

14015

No. _____

Supreme Court of Illinois

gaty, McCune & Glasby

vs.

Thomas J. Casey

71641  7

State of Illinois }
County of Adams } etc

Pleas before the Honorable Onias G. Skinner
At a Circuit Court holden at the Court house in Quincy, in and
for said County on Tuesday the Fifth day of April, in the
year of our Lord one thousand eight hundred and fifty
three. Present the Hon. Onias G. Skinner Judge of the 15th Judicial Circuit
C. M. Woods Clerk
Levi Palmer Sheriff

Samuel Gaty, John S. McBune, and Alban Glasby Plaintiffs
vs } Petition to Enforce Lien for materials
Thomas J. Casey, Ebenezer Moore, Nehemiah Bushnell, }
Hugh Riddle, David Mathews, and William V. Patch } Defendants

Be it remembered that heretofore, to wit, on the 1st
day of May, A.D. 1849, the said plaintiffs filed in the office of
the Clerk of the said Circuit Court, in said cause, a petition, in
the words and figures following to wit:—

Bill —

State of Illinois }
County of Adams } ss

Adams Circuit Court
May Term A.D. 1849
Mechanics &c

To the Honorable William A.
Minshall, Judge of the Fifth Judicial Circuit
Humbly complaining sheweth unto your
Honor your orators Samuel Gaty, John
S. McBune, and Alban H. Glasby partners
doing business under the name, of Gaty,
McBune, & Glasby of the city of St. Louis &
state of Missouri, that heretofore, to wit on the
24th day of July A.D. 1848 your orators sold
and delivered to one Thomas J. Casey, of the
County of Adams & State of Illinois, two

Bill -
large double flue boilers and five gauge-cocks to be used by the said Casey in repairing the machinery belonging and appurtenant to, and a part of, a certain steam-mill and distillery situated in said County of Adams & hereinafter more particularly described by the lot wherein it stands, said lot and the mill thereon, and the machinery thereof, being then owned and possessed by the said Casey ~~for~~ which boilers, and gauge-cocks the said Casey, at the time aforesaid, agreed to pay your orators the sum of Nine Hundred and Seventy Eight Dollars and five cents, said payment to be made on the 15th day of March, A.D. 1849.

Your orators further show that said Casey received said boilers and gauge-cocks and used the same in repairing his said mill, and placed the same in his said mill making them a part and parcel thereof, but the said Casey has not paid to your orators the said sum of \$978,05 agreed by him to be paid to your orators or any part or parcel of said sum.

Your orators further show that the period of six months has not elapsed since said payment for said boilers & gauge-cocks fell due.

Your orators further show that the lot wherein said mill is situated is known and described as a part of Section Thirty Five, in Township one (1) South in Range nine (9) west of the Fourth Principal Meridian bounded as follows: commencing at the South West corner of

the North Half of the South Half of said Section Thirty Five, thence running East Two (2) chains & Twenty Six (26) links to the West line of the Road, (said road being a continuation of Front Street in the City of Quincy leading North through Adams County from Quincy,) thence running North on the West line of said road with a variation of seven degrees, thirty-two minutes West, Seventeen (17) chains and Twenty Three (23) links to the west side of said Section Thirty Five, thence South on the West line of said Section seventeen (17) chains and eight (8) links to the place of beginning; also a part of the East detached part of the South East Fractional Quarter of Section Thirty Four (34) in Township one (1) South, of the Base line in Range nine (9) West of the 4th principal meridian bounded as follows: beginning on the East line of said quarter Section at a point where the North line of the Town (now City) of Quincy on the original plat intersects the same and running thence North with said East line of said quarter section fifty feet, thence West to the River, thence with the River to the corporation line of Quincy, thence East to the place of beginning. Your orators further show that both said above described tracts are situated in said County of Adams State of Illinois, and that both together form the lot whereon said mill is situated.

Your orators further show that one Oliver S. Miller and George A. Miller being seized in fee simple of said above described lots, did,

Bill
heretofore, to wit on the 31st of December 1846 by
their deed of conveyance of that day, in which
the wife of the said George A. united to
release her dower, convey said above described lots
with the appertinances thereof to one John S.
Williams which deed was acknowledged on the
same day, and on the 1st day of January A.D.
1847 duly recorded in the Recorders office of said
Adams County:

Your orators further show, that afterwards, to wit
on the 26th day of May A.D. 1847 the said John S.
Williams by his deed of conveyance of that date,
duly acknowledged on the same day and
recorded on the 26th November 1847 in the
Recorders office of Adams County conveyed
said lots with the appertinances thereof to the
said Thomas J. Casey:

Your orators further show that before the said
Millers so conveyed to the said Williams, to
wit on the 5th day of September A.D. 1846 they,
the said Oliver, & George A. and his wife, together
with Cyrus J. and his wife by their deed of
that date, acknowledged on the 9th day of
September A.D. 1846 and recorded in the

Recorders office of Adams County on the same
day, conveyed said lots to Ebenezer Moore and
Nehemiah Bushnell both of said County of
Adams in trust to pay certain debts
owing by the said Millers and particularly
described in a schedule annexed to said deed,
the said trustees Ebenezer Moore and Nehemiah
Bushnell being empowered by said deed,
in case said debts should not be paid

before the 16th day of July A.D. 1848 to sell said property and apply the proceeds thereof in payment of said debts.

Your orators further show that said Moore and Bushnell have never sold said property and that a large part of the indebtedness to secure which said deed of trust was given has been paid and discharged.

Your orators further show that after the title of said property was vested in said Casey, he, the said Casey executed the following mortgages on said property: to wit a mortgage to Hugh Riddle of the County of Adams & State of Illinois said mortgage purporting on its face to secure the payment to the said Riddle by the said Casey on or before the 4th day of March A.D. 1848 of a certain note of said Casey's to said Riddle for the sum of Thirty Seven Hundred Dollars with 6 per cent interest from March 4. 1847 which deed of mortgage was executed on the 6th day of May A.D. 1847 and acknowledged on the 29th day of May 1847 and recorded in the Recorder's office of said Adams County on the 22nd day of November 1847; also a mortgage to David Mathews and William G. Patch, said mortgage purporting on its face to be made to secure the payment by the 1st day of January A.D. 1848 of the sum of Three Thousand Dollars due from the said Casey to the said Mathews & Patch; which deed of mortgage was

executed on the 26th day of May A.D. 1847 and acknowledged on the 29th day of May A.D. 1847 and recorded on the same day: also another deed of mortgage to the same Mathews and Patch purporting on its face to be made to secure the payment by the 1st day of January A.D. 1848 of the sum of seven thousand dollars due from said Casey to said Mathews and Patch for past indebtedness is also to secure the payment by the said Casey to said Mathews and Patch of whatever advances of money in the way of business, the said Mathews and Patch might make to the said Casey for the space of one year from the execution of said mortgage, which deed of mortgage was executed on the 31st day of August A.D. 1847 acknowledged on the same day and recorded on the 20th day of September A.D. 1847.

Your orators further show, and so charge the fact to be, that said last described mortgage to sd Mathews & Patch was given in liquidation and discharge of the first mortgage to the same parties and covered and secured the same indebtedness, and that there is not now due on either or both of said mortgages above the sum of four thousand dollars.

Your orators further show, and so charge the fact to be that there is nothing now due on said mortgages to said Piddie and there is not above the sum of Four thousand

five hundred dollars due to the various persons, the debts to whom said deed of trust to said Moore and Bushnell was given to secure.

To the end therefore that your orators may receive the relief to which they are by law entitled and that the lien upon said land and the mill thereon given them by the statute in such cases made and provided may be enforced, your orators pray that the said Thomas J. Bascy, Ebenezer Moore, Nehemiah Bushnell, Hugh Riddle, David Mathews and William G. Patch may be made parties defendant to this bill, and that the Peoples writ of summons may issue from the Clerks office of this Court under the seal thereof, against said defendants, commanding them and each of them to be and appear at the next Term of this Court and then and there upon their several and respective corporal oaths, full, true, and perfect answers make to the allegations herein contained and that as fully as if they were specially interrogated as to each: and particularly that the said Moore & Bushnell may state the exact amount of indebtedness, now unpaid, which is secured by said deed of trust to them: and that the said Riddle may state the amount now due to him and unpaid of the indebtedness secured by said mortgage to him: and what amount was originally due by virtue of said

mortgage: and what amount has been received by him on said debt; and that the said Mathews and Patch may also state the exact amount now due them by virtue of said two mortgages from said Casey, and what was the original amount of said indebtedness and what amount has been received on the same by them and whether the second mortgage was not given in liquidation and discharge of the first and does not cover the same indebtedness secured by the first ~~and also~~ that the said ~~Deeds~~ Bushnell may set forth the original amount of the indebtedness secured by said deed of trust and the amount they have received on said indebtedness. And your orators further pray that upon a final hearing of this cause your Honor will enforce the law of your orators, according to the statute in such cases provided, against the land above described, and the mill thereon and its appurtenances, and that your Honor will decree a sale of said property, and that your orators have their proportion of the proceeds of said sale, according to the additional value given to said property by the materials furnished by your orators or such other proportion as to your Honor may seem meet, and that your Honor may decree such further and other relief in the premises as the circumstances of the case may require and to equity shall seem

meet. And your orators as in duty bound will ever pray. &c.

Williams & Lawrence
Sol' etc for comp'ts.

Samuel Gaty
John S. McSpue
Alban H. Glasby

Words for cost

Samuel Gaty, John S. McSpue
& Alban H. Glasby

vs

Thomas G. Casey, Ebenezer Moore,
Nehemiah Bushnell, Hugh Hiddle,
David Mathews & William G. Patch.

Adams Circuit Court

May Term A.D. 1849

We do hereby enter ourselves security for costs in the above entitled case and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court in pursuance of the laws of this State.

Dated this 1st day of May A.D. 1849.

Williams & Lawrence

The Clerk will please issue summons in the above entitled case

Williams & Lawrence. Sol' etc for com.

And afterwards, to wit, on the said 1st day of May 1849 a summons was issued out of the said Clerk's office in the words and figures following to wit:-

May 1849

Summons

State of Illinois }
Adams County } SGT.

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

Thomas J. Casey, Ebenezer Moore, Ashemiah Bushnell, Hugh Riddle, David Mathews, and William G. Patch, if to be found in your county, personally to be and appear before the Circuit Court of said county of Adams on the first day of the next term thereof to be holden at the Court House in Quincy on the 4th Monday in the month of May inst^o to answer to a petition to enforce a lien for materials furnished, filed in our said Circuit Court against them by Samuel Gaty, John S. McBurne, and Alban H. Glasby.

And have you then there this writ, and make return thereon in what manner you execute the same.

WITNESS, Peter Lott.

Clerk of our said Circuit Court, at Quincy, this First day of May, in the year of our Lord one thousand eight hundred and forty nine.

Peter Lott. Clerk.

By Geo. W. Leach. Deputy.

And afterwards, to wit:— on the 25th day of May 1849, said summons was returned into the said Clerk's office— with endorsements thereon in the words and figures following to wit:—

Return

I have served the within writ by delivering a copy of the same to the within named Ebenezer Moore, and Ashemiah Bushnell
May 4th 1849

By S. H. Stevens. Deputy.

Washington Town. Sheriff. A. C. Hill.

I cannot, in any county, find the within named
Thomas J. Casey, ^{Dugh Riddle} David Mathews, and William J. Patch.
Washⁿ Wren. Sheriff, A. C. I W.

May 11th 1849.

By J. H. Stevens Depty.

31st day of May 1849.

continuance

And afterwards, to wit: on the
31st day of May 1849. An order is entered in the said cause
by the said circuit court in the words
and figures following to wit: on motion of
plaintiffs by their attorney, leave is given them
to amend their Petition filed herein, and
this cause is continued. And afterwards
to wit: October 24th 1849. A certificate of
Publication was filed in the words and
figures following to wit:

certificate of
Publication

We certify that the
attached notice was published for four
weeks successively in the Quincy Whig, a
public newspaper, of which we are the
publishers, printed in the City of
Quincy, Adams County, State of Illinois.
The first publication was in said paper,
dated Tuesday, July 17th 1849, and the publi-
cation was in said paper, dated Tuesday,
August 7th 1849

Bartlett & Co.

Printers fee \$6.37 1/2

State of Illinois, Adams County.

For the Adams circuit court, of the May Term,

1849.

Samuel Gaty, John C. McCom
and Alban W. Shasby, Plain-
tiffs.

vs.

Thomas J. Casey, Obeney
Moore, Benjamin Bushnell,

For Dues
for materials
furnished.

Hugh Riddle, David Mathews, and William G. Patch, }
Defendants.

Now come the said Plaintiffs, by their Attorneys, and it appearing to the satisfaction of the Court, that the said Defendants, Thomas G. Casey, Hugh Riddle, David Mathews, and William G. Patch, are not residents of this State: It is, therefore, ordered, that the said Defendants be notified that a petition to enforce a Lien for materials furnished, has been filed in the said Circuit Court, and that a summons has been issued, thereon, at the suit of the said Plaintiffs, against the said Defendants, and that unless they appear and plead, on or before the first day of the next term of this Court, to be holden at the Court House in the City of Quincy, on the fourth Monday in the month of October next, judgment will be entered against them, and the estate described in said petition will be sold according to law, for the satisfaction of said claim, together with the costs of this suit.

And it is further ordered, that a copy of this order be published in a public newspaper printed in the City of Quincy in said State, for four weeks successively: the first insertion whereof to be made within sixty days from this date, and this cause is continued to the next term of this Court. May 29th A. D., 1849.

A true copy.

Attest:

Peter Sott, Clerk.

By George W. Leach, Deputy.

Williams & Lawrence, Attys for Plffs.

July 17-49. W4.

And afterwards to wit: on the 26th day of
October, 1849. Demurrer is filed, in the words and figures
following to wit:-

Demurrer of
N. Bushnell

Gaty, McBane, & Glasby,

v.s.

Thomas J. Casey and others,

And the said Defendant, N. Bushnell,
in proper person comes and says that the said
petition & the matters & things therein contained
in the manner & form as the same are
therein set forth are not sufficient in law
to maintain the plaintiffs said action and
that this Defendant is not bound by the
law of the land to answer the same and
this the defendant is ready to verify -
therefore the defendant prays judgment &c.

N. Bushnell.

And afterwards, to wit: on the 30th day of
October 1849. An order is entered in the said cause, by the said
Circuit Court in the words following to wit:

continuance

Ordered that this cause be continued to the next
term of this Court, and that said plaintiffs pay
the costs accruing by reason of filing their
amended petition herein, and it is further
ordered that publication be made to
Kennedy, and Foster two - (non resident defendants
herein.

And afterwards, to wit on the 27th day of
February, 1850. An answer is filed in said cause, in the words
following, to wit: - The separate answer of
Nehemiah Bushnell to a petition for a mechanics
lien filed against him and others in the
Adams Circuit Court by Gaty, McBane & Glasby.

Answer of
N. Bushnell

Bushnell's
answer to
original Bill

This defendant, first having & reserving
unto himself all benefit of exception to the
many errors uncertainties & imperfections
in the said petition contained for
answer to so much of the said petition
as this defendant is advised it is necessary
for this defendant to make answer unto
answering says, that as to whether the
petitioners on the 24th day of July A.D.
1848 or about that time sold and delivered
to one Thomas J. Casey of the County of
Adams & State of Illinois two large double
flue Boilers and five gaug-cocks to be
used by the said Casey in repairing the
machinery belonging and appertenant
to and a part of a certain steam-mill
& distillery mentioned in their said petition
this defendant knows nothing except as
he is informed by the said petition
that he is an utter stranger to said alleged
transaction and can neither admit nor
deny the same to be true, & insists that
the petitioners may be held to strict proof
of the same but on the other hand this
defendant believes & therefore insists that
if the petitioners ever sold and delivered
to the said Casey the said boilers & gaug-
cocks in said petition mentioned that
no special contract was made between
the petitioners and the said Casey by
which the said Casey was to use the same
in the repairing the machinery of the
said mill or by which the said Casey

was to use the same at any particular place or for any particular purpose, & but that any said supposed sale was a general sale & delivery to the said Casey, & that if the said Casey used the same in repairing the said machinery of the said mill it was because he chose to do so, and not because he was by the said contract of sale and delivery under any obligation to do so, & that the said petitioners are not herein entitled to any benefit of a lien on the said mill & appurtenances, for any part of the purchase money of said described boilers & gauge-cocks - This defendant further answering says, that he is ignorant except as he is informed by the said bill and by rumor as to how much the said Casey agreed to pay or as to the time of payment for the said boilers & gauge-cocks or whether the same has ever been paid or whether he received the same and used them in repairing the said mill and insists that the petitioners be required to make full proof of these matters as stated in his petition - but this defendant says he is informed and therefore charges the fact to be that after the sale & delivery to said Casey of the steam-boilers & engines mentioned in the petition & before the commencement of this suit the said Casey & the petitioners, had a settlement of the amount due the petitioners therefor &

Bushnell's

Answer

to original Bill

that the said Casey executed and delivered to the petitioners his note for the amount due and also gave the petitioners collateral security for the payment of the said note & that in consideration thereof the petitioners gave the said Casey an extension of time for the payment of said Boilers and gauge-cocks beyond the time of credit to which the said Casey was entitled by virtue of the contract of purchase thereof & that by virtue thereof this defendant insists that any lien the petitioners might at any time have held on the said mill was thereby discharged waived & abandoned—

This defendant further states from information and insists that the said boilers & gauge-cocks if put into the said mill at all were by the said Casey put into & used in the said mill not merely by way of reparation of the machinery of the said mill but in lieu & in place of other boilers which were at the time in & used in the said mill which were taken out & removed from the said Mill for the purpose of being replaced in said mill by the said boilers and gauge-cocks in the petition mentioned at the time & as a part of the transaction by which the said new boilers were put into the mill and that said old boilers were worth at the time of their said removal

about four or five hundred dollars and that the additional value of mill by virtue of the repairs & improvements in putting in the said new boilers did not exceed the difference between the value of said old boilers thus taken out and the said new ones thus put in & of the value of the said new boilers this defendant has no means of knowing except by judging of their alleged costs & that if for any reason the petitioners are entitled to any lien on said mill it can only be for the increased value of the mill created by the improvements & repairs made with the property purchased of them deducting the injury done to the mill & the value of what was removed for the mill in making way for such repairs & improvements—

Your orators further show that the petitioners at the time of the said supposed sale & delivery of the said boilers and gauges & for a long time previous & still are citizens of Saint Louis in the State of Missouri & engaged in carrying on an extensive establishment in the manufacture of steam-engines & boilers & that the said boilers & gauges so alleged to be sold by them to the said Casey, were by the petitioners manufactured at the said City of Saint Louis & sold & delivered to the said Casey at the said City of Saint Louis by the petitioners as the manufacturers

Bushnell's
answer
to original Bill

thereof, and in the characters of manu-
facturers and not as mechanics and this
defendant insists that as citizens of the
State of Missouri the petitioners are
not by the laws of this State entitled
to the benefit of a mechanics lien, or
property situated in this State, on said
supposed contract of sale there made
& executed in the State of Missouri.

This defendant further answering admits it to
be true that the said Thomas J. Casey was
in the possession of the said Mill and the
premises on which the same was situated
on the 24th day of July A.D. 1848. & that the
said premises are truly described in the
said petition, but this defendant denies
that the said Thomas J. Casey was then
or at any other time the owner of the
said premises or Mill as is in the
said bill alleged, except to the extent and
in the manner hereinafter stated.

This defendant further answering says
that on the ninth day of September A.D.
1846. Oliver F. and George A. Miller were
seized in fee simple of the said Mill &
the premises on which the same was
situated as described in the said petition
and that being so seized thereof the said
Oliver F. Miller & George A. Miller & his wife
and one Cyrus J. Miller & his wife on
that day executed and delivered to this
defendant and his co-defendant Cheney
Moore their certain deeds of conveyance

dated the fifth day of said September & duly acknowledged by the said grantors & recorded on the said ninth day of September in the Recorders office of Adams County, where by the said grantors, granted, bargained, sold and conveyed to the defendant & the said Ebenezer Moore & to the survivor of them & to the heirs and assigns of such survivor the said premises including the said mill & the premises on which the same was situated, with all the machinery fixtures, steam-engines, boilers, furniture & apparel belonging to & connected with & employed in and about the steam flouring mill & steam saw-mill & steam distilling on said premises situated together with other premises in the said deed described & conveyed. To have and to hold the same with all & singular the rights privileges, improvements & appurtenances & unto this defendant & the said Ebenezer Moore and to the survivor of them & to the heirs and assigns of such survivor forever. In trust however to secure the payment of certain debts due by the said C. F. G. A. & C. J. Miller enumerated in a schedule to this said deed annexed and amounting to the principal sum of about fourteen thousand dollars — — — with interest to a large amount then due, & with power and authority on the part of the defendant & his co-defendant Ebenezer Moore and the survivor of them & the executors & administrators of such survivor

Bushnell's
Answer
to original Bill

in case the said Millers failed to make payment of the said debts on or before the 16th day of July A. D. 1848. with the interest which might then be due on the said debts, respectively, to sell all the premises conveyed by said deed as aforesaid or any part thereof at public auction to the highest bidder at the door of the Court House in the County of Adams & State of Illinois for cash on first giving thirty-days notice of the time, terms and place of sale & of the property to be sold by advertisement thereof in some public newspaper printed in the said County of Adams & on such sale to execute & deliver a deed to the purchaser & receive the proceeds of the said sale, & out thereof pay first the costs or expenses of said trust & next the said debts mentioned in the deed pro-rata till all paid & the bal if any to the said O. F. & G. A. Miller - And it was further provided that the said O. F. & G. A. Miller should have the privilege of selling any part of the said trust property, on terms to be approved by the said Trustees on the payment of the purchase money to them or in liquidation of prior encumbrances on the trust property. & which said deed of trust is the same deed of trust mentioned in said petition as executed by the said Millers to this

defendant & the said Ebenezer Moore.

This defendant further answering admits that the said Oliver J. Miller and George A. Miller with his wife on the 31st day of December A. D. 1846 conveyed the said premises in the petition described to John S. Williams as stated in the petitioners petition, and says that the said sale was made with the consent of this defendant & his co-defendant Ebenezer Moore as Trustees in the said deed of trust, & that said Williams was to pay thereon the sum of eleven thousand & seven hundred dollars & of which by a mutual arrangement between the said Millers, Williams, & this defendant & said Ebenezer Moore, three thousand seven hundred & eighty seven dollars & fifteen cents was paid over to James E. Woodruff, Willard Keyes & the petitioners Gaty, McCune, and Glasby to discharge liens & encumbrances on said premises described in the petition herein, existing previous to the conveyance by the said Millers to this defendant & said Moore & of which the sum of two hundred & twelve ²⁵/₁₀₀ dollars, the bal. of the four thousand dollars was applied by said agreement on the debts entered in the said deed of trust to this defendant & said Moore, & for the balance of said purchase money being seven thousand & seven hundred dollars that said Williams was to pay this defendant & said Moore as trustees in said Deed on the 16th day of

Bushnell's
Answer
to original Bill

July A.D. 1848. the time when the said debts
in the said deed of trust mentioned
were by the terms of said deed to be
paid, & to secure the payment of said
purchase money by said Williams
& as an evidence of the amount & the
time of such payment the said Williams
on the 4th day of Nov. A.D. 1846. executed to
this defendant & the said Moore his note
for the said sum of seven thousand &
seven hundred dollars payable on the 16th
of July 1848. & which when paid was to be
credited on the debts mentioned in the sche-
dule annexed to the said deed of trust
& to be in satisfaction of the said deed of
trust as to the said property in the petitioner's
petition described which property thereby
became as it respects the said Williams &
his grantors separated from the general
mass of trust property, & held subject
specifically bound under said deed of trust
for the payment of seven thousand &
seven hundred dollars on the said 16th
day of July 1848. according to the terms & pro-
visions of said deed.

This defendant further answering admits it
to be true that the said John S. Williams con-
veyed the said premises in the petition
described to the said Thomas J. Casey as is
in the said petition mentioned, but that
the said conveyance was so made subject
to the said sum of seven thousand &
seven hundred dollars so secured thereon.

& to be paid this defendant & the said Ebenezer Moore by virtue of the said trust deed, of which the said Casey then had notice & which first was expressed on the face of the said deed to the said Casey—as will appear from the original deed which the petitioners are hereby required to produce & exhibit to the court & which is not in the possession or control of this defendant.

This defendant further answering admits that the said Casey executed and delivered to the said Hugh Riddle the mortgage on said premises, of the date & to secure the payment of the sum of money in the said petition mentioned & that the same was duly recorded in the proper Records office in said county at the time in the said petition mentioned, but this defendant denies that the said mortgage debt or any part thereof has at any time been paid, but that both principal and interest on the said mortgage debt and every part thereof remains wholly due & unpaid as this defendant is ready & prepared to prove when & as this honorable court may direct.

This defendant further answering admits the execution and recording of the said several mortgages by the said Thomas J. Casey to the said Matthews & Patch of the dates and to secure the payments

Dushnell's
answer
to original bill

of the several sums of money therein mentioned respectively, as is alleged in the said petition, — but that this defendant is a stranger to the consideration of said mortgages & cannot neither admit nor deny, that the second of said mortgages was given in liquidation of the said first mortgage to Matthews & Patch, or that only about \$4,500 is yet due on said mortgages to the said Matthews & Patch but insists that the petitioners be required to make proof of these allegations in their petition. but this defendant is informed & therefore insists that that the said second mortgage was not executed in liquidation of the said first mortgage & that the debt & consideration of said first mortgage did not form any portion of the debt & consideration mentioned in the second mortgage & that the said mortgages were of distinct debts & transactions & insists that the petitioners be held to strict proof of the matters in their petition alleged in relation thereto.

This defendant further answering denies that at the time of the filing of their said petition there was not above the sum of four thousand & five hundred dollars due to the various creditors mentioned in the deed of trust to said Moore & this defendant, if it is thereby intended to be alleged that there was only that sum yet due & charge —

able under said deed of trust upon the premises in said petition described, but on the contrary this defendant says that at said time there was due under said deed of trust & chargeable on said premises the sum of seven thousand & seven hundred dollars with six per cent interest from the 16th day of July A.D. 1848. & that after having first sold & exhausted all the other property described in & conveyed by the said deed of trust there still remained due to the various creditors mentioned in said deed of trust the further large sum of several thousand dollars wholly unpaid out of the said trust property & for which the said creditors have no security whatever.

This defendant further answering that by the non-payment of the said sum of seven thousand & seven hundred dollars to this defendant & the said Ebenezer Moore, either by the said Millers or by the said Williams or by the said Casey on the 16th day of July A.D. 1848. the said deed of trust became wholly forfeited & absolute in the said trustees & their right under said deed to proceed and sell the premises in the said deed & petition described, became absolute in the said trustees to sell & pay said said sum of seven thousand & seven hundred dollars with interest from the 16th of July A.D. 1848.

Bushnell's
Answer
to original bill

to the creditors named in said deed, having first paid the expenses of said trust and sale of which the said petitioners had notice from the record of the said deed of trust & also from the record of the said deed from the said Williams to the said Casey & under which the said Casey held the possession & all the interest he at any time had in said property & that for any labor or materials which the said petitioners after that time furnished to the said Casey in & about repairing the said premises, & any interest they may thereby have acquired to a lien on said premises therefor, they held said lien junior and subordinate to the title of the said trustees in said premises & subject to their right & power to sell for the payment of the said trust debt - and that as against the said trustees & the creditors in the said trust deed mentioned, the petitioners could not hold claim or enforce such lien except as subsequent to & junior to the payment of the trust expenses & the debts secured on said premises.

This defendant further answering says that the this defendant & the said Ebenezer Moore, as trustees under the said trust deed at the request of the said Casey in order raised a part of the money due under said trust deed and chargeable upon the premises in said

petition described on the 21st day of October 1848. without a sale of the premises at that time, the said deed of trust then having become absolute assigned to the firm of Jas. E. Woodruff & Co. on interest in said trust deed to the extent of twenty-seven hundred dollars who thereupon became substituted to that amount as a beneficiary under said trust deed in the place and stead of the creditors named in the schedule annexed to said deed and that afterwards & on the 28th day of May A. D. 1849 the said Jas. E. Woodruff & Co. assigned & transferred to the firm of Kennedy & Foster, composed of Samuel H. Kennedy and Joseph W. Foster, their said interest in the said deed of trust amounting at that time principal & interest to the sum of twenty-seven hundred & ninety nine dollars.

This defendant further answering says that on or about the 21st day of March A. D. 1848 the said Mathews & Patch assigned and transferred to the said firm of Kennedy & Foster the said two notes mentioned in the conditions of the said two mortgages from said Casey to the said Mathews & Patch & also delivered to the said Kennedy & Foster the said mortgages as security therefore whereby the said Samuel H. Kennedy & Joseph W. Foster became the holders of said mortgage security on said mill & premises. in the petition

Bushnell's
answer
to original bill

described & entitled to the benefit thereof & that on the 24th day of July A. D. 1848. at the time the said petitioners allege the furnishing of the said boilers & gauge-cocks for the said Casey - there were due on the said premises secured by the mortgages & deeds of trust aforesaid, all prior to the making of the said sale and delivery & of which the said plaintiffs had due notice from the records of said Adams County the following sums of money, as evidenced by the said deeds of trust & mortgages aforesaid, & due & payable to the following persons as aforesaid

To this defendant & the said Ebenezer Moore, as trustees under said deed for the creditors, named in the schedule to the said deed the sum of seven thousand & seven hundred dollars with a large amount of accruing interest

To the said Kennedy & Foster on the said two assigned notes and mortgages of the said Casey to the said Matthews & Pateto the sum of ten thousand dollars with a large amount of accruing interest.

And to the said Hugh Riddle on the said mortgage of Casey to him the sum of thirty-seven hundred dollars with a large amount of ^{accruing} interest and amounting in the aggregate principal sum of twenty-one thousand & four

Summed dollars besides all the accruing interest & all of which said deeds of trust & mortgages had become absolute & forfeited & that any lien or claim of the said petitioners on said land by virtue of the matters in the said petition are this defendant insists junior to the prior claims of the said prior incumbrances & are in no way to be paid or satisfied out of said premises till after the said prior incumbrances are paid in full.

And this defendant further answering says that at the time of the commencement of this suit the said Samuel H. Kennedy & Joseph W. Foster were interested in said property & held the said mortgages thereon in the place of the said Matthews & Patch & also the said sum of twenty-seven hundred dollars & interest under the said deed of trust & that the said Kennedy & Foster ought to have been made parties defendants to this suit & this defendant submits to the Court whether the complainants shall be permitted further to proceed in this cause without making them parties & that since the commencement of this suit the fee simple in said property has become invested in the said Joseph W. Foster who now is possessor of the same in fee simple.

This defendant further answering says that the said premises in the said petition

Bushnell

Answer
to original bill
value

price

described & the mill thereon situated as a part of the said premises were together wholly inadequate in value to pay the said prior incumbrances either at the time of the alleged contract between the petitioners & the said Casey, or at any time since, and that the saleable value of said premises by the affixing thereto the said boilers & guage-cocks in the manner in which it was done, by the removal of other similar fixtures added very little to the saleable value of said premises & that since the commencement of this suit the said mill has wholly burned down & been destroyed by fire and leaving but a small part of the original value of said mill or fixtures available or of value & that if under the facts stated herein the said petitioners were entitled to any lien originally on the said mill & premises or any part thereof that they never had any lien on the said lands & building as it stood at the time of said contract as against the prior incumbrances nor would they now be entitled to any lien on the remnants of the building & fixtures left by the said fire except in proportion to the amount of their claim bears to the whole of the said prior incumbrances.

And now having sufficiently answered this defendants prays to be hence dismissed with his reasonable costs.

N. Bushnell

State of Illinois }
County of Adams } ss.

N. Bushnell being first duly sworn deposes and says that the matters & things in the foregoing answer by him subscribed contained, & as far as they are stated on his own knowledge, are true, and so far as they are stated from the information of others he believes them to be true.

N. Bushnell

Sworn & subscribed before me
this 27th day of February A D 1850 }
Peter Lott Clerk }

~~A. P. ...~~

And afterwards, to wit: on the 30th ^{day} of June, A. D. 1850. An order is entered in said cause by the said Circuit Court in the words following, to wit:— Now come Browning & Bushnell and enter the appearance of Kennedy and by consent of said parties, this cause is continued.

Kennedy's
appearance
entered

And afterwards, to wit: on the 15th day of Oct, A. D. 1850. A Supplemental Bill is filed in said cause in the words & figures following to wit:—

Supplemental
Petition

State of Illinois }
County of Adams }

Adams Circuit Court
Oct. Term A. D. 1850.

To the Honorable W^m. A. Minshall
Judge of said Court:

Humbly Complaining
show unto your Honor, your orators
Samuel Gaty, John S. McBune and Alben
H. Glassby that heretofore, to wit at the
May Term A. D. 1849 of this Court they filed
their petition in this Court against Thomas
J. Casey, Ebenezer Moore, Nehemiah Bushnell,
Hugh Riddle, David Mathews & W^m G.
Patch, showing to the Court that they
had before that time sold and delivered
to the said Casey two steam boilers and
five gauge-cocks at the price of \$978.00
to be used, and which were used by him
in the repair of a certain steam-mill
situated in said County & described in

Supplemental

B 33

said bill, and showing to the Court certain incumbrances held or claimed upon said property by the other defendants to said bill, and praying the Court to enforce the lien of your orators on said premises for the payment of said materials furnished for repairs and to decree a sale of said premises.

Your orators further show that on the 27th day of February A. D. 1850. the said defendant Nehemiah Bushnell filed his answer to said bill, stating among other things, that Samuel H. Kennedy & Joseph W. Foster, had become the owners of certain of the incumbrances on said property, described in said bill and asking that they be made parties to this proceeding.

Your orators further show by way of supplement to said bill, that since the filing thereof to wit in the month of A. D. 1849. the said Nehemiah Bushnell & Ebenezer Moore in their capacity as Trustees as described in said original bill and in the answer of said Bushnell sold said premises described in said bill in fulfillment of the trust created in the said deed of trust to said Bushnell & Moore, ~~described~~ in said bill, and that at said sale the said Joseph W. Foster became the purchaser of said premises for the benefit of said Kennedy & Firm, said Foster, partners residing in the City of New Orleans

State of Louisiana, for the sum of five thousand dollars, having at the time of said purchase, full notice of the lien of your orators on said premises for the boilers & gauge-cocks aforesaid, and of the pendency of this suit:

Your orators further show that after said premises were so, as aforesaid, sold by the said Bushnell & Moore, as Trustees, & purchased by the said Foster, to wit - in the month of January A.D. 1850. the buildings upon said premises were burned, and destroyed ^{being insured at the time of said fire} by fire, to the amount of nine thousand dollars which sum was duly received by said Foster from the Insurance Companies:

Your Orators further show that the said boilers and gauge-cocks, furnished by your orators as aforesaid for the repair of said mill were but slightly injured by said fire, and after the said fire they were taken by said Foster from the ruins of said building, and said boilers were sold by said Foster for the sum of four hundred dollars in cash each, making the sum of eight hundred dollars received by said Foster from said boilers, which sum was received by said Foster on the joint account and for the joint benefit of said Kennedy and said Foster.

Your orators further show that at the time of said sale by said Foster

Supp^t Bill

of said boilers the same were subject to the lien of your orators for the purchase money thereof as heretofore shown in your orators bill herein, which lien was well known to said Foster at the time of said sale, and was for a larger sum than the sum of 800. \$ rec^d by said Foster on the sale of said boilers, and said sale was in violation of the rights of your orators, and the purchase money received by said Foster, being less than the amount of your orators lien on said boilers, should in equity and justice be paid by said Kennedy & Foster to your orators:

Wherefore your orators pray that the said Samuel H. Kennedy & Joseph W. Foster be made parties defendant hereto. and that a writ of summons be issued against them commanding them and each of them to appear at the next Term of this Court and then and there full and perfect answer make to said original bill and to the allegations herein contained and that the other defendants to this proceeding also answer the allegations herein. And your orators pray that upon a final hearing of this case your Honor will decree that the said Foster or the said Kennedy & Foster pay to your orators the said sum of eight hundred dollars received by them in payment of said boilers sold by them as aforesaid, and for such

other and further relief as to your Honor may seem meet, and as the nature of the case and equity and good conscience may require

Samuel Gaty
John S. McCune
Alban H. Glasby.
William F. Lawrence.
Solicitors

County of Adams }
State of Illinois }

Charles B. Lawrence being duly sworn says that Samuel H. Kennedy & Joseph W. Foster defendants herein, are not residents of the State of Illinois: wherefore he prays publication against them.

Charles B. Lawrence

Subscribed & sworn
before me Oct. 30. 1850

Peter Sott, C. Ck.

And afterwards to wit: on

May 29th 1851. the 29th day of May A.D. 1851. an answer to said Supplemental bill is filed in said cause in the words and figures following, to wit:

State of Illinois }
County of Adams }

The answer of St. Duchess to the Supplemental bill of Gaty, McCune & Glasby, exhibited against him & others in the Adams Circuit Court

This defendant first reserving to himself all benefit of exception to the many errors & imperfections in the complainant's supplemental bill contained says that it

Duchess ans.
to sup^e bill

Bushnell's
answer to
Sup^r Bill

is true that before the commencement of this suit the said defendants Samuel H. Kennedy & Joseph W. Foster had become the owners of incumbrances to a large amount on the premises described in complainant's bill, as this defendant hath already stated in his answer to the original bill filed herein.

This defendant further answering admits as in his answer to the original bill herein, he hath already admitted, that his defendant & his co-defendant Ebenezer Moore as trustees in the deed of trust mentioned in the answer of the defendant to the original bill herein, sold & conveyed the premises in the original bill described to the said Joseph W. Foster & executed & delivered to the said Foster the deed thereon at or about the time of the said sale which was on the ninth day of November 1849, & for which premises the said Foster paid the said Bushnell a large sum of money, the accurate amount of which this defendant doth not now recollect and a copy of which said deed is hereto annexed marked "No. 1." with this answer, & which is hereby made a part thereof.

This defendant further answering says that whether or not the said Foster so became the purchaser of said premises for the benefit of himself and the said Kennedy, this defendant has no knowledge, except

from rumor and information, and that from rumor and information this defendant believes he did, but as to the real fact of the case this defendant having no real knowledge can neither admit nor deny the same to be true & therefore requires that the petitioners be required to make full & strict proof of his said allegations whenever it becomes a material matter in this cause.

This defendant further answering says, that so far as this defendant now knows, remembers or believes, & therefore he so states the facts to be, that he never had any knowledge, intimation or notice, of the claim of the complainants to a lien on said premises, set up in their petition, nor to any other lien or claim thereto, till on or about the time of the filing of their said petition herein, nor does he know or believe that his co-trustee Ebenezer Moore, nor the said firm of James E. Woodruff & Co. or the said Kennedy & Foster or any of the various grantees, in the said several mortgages & incumbrances in this defendant's answer to the original bill herein, had prior to that time any notice legal, actual or constructive of the said claim of the complainants, to their said lien on the said premises or any part thereof & that the said bonds, mortgages and contracts & deeds of trust mentioned in this defendant's said answer, were all made prior to the time when said constructive notice, by the commencement

Bushnell's
answer to
Sup^c Bill

of this suit, took effect & that from & after such constructive notice in the said Kennedy, or the said Foster they still had a right to trade in & purchase the said incumbrances, or lands & tenements & fixtures, of this defendant & his said co-trustee & of the said James E. Woodruff & Co. & of the said Matthews & Pate without being affected by such notice to them, as the said respective grantors held said claims for the full value & without notice in & that said boilers & guage-cocks & other articles so by the said petitioners so furnished to the said Casey, were so by the said Casey put into and affixed to the said mill & ground & premises, while he was in the actual possession & use of the said premises, & while he was the actual owner of said premises subject to the said incumbrances, & which said articles therefore became a part of the said real estate & that by the sale and conveyances by this defendant & his co-defendant Ebenezer Moore, to the said Foster, the said Purchase & became the owner in fee simple, divested of all subsequent liens including the said pretended lien of the petitioners of all the said premises described in the said deed a copy whereof hath been heretofore exhibited with this answer, with all the rights, privileges, improvements, appurtenances, machinery, fixtures, steam-engines, boilers,

furniture, & apparel belonging to & connected with the said premises & as a part of the said premises, so purchased & paid for by him, & for which said premises, the said Foster paid more than their fair and cash value, including the amount they paid the said Moore & Bushnell, at the said sale & the other & subsequent incumbrances & claims they had on the said premises as stated in this defendants answer to the original petition herein, junior to the incumbrance for which this defendant & his co-defendant Ebenezer Moore, as trustees so sold the same.

This defendant further answering admits that the said premises were burned down by fire at about the time mentioned in the said supplemental bill, & this defendant further states that he has been informed & believes that the said Foster or the said Kennedy & Foster had an insurance on the said premises at the time they were so destroyed by fire, & that they have received their insurance money from the insurance companies, & that the said insurance on said premises was some eight or ten thousand dollars, all of which this defendant has heard from information & rumor alone, but has no knowledge of the matter & cannot therefore either admit or deny

Bushnell
Answer to
Sup^r Bill

the same, but that as this ^{affiant} defendant is informed & believes the said insurance so effected by the said Foster & Kennedy or by the said Foster, was simply an insurance on their own account, & of their own interest only, & that the premiums of such insurance were paid by themselves alone, & that the said complainants had no interest in the said policy or policies of insurance, nor were at any part of the expense, nor did they purport to cover any interest of the complainant therein, & that the said Foster, or the said Foster & Kennedy, were not bound, nor did they ever in fact, insure for the complainants, but only for themselves & for losses they might sustain by fire & that if the complainants had any interest in said premises, it was for them if they wished to guard against losses by fire, to insure their own interest, & at their own expense.

This defendant further answering says, that the said Foster saved from the ruins of the said fire one of the boilers which the said petitioners furnished to said Cray, in a damaged state, & sold it for its then full value for three hundred dollars, & that this defendant has been told by the said Foster

that he also saved the other boilers furnished to Casey by the petitioners from the ruins of the said fire, in a damaged state & which also this defendant believes the said Foster afterwards sold, but for how much or what was its value this defendant is wholly ignorant, & insists on proof,

This defendant denies that, at the time that said Foster so sold said boilers, the complainants had any lien thereon for the purchase money thereof, or that the said Foster is in any way liable, in law or equity to account to the complainants for the purchase money thereof,

This defendant further answering says that since the session of this court at the last fall term thereof the said Joseph W. Foster hath departed this life that he was a resident of New Orleans in the State of Louisiana leaving as this defendant believes, heirs & legal representatives, who survive him & who have an interest in said premises, but whose names or places of residence or ages are to this defendant unknown & that before the complainants can be permitted to proceed with this suit; they should in some apt & proper mode make the heirs or other legal representatives of the said Joseph W. Foster dec^d parties herein & now having fully answered, this defendant

Bushnell
Answer to
Supp^d Bill

prays to be heard, discharged with his
reasonable costs &c.

N. Bushnell

State of Illinois }
County of Adams }^{ss}

N. Bushnell this day personally
appeared before the undersigned Clerk of
the Circuit Court of said County & being
first duly sworn to the depose & say that
the matters & things in his ^{written} ~~written~~ &
foregoing answer in chancery so far as they
are stated of his own knowledge are
true & so far as they are stated from
the information of others he believes them
to be true

N. Bushnell

subscribed & sworn to this

29th day of May A.D. 1851.

Peter Lott, Clerk.

By Geo. W. Leach Deputy

Exhibit N^o 1 with answer of N. Bushnell to Supplemental Bill

Moore & Bushnell
vs
Jas. W. Foster

Whereas Oliver J. Miller, & George A. Miller
& Ann P. Miller his wife, & Cyrus J. Miller &
Susanna D. Miller his wife, of the County
of Adams, & State of Illinois by their certain
deed of trust dated the fifth day of September
in the year eighteen hundred & forty six
for the consideration therein named, granted
bargained, sold & conveyed unto Ebenezer
Moore & Nehemiah Bushnell of the County

& State aforesaid & the survivor of them
& to the heirs & assigns of such survivors
Certain parcels of land situated in the
County of Adams & State of Illinois &
including the premises hereinafter described
with all & singular the rights, privileges,
improvements, appurtenances, Machinery,
fixtures, Steam-engines, boilers, furniture,
& apparel belonging to & connected with
& employed in & about the steam-flouring-
mill & steam-saw-mill, & steam distillery
situated at that time on the said premises
hereinafter described, But in trust to
secure the payment of certain debts of
the said grantors enumerated in the sched-
ule annexed to the said deed & with
authority to the said Ebenezer Moore &
Stephen Bushnell & the survivor of them
& the executors or administrators of such
survivor, in case the said debts were not
paid by the said grantors on or before the
sixteenth day of July eighteen hundred &
forty eight with the interest which might
then be due on the said debts to sell the
said premises in the said deed described
& including the premises hereinafter mentioned
& conveyed or any part thereof at public
vendue to the highest bidder at the door
of the Court-house in the County of Adams
& State of Illinois for cash, first giving
thirty days public notice of the time, terms,
& place of said sale & of the property to
be sold by advertisement thereof in some

Moore & Bushnell

To S Deed

Jos. W. Foster

newspaper printed in the said County of
 Adams & upon such sale to execute & deliver
 a deed in fee-simple of the property sold
 to the purchaser or purchasers thereof & which
 said deed is recorded in the Recorder's office
 in the said County of Adams & State of
 said in book D. of Mortgages on Pages 226.
 227. 228. & 229. inclusive, & whereas the day
 for the payment of the said debts, secured
 to be paid by the said deed of trust hath
 long since elapsed & an amount exceeding
 ten thousand dollars thereof remaining due
 & unpaid, we the said Ebenezer Moore &
 Nehemiah Bushnell trustees as aforesaid,
 having first advertised the premises herein-
 after described, for sale by an advertisement
 thereof duly published in the Quincy Whig,
 a public newspaper published weekly in the
 city of Quincy in the County of Adams
 aforesaid, for the space of thirty day preced-
 ing the sale hereinafter mentioned & of the terms,
 tenor & purport required in & by the said
 deed of trust, did on the ninth day of
 November A.D. 1849, in pursuance of the said
 notice & by authority of the said deed of
 trust offer the premises hereinafter dis-
 cribed at public sale at auction to the
 highest bidder for cash in hand at the
 door of the Court-house in the city of
 Quincy in the said County of Adams and
 at the said sale Joseph W. Foster offered
 for the said premises the sum of seven
 thousand & seven hundred dollars, which being

the highest & best bid therefor, the said premises were then & there by us struck off & sold to him at that price.

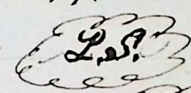
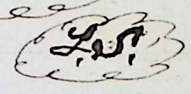
Now therefore know all men by these presents that we Ebenezer Moore & Nehemiah Bushnell trustees as aforesaid, & by virtue of the authority in us vested, in & by the said deed of trust, & not otherwise & in consideration of the sum of seven thousand & seven hundred dollars, to us in hand paid by the said Joseph W. Foster late of the city of New Orleans in the state of Louisiana, but at present of the county of Adams & State of Illinois, as by these presents grant, sell, convey & confer unto the said Joseph W. Foster & to his heirs & assigns all the right, title, claim, & demand legal & equitable vested in us, as trustees as aforesaid by the virtue of the deed of trust aforesaid in & to the premises so sold to him the said Joseph W. Foster situated in the county of Adams & State of Illinois & more particularly described & bounded as follows; to wit: A triangular piece of ground commencing at the South West corner of the North half of the South half of Section number thirty-five in township one south of the base line & in range nine west of the fourth principal meridian in the county of Adams & State of Illinois; thence running East two chains & twenty-six links to the west line of the road (being a continuation of Front-Street in the city of Quincy)

Moore & Bushnell
To E Deed
Jos. W. Foster

Leading North from Quincy in the said County of Adams, thence running north on the west line of said road with a variation of seven degrees & thirty two minutes, West seventeen chains & twenty-three links to the west line of said Section thirty-five, thence running south on the west line of said Section thirty-five seventeen chains & eight links to the place of beginning, containing one acre & ninety-three hundredths of an acre more or less; also a part of the east detached part of the south east fractional quarter of section thirty-four in township one south & range nine west of the fourth principal Meridian. Beginning on the east line of said quarter section where the North line of the city of Quincy in the original plat intersects the same & running thence north with said east line of said quarter-section fifty-feet thence west to the river thence with the river to the corporation line of said Quincy thence east to the place of beginning; To have, & to hold the above described & granted premises with all the rights, privileges, improvements, appurtenances, machinery, fixtures, Steam-Engines, boilers, furniture & apparel belonging to & connected with the said premises in as full & ample a manner as the same are now vested in us by virtue

of the trust deed aforesaid unto the said Joseph W. Foster his heirs & assigns to his & their own use, benefit, & behoof forever.

In witness whereof, we the said grantors have hereunto set our hands & seals this ninth day of November A.D. 1849.

Ebenzer Moore 
Abneriah Bushnell 

November 22nd 1851

Leave given
Kennedy to
answer

And afterwards, to wit:— on the 22nd day of November A.D. 1851. An order is entered in said cause by the said Circuit Court in the words following, to wit:— Now comes the said defendant Kennedy by his attorney, and enters his motion for leave to file his answer herein whereupon it is ordered that said defendant have leave to file his answer herein by the first day of February next, on condition that he pay one half of the costs up to this time, that the plaintiffs have leave to file their replication in vacation, and that this cause stand continued.

March 8, 1852

Kennedy's
Answer

And afterwards to wit:— on the 8th day of March A.D. 1852. An answer is filed in said cause in the words and figures following to wit:—

The separate answer of Samuel A. Kennedy to a petition for mechanics lien filed against him & others in the Adams Circuit Court by Gaty, McGuire, & Glarby

Kennedy's
Answer

This defendant having & reserving unto himself all benefit of exception to the many errors, uncertainties & imperfections in the said petition contained, for answer to so much of the said petition as this defendant is advised it is necessary for this defendant to make answer unto answering says, that as to whether the petitioners on or about the 24th day of July, A.D. 1848 sold & delivered to one Thomas J. Casey of the County of Adams and State of Illinois two large double flue boilers and five gaug-cocks to be used by the said Casey in repairing the machinery belonging and appurtenant to and a part of a certain steam-mill and distillery mentioned in the said petition this defendant is wholly ignorant except as he is informed by the said petition & that he is an utter stranger to said alleged transaction and can neither admit nor deny the same to be true & insists that the petitioners be required to make strict and full proof thereof, but on the other hand this defendant insists and says that if the petitioners ever sold and delivered to the said Casey the said boilers & gaug-cocks in said petition mentioned that no special contract was made between the petitioners and the said Casey by which the said Casey was to serve in repairing the machinery

of the said mill & distillery or by which the said Casey was to use the same at any particular place or for any particular purpose but that any said supposed sale, was a general sale and delivery of the said boilers and gauge-cocks to the said Casey, and that if the said Casey used the same in repairing the said machinery of the said mill and distillery, it was because he choose to do so & not because he was by the said contract of sale & delivery under any obligation to use the same for that purpose and that the said petitioners are not hence entitled to any benefit of a lien on the said mill & the appurtenances thereof, for any part of the supposed purchase money for the said boilers & gauge-cocks.

This defendant further answering says that he is ignorant except as he is informed by the said petition as to how much the said Casey agreed to pay or as to the time of payment for the said boilers & gauge-cocks, in case he ever purchased any from the petitioners as stated in their said petition, or whether the said purchase money has ever been paid, or whether the said Casey received the said boilers & gauge-cocks & used them in repairing the said mill and distillery & can therefore neither admit nor deny the same as charged in the bill, but insists that the petitioners be required to make strict and full proof of the matters relating thereto contained in their said petition, but this defendant

Kennedy's
Answer

says he is informed and therefore charges the fact to be true that after the said supposed sale & delivery to the said Casey of the said steam boilers & gauge-cocks mentioned in the petition and before the commencement of this suit the said Casey and the petitioners had a settlement of the amount due from the said Casey to the petitioners therefore & that the said Casey executed & delivered to the petitioners his note for the amount found due on such settlement and also gave the petitioners collateral security for the payment of the said note & that in consideration thereof the petitioners gave the said Casey an extension of time for the payment of the said boilers & gauge-cocks beyond the time of credit to which the said Casey was entitled by virtue of the contract of purchase thereof & that by virtue thereof this defendant insists that any lien the petitioners may have at any time had on the said mill & distillery, was thereby discharged, waived and abandoned forever!

This defendant further states from information and insists that the said boilers & gauge-cocks if put into the said Mill & Distillery at all by the said Casey, were by the said Casey put into and used in the said mill not merely by way

of reparation of the machinery of the said mill but in lieu and in place of other boilers & gauge-cocks which were at the time in & used in the said Mill & Distillery which were taken out & removed from the said mill for the purpose of being replaced in said mill by the said boilers & gauge-cocks in the petition mentioned and as a part of the transaction by which the said new boilers & gauge-cocks were put into the said mill & that the said old boilers were worth at the time of their said removal about four or five hundred dollars and that the additional value of said mill & distillery by virtue of the reparations & improvements in putting in the said new boilers did not exceed the difference between the value of the said old boilers & gauge-cocks thus taken out and the said new ones thus put in & of the value of said new boilers & gauge-cocks this defendant has no means of judging except from the alleged cost thereof, as stated in the said petition, and that if for any reason the Complainants are entitled to any lien on said mill & distillery & appurtenances thereof it can be only to the extent of the increased value thereof created by the improvements & repairs made with the said new boilers & gauge-cocks deducting the injury done to the said mill & distillery & the value of

Kennedy's
Answer

the said boilers removed from the said mill in making way for such reparation & improvement

This defendant further answering says that the petitioners at the time of the said supposed sale and delivery of the said boilers & gauge-cocks to the said Casey & for a long time previous & still are citizens and residents of the city of Saint Louis in the State of Missouri & engaged in carrying on an extensive establishment in the manufacture of steam-engines & boilers at the said City of Saint Louis and that the said boilers & gauge-cocks so alleged to be sold by them to the said Casey were by the petitioners manufactured at the said City of Saint Louis and sold and delivered to the said Casey at the said City & within the said State of Missouri as the manufacturers thereof & in the character of Manufacturers and not as mechanics, and this defendant insists that the petitioners, as citizens of the State of Missouri, are not by any law of this State entitled to the benefit of a mechanics or other lien on the property mentioned in their said petition, on the said alleged contracts of sale made by them to the said Casey and fully executed and completed in the said State of Missouri nor as the manufacturers of the said articles as herein before stated are the

said

said petitioners petition are the petitioners entitled to the benefit of any lien on said property as prayed for in their said petition or otherwise

This defendant further answering admits it to be true that the said Thomas J. Casey was in the possession of the said Mill & Distillery & the premises on which the same & the appurtenances thereof were situated on the 24th day of July A.D. 1848 but this defendant denies that the said Thomas J. Casey was then or at any other time the owner of the said premises or mill & distillery as is in the said bill alleged, except to the extent and in the manner hereinafter stated.

This defendant further answering says that on the ninth day of September A.D. 1846 Oliver H. Miller & George A. Miller being seized in fee simple of the said Mill & distillery, & the premises, on which the same were situated as described in said petition on that day executed and delivered to Nehemiah Bushnell and Ebenezer Moore, two of the defendants in the said petition named a deed of conveyance dated the fifth day of the said month of September A.D. 1846 & duly acknowledged by the said grantors & also being executed & acknowledged by the wife of the said George A. Miller & also duly recorded on the said ninth day of September A.D. 1846 in the Recorder's office in & for the County of Adams &

Kennedy's
answer-

State of Illinois whereby the said named grantors granted, bargained & sold to the said Bushnell & Moore & to the survivor of them and to the heirs & assigns of such survivor the premises in the said petition mentioned & on which the said mill & distillery were situated with all the machinery, fixtures, steam-engines, boilers furniture & apparel belonging to and connected with and employed in and about the steam flouring mill & steam saw mill & steam distillery on said premises situated & being the same steam mill and distillery in the said petition mentioned, To have & to hold the same with all & singular the rights, privileges, improvements, & appurtenances &c. unto the said Bushnell & Moore and to the survivor of them and to the heirs and assigns of such survivor forever, In trust however to secure the payment of certain debts owing by the said George A. Miller, Oliver F. Miller & one Cyrus J. Miller enumerated in a schedule to the said deed annexed and amounting to the principal sum of about fourteen thousand dollars with interest to a large amount which had then accrued on said indebtedness & which remained unpaid & with power & authority on the part of the said Moore & Bushnell & the survivor of them & the executors & administrators of such survivor in case

the said O. F. G. A. & C. J. Miller failed to make payment of the said indebtedness on or before the 16th day of July A. D. 1848 with the interest on the said indebtedness to sell all the said premises and appurtenances conveyed by the said deed at public auction to the highest bidder at the door of the Court House in the County of Adams and State of Illinois for cash, on first giving thirty days notice of the time, terms & place of sale & of the property to be sold by advertisement thereof in some public newspaper printed in the County of Adams & on such sale to execute & deliver a deed to the purchaser & receive the proceeds of the said sale & out of such proceeds pay first the costs & expenses of said trust & next the said debts mentioned in the schedule to said deed annexed pro rata till all the said indebtedness was paid and the balance (if any) to the said O. F. & G. A. Miller & it was further provided in and by the said deed that the said O. F. & G. A. Miller should have the privilege of selling any part of the said trust property on terms to be approved by the said Moore & Bushnell on the payment of the purchase money being made to the said Moore & Bushnell or in liquidation of prior incumbrances on the trust property & which said deed of trust mentioned in the said same deed of trust mentioned in the said

Kennedy's
Answer

petition as executed by the said O. F. Miller
George A. Miller & Cyrus J. Miller to the
said Moore & Bushnell, & which said
deed of trust this defendant prays may
be taken & considered as a part of this
his answer to the said petition &
hereby begs leave & offers to produce
the same to the Court on the hearing
of this cause, or at any other time &
when & where and as this honorable
Court may direct.

This defendant further
answering admits that the said Oliver
F. Miller and George A. Miller with his
wife on the 31st day of December A.D. 1846
conveyed the said premises in the petition
described to one John S. Williams, as stated
in the said petition & says that the said sale
was made with the consent of the said
named trustees & that said Williams was
to pay therefor eleven thousand & seven
hundred dollars, of which by a mutual
arrangement between the said Millers,
Williams & the said trustees, three thousand
seven hundred & eighty-seven dollars &
fifteen cents was paid over to James E.
Woodruff, Willard Hayes & the said
petitioners to discharge liens & incum-
brances held by them on said premises
existing prior to the making of the said
deed of trust & of which the sum of
two hundred & twelve $\frac{85}{100}$ dollars was

applied by said arrangement on the debts in the said deed of trust mentioned & the balance of said purchase money being seven thousand & seven hundred dollars the said Williams was to pay the said trustees, in said deed of trust named, on the 16th day of July A.D. 1848, the time when the debts in said deed of trust mentioned were to be paid, by the terms of said deed & to secure the payment thereof by said Williams, & as an evidence of the amount & the time of such payment the said Williams executed on the 4th of November A.D. 1846, to the said trustees his promissory note for seven thousand seven hundred dollars payable on the said 16th day of July A.D. 1848, & which when paid was to be credited on the debts in said deed of trust mentioned & to be in full satisfaction of the said deed of trust so far as the premises in said petition described, were concerned, as it respected said Williams & those claiming under him, which said premises thereby as to the said Williams & those claiming under him became separated from the general mass of trust property & was held specifically bound under said deed of trust for the payment of seven thousand seven hundred dollars on the 16th day of July A.D. 1848, according to the terms & provisions of said deed.

This defendant further

Kennedy's
Answer

answering admits it to be true that the said John S. Williams conveyed the said premises in the petition described to the said Thomas J. Casey as is in the said petition alleged, but says that such conveyance was made subject to the said sum of seven thousand seven hundred dollars secured thereon & to be paid the said trustees by virtue of the said deed of trust, of which the said Casey then had notice & which first was expressed on the face of the said deed to the said Casey as will appear from the said deed, the original of which is not in the possession or in the power or under the control of this defendant, but a certified copy whereof this defendant will produce to the Court on the trial of this cause, or when, when & as this Honorable Court may direct, as a part of this his answer.

This defendant further answering admits that the said Casey executed & delivered to the said Hugh Riddle the mortgage, of the date & tenor in said petition mentioned, & to secure the sum of money in the petition mentioned, & that the same was duly recorded as in the petition alleged but this defendant denies that the said mortgage debt or any part of the same has ever been paid, but alleges on the contrary that the whole of said debt remains

Kennedy's
Answer

answering admits it to be true that the said John S. Williams conveyed the said premises in the petition described to the said Thomas J. Casey as is in the said petition alleged, but says that such conveyance was made subject to the said sum of seven thousand seven hundred dollars secured thereon & to be paid the said trustees by virtue of the said deed of trust, of which the said Casey then had notice & which first was expressed on the face of the said deed to the said Casey as will appear from the said deed, the original of which is not in the possession or in the power or under the control of this defendant, but a certified copy whereof this defendant will produce to the Court on the trial of this cause, or when, when & as this Honorable Court may direct, as a part of this his answer.

This defendant further answering admits that the said Casey executed & delivered to the said Hugh Riddle the mortgage, of the date & tenor in said petition mentioned, & to secure the sum of money in the petition mentioned, & that the same was duly recorded as in the petition alleged but this defendant denies that the said mortgage debt or any part of the same has ever been paid, but alleges on the contrary that the whole of said debt remains

due & unpaid.

This defendant further answering admits the execution & recording of the several mortgages by the said Thomas G. Casey to the said Matthews & Patets of the dates & of the tenor & to secure the payment of the several sums of money therein respectively mentioned, but says he is a stranger to the consideration of said mortgages as between the said Casey & Matthews & Patets & can therefore neither admit nor deny that the said second mortgage was given in liquidation of the said first mortgage to Matthews & Patets, nor can he admit or deny that only about \$4,500 is yet due on said mortgages from the said Matthews & Patets as he is ignorant of the state of Account between said parties & requires that the petitioners be required to make strict & full proof of said allegations in their petition, but on the contrary this defendant insists as a matter of fact that the said second mortgage was not executed in liquidation of the said first mortgage & that the debt & considerations of said first mortgage did not form any portion of the debt & considerations in said second mortgage mentioned & that said mortgages were for distinct debts & transactions.

This defendant further answering denies that at the time of the

Kennedy's
Answer

filing said petition herein, there was not above the sum of \$4500. due to the various creditors mentioned in said deed of trust, but on the contrary this defendant is informed & believes & therefore alleges the fact to be, that at the time aforesaid, the whole of the said \$7700, chargeable under said deed upon the premises described in the petition, as herein before stated, with the accruing interest was wholly due & unpaid & that after having first sold & exhausted all the other property conveyed by said deed of trust, there still remained due to the various creditors in said deed of trust mentioned wholly unpaid & for which the creditors have no security whatever.

This defendant further answering says that by the non payment of the said sum of \$7700. to the said trustees either by the said Millers, or by the said Williams or by the said Casey on the 16th day of July A.D. 1848. the said deed of trust became wholly forfeited & absolute in the said trustees, & they thereby became vested with full & absolute rights & power to sell the premises in the petition described, & from the proceeds of the said sale to pay to the creditors the said sum of money & all accruing interest having first paid the expenses of the said trust and sale, of which the said

petitioners had notice from the record of the said deed of trust & also from the record of the said deed from the said Williams to the said Casey under which the said Casey held the possession & all the interest he at any time had in said property & that for any labor or materials, by the petitioners after that time furnished to the said Casey in & about the repair of said premises, & any interest the petitioners may thereby have acquired to a lien on said premises therefor they held said lien junior & subordinate to the title of said trustees in said premises & subject to their right & power to sell for the payment of the said trust debt & that as against the said trustees & the creditors in the said deed of trust mentioned, the petitioners could hold no claim or enforce such lien except as subsequent and junior to the payment of the expenses of said trust & the debts so secured on said premises.

This defendant further answering says that the said trustees in the said deed of trust mentioned, at the request of the said, in order to enable the said Casey to raise for the creditors therein named a part of the monies, secured by said trust deed on the premises in the petition mentioned, on the 21st day of October 1848, without a sale of the premises at that time, the deed of trust being then absolute, assigned to the firm of Jas. E. Woodruff & Co. an

Kennedy's
Answer

interest in said trust deed to the extent of \$2700, who thereby became substituted to that amount as a beneficiary under said trust deed in the place & stead of the creditors named therein and that afterwards & on the 28th day of May, A.D. 1849, the said James E. Woodruff & co. assigned & transferred their interest in said deed of trust, amounting at that time principal to \$2799, to this defendant & Joseph W. Foster, since deceased, then being partners in business under the joint names & firm of Kennedy & Foster, all of which will more fully appear by reference to the said original assignment aforesaid to the said J. E. Woodruff & co. & from them to the said firm of Kennedy & Foster, which this defendant prays may be considered as a part of this his answer. & which this defendant is ready & hereby offers to produce, on the trial of this cause & when, where & as this honorable Court may direct.

This defendant further answering says that on or about the 21st day of March A.D. 1848 the said Mathews & Patch assigned & transferred, for a valuable & sufficient consideration, to the said firm of Kennedy & Foster the said two notes mentioned in the respective conditions of the said two mortgages from the said Casey to the said Mathews & Patch & delivered to the said firm of Kennedy & Foster the

said two mortgages as security therefor, whereby the said Kennedy & Foster became the legal & equitable holders & owners of the said notes and mortgages security on the premises in the petition described & entitled to the full benefit thereof & that on the 24th day of July A.D. 1848, at the time the petitioners allege the furnishing the said boilers & gauge-cocks for the said Casey, there was due on the said premises & unpaid, & the payment whereof was secured by the deed of trust & mortgages aforesaid all prior, to the furnishing the property and materials aforesaid by the petitioners to the said Casey, of all of which the petitioners had due notice from the records of the said Adams County the following sums of money evidenced by the said deed of trust & mortgages to wit. To the said Bushnell & Moore as trustees for the creditors in the said deed of trust named the sum of \$ 7700. with the accruing interest

To the said firm of Kennedy & Foster on the said two notes & mortgages assigned to them, the sum of ten thousand dollars with a large amount of accruing interest

To the said Hugh Riddle on the mortgage executed by the said Casey to him as before stated the sum of \$ 3700. with a large amount of accruing interest — all amounting to the aggregate principal

Kennedy's
Answer-

sum of \$21,400, besides a large amount of interest in arrear, & all of which said deeds of trust & mortgages, had become forfeited & absolute in the respective grantees & assignees & any lien or claim of the petitioners, on said premises, by virtue of the matters stated in said petition, this defendant insists are junior & subsequent to the prior claims of the said prior & absolute forfeited incumbrances, & are in no wise to be paid or satisfied out of said premises till after the said prior incumbrances are satisfied in full.

This defendant further answering says that the said premises in the petition described & the mill thereon situated as a part of said premises are & were at all times wholly inadequate in value to pay the said prior incumbrances, either at the time of the alleged contract between the petitioners & the said Casey, or at any time since & that the saleable value of said premises by the affixing thereto the said boilers & gauges in the manner in which it was done by the removal of other similar fixtures, added very little to the real or saleable value of said premises and that since the commencement of this suit the said named trustees have under & by virtue of the said deed of trust sold the said premises at public sale to the said Joseph W. Foster since deceased, for the sum of seven

thousand & seven hundred dollars, that being the highest & best bid therefor, & in pursuance of said sale the said trustees executed & delivered to the said Joseph W. Foster, a deed therefor, conveying unto him, his heirs & assigns the said premises, including the rights, privileges, improvements, appurtenances, machinery, fixtures, steam engines, boilers, furniture and apparel belonging to & connected with the said premises, all of which will appear more fully from a copy of the said deed, dated the 9th day of November, A.D. 1849, & a copy whereof marked "Exhibit No 1" with the answer of the defendant Nathaniel Bushnell is hereby referred to & prayed to be taken and considered as a part of this answer.

This defendant further answering says that he did not, nor so far as is informed & believes did the said Joseph W. Foster deceased, ever have any knowledge, intimation or notice of the claim of the petitioners to a lien on said premises set up in their said petition, nor to any other lien or claim thereon, until the time of the commencement of this suit, by the filing said petition herein, nor does he know, nor has he been informed or believe that the said trustees, or the said James E. Woodruff & Co. or the said Mathews & Pateto or any of the said grantees or assignees in the said several mortgages herein before mentioned, had prior to that time any notice, actual or constructive of the

Kennedy's
Answer

complainants said claim to a lien on said premises or to any part thereof & that the said bonds, mortgages, deed of trust, & contracts hereinbefore mentioned by this defendant were all made prior to the commencement of this suit & to the notice on this defendant & the said Foster, thereby affected & that from and after such notice this defendant & the said Foster had a right, legal & equitable, to trade in & purchase the said incumbrances or lands & tenements with the appurtenances, of the said trustees & the other holders of such incumbrances without being affected by such notice to this defendant & the said Foster, as the said respective grantors & assignors held & owned such incumbrances for their full value & without notice & that the said boilers & guage-cocks & other articles so by the petitioners alleged to have been furnished to the said Casey were by the said Casey put into & affixed to the said mill & premises while he was in the actual possession thereof & while he was the actual owner thereof subject only to the said incumbrances & which said boilers & guage-cocks and other articles thereby became a part of the said real estate & that by the sale & conveyance by the said trustees to the said Joseph W. Foster, since deceased, he the said Foster became the owner of the said premises in fee simple, with all the rights, privileges, improvements, appur-

tenances, machinery, fixtures, Steam Engines
boilers, furniture & apparel belonging to
& connected with the said premises, so
purchased & paid for by him divested
of all liens or incumbrances, attached
to or affected on said premises, sub-
sequent to the making & recording of the
said deed of trust as hereinbefore stated,
and for which said premises this
defendant & the said Foster paid, at
the said sale, & for the said prior incum-
brances, assigned to them, as before stated
paid greatly more than their cash value
and this defendant further alleges & avers
that if under the facts stated herein
the said petitioners are or ever were entit-
led to any lien originally on the said mill
& premises or any part thereof, they never
had any lien on the said premises or
buildings & appurtenances as they were at
the time of their alleged contract with said
Caley as against the said prior incum-
brances, nor can they in any event be
entitled to any lien on said premises or
any part thereof or of the appurtenances or
the remnants of said buildings and appurtenances
except in proportion to the additional
value which the said improvements &
repairs of said premises gave to said
premises as compared with the whole
amount of the said prior incumbrances
This defendant admits that
the said Foster, purchased the said prem-
ises at said trustees sale for the joint

Kennedy's
Answer

benefit of himself & this defendant but that by virtue of the deed executed to him the title to said premises and the appurtenances vested in the said Foster, who has since departed this life leaving heirs & legal representatives in whom the legal title thereto became vested.

This defendant admits that the said premises were burned down by fire at or about the time mentioned in the supplemental bill, & that the said Kennedy & Foster or the said Foster for the benefit of said firm had an insurance thereon at the time they were so destroyed by fire & that they have since received the insurance money from the insurance companies for about \$10,000, but that said insurance by no means indemnified the said Kennedy & Foster, for the costs of the said premises, & the additional expenses incurred by them in the improvement thereof, but that their losses by said fire over & above the said insurance money amounted to several thousand dollars - that said insurance so effected by the said Kennedy & Foster or by the said Foster for them, was simply an insurance on their own account and of their own interest in said premises only, and that the premiums for such insurance were paid by themselves alone & that the

petitioners had no interest in said policies of insurance nor were at any part of the expense, for premiums of insurance, nor did said policies purport to cover any interest of the petitioners in said premises, nor were the said Kennedy & Foster or the said Foster under any obligation, nor did they or either of them in fact insure for the petitioners but only for themselves & for losses they might sustain by fire, & that if the complainants had any interest in said premises, it was for them if they wished to guard against losses by fire to insure their own interest & at their own expense

This defendant further answering says it is true that the said Foster saved from the ruins of said fire one of the boilers (which the said petitioners allege they furnished to said Cassey) in a damaged state & sold it for about three hundred dollars, which this defendant was informed & believes was its full value & that this defendant is also informed & believes that the said Foster also saved some other articles & perhaps the other boiler (which was in the mill) from the ruins of said fire, in a damaged state & which this defendant also believes the said Foster afterwards sold, but as the said Foster had the sole charge & management of said property, this defendant is not familiar with his

Kennedy vs
Answer

transactions in relation thereto, nor able to state the particulars about them, but insists that the petitioners be held to strict proof of their allegations in relation thereto.

This defendant further answering denies that at the time the said Boilers were ^{so} sold or at any other time, the petitioners had any lien thereon for the purchase money thereof, as against the said Foster or the said firm of Kennedy & Foster, or that they or either of them were or are in any manner in law or equity liable to account to the petitioners for the purchase money thereof, or for any insurance money thereon.

And now having sufficiently answered the defendant, denying all fraud & combination wherewith he stands charged in said petition, & all of which matters aforesaid, this defendant will aver, maintain & prove, when, where & as this honorable Court may direct.

This defendant now prays to be ^{discharged} discharged with his reasonable costs, in this behalf most wrongfully sustained & as in duty bound will ever pray
Sam^l H. Kennedy.

State of Louisiana }
Parish of Orleans } S. S.
City of New Orleans }

This day Samuel H. Kennedy who is personally known to me the undersigned Justice of the Peace in and for the Parish and State aforesaid, to be the same person who made and subscribed the foregoing answer in chancery, came before me and being first duly sworn, doth depose and say that the matters and things in his foregoing answer in chancery set forth and contained, so far as the same are by him stated from the information of others, he believes them to be true and that so far as they are stated of his own knowledge, the same are true in substance and in fact.

Sworn to & subscribed }
before me by the said } Samuel H. Kennedy }
24th day of February }
A.D. 1852. }

Sam^l H. Kennedy

J. L. Winter
Justice of the Peace
for the Parish of Orleans.

State of Louisiana
Third District Court of New Orleans.
J. William P. Redlock, Clerk of the Third District Court of New Orleans the same being a Court of Record do hereby certify that J. L. Winter before whom the foregoing affidavit of Samuel H. Kennedy

cf to
Kennedy's
answer

was taken was at the time the same was taken and bears date an acting Justice of the Peace in and for the Parish of Orleans duly qualified and commissioned and that full faith and credit are due to all his official acts as such Justice of the Peace.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at my office in the City of New Orleans on this twenty fourth day of February Anno Domini Eighteen hundred and fifty two of the 76th year of the Independence of the United States of America



W P Redlock Clerk
of the Third ^{District} Court of New Orleans

And afterwards to wit: on the 23rd day of March, A.D. 1852 an order is entered in the said cause by said Court in the words following, to wit:

Now come the said parties, by their attorneys, and by their assent here in Court given, it is ordered that this suit be continued until the next term of this Court.

And afterwards to wit: on the 14th day of June, A.D. 1852. An order is

continuance

entered in said cause in the words
following, to wit:— It is ordered that said
cause be continued to the next term
of this court.

And afterwards to wit: on
the 1st day of April, A.D. 1853, a Replication
is filed in said cause, in the words
and figures following, to wit:—

Replication

Gaty, McBune & Glasby }

to Bushnell

vs

Adams Circ

+ Kennedy's

Thomas J. Casey et al. }

Court.

answers

The replication of the said com-
plainants to the separate answers of
N. Bushnell to said original and
supplemental bills, and to the separate
answer of Samuel H. Kennedy to said
bills,

These replicants saving all right
of exception &c. to said answers, says
that said answers and the matters
and things therein contained are not
true, and that the matters and things
in said original and amended bills
contained are true, and this they are
ready to prove, as this Honorable Court shall
direct, &c.

Williams & Lawrence
for complts,

And afterwards to wit: on the said 1st day
of April, A.D. 1853. An order is entered in

Foster's death
suggested

said cause by said Court. in the words following, to wit— Now come the said plaintiffs by their attorney and suggest the death of said defendant Joseph W. Foster, and also filed their replication to the answer of said Bushnell and Kennedy.

And afterwards

And now on this 5th day of April 1853, A decree is entered in said cause by the said Court in the words & figures following to wit—

Final Decree

Gaty McGune & Glasby }
vs } Adams Circ Court
Thomas J. Casey et al. } March Term 1853.

And now this cause coming in to be heard upon the original and supplemental bills, and the answers of M. Bushnell and Kennedy and depositions and proof the Court finds that the real estate described in said original bill whereon said mill was situated is not at the date of this decree of value sufficient to pay the prior incumbrances existing upon said property at the time when said boilers were furnished, and now owned by said defendants; wherefore the Court refuses a decree as prayed in said original bill: and the Court being of opinion that by the destruction

of said mill by fire, and the removal and separation of said boilers from the ruins of said mill, the complainants lost their lien on said boilers, the Court doth therefore refuse the decree against the defendant Kennedy prayed for in said supplemental bill for the proceeds of the sale of said boilers: but the Court finds that the defendant Thomas J. Casey is indebted to the complainants in the sum of Nine Hundred and Six dollars and twenty five cents and hereby order and decree that the said complainants recover of the said Casey ~~the~~ ^{sum} said of Nine Hundred and Six dollars and twenty five cents and that they have execution therefor against the goods, chattels and real estate of said Casey: and the Court further orders and decrees that as to said Samuel H. Kennedy and as to all the other defendants in said original and supplemental bills except said Thomas J. Casey, that said original and supplemental bills be dismissed at the costs of the complainants.

And the Court further orders with the consent of the parties hereto, that said complainants, have leave to file and prosecute a bill of exceptions herein ^{preserving} the evidence at or before the next Term of this Court in June next.

O. C. Skinner
Judge.

appeal allowed

And the said plaintiffs now pray an appeal to the Supreme Court of this State, which is granted on condition that they or either of them enter into bond in the sum of two hundred dollars, within sixty days from this date with Archibald Williams or Charles B. Laurence, as security, conditioned according to law.

And afterwards to wit on the 9th day of May 1853. a letter of attorney and an appeal bond are filed in said cause, in the Clerks office, in said Circuit Court, in the words and figures following, to wit:—

Power of atty

I know all men by these presents that are the undersigned. Samuel Gaty, John S. McSpene, & Alban H. Glasby, composing the firm of Gaty, McSpene & Glasby, of the City of St. Louis & State of Missouri, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Archibald Williams or Charles B. Laurence, either of them, or true and lawful attorney in fact for us and in our name to execute an appeal bond or any other bond or instrument in writing that may be necessary in order to prosecute an appeal to the Supreme Court of the State of Illinois from the decree or decision of the Circuit Court of Adams County.

in said State made at the March Term A. D. 1853. of said Circuit Court in a certain suit wherein we are complainants and Thomas J. Casey and others are defendants; hereby authorizing our said attorneys or either of them to execute in our names any instrument in writing that may be necessary to take said case to the Supreme Court, and ratifying whatever either of our said attorneys may do in the premises.

Witness our hands & seals this 26th day of April A. D. 1853

Samuel Gaty *S.S.*
J. S. McCune *S.S.*
A. H. Glasby *S.S.*

Appeal Bond

Know all men by these Presents, that we Samuel Gaty, John S. McCune and Alban H. Glasby, of the County of St. Louis & State of Missouri, and Charles B. Lawrence of the County of Adams and State of Illinois, are held and firmly bound unto Thomas J. Casey, Samuel H. Kennedy, Ebenezer Moore, Nehemiah Bushnell, Hugh Riddle, David Mathews & William G. Patete, in the penal sum of Two hundred dollars, current money of the United States, for the payment of which, well & truly to be

made, we bind ourselves, our heirs, executors and administrators jointly, severally, and jointly by these presents. Witnesses our hands and seals at the Clerk's Office in Quincy, this Ninth day of May, A.D. 1858.

The condition of the above obligation is such, that whereas the said Samuel H. Kennedy, and others above named, except said Casey, did on the Fifth day of April, in the year of our Lord one thousand eight hundred and fifty three, in the Circuit Court, in, and for the County of Adams, and State of Illinois, recover a judgment, by a decree in Chancery, against the above bounden Gaty, McCune & Glasby, for the sum of three dollars and ninety six cents costs; from which said judgment of the said Circuit Court, the said Gaty, McCune & Glasby, have prayed for and obtained an appeal to the Supreme Court of said State, now of the said Gaty McCune & Glasby, shall duly prosecute their said appeal with effect, and shall moreover pay the amount of the judgment, costs, interest, and damages rendered, and to be rendered against them, in case ~~the same~~ ~~shall~~ the said judgment shall be affirmed ~~in~~ ~~the~~ said Supreme Court, then

made, we bind ourselves, our heirs, executors and administrators jointly, severally, and jointly by these presents. Witnesses our hands and seals at the Clerk's Office in Quincy, this Ninth day of May, A.D. 1858.

The condition of the above obligation is such, that whereas the said Samuel H. Kennedy, and others above named, except said Casey, did on the Fifth day of April, in the year of our Lord one thousand eight hundred and fifty three, in the Circuit Court, in, and for the County of Adams, and State of Illinois, recover a judgment, by a decree in Chancery, against the above bounden Gaty, McCune & Glasby, for the sum of three dollars and ninety six cents costs; from which said judgment of the said Circuit Court, the said Gaty, McCune & Glasby, have prayed for and obtained an appeal to the Supreme Court of said State, now of the said Gaty McCune & Glasby, shall duly prosecute their said appeal with effect, and shall moreover pay the amount of the judgment, costs, interest, and damages rendered, and to be rendered against them, in case ~~the same~~ ~~shall~~ the said judgment shall be affirmed ~~in~~ ~~the~~ in the said Supreme Court, then

the above obligation to be
 void, otherwise to remain in
 full force and virtue
 Taken & entered into, before me,
 at my office in Quincy } Samuel Gaty [LS]
 this 9th day of May } John S. McCune [LS]
 A.D. 1953 } Alban H. Glasby [LS]
 attest C. M. Woods, Clerk } by their attorney
 in fact C. B. Lawrence [LS]

By George W. Leech Dep'y.
 Charles B. Lawrence [LS]

And afterwards to wit on the 9th day of January A D 1854
 a Certificate of Evidence, and a agreement were filed in
 the office of the Clerk of the said Circuit Court, as of the
 23^d day of November A D 1853, (said 23^d day of November
 A D 1853, being one of the days during which the October
 term of said Court was holden, in the year 1853) — in the
 words and figures following to wit

Certificate of
 Evidence

Gaty McCune & Glasby } Circuit Court of Adams
 vs } County State of Illinois
 Thomas J. Casey et als } March Term 1853

Be it remembered that on the hearing
 of the above entitled cause, at the March term 1853,
 of said Court, the complainants read in evidence the
 following deposition of Mr. Ter

STATE OF ILLINOIS, } SCT. The People of the State of Illinois,
COUNTY OF ADAMS, }
TO *Melvin S. Gray, of the City of St. Louis & State of Missouri*

Greeting

KNOW YE, *That we, in confidence of your prudence and fidelity, have appointed you, and by these Presents, do give unto you full power and authority, and do hereby authorise and require you, that, at a certain time and place, to be designated and appointed by you, for that purpose, you do cause the Witnesses, whose names are mentioned in the caption of the enclosed interrogatories, as well on the part of *Saty, McBurn & Glasby* plaintiffs, as *Thomas J. Casey & A. Breshnew* et als, defendants, in a certain *Suit pending*
And undetermined*

in the Circuit Court, within and for the County of Adams, in the State of Illinois, to come before you, and then and there, diligently and faithfully examine each of them, apart, upon the said interrogatories, and none others, both on the part of the said Plaintiffs and Defendants, on their respective corporal oaths first taken before you, and that you do take such their examinations, and cause the said interrogatories as they are propounded, together with the said answers of the said Witnesses thereto, to be reduced to writing, in the order in which they shall be proposed and answered; and when you shall have so taken them, you shall cause the said witnesses to sign their names to the same, in their proper places, in your presence; and thereupon, you will annex, at the foot thereof, a certificate, subscribed by yourself, in which you must state that they were sworn to, and signed by the Deponents, and the time and place, when and where, the same were taken. After which, you are to send the said Depositions, together with this Commission, and the enclosed interrogatories, carefully enclosed and sealed up to the Clerk of the Circuit Court in and for the County of Adams, and State of Illinois, with the names of the said parties litigant endorsed thereon, with the least possible delay. And this you shall in no wise omit.

Witness, PETER LOTT, Clerk of our said Circuit Court,

at QUINCY, this *fourteenth*

day of *May*

in the year of our

Lord one thousand eight hundred and *fifty* 1850

Peter Lott

Clerk.

By C. M. Woods Deputy

Gaty, McLean, & Glasby } Circuit Court of Adams County;
vs. } State of Illinois, an Petition for
Thomas J. Casey } Mechanics Lien.
W. Bushnell et al }

Es Messrs Browning & Bushnell

Attys for Def.

Gentlemen you are hereby notified, that we shall on the 14th day of May A. D. 1852 sue out of the Clerk's office of the above entitled Court a commission in the above entitled case, directed to Melvin S. Gray of the City of St. Louis & State of Missouri as a special commissioner, authorizing him as such commissioner to take the deposition of Thomas Webster, of the City of St. Louis & State of Missouri to be read on the trial of the above entitled case, on behalf of the plaintiffs; said deposition to be taken on the part of the plaintiffs upon the following interrogatories; at which time & place for suing out said commission you can appear and file cross interrogatories to be sent out with the same, if you see proper.

Quincy Ill. May 3. 1852.

William & Lawrence
Attys for Complts.

Questions to be put to the witness on behalf of the complainant

- Quest. 1. What is your name & residence
- " 2. Do you or do you not know the firm of Gaty, M^r. Lume & Glasby of the city of St. Louis; if you do know them state whether you were or were not in their employment in the year 1848?
- " 3. Do you or do you not know of a sale made by the said Gaty, M^r. Lume & Glasby in 1848 to one Thomas J. Casey then of Quincy of two large double flue boilers and five gauge cocks; if you do know of such sale, please state at what time said sale was made, what price said Casey was to pay for said boilers & gauge cocks, for what purpose said boilers and gauge cocks were bought, and to what place they were shipped, and at what time they were to be paid for?
- " 4. Were you or were you not present at said sale?
- " 5. Was or was not anything said at that time between the parties to said sale as to the purpose for which said boilers & gauge cocks were sold?
State what was said.
6. Was it or was it not expressly understood between the said Gaty, M^r. Lume & Glasby and the said Casey at the time of said sale, that said boilers & gauge cocks were sold said Casey for the purpose of being used by the said Casey in repairing the machinery of a steam mill occupied by him in the city of Quincy & State of Illinois and of being placed by him in said mill?
7. By the terms of said sale, what credit was given on said boilers & gauge cocks?

- Cross questions to be propounded to the said witness.
- 1 At what place were the said boilers & gauge cocks sold & delivered to the said Thomas Casey - Were they or not sold & delivered to the said Casey at the City of Saint Louis in the State of Missouri
 - 2 What was the exact time at which the said boilers & gauge-cocks were so sold & delivered to the said Casey -
 - 3 Was there not a written contract between the parties on which the said boilers & gauge cocks were so sold & delivered to the said Casey - If you please annex the said contract or a true copy thereof to your answer to this interrogatory
 - 4 By the agreement on which the said boilers & gauge cocks were so sold & delivered to the said Casey, how much was the said Casey to pay for the same, and when was he to pay it - Did the said Casey at any time make any payment on the said boilers & gauge cocks or either of them & if so when did he make such payments & what was the amount he so paid -
 - 5 When the said plaintiffs agreed to furnish the said boilers & gauge cocks or either of them to the said Casey - or at some other time did they not agree with said Casey to reserve and take the old boilers then in Casey's mill at Quincy in part payment - If so when was such agreement made, & for what amount did the plaintiffs agree to take said old boilers

6 In what manner did the said leasee settle for the said boilers & gauge cocks or either of them at the time he received them of the plaintiffs, by cash or by note or by draft, or in what way? Please describe particularly, the kind of settlement he made with the plaintiffs and describe particularly the notes or drafts by him given the plaintiffs therefor, with the amounts due thereon & the time they had to run to maturity

7 Did or did not the said leasee at any other time make with the said plaintiffs any settlement for the said boilers & gauge cocks or either of them & get from the plaintiffs an extension of the time of the payment therefor beyond the time originally agreed on between the parties, & then give the plaintiff notes or drafts or other paper having time to mature, for what was unpaid the plaintiffs on said boilers & gauge cocks or either of them please answer this question particularly, and state whether or not the said leasee did not get from the plaintiffs an extension of time for the payment of the said boilers & gauge cocks or either of them, and if so at what time or times this extension was made, describing particularly the date & amount of each note or draft given the plaintiffs by said leasee, in pursuance or by such arrangements for the extension of time & also at what time any such note or notes, draft or drafts became payable by the terms thereof respectively. — Browning & Bushnell
of counsel for defendants

We acknowledge and advise of the foregoing notices & of the interrogatories on the part of the plaintiffs thereto answered by the delivery of a true copy thereof to us this day — Browning & Bushnell
Quincy, ^{Mass.} May 5th 1852. of defendants

5

Deposition of Thomas Webster a witness, taken on the 25th day of May A. D. 1852 between the hours of eleven o'clock A. M. and seven o'clock P. M. at the office of Melvin S. Gray, in the city and county of St. Louis and State of Missouri (the said time and place having been previously fixed upon by me as the time and place of taking the same) by Melvin S. Gray a special commissioner, acting under and by virtue of the annexed commission, to me directed & dated the 14th day of May 1852, and upon the enclosed interrogatories, and by virtue of the enclosed commission, to be read in evidence in a certain suit now pending in the Circuit Court of Adams County in the State of Illinois, described in said commission and interrogatories, wherein Gaty, McKeune & Glasby are plaintiffs & Thomas J. Casey, N. Bushnell et als are defendants, as well on the part of the said plaintiffs, as the said defendants -

Questions put to Thomas Webster on behalf of the complainants. Deposition of Thomas Webster
The said Thomas Webster being first duly sworn doth depose and say in answer to the several interrogatories, as follows to wit,

Interrogatory 1. What is your name and residence?

Answer. Thomas Webster, and my residence is the city of St. Louis, Missouri.

Interrogatory 2. Do you or do you not know, the firm of Gaty, McKeune & Glasby of the city of St. Louis? If you do know them, state whether you were or were not in their employment in the year 1848?

Answer. I know the firm of Gaty, McLean & Glasby, & I was in their employment in the year 1848.

Interrogatory 3. Do you or do you not know of a sale made by the said Gaty, McLean & Glasby in 1848 to one Thomas J. Casey then of Quincy, of two large double flue boilers and five gauge cocks; if you do know of such sale please state at what time said sale was made, who paid said Casey was to pay for said Boilers & gauge cocks, for what purpose said Boilers and gauge cocks were bought, and to what place they were shipped, and at what time they were to be paid for?

Answer. I know of a sale made by the said Gaty, McLean & Glasby, in 1848, to Thomas J. Casey, then of Quincy, Illinois, of two large double flue Boilers, and five gauge cocks. Said sale was made in July 1848, somewhere from the 20th to the 24th day of July. The said Casey was to pay to the said Gaty, McLean & Glasby for said Boilers & gauge cocks, the sum of nine hundred and six dollars & twenty five cents. Said Boilers and gauge cocks were bought by said Casey to be put into, and used in a flouring mill, occupied by the said Casey, at Quincy, Illinois, and they were shipped to the town of Quincy, Illinois. They were to have been paid for, on the 15th of March 1849.

Interrogatory 4. Were you or were you not present at said sale?

Answer. I was present when the sale was made.

Interrogatory 5. Was or was not anything said at that time, between the parties to said sale, as to the purpose for which said Boilers and gauge cocks were sold. State what was said -

Answer. There was something said between the parties to said sale, as to the purpose for which said Boilers & gauge cocks were sold. Mr Casey said, they

were bought to repair his mill in Quincy, and so inform-
ed Gaty, Mc Lane & Glasby at the time of said sale.

Interrogatory 6. Was it or was it not expressly understood, between
the said Gaty, Mc Lane & Glasby, and the said Casey,
at the time of said sale, that said boilers and
gauge cocks were sold said Casey for the purpose
of being used ^{by} the said Casey in repairing the Ma-
chinery of a Steam Mill, occupied by him in
the City of Quincy & State of Illinois, and of being
placed by him in said Mill?

Answer It was so expressly understood between the said
Gaty, Mc Lane & Glasby and the said Casey, at the
time of the said sale.

Interrogatory 7. By the terms of said sale, what credit was giv-
en on said Boilers and gauge cocks?

Answer By the terms of the sale, said Casey, was to have had
a credit from the time of sale to the 15th of March
1849, he paying interest after ninety days from
the day of sale, and Casey was to have given Boutwell
and Valle's acceptance, for the amount payable the
15th of March 1849, which however was never giv-
en to Gaty, Mc Lane & Glasby.

In answer to the cross-interrogatories propoun-
ded, by the said defendants, the said Thomas
Webster, doth depose and say, as follows to-wit:

Cross Interrogatory 1. At what place were the said boilers
and gauge cocks sold & delivered to the said
Thomas Casey? were they or not sold, and delivered
to the said Casey at the City of Saint Louis, in the
State of Missouri?

Answer They were sold & delivered to the said Casey,
in the City of St. Louis, in the State of Missouri.

Cross Interrogatory 2. What was the exact time at which the
said boilers & gauge cocks were, so sold, & delivered
to the said Casey?

I cannot state the exact day, but it was between the 20th & 24th of July 1848. The charge on the Plaintiff's Books bears date of the 24th of July 1848, and was made by me.

" 3. Was there not a written contract between the parties, on which the said Boilers & gauge cocks, were sold, and delivered to the said leasey - If you please annex the said Contract, or a true copy thereof to your answer to this interrogatory.

Answer. There was no written contract on which the said articles were sold, and delivered.

" 4. By the agreement on which the said Boilers and gauge cocks were sold, and delivered to the said leasey how much was the said leasey to pay for the same, and when was he to pay it. - Did the said leasey at any time, make any payment on the said Boilers and gauge cocks, or either of them, and if so, when did he make such payment and what was the amount he so paid.

Answer. By the agreement the said leasey was to pay, for said articles nine hundred and six dollars & twenty five cents, and was to have paid it on the 15th of March 1849. Said leasey never made any payments on said boilers & gauge cocks or either of them.

" 5. When the said Plaintiffs agreed to furnish the said boilers & gauge cocks or either of them to the said leasey, or at some other time, did they not agree with said leasey to receive, and take the old boilers then in leasey's Mill at Quincy in part payment - If so, when was such agreement made, and for what amount did the Plaintiffs agree to take said old boilers?

Answer Neither at the time of sale, nor at any other time, to my knowledge, was there any such agreement. At the time of the sale Casey spoke about sending down the old boilers to St Louis but was undecided about doing so, and it was understood, that if he did send them to St Louis Plaintiffs were to receive them, and credit him, with what they might be worth, but they never were sent to the Plaintiffs

6 In what manner did the said Casey settle for the said boilers & gauge cocks, or either of them, at the time he received them of the Plaintiffs; by cash, or by note, or by draft, or in what way? Please describe particularly the kind of settlement he made with the Plaintiffs and describe particularly the notes or drafts, by him given, the Plaintiffs therefor, with the amounts due thereon, and the time they had to run to maturity?

Answer No settlement was ever made by said Casey for said boilers and gauge cocks or either of them; either at the time of sale, or afterwards. He gave no cash, nor did he give notes or drafts. By the terms of sale he was to have given Plaintiffs the acceptance of Chouteau & Walli for the amount to mature on the 15th of March 1849 but failed to do so.

7 Did or did not the said Casey, at any other time, make with the said Plaintiffs any settlement for the said boilers and gauge cocks, or either of them and get from the Plaintiffs an extension of the time of the payment, therefor, beyond the time originally agreed on between the parties & then give the Plaintiffs notes or drafts, or other paper, having time to mature for what was unpaid the Plaintiffs on said Boilers & gauge cocks, or either of them. Please answer this question

particularly and state whether or not, the said leasey did not get, from the plaintiffs, an extension of time, for the payments of the said boilers and gauge-cocks, or either of them, and if so, at what time or times, this extension was made describing particularly the date and amount of each note, or draft given the plaintiffs, by said leasey, in pursuance of such agreement for the extension of time, and also at what time, any such note or notes, draft or drafts, became payable by the terms thereof respectively.

Answer

No settlement was ever made, by said leasey with the plaintiffs for said boilers and gauge-cocks or either of them nor was there ever any extension of the time of payment, made or paper, of any kind given, to my knowledge and I am confident no extension of the time of payment was obtained from the plaintiffs by leasey, and that no notes, drafts, or other paper, were ever given by him to plaintiffs, as is supposed in the question, for the reason that all the business transactions of the plaintiffs, passed through my hands in the office and also all business papers, and all original entries of business transactions, were made ^{by} me and I never knew or heard of any such settlements or extensions, as are supposed in the above question.

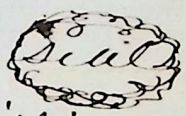
And further this deponent saith not.
Geo. Webster.

State of Missouri,
City of St. Louis

W. Melvin S. Gray a special

Commissioner; acting under and by virtue of the Commission, hereto annexed and to me directed, do hereby certify that the said witness Thomas Webster, prior to the taking of said Deposition, and on the 25th day of May A. D. 1852, was by me duly sworn to testify the truth, in relation to the matter in controversy in the suit mentioned in the caption of this Deposition, and in the enclosed Commission, so far as he might be interrogated in relation thereto; and that the said Deposition was, on the 25th day of May A. D. 1852, at the Office of Melvin S. Gray in said City and State, taken and reduced to writing, and signed and sworn to, by said witness, in my presence, and the said Deposition, Commission and interrogatories, are now herewith returned.

Given under my hand and seal, this 25th day of May A. D. 1852.

Melvin S. Gray 
 Special Commissioner.

They also proved that the mill described in said original and supplemental bills was destroyed by fire in the month of January A. D. 1850, and that the boilers described in said original and supplemental bills were saved from said fire and taken from the ruins of said mill by said Foster acting in behalf of said firm of Kennedy & Foster and that one of said boilers was sold by said Foster to one Wagon in said Adams County for the sum of three hundred dollars and the money deposited by said Foster with Nehemiah Bushnell one of the defendants herein

and counsel, of said Kennedy & Foster, to abide the result of this suit and be paid over to the complainants herein should they establish a right to the proceeds of the sale of said boilers, and otherwise to be paid to the said Kennedy & Foster, and that the other of said boilers was sold by said Foster acting for said firm to one Mr Comstock in Adams County for \$250 and the money paid to said Foster.

The defendants then proved that the boiler purchased by the complainants were put into the said mill in the place of old boilers then in the mill & which were at the time removed to make room for the new ones and that said old boilers ~~and~~ ~~the~~ ~~old~~ ~~boilers~~ ~~and~~ ~~the~~ ~~old~~ ~~boilers~~ were worth \$250.

The defendants then proved that Oliver B. Miller & George A. Miller being on the fifth day of September A. W. 1846 the owners of the ground & mills in the petition described and the said Oliver B. Miller, George A. Miller and Cyrus J. Miller being the owners of certain other real estate in the said County of Adams, the said Miller being at that time jointly indebted to various creditors in the City of Baltimore in the principal sum of \$13,753 besides a large sum for interest accrued thereon in order to secure the payment thereof conveyed, by deed dated the fifth day of September A. W. 1846 & duly acknowledged & recorded in the recorder's office in Adams County on the 9th day of September A. W. 1846, to the defendants Moore & Bushnell, as Trustees for said creditors, the premises described in the petition together with said other real estate jointly owned by them with power to the said Trustees to sell the said real estate to pay said debts as therein stated, & the tenor

112

to purport of which said deed is truly set forth
in the answer of the defendant Bushnell herein.

Then defendants then proved, as stated in said
defendant Bushnell's answer that the property in
the petition described was at the time of the ex-
-ecution of the said deed of trust, ^{encumbered by prior mortgages and deeds of trust duly} recorded
& executed by the said Miller to secure prior
debts due ~~and~~ from them to other creditors to the
amount of \$3787 ¹⁵/₁₀₀ and which debts were then
due & unpaid.

The defendants then proved that with the consent
of the said Moore & Bushnell as trustees, given in
pursuance of a provision contained in the said deed
of trust, the said C. B. & G. A. Miller on the 31st day
of December A. D. 1846 sold and conveyed the prem-
-ises ^{in the petition} described to one John Williams by deed of that
date & duly acknowledged & recorded in the con-
-er's office of said Adams locality on the first
day of January A. D. 1847 for the sum & considera-
-tion of \$11,700 of which the said Williams paid
to the said trustees Moore & Bushnell \$4000 out of
which the said Trustees paid the said prior incumbrances
on said premises of \$3787 ¹⁵/₁₀₀ in full, and leaving
the balance of \$7700 dollars ~~due~~ due from the said Mil-
-ler to the said Miller on the purchase money
unpaid and which the said Williams was
to pay to the said Trustees by the 16th day of
July 1848, the date at which the said deed of trust
matured, ~~to~~ to be applied by the said Trustees
on the debts secured by the said deed
of Trust and on which payment being made
the deed of Trust was to be released on said
premises but till such payment was made,

the said deed was to remain in full force against the said premises for the said sum of \$ 7,700 payable on the 16th day of July A. D. 1848 the time at which the said deed of trust matured.

The defendants then proved that on the twenty sixth day of May A. D. 1847 the said John S. Williams by his deed of that date executed in pursuance of a prior verbal sale of said premises by him to Thomas J. Casey and ^{and} acknowledged by him and recorded in the recorder's office of the said Adams County on the 26th day of November A. D. 1847 sold & conveyed the premises in the petition described to one Thomas J. Casey for the consideration of \$ 11,400 in part of which was paid by the said Casey to the said Williams but the said Casey was to pay the same by paying the said \$ 7700 which the said Williams still owed for the purchase money therefor & which stood secured on the premises by the said trust deed to the defendants Moore & Bushnell, and also by paying or securing the payment to one Blugh Kiddle of the sum of \$ 3,700 which the said Williams then owed to said Kiddle and for which sum of \$ 3700 the said Casey had on the 4th day of March 1847 executed his promissory note to the said Blugh Kiddle and which note is described in the mortgage of the said Casey to the said Kiddle hereinafter mentioned & that in pursuance of the said agreement the said Casey on the 26th day of May 1847 executed his mortgage on the premises in the petition described, to the said Blugh Kiddle to secure the payment of the said note described in

13

said mortgage & which mortgage was duly acknowledged by the said leasee & was on the 20th day of November A. D. 1847 duly recorded in the recorder's office of Adams County and is the same note and mortgage from said leasee to Hugh Kiddle mentioned & described in the petition herein, and that no part of the said mortgage debt to the said Hugh Kiddle has ever been paid either by the said leasee or by any other person.

The defendants then proved that on the 28th day of May A. D. 1847 the said Thomas S. Casey being indebted to David W. Matthews & Thomas G. Patch Partners under the name & firm of Matthews & Patch in the sum of \$3000 executed to them his note therefor payable on the first day of January A. D. 1848 & to secure the payment thereof did on that day & of that date execute to the said Matthews & Patch a mortgage on the premises described in the petition to secure the payment of said note & that the said mortgage was duly recorded in the recorder's office of Adams County on the 29th day of May A. D. 1847, and that on the 31st day of August A. D. 1847 the said Casey being indebted to the said Matthews and Patch in the further sum of \$7000. executed to them his certain other promissory note of that date therefor payable on the first day of January A. D. 1848 & to secure the payment of the said last note & future advances they might make to the said Casey he the said Casey on the same day executed to the said Matthews & Patch another mortgage on the

premises in the petition described to secure the pay-
-ment of this last note & which last Mortgage
was duly recorded in the Recorder's Office of Adams
County on the 20th day of September A. D. 1847
and of which are the same two Mortgages from
leasey to Matthews & Patch mentioned in the pe-
-tition herein and that the said Matthews
and Patch being indebted to the said Kennedy
& Foster to the full amount of the said two notes
& Mortgages, in order to secure the payment of
the same on the 21st day of March A. D. 1848 as-
-signed & transferred the said two notes and
(Mortgages to the said Kennedy & Foster, and
no part of which said (Mortgage debts has ever
been paid by the said leasey or by any other
person for him.

The defendant then proved that the said
Millers nor either of them, nor any other person
for them ever paid the said debts mentioned
in & secured by the said deed of Trust to the
said Moore & Bushnell as trustees or any part
thereof and that neither the said ~~the same~~
John S. Williams, Thomas S. Casey or any other
person has ever paid the said \$7700 & interest
& accrued as before stated on the premises in the
petition described, or any part thereof, and
that at the time of the maturity of the said deed
of trust on the 16th day of July A. D. 1848 there
was due and unpaid on the deeds of Trust & Mort-
-gages hereinbefore mentioned & specifically secured
thereby on the property described in the petition
the following sums in the following order of
priority.

1. To the said Moore & Bushnell, as trustees under said deed of trust, the principal sum of \$ 7700.

2. To the said Hugh Kiddle on the said mortgage of Tho: V. Casey the principal sum of three thousand seven hundred dollars with a large amount of accruing interest

To the said Kennedy & Foster on the said two mortgages of Casey to Matthews & Patch & assigned to the said Kennedy & Foster the principal sum of \$ 10,000 with a large amount of accrued interest, and making the total sum of \$ 21,400 besides the interest accrued & secured by the said deed of trust & mortgages on the premises in the petition described, at the maturity of the said deed of trust on the 16th day of July A.D. 1848 and that said sum greatly exceeded the value of the premises in the petition described -

The defendants then proved that on the said 16th day of July A.D. 1848 the debts mentioned in the said deed of trust, exclusive of the said \$ 7700, amounted including interest to the sum of \$ 8,249, and that said last named sum exceeded the value of all the property described in the said deed of trust, exclusive of ^{the} premises described in the petition.

The defendants then proved that no part of the debts in the said deeds of trust mentioned having been paid the defendants Moore & Bushnell as trustees, in the month of September 1848 on the notice & in the manner in the said deed required sold at public auction all the property described

in the said deed, except the premises described in the petition herein and applied the proceeds of such sale, on the debts mentioned in the trust deed, and that, after the proceeds of said sale were thus applied on said debts, several thousand ^{dollars} thereof, exclusive of the said \$7700 specifically secured on the premises in the petition described remained unpaid and for which the said creditors had no further security and which has never been paid either in whole or in part either by the said Millers or by any person for them.

The defendants then proved that said Moore & Bushnell as such Trustees on the 21st day of October 1848, the said \$7700 & every part thereof being unpaid, in order to procure for the use of the creditors in the said deed of Trust a portion of the said sum on the credit & security of the said deed of Trust procured for the said creditors of the firm of James E. Woodruff & Co. the sum of \$2700 and assigned to them an equitable interest in the said deed of Trust to that ~~that~~ amount on the premises in the petition describe with and agreements by the said Trustees to repay the same with interest to the said James E. Woodruff & Co. out of the proceeds of the sale of the said premises under said deed, & that the said James E. Woodruff & Co. afterwards on the 28th day of May A. D. 1849, for value received assigned the said agreement & sum of money to the said Kennedy & Foster, who thereby became equitably interested in the said deed of Trust & in the property in the petition described to the extent of the said \$2700 & interest and to the repayment of the same by the said Trustees out of the

17


proceeds of the sale of said premises when made by
the said Trustees,

The defendants then proved that the said Moore
& Bushnell as trustees on the ninth day of Novem-
ber A. D. 1849 in the manner & on the notice
by ~~the~~ the said deed of Trust required sold
at public Auction and conveyed the said prem-
ises in the petition described to the said John W.
Foster for the sum of seven thousand & seven hun-
dred dollars to them paid by the said Foster &
executed to him a deed therefor of which Exhibit
No. 1. with the answer of the defendant Bushnell to
the supplemented petition herein is a true copy
- and that the said Foster purchased the said
premises in his own name but for the benefit
of the said firm of Kennedy & Foster - and that
at the time of the said sale no part of the said
\$ 7700 secured on said premises had been paid
and that out of the proceeds of ^{the} said sale the
said Trustees paid the said Kennedy & Foster
the said sum of \$ 2700 to which they had become
entitled in manner before stated & the bal-
-ance of the said purchase money the said Trust-
ees paid to the creditors mentioned in the said
deed of Trust.

The defendants then proved that they had no
notice or information whatever of the furnishing the
boilers & guage cocks by the petitioners to the said lease
or of the existence of any claim in behalf of the
petitioners or any other persons against said prem-
ises on account thereby until long after the same
were furnished & placed in said Mill nor until

about the time of the commencement of this suit
nor till the time aforesaid did the defendants have
any information or notice that the said Casey was
indebted to the petitioners or to any other persons
for boilers or gauge cocks put in to the said Mill

The defendants then proved that the said
John W. Foster died in the summer of 1850, and
that in June 1851 the executors of the said Foster
conveyed the real estate in the petition described,
to one John Arthur.

I hereby certify that the foregoing ^{contains} a true
statement of all the evidence produced by the parties
to this cause on the hearing thereof before me & and
that this certificate be made a part of the
record, Witness my hand & seal, C. C. Skinner 
Judge of the Adams Circuit Court

Gaty, M^r Leune & Glasby }
vs } Adams Circuit Court
Thomas D. Casey et al

I hereby authorize N. Bushnell
to sign my name to any bill of exceptions in the above
case prepared by him & Williams & Lawrence and
direct the clerk at the request of said Bushnell
to file said bill as of some day at the last October
term of this court in the files of this case; provided
the same is approved and such filing ~~is approved~~
consented to by said Williams & Lawrence, ~~Attys for complts~~
Attys for complts, Dec^r 15th 1853 C. C. Skinner

We approve of any bill of exceptions which N. Bush-
nell may file with the clerk.

Williams & Lawrence

State of Illinois }
Adams County } Sch

I, C. M. Woods, Clerk of the Circuit Court in and for said County and State do hereby certify that the foregoing is a full, true, perfect, and complete transcript of the records and proceedings had in the cause therein mentioned as appears from the records and files remaining in my office

In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court at Quincy this 16th day of January A.D. 1854

C. M. Woods Clerk

Fees for this Record - 535 folios \$33.50

And now comes the said appellants and says that in the preceding record there is error in this writ:

The Court erred in sending the decree above set forth in said record, dismissing said bill as to all the defendants except said Casey:

The Court in pronouncing said decree.

William Lawrence
for the appellants

101
Gaty, M. Cune
& Glasby

2
Thomas J. Casey
& others

second

14015

Filed Jan 24th 1854
1/5 paid 1/11 B Warren

Prepared