B. Whitaker for himself
& his Co. defendants
Ludwig Lee Solicitor
for Complainants

And the said defendants by Mathews & Tapp
their Solicitors come at this day April 22d
1862 in April Term of that year and say
that there is no error in the Record Proceedings
aforesaid or in rendering the Decree aforesaid
and they pray that the decree aforesaid
be in all things affirmed.

Mathews & Tapp
Solicitors for Defts

~~260~~ 207.

Chickering &
Ludington
vs
Faile et als

Record &
Evans & joinder

Filed Apl. 23d-1862
L. Leland
Clk.