

No. 13762

Supreme Court of Illinois

Montague

vs.

Kitchel et al

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

14295

No. 136.

Mentague
vs

Kitchel

1862

Prepared

Richard Montague

v

Edward A. Kitchel

Richard P. Layton

John W. Young &

Samuel S. Church

Supreme Court

Third Grand Division

Decided at Conference

Term September 1862

In the final decree in this
Case the Court having inadvertently entered
a decree for costs against the said defend-
ant Samuel J. Young who was but a
nominal party in said case and who should
not have been decreed to pay costs the whole
of which should be paid by the other defend-
ants. It is therefore ordered that the said
decree be so modified as to exempt the
said Young from the payment of said
costs.

File 3-1863.

J. H. Eaton

P. H. Walker

Samuel B. Press

Montague v Kitchell et al.
Order of Court

Filed Feby. 17. 1863
Skelton
Clk.

13762

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Wmubago County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the ~~County~~ County Court of Wmubago County, before the Judge thereof, between Richard Montague

Complainant
plaintiff, and

Edward N. Heitchel Reuben P. Sayton
John B. Young and Samuel I Church

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

Richard Montague

as we are informed by his complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Courts of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Edward N. Heitchel Reuben P. Sayton
John B. Young and Samuel I Church

that They be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if

They shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Edward N. Heitchel

Reuben P. Sayton John B. Young and
Samuel I Church

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 26th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-Two.

J. Seland

Clerk of the Supreme Court.

Richard Montague

No. 136 vs.

Edward N. Fitchel
& others

SCIRE FACIAS.



FILED April 23 A. D. 1862

S. Selwood Clerk.

I duly served the within writ
 by reading the same to the with-
 in named Edward N. Fitchel &
 Reuben P. Lorton and Samuel
 S. Church on the 29th day of
 March A. D. 1862 - and on Samuel
 S. Church on the 19th day of
 April A. D. 1862 - all of which I
 do hereby certify.

for services \$1.50
 mileage 10
 return 10
 total 1.70

of Thomas Lewis of
 county

Fitchel Lorton
 Lorton Lorton

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Ogle County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the County Court of Wabago County, before the Judge thereof, between

Richard Montague

^{Complainant}
~~Plaintiff~~, and Edward N. Keitel
Reuben P. Sayton, John B. Young and
Samuel I. Church

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

Richard Montague

as we are informed by complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law:

Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Edward N. Keitel, Reuben P. Sayton
John B. Young and Samuel I. Church

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if

they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Edward N. Keitel

Reuben P. Sayton John B. Young and
Samuel I. Church notice, together with this writ.

Witness, The Hon. John W. Galon, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 26th day of March in the year of our Lord One Thousand Eight Hundred and Sixty-Two

S. Island
Clerk of the Supreme Court.

Richard Montague

No. 136 vs.

Edward M. Hitchel
Et als.

SCIRE FACIAS.

FILED At 23 A. D. 1862

S. Solvitt Clerk.

State of New York
County of ...
I, the undersigned, Clerk of the
Court, do hereby certify that
within and among the
County of ...
Name of John B. Jones
I am therein commanded
by reading in his presence
and hearing this 9th day
of April 1862
John H. ... Sheriff
By E. P. Sinton Deputy

Fees ... 50
Mileage 1.00
\$ 1.50

Rec'd my fees
E. P. Sinton Deputy
Sheriff

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the County Court for the County Winnemago Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment ^{of Judge} of a plea which was in the County Courts of Winnemago County, before the Judge thereof, between

Richard Montague

Complainant
~~plaintiff~~, and

Edward A. Hitchel, Reubin P. Saylor,
John B. Young and Samuel S. Church

defendants..., it is said manifest error hath intervened, to the injury of the aforesaid

Richard Montague

as we are informed by ~~said~~ his complainant ~~and not being willing~~ that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 26th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

S. Island

Clerk of the Supreme Court.

In the Supreme Court, April Term,
1862.

Richard Montague

vs.

Edmond W. Kitchel
Reuben S. Layton
John B. Young &
Samuel S. Church

In Error.

State of Illinois,
In the Winnebago County Court.

ago }
ss. }

Be it remembered, that on the fifth day of April, in the year of our Lord one thousand eight hundred and fifty eight, Richard Montague, by his Solicitors, filed in the office of the Clerk of the County Court of the County of Winnebago, his bill of Complaint in equity against Edmond W. Kitchel, Reuben S. Layton, John B. Young and Samuel S. Church, defendants therein, and an affidavit of the truth of the said bill, as follows, that is to say:

In the Winnebago County Court.
In Chancery.

To the Honorable Anson S. Miller,
Judge of the County Court of the County of Winnebago:

Complainant respectfully states Richard Montague, of the City of Rockford and County of Winnebago, that on the seventh day of August, in the year of our Lord one thousand eight hundred and fifty seven, John B. Young of the said City and County, (one of the defendants to this bill of Complaint) applied to Edward Kitchel and Ruben P. Layton of the same City and County, (also defendants to this bill) then partners in the business of banking and doing business in the City of Rockford aforesaid, under the partnership name of Kitchel & Layton, for the loan of two hundred dollars, to be made to him by the said Kitchel & Layton, as such bankers as aforesaid.

And this Complainant further states, that the said Kitchel & Layton thereupon agreed to lend to the said John B. Young the said sum of two hundred dollars for sixty days, first deducting and keeping back the usual rate of interest by them charged in such cases, upon his getting a surety to sign a note with him, according to the usual custom of bankers in such cases.

And this Complainant further states, that the said John B. Young thereupon named this Complainant as a person whom he might probably get to sign with him as surety, but

3 suggested to them that he did not know whether this Complainant would do so or not.

And this Complainant further states that the said Kitchel & Layton expressed their satisfaction to have this Complainant as such surety as aforesaid, and filled out one of their printed forms for notes for the said sum of two hundred dollars to be signed by the said John B. Young and this Complainant, and delivered the same to the said John B. Young for the purpose of having him obtain the signature of this Complainant to the same, the said Kitchel & Layton well knowing that the said intended loan was for the sole benefit and accommodation of the said Young, and that this Complainant had no interest therein.

And this Complainant further states, that the transactions aforementioned took place at the banking office of the said Kitchel & Layton; that the said Young took the said note, affixed his own signature to it, and went out and obtained this Complainant to sign the same, as surety, and shortly returned the same to the said Kitchel & Layton at their said office, so signed, delivered it to them, and received the sum he had agreed upon as aforesaid, at the said office, upon security of the said note.

And this Complainant further states,

that the said promissory note was and is in the words and figures following, that is to pay:

"\$200 Rockford Ill August 7th 1857.

"Sixty days after date, for value received, I promise to pay Mitchel & Layton, or order, two hundred dollars, being for money loaned.

[Signed] John B. Young
Richard Montague"

and this Complainant further states, that when the said promissory note fell due, the said John B. Young, without the consent or knowledge of this Complainant, applied to the said Mitchel & Layton at their said office, for delay in the payment of the said note; and that it was thereupon agreed by and between the said Mitchel & Layton and the said Young, that the said Mitchel & Layton should give to him the said Young time for the payment of the said note, and should not exact or require payment thereof until the expiration of thirty days from the time the same so fell due as aforesaid, in consideration of the sum of seven dollars; which sum the said Young then and there paid them for the said delay and giving time, and the said Mitchel & Layton then and there received the same as such consideration; and that no endorsement of the said payment was

made upon the said note.

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and this Complainant further states, that at the expiration of the said thirty days, the said John B. Young without the knowledge or consent of this Complainant, again applied in like manner to the said Mitchel & Layton for another delay of thirty days for the payment of the said note, and another like agreement was made by and between him and the said Mitchel & Layton for thirty days time for the payment of the said note, and that the said Young paid them, and they received, a further sum of seven dollars therefor.

and this Complainant further states, that he never gave any consent to either of the said agreements for delay and for time for payment of the said note, or had any knowledge of either of the said agreements, and was surety only for the payment of the said note; and this Complainant insists that by either and both the said agreements for delay and giving time for the payment of said note, he was discharged from liability for the payment thereof.

and this Complainant further states, that he has been informed by the said John B. Young, that according to the best of his the said Young's recollection, he the

said Young for a like consideration of seven dollars, at the expiration of the said second period thirty days, obtained time for the payment of the said note for another period of thirty days; and this complainant is of opinion, from the circumstances, that the said Young did obtain such third delay.

And this complainant further states, that the said promissory note was accompanied by a warrant of attorney to confess judgment thereon; and that the said Ritchel & Layton, on the first day of February, in the year of our Lord one thousand eight hundred and fifty eight, caused judgment to be entered thereon in the County Court of Winnebago County, for the sum of two hundred dollars specified in the said note, with the addition of an attorney's fee of twenty dollars, provided for in the said warrant, making in all the sum of two hundred and twenty dollars damages, besides costs; that they sued out a writ of fieri facias upon the said judgment against the goods and chattels, lands and tenements of the said John B. Young and of this complainant, and placed the same in the hands of Samuel A. Church, sheriff of the said County of Winnebago, (also a defendant in this bill) for execution; that the said writ is now in the hands of the said Sheriff, and that he intends to levy the same upon the

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above in that behalf prayed, and that the
said Edward W. Mitchell, Heber S. Layton,
John B. Young and Samuel S. Church may be
summoned to answer this bill of Complaint.

Richard Montague
Burnap, Solicitor and
Counsel. }

State of Illinois, }
Winnebago County } ss.

Richard Montague, the complainant
in the foregoing bill of Complaint named, being
duly sworn, upon his oath says, that he has
heard the said bill read, and knows the con-
-tents thereof, that the facts stated in the
said bill, except those which appear from the
statements thereof in the said bill not to be
within his knowledge, this complainant knows
to be true of his own knowledge; and that the
facts stated in the said bill which he does
not know of his own knowledge, he has been
informed of, and verily believes them to be true,
and has no doubt that they are true.

Richard Montague
Sworn to at Rockford, in the
County of Winnebago, the 3^d
day of April, A. D. 1858,
before me,

Wm. H. C. Court.

Filed: Winnebago County Court
Richard Montagne

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vs.
Edward C. Mitchell
Benjamin J. Layton
John B. Young and
Samuel S. Church

Bill

Filed April 5. 1858.
Wm. Hulin Clk

Recap

And the said bill and affidavit having been so filed, the Judge of the said Court endorsed thereon the following order, to wit:

State of Illinois

Winnebago County ss

Upon the filing of the foregoing bill of Complaint together with a bond by the complainant in the sum of Five hundred dollars with Michael Wanderville as surety conditioned that the complainant shall prosecute his said bill with effect, and that he will pay to said defendants such damages & costs as they shall wrongfully sustain by reason of an injunction herein, doct the writ of injunction

issued in accordance with the prayer of
Complainant's bill

anson J. Miller

To the Clerk of the
Winnabago County Court

And thereupon a writ of Injunction
was issued and returned, as follows, that is to say:

State of Illinois, }
Winnabago County } ss.

The People of the State of Illinois to
Edward W. Kitchel and Reuben S. Layton, their
attornies and agents, to Samuel A. Church, sheriff
of the County of Winnabago, his deputies and
successors; and to the Coroner of said County,
Greeting:

Whereas Richard Montague has filed
his bill of complaint in our County Court of
the County of Winnabago, on the equity side
thereof, forthsetting that on the first day of
February, in the year of our Lord one thou-
=and eight hundred and fifty eight Edward
W. Kitchel and Reuben S. Layton unjustly
and inequitably caused a judgment to be entered
in our said Court against the said Richard
Montague together with one John B. Young,
for the sum of two hundred and twenty dollars
damages, besides costs, and had sued out a

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writ of fieri facias upon the said judgment,
and had placed the same in the hands of
Samuel Church, sheriff of the said County,
for collection thereof, and whereas the said
Richard Montague has by his said bill
prayed that the said Edward V. Kitchel
and Reuben P. Layton, their attorneys and agents,
and the said Samuel C. Church, his deputies
and successors may be enjoined in manner
and form as herein after contained, and has
obtained an order of the Judge of our said Court
for a writ of injunction in that behalf.

Now therefore we do command
and strictly enjoin the said Edward V. Kitchel
and Reuben P. Layton, their agents and
attorneys, and the said Samuel C. Church,
his deputies and successors, that they or
any of them do not in any wise levy or
cause to be levied of the goods or chattels,
lands or tenements of the said Richard Mon-
tague, the said judgment or execution, or
any part of the monies therein specified,
or collect or cause the same or any part
thereof to be in any wise collected of the
said Richard Montague until our said
Court shall otherwise order.

And we command the said coroner
that he do forthwith make service of this writ
upon the said Edward V. Kitchel, Reuben P.

Leayton and Samuel D. Church, and make return of the said writ into our said Court, with an endorsement thereon of the manner in which he shall have served the same.

Seal

Witness, William Hurlin,
Clerk of our said County Court,
at Rockford in said County,
this fifth day of April, A.D.
1858.

William Hurlin
Clerk.

Winnebago County Court
Richard Montague

vs.

Edward V. Hitchel
Leuben P. Layton
John B. Young and
Samuel D. Church

Injunction

Filed April 13. 1858
Wm Hurlin Clerk

I have duly served the within writ by leaving true copies with the within named E. V. Hitchel Leuben P. Layton & Samuel D. Church this 13th day of April 1858 did not serve on John B. Young by order of Plaintiff's Solicitor

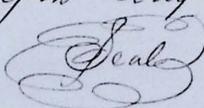
H T Mesler Coroner

Fees Service 1.50 Copies 1.50 Mileage 15
Return 10 \$ 3.25 Recd my fee H T Mesler Coroner
Burr apv

And upon the filing of the said bill a writ of
 Summons was issued thereon, and was returned,
 as follows, to wit:

State of Illinois, Winnebago County, ss.
 The People of the State of Illinois to the
 Coroner of said County - Greeting:

We command you that you Summon
 Edward M. Hitchel, Deuben P. Layton, John
 B. Young and Samuel S. Church if they
 shall be found in your County, personally to
 be and appear before the County Court of said County,
 on the first day of the next term thereof, to
 be holden at the Court House in the City of
 Rockford in said Winnebago County, on the
 first Monday of June next, to answer unto
 Richard Montague in his certain bill of
 Complaint filed in the said Court, on the
 Chancery side thereof. And have you then
 and there this writ, with an endorsement
 thereon, in what manner you shall have
 executed the same. Witness, William Hulin,
 Clerk of our said Court, and the Seal thereof,
 at the City of Rockford in said County, this
 fifth day of April A. D. 1858



William Hulin Clerk.

Endorsement of the Writ of Summons:

Winnebago County Court.

In the matter of
Richard Montague

vs
Edward C. Kitchel
Seben S. Layton
John B. Young and
Samuel S. Church

Summons. June Term, 1858

State of Illinois,
Winnebago County.

I have duly served the within summons by
leaving two copies the within named defendant
Ed. Kitchel Seben S. Layton & Samuel S. Church
this 13th day of April 1858 did not serve
upon John B. Young by order of S^{rs} Solicitor
H. T. Mesler Coroner

Fees -	Service	1.50	
	Mileage	15	
	Return	10	
	Copies	1.50	3.25
Acc ^d my fee	H. T. Mesler	Coroner	

H. Bunnap
Solicitor

Filed April 13th 1858. Wm. H. Huber Clerk

And at the June term of the said Court,
in the year 1858; the following entry was
made in the record of the said cause, to
wit:

No 200

Richard Montague

vs

Edward V. Mitchell

Reuben S. Layton

John B. Soumy

Samuel S. Church

Injunction

And now come Ogden and Howard
and enter the appearance of the said Defendants,
Mitchel, Layton and Church, herein, and
ask that said defendants may be allowed
sixty days from the rising of the present term
of this Court to file the answers of said Defend-
=ants Mitchell, Layton and Church herein,
which motion is allowed by the Court.

And on the seventh day of August,
1858, an answer was filed in the said cause,
which, with an amendment thereto, is as
follows, that is to say:

In the Winnebago County Court
In Chancery. } The joint and several answer
of Edward V. Mitchell &
Reuben S. Layton two of the

defendants to the bill of complaint
of Richard Montague complainant.

These defendants now and at all times
hereafter reserving all manner of benefit and
advantage to themselves of exception to the many
errors & insufficiencies in said bill contained for
answer thereto or unto so much or such
parts thereof as these defendants are advised
is material for them to make answer unto they
answer and say they admit that they were
partners in the Banking & Exchange business in
the city of Rockford in the county of Winnebago &
State of Illinois during the year A D 1854
under the firm name of Hitchel & Layton &
that on or about the 7th day of August of
that year John B. Young in said bill named
applied to them for the loan of about Two hundred
dollars

And these defendants further answering say
that on said 7th day of August the said Young
& said complainant were partners in the lumber
trade doing business in the city of Rockford aforesaid
where the said Young & Montague resided & that
said parties in connection with other persons
had been engaged in the lumber business as
partners for a long time previous to said 7th of
August to the knowledge of these defendants.

And these defendants further answering
say that they had previous to said 7th day of

August loaned to said Young & said Complainant considerable sums of money at different times and at the time said Young applied to them for the loan of two hundred dollars as above mentioned they understood & believed that said loan was to be made for the joint benefit of said Young & said Complainant as such partners as aforesaid

And these defendants further answering say that agreed to loan the said sum of money and filled out a note with a warrant of attorney attached thereto (a copy of which said note and warrant of attorney is hereto annexed and made part of this answer) and delivered the same to said Young for the purpose of procuring the signature of his said partner thereto but they deny that said Young suggested the name of Montague as a person whom he might probably get to sign said note as surety or that said note was signed by said Complainant as surety but on the contrary they aver and insist that said note & warrant of attorney was executed & delivered to them signed by said Young & said Montague as joint makers & that these defendants delivered to said Young the sum of money agreed upon previously & received said note therefor

And these defendants further answering say that they are informed and believe that

said loan was made for the benefit of said Young & said complainant and that the proceeds thereof were used to cancel an indebtedness then existing against said Young & Montague.

And these defendants further say that they had previous to said 7th day of August full knowledge of the copartnership existing between said Young & said complainant & had before that time loaned them different sums of money to assist them in carrying on the said lumber business.

And these defendants further answering deny that at any time after the execution of said note they agreed with said Young to extend the time for the payment of the same, or that they ever received of said Young any sum of money as a consideration for any such agreement or that said note was extended for any definite length of time.

And these defendants further answering say that they delayed the collection of said note by process of law until the 1st day of February A.D. 1858 and that such delay was occasioned at the earnest request of said Young & said Montague they asking these defendants to defer the collection of the same & stating to these defendants that they would pay the same in a short time.

And they further say that from the time

the said note became due until the time judgment was rendered therein in the Union =
 = hays County Court to wit on the 1st day of February A. D. 1858 these defendants frequently urged the said parties to said note for payment thereof & that during the months of October, & November & December last past these defendants received several letters from said Young two of them enclosing the sum of about seven dollars each urging these defendants not to sue said note and promising payment in a few days

And these defendants further say that relying upon the promises of the said Young & Montague they neglected to prosecute said note but permitted the same to remain until the said first day of February last past without resorting to legal process to enforce the collection of the same but they deny that such neglect to sue said note was occasioned by any agreement made by said Young with these defendants not to sue the same for any given length of time or upon any agreement to give time for the payment thereof as charged in said Complainant's bill of Complaint

And these defendants further answering admit that on said first day of Feb last past they caused judgment to be entered on said note against said Young & said Complainant

For the sum of Two hundred & twenty dollars including an Attorney's fee of twenty dollars as provided and agreed upon in and by said warrant of attorney on which said judgment Execution was issued as stated in said Complainant's bill of Complaint.

And these defendants further answering say Amendment that since the maturity of said note and after the first day of January AD 1858 the said John B. Young fully indemnified the said Complainant against any and all liability by reason of or on account of said note

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

Marsh & Ogden
Solicitors

Edward V. Kitchel
Benbow J. Layton

Copy of note & Warrant of Attorney referred to in above answer

\$200 Rockford Ill., August 7th 1857
Sixty days after date, for value received, I Promise to pay Kitchel & Layton, or Order Two hundred Dollars, being for money loaned

(Signed) John B Young
Richard Montague

Know all Men by these Presents, That I, the undersigned, being honestly and justly indebted to Mitchel & Layton, upon a certain Promissory note, bearing even date herewith, in and for the sum of Two Hundred Dollars, being for money loaned, made payable to the said Mitchel & Layton, or order, and due in sixty days after date.

Now Therefore in consideration of the promises, and of One Dollar to me in hand paid, the receipt whereof is hereby acknowledged and Confessed, I do hereby make, constitute and appoint Wm H Ogden Esq or any attorney of any Court of Record, to be my true and lawful Attorney, irrevocably for me, and in my name, place and stead, to enter my appearance and appear in and before any Court of Record in the State of Illinois, or in and before any Court of Record in any of the States or Territories of the United States, or in and before any Court of the United States, either in Term Time or in Vacation, at any time either before or after the said note becomes due, and waive the service of process, and confess a Judgment, and sign a cognovit confessing a judgment in favor of the said Mitchel & Layton or their assignee or assignees, upon the said note, for the amount in said note mentioned, together with costs; and the further

Sum of Twenty Dollars for Attorneys Fees For entering up the said Judgment, to be added to the amount mentioned in said note on entering up said judgment, and also file a cognovit for the amount that may be unpaid upon said note; and to release all errors that may accrue or intervene in the entering up of said judgment, and the issuing execution thereon; and to waive my right, to turn out real estate on any execution issued on the judgment entered on said note; and to stipulate that no writ of error or appeal shall be presented on or upon the said judgment, nor any bill in equity filed to interfere in any manner with the operation of said judgment, or the execution issued thereon; and to consent that execution may be immediately issued on said judgment, either in Term Time or vacation of the court in which judgment shall be entered on said note; and consent, stipulate and agree that the execution issued on or by virtue of any judgment entered on or upon said note, may be levied upon and satisfied out of any personal property which I may have, before levying upon any land or real estate by virtue of said execution, at the election of the plaintiff in said execution.

And in consideration of the premises, and for value received, I do hereby waive, release and relinquish in favor of the said Mitchell Clayton and their assignees and assignees of said note, the benefit of all exemption laws of the State of Illinois, whether relating to real or personal estate, and particularly for

a good, valuable, valid and sufficient consideration, by me received from the said Mitchel & Lupton, I do hereby stipulate, covenant and agree with the said Mitchel & Lupton and their assignee and assignees of said note, that all right, title claim, demand, interest, benefit or advantage accruing or belonging to me, from or by virtue of the act of the General Assembly of the State of Illinois, entitled "An act to exempt Homesteads From sale on execution", approved Feb 11th 1851, and all other acts of a similar nature passed since or before, are hereby distinctly and expressly waived and released in favor of the said Mitchel & Lupton, and their assignee or assignees of said note, and all property I now own or may hereafter acquire, until the payment of said note, is hereby made subject to levy and sale by virtue of any execution which shall be issued on or by virtue of any judgment which shall be entered on said note, and such execution may be levied upon and satisfied out of any personal property which I may have, either before or after levying upon real estate, at the election of the plaintiffs in such execution, and the land on which I shall or may reside, and my personal property need not be taken last in execution, but may be first taken in execution on said judgment entered on said note at the election of the plaintiffs in said execution.

Witness my hand and seal, this Seventh

24
day of August A. D. 1857.

(Signed)

John D. Young J. D.

Richard Montague J. D.

Signed, sealed and delivered
in the presence of

Filing of Defendants' Answer;

Win. Co. Court

In Chancery

Kitchel & Layton

ads

Montague

Answered

Filed Aug. 7. 1858.

Wm. Hillier

for

Marsh & Ogden

Solicitors

And on the sixth day of September, in
the September term of the said Court, A. D. 1858,
the complainant filed his replications, as
follows, to wit:

In the Winnebago County Court.
Infrancey.

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The replication of Richard Montague complainant to the answer of Edward W. Mitchell and Reuben S. Layton, defendants,

This complainant reserving to himself all benefit of exception to the said answer, for replication thereto says, that his bill of complaint in this cause is true and sufficient, and that the said answer thereto is untrue and insufficient. And this he is ready to verify and prove.

Francis Burnap
Solicitor for Complainant

Filing of Complainant's Replication
Winnebago County Court.

Richard Montague

ag^r
Edward W. Mitchell and
Reuben S. Layton.
Replication

Filed Sep 6. 1858.
Wm. H. H. Clerk

Burnap

And on the seventh day of December, in the December Term, in the year 1858, the following orders were entered in the record, to wit:

21226

Richard Montague

vs
Edward M. Mitchel

Benben J. Layton

John B. Young

Samuel J. Church

Injunction

Tuesday, December 7, 1858

And now come the parties by their Solicitors, and the Defendants Mitchel & Layton ask leave to amend their answers herein, within ten days from the rising of the court. And the arguments of counsel being heard upon said motion and maturely considered by the court, the Court grants the leave asked for, to which order of the court said Complainant excepts. And the said Complainant asks leave to amend his Bill within thirty days from the rising of the court, which motion, the Court having heard and duly considered the arguments of counsel thereon, is allowed by the Court, to which order the defendants except. And it is ordered that this cause stand continued to the next March term of the court.

And on the thirteenth day of January in the

years one thousand eight hundred and fifty
 nine, the Complainant filed the following excep-
 -tions and motions, to wit:

In the Winnebago County Court.

Richard Montague

^{vs}
 Edward V. Kitchel
 Benben J. Layton
 John B. Young and
 Samuel D. Church

Infrancery

The complainant in this cause
 excepts to all that part of the amended answer
 of the defendants Kitchel and Layton added to
 their original answer in the above entitled
 cause, by way of amendment thereto, in the
 following words, to wit: "And these defendants
 further answering say, that since the maturity
 of the said note and after the first day of
 January, A.D. 1858, the said John B. Young
 fully indemnified the said complainant against
 any and all liability by reason of or on account
 of said note."

And the said complainant prays and
 moves that the said amendment may be
 stricken out not only because the same is
 impertinent, but also because the said amend-

ment does not show any sufficient defence to the said complainants, or show any reason why the same was not at first answered, or present any definite cause of defence which the said complainant can put in issue by amending his bill, or ought to be required to put in issue by a replication, and for other causes.

Francis Burnap
Solicitor for complainant

Indorsed:
Filed Jan'y 13. 1859, Wm. Hubin Clk

And on the fourteenth day of March, in the March term, A. D. 1859, the following was entered in the Record, to wit:

Richard Montague	}	Injunction
Edward v. Mitchell		
Benbow J. Layton		
John R. Young		
Samuel S. Church		

And now comes the complainant by his Solicitor, and moves to strike out a part of the amended answer of the said Defendants

And on the sixteenth day of March, in the March term, A. D. 1859, the following order was entered in the record, to wit:

no 155

Richard Montague

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Edward V. Hitchel
Newton P. Layton
John B. Young
Samuel S. Church

Injunction

And now again came the said parties by their Solicitors, and the Court having heard the arguments of Counsel on the motion of complainant to strike out a part of the amended answer of the Defendants, and maturely considered the same, overrules the said motion, and on motion of the complainant's Solicitor, leave is given to amend his Bill within forty days from the rising of the Court, and it is further ordered that this cause stand continued

And on the thirty first day of March, in the year one thousand eight hundred and fifty nine, the complainant filed the following amendment to his bill of Complaint, that is to say:

In the Winnebago County Court.

Richard Montague

Edward ^{vs} Mitchel
 Reuben J. Layton
 John B. Young and
 Samuel J. Church

Infrancery

The defendants Edward vs. Mitchel and Reuben J. Layton by leave of Court amended their answer in the above entitled cause, by the insertion therein of the following words to wit:

"And these defendants further answering, say, that since the maturity of said note and after the first day of January A.D. 1858, the said John B. Young fully indemnified the said Complainant against any and all liability by reason or on account of said note."

And the above named complainant, having obtained leave of the said Court to amend his bill of complaint in this cause, by way of such amendment, says that the said defendants pretend that the said supposed indemnity was by the conveyance of a certain tract of land to Samuel J. Montague, by the defendant John B. Young and Margaret his wife in trust to indemnify the said complainant for the payment of the said note. But this complainant charges that the matter of the

said conveyance and supposed indemnity were
 as follows, and not otherwise. That on the
 thirtieth day of March, in the year of our
 Lord one thousand eight hundred and
 fifty eight, there was a balance of account
 of the firm of Young, Sawidge & Co. of which
 the said John B. Young and Richard Montague
 had been partners, as mentioned in the said
 answer, against the said John B. Young, and
 there were other accounts against the said
 John B. Young outstanding, due to other persons,
 which it was expected by the said Richard
 Montague and John B. Young would be
 claimed by way of set off against accounts
 of the said partnership against such persons,
 and that the said partnership would be com-
 -pelled to allow the same, and that thereby the
 indebtedness of the said John B. Young to the
 said firm would be increased to several hundred
 dollars: that previous to and at that time,
 Margaret Young wife of the said John B.
 Young, was seized in fee of the tract of land
 hereinafter described, in her own right, and
 in view of the aforesaid facts, and being
 unwilling that this complainant should suffer
 loss by reason of the said accounts, voluntarily
 offered to convey the said tract of land to
 the said Samuel S. Montague, in trust to
 secure and indemnify this complainant against

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the said accounts, and that the said Samuel Montague should sell the said land and out of the proceeds of such sale, pay up a previous mortgage thereon to the Rockford Loan Fund Association, and out of the balance of such proceeds should pay the said accounts against the said John B. Young, and the amount of the said judgment in the said bill of complaint mentioned, in case this complainant should be compelled to pay the same, and not otherwise, and that he the said Samuel S. Montague should pay over the residue of the said proceeds, if any remained, to the said Margaret Young.

And this complainant further charges, that in pursuance of the said offer, the said Margaret Young and John B. Young her husband, on the said thirtieth day of March, in the year of our Lord one thousand eight hundred and fifty eight, executed an indenture of bargain and sale in the usual form whereby for a nominal consideration of \$1250, they conveyed in fee to the said Samuel S. Montague the aforesaid tract of land by the description of all that tract or parcel of land situate, lying and being in the county of Winnebago and state of Illinois, and known and described as follows, to wit, commencing at the northeast corner of the north half

of the south east quarter of section ten of township forty four north of range one east of the third principal meridian thence running north on said section line, nine hundred and fifty links; thence west nine hundred and ninety links; thence south nine hundred and fifty links; thence east nine hundred and ninety two links to the place of beginning, containing ten acres; and that the said indenture was recorded in the recorder's office of the said county on 31 March 1859, in Book 44 of Deeds, page 221.

And this complainant further charges that the said conveyance was by the said indenture expressly made subject to the said mortgage to the Rockford Loan Fund Association; that the said conveyance was on the face of the said indenture absolute in its terms, and no written declaration of trust accompanied the same; but the trust aforesaid was expressly agreed upon by the parties to the said deed. And this defendant further charges that the said mortgage bears date 23 March 1857 and conveyed the said tract of land in fee to one Robert H. Hatch in trust to secure to the said Rockford Loan Fund Association, the payment of the sum of thirteen dollars and thirteen cents per month on the second Monday of each month,

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until the determination of the said Association,
with a provision that in default in making the
monthly payments, the whole amount secured
should be payable, the sum secured being
\$125.00: and that the said mortgage was
acknowledged and recorded in the office of
the recorder of said County in Book V. of Mort-
gages page 2.

And this complainant further charges, that
the said Samuel S. Montagne accepted the
said conveyance under the said trusts thereof,
that at the time of making thereof there was
about the sum of four hundred and ninety
dollars of the money secured by the said
mortgage unpaid; that he has paid the
monthly instalments which have since fallen
due upon the said mortgage; and that he
still holds the title to the said land subject
to the said trusts.

And this complainant further charges
that the said accounts against the said
John B. Young, which this complainant
was to be secured against as aforesaid, which
have been ascertained, amount to about three
hundred dollars; and that this complainant
expects that others of a like kind will have
to be allowed and paid out of the funds of the
said partnership.

And this complainant further charges,

that attempts have been made to sell the said tract of land for the purposes of the said trust, but no offer has been obtained for it exceeding seven hundred dollars, and that on time; and that there is no prospect that it can be sold for much more than that sum.

And this Complainant further charges, that it was the understanding of the parties to the said conveyance at the time when it was made, that this Complainant would resist the payment of the said judgment by a proceeding in Chancery; and this Complainant was then preparing the Bill of Complaint in this cause for that purpose.

Wherefore, and for the causes aforesaid, this Complainant not only insists that he is not legally or equitably holden to pay the said judgment; but also that if he should be compelled to do so, he has no effectual indemnity for such payment, or any part thereof.

Francis Burnap
Solicitor for Complainant

Advised:

Filed March 31, 1859. W. H. Clark.

And at the hearing of the said cause, the Complainant exhibited the following proofs, that is to say:

I. The record of the judgment mentioned in the bill of Complaint.

To save expense of copying this record, the parties agree that the judgment was entered by confession, on a note and warrant of attorney, of which a copy is attached to the answer of the defendants to the bill, at the time and in the manner stated in the bill, and that an execution was issued thereon as stated.

II. The deposition of John B. Young, as follows, to wit:

Richard Montague

vs
Edward N. Kitchel
Reuben P. Layton
John B. Young &
Samuel I. Church

Deposition of John B. Young taken before me in the above entitled cause at the office of Francis Barnard Esq. in the City of Rockford in the County of Winnebago & State of Illinois. Commenced on the 29th day of November A.D. 1858, & continued until completed by the Complainant. The said Witness first being duly sworn did depose and say as his answer are hereinafter written down to the hereinafter Interrogatory propounded to him as follows.

Richard Montague

vs

Edward N. Kitchel Et al

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1st Inty

What is your name age occupation & where do you reside,

My name is John B Young. I am 35 years old. Am in the Lumber business & I reside in Rockford This County & State

Adjourned untill Tuesday Morning at 9 O'Clock A.M.

Tuesday Nov 30th 1858.

2^d

Are you acquainted with the parties to this suit both Complainant & Respondants & how long have you known them respectively =

I have known Complainant about 4 years. I have known Mr Kitchel about 2 years & Mr Layton I have not known so long. I have known Mr Church for about 2 years. & I am the John B. Young one of the Defendants

3^d Inty

Did you or not make & deliver to the Defendants Kitchel & Layton a promissory Note & warrant of Attorney of which a copy is annexed to the answer in the case of the Messrs Kitchel & Layton

I signed & delivered the Note & warrant of attorney to the Messrs Kitchel & Layton,

1st Inty. What was the consideration of that Note.

I got the money on the Note less the percentages.

5th Inty did you get that money on your own account, or for yourself or some other person.

I got it on my own account.

Who drew that note & warrant of Attorney?

Mr Layton

Inty Where was it drawn.

At the Banking office of Kitchel & Layton

did you get the money at the time you first applied for it.

I did not, The first time I applied for it. Mr Kitchel took me in the back room and asked me how much I wanted & told me if I would get a good signature with me, he would let me have it at the rate of 3 per cent per month. I told him I had never had any one in Rockford to sign with me. and asked him if I got Mr Montague to sign if that would be sufficient.

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he answered affirmatively. I then told him that I would take the note as drawn up by Mr Layton & try to see Montague & ask him regards his willingness to sign it. I saw Montague that day & got him to sign it. I went back to the Banking House of Kitchel & Layton, signed the note myself in their office & received the amount of the note less the percentage.

Did Mr Montague sign the warrant of Attorney

also
Yes.

State whether Mr Montague received any benefit of the money received by you from the Messrs Kitchel & Layton

He did not.

Did you state to Mr Kitchel for whose benefit or use you wanted the money & if you did state what you said about it

I stated to Mr Kitchel that the money was for my own use

When that note fell due what transaction if any took place concerning it

I requested a renewal of it from Mr Kitchel or an extension

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-in for one month, he agreed to do so but said as
money was tight, he would charge $3\frac{1}{2}$ per cent,
I paid him the money & had it extended,

Inty. Can you state whether Mr Montague knew of
that transaction,

He did not

At the end of that 30 days
was any thing done about that note & if there
was what was it,

I again asked for an extension by letter I believe,
enclosing the same amount of interest $3\frac{1}{2}$ per
cent & found afterwards that it had been extended,
as a notice of its maturity reached me each
time through the Post Office

Did or not Mr Montague know of that 2^d application
for an extension,

He did not.

Can you state whether you received
a letter from the Messrs Kitchel & Layton giving
you notice that that note would fall due at
the end of one or both of those times of exten-
sion & can you produce such letter or letters,

I received a notice at the close of each extension

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through the Post Office in the regular form of bank notice for such notes. Acquainting me of the day it was due. These notices I have not in my possession & cannot produce them.

17th July. Do you know what has become of those notices or where they are

I do not.

Have you made search for them among your papers.

I have, & could not find them. I do not generally keep such notices

By whom were those notices signed.

(Objected to giving evidence of the contents of the notices)

Council for complainant consents to cross examination of what has become of these notices.

They were signed by Kitchel & Lupton

20th July - Was the signature in writing or printing

I ain't positive but think it was in printing

Can you recollect whether the notices stated anything about the money falling due & if they

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did what did they state about it.

Yes. They mentioned the day on which the note would be due, at each of the different extensions.

22^d Insty. Did you or not apply for a third extension & if you did, state what took place on the occasion of that application

I did apply by letter for a delay & got it part off for some time through repeated letters.
Craving for time

State whether you enclosed money in any of those letters, & if you did how much & when

I enclosed no money in making the 3^d application for an extension on the payment of the note,

If judgement had been entered up upon that Note when it first fell due, could it or not have been collected out of your property,
(Objected too)

I believe it could,

25th Insty. Did or not your circumstances become worse as to the collection of Money from you, previous to the time upon which judgement was entered,

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"Objected too"
They became worse,

26th July

Was there formerly a Partnership
between you & Mr Montague & if there was, who
were members of that Copartnership.

There was, under the name of Young
Savidge & Co. Composed of John B. Young
Hunter Savidge Richard Montague & Azel Wilder,

John B. Young,

Richard Montague }
do }
E. N. Mitchell Esq }
} Coop Interrogatories

When was this first application you speak of,
made to Mitchell for the money on the Note

On the day upon which the Note
was drawn August 7th 1857

g- Relate all the conversation that took place between
you & Mitchell at that time,

I went to Mr Mitchell & made application for the
sum of 2 hundred dollars, he told me that I could
have the amount at the rate of 3 per cent per
month, providing I got a good man to sign
with me on a good signed, I told him that I had

never had any one in Rockford sign with me,
on any occasion, but asked him should I
get Mr. Montague to sign would that
satisfy him, he said it would, I got
Mr. Layton to draw out a note ready for
signing & give it to me. I found Montague
that day & he signed it, & I stated to
Kitchell the Money applied for was for my own use.

In your last answer. Have you ^{in your last answer} related all the
conversation that took place between you &
Kitchell when you applied for that money.

All to the best of my recollection, on that
subject.

5. Upon what day did you receive the Money on the
note.

To the best of my recollection the
same day that the note was drawn.

6. At the time you brought the Note to the Banking
Office of Kitchell & Layton to receive the money,
had it been executed by the Complainant Richard
Montague,

It had

6th " What conversation if any took place between
you & Kitchell at the time you received
the money.

I took in the note & told Mr Kitchel that I got Mr Montague to sign it, I then signed it & received the money, less the discount, this was all the conversation between us at that time, that I remember on that subject.

7th Monty,
 Was you and the complainant at that time partners in the Lumber business

We were.

Previous to the 7th day of August 1857 had you applied to Kitchel & Layton for the loan of money, or to E. A. Kitchel;

I had,

State if previous to that time you had borrowed of E. A. Kitchel or Kitchel & Layton any money at any time, & if so who signed the notes with you, & on how many different occasions you had borrowed.

I think I had borrowed twice, one of the notes was signed by the Company in my favor I think, & the other I signed, I am not sure whether Mr Frazer signed it with me or not

7.
 Did the complainant Montague sign either of those notes -
 No he did not

15th
" 417

I think I was,
was Montague with you at Kitchels Bank at
the time this money was got,

I think I was there & if so Montague was present.

16th
"

Had you occasionally previous to August
1857 got money of Kitchel & Layton for the
benefit of the Firm of Young Sawadge & Co

Individually I had not or did not as I rem-
ember as a partner of the Firm, I was the
recipient of money that was got there

Q. Upon what purpose was the money applied
that you received from Kitchel & Layton
on the 7th of August 1857, for which note
in question was given,

A. It was paid, the principal part if not the
whole was paid upon a debt in Chicago
it was a debt of my own for Lumber.
The debt was contracted a year or more
previous to the 7th of August 1857 or probably
less than a year

Q. What was the object & business
of Young Sawadge & Co or what was the purpose
of forming the Co-partnership.

" Objected to "

It was for the purpose of carrying on the Lumber
business. The cutting of Lumber in Michigan
& the selling of Lumber here.

Was or was not the claim to the payment of
which the 2 hundred dollars you received
of Kitchel & Layton on the 7th of August
1857 was applied in a judgement upon which
an Execution had been issued to the Sheriff
of this Winnebago County at the time the
payment was made.

"Objected too"

Apart of it was, I cant
state how much, say \$150, dollars more
or less.

To whom did you pay that money

I paid it to R. S. Prescott,

Did you pay any portion of that money & if
so how much to the Sheriff of this County
on an Execution which had been issued
on that judgement in favor of R. S. Prescott.

"Objected too"

I paid him what was due on it. I dont remem-
ber how much. I did not pay a cent of the
Kitchel money to the Sheriff. I think the
Sheriff was paid before the money of Kitchel

32^d
49 State how you paid the Sheriff the
Amount due on the Judgment.

"Objected too."

The Judgment was
delayed first by a check of Young Savidge
& Co. then the parties to whom the debt was
owing, gave I think 60 days extension by a
note of the same Firm signed by myself.

Did any portion of the money you received
from Kitchel & Layton apply in payment
of this note of the Firm & if so how much

"Objected too"

It did 150. dollars more or less.

24 Had you previous to the 7th of August 1857
informed Kitchel & Layton of the existence
of this copartnership of Young Savidge & Co

"Objected too"

Mr Kitchel knew of the copartnership previous
to that time.

25 When that note became due the first time
did you go to the office of Kitchel & Layton
to get a renewal of it.

I did, or to get an extension of it

26th What conversation took place if any between

you & Kitchel at that time. State the whole particularly;

The only thing I remember is I told Mr Kitchel that I had been disappointed in getting some money that was due me & that I wished an extension of the note for 30 days. He said he would give it but as times were tight he would have to charge $3\frac{1}{2}$ per cent. I paid the $3\frac{1}{2}$ per cent for one months interest, got it extended on the books & left the office, that comprises in substance all that I remember of what passed between us,

What interest had you paid for the first 30 days on the note,

Three per cent
Did you go to see him again when the note was due the 2^d time & if so what was said between you

As far as I can remember it was in this way, I had occasion to leave for Chicago & the time having expired for the payment of the note, I enclosed the amount of money to pay the interest on the note for another month at the same rate of interest $3\frac{1}{2}$ per cent per month, with the request that he would extend it for a month

29th Inst.

Did you specify in that letter you wrote him that the seven dollars enclosed was to pay

the interest for 30 days

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" Objected to, as the letter is not produced to the witness "

I could not state in what form I did present it. I do not remember

30th Inty

How much money did you pay Kitchel & Layton on the note in question, after it became due

I think about fourteen dollars as near as I can remember

Was that money paid as interest or principal

It was paid as interest.

Did Kitchel & Layton receive from you any other sum of money on account of the note in question except the sum of 14 dollars you have spoken of.

Not to my recollection.

33^d Inty

At the time when either of these sums of seven dollars each was paid by you was any endorsement or extension written upon the note

" Objected to, " the note must be produced before the witness can be inquired of

Concerning it "

I think it was once but cant say I saw
a note made of it, made upon Book,

Did you ever have any conversation with the
Complainant in relation to the Note in question
after it became due,

Not until I was refused a further
extension, I think about New Year,
somewhere about the middle of Winter,

35th 5 Did the Complainant tell you previous to January
1858 that he would apply to Hitchel or Kitchel
and Layton to have the Note extended longer!

I do not remember of any such conversation,

Did the Complainant tell you since that Note
became due that he had got Hitchel & Layton
to extend that Note for you, or that he had
applied to them to get such an extension,

According to my recollection I know of none,
he did not according to my knowledge,

37th Note,

Did you ask Montague to see Hitchel & Layton
to get that note extended,

I requested Mr Montague to try and

take care of the Note if possible, as every thing on my part had failed, being unable to meet it.

38th Inty

What reply did he make,

He said he had enough in his own hands, he could do nothing for it. He said I was required to see after it myself & make some arrangement, and was quite surprised that it had not been paid.

Did this Partnership of Young Savidge Co extend up to this time,

It did not. it was dissolved I believe on the 18th August 1857.

Is the firm of Young Savidge Co Bankrupt or was it when it dissolved

It was not and is not,

Do you know of the fact that Richard Montague has made an assignment of his property for the benefit of his creditors

↳ "Objected too"

I know it only by hearsay

What was the amount of the judgement in favor of R S Prescott and against you that you have referred to in your testimony

" Objected to "
Something over 500. dollars

Has it or has it not been suggested to you by the Complainant since the commencement of this crop examination, and your answer to the 2^d Interrogatory that you should add to that answer that you told Mitchell at the time you got the Money that it was for your benefit.

I have had no conversation on that point with any one

John B. Young

Direct resumed,

Who were the Partners in the Mill & Lumber concern after the dissolution of the Firm of Young Savidge & Co that you have mentioned,

Richard Montague Hunter Savidge & James Fraser.

2^d Inty Who had the Lumber for which the Prescott debt you have spoken of was contracted.

I had it for myself, I was carrying on the Lumber business in my own name, at the same place in Rockford that

was afterwards occupied by Young Savidge & Co

Was that before or after the Firm of Young & Savidge & Co was formed, that the Prescott debt was contracted

It was before, one year more or less,

Was the Judgment you have mentioned, or the execution in the hands of the Sheriff spoken of by you - recovered on that demand,

It was,

Did Mr Montague at the time know that, that Execution was in the hands of the Sheriff.

" Objected to "

He did not.

For what purpose was the Check you have mentioned given to the Sheriff

To stay the proceedings untill some arrangement could be made.

What arrangement was made between you and the Sheriff at the time you gave him that check

" Objected to "

He promised to retain it in his hands, or not to use it for 8 days so as to give me time to make some other arrangements

Had the Sheriff proposed to do any thing with that Execution, unless you made an arrangement & if he had what was it.

" Objected too "

He had threatened to Levy on my share of the Lumber of Young Sawidge Co that was stacked up in the Yard,

Was it in consequence of that Threat, that you gave that Check

" Objected too "

It was,

How was the matter of the Execution arranged

" Objected too "

By a Note of the Company signed by me for 60 days, negotiated at the instance of R. S. Prescott,

10th Was Mr Prescott here at the time of the arrangement,

He was,

11th Inty State what further was done about the matter,

From Notes & other claims I had against other parties. Prescott was induced to take this Note signed by me in the full confidence that I individually would be able to meet it when it became due, & for that reason the other members of the Firm were not advised of the Transaction

" Objected too, "

How was the Note discharged.

There was one hundred & fifty dollars more or less of the Kitchel money; fifty dollars more or less of money in my own possession & the balance in a gold watch & chain to R. S. Prescott, which was worn & owned by me

130. During all this time did Mr Montague know of those transactions with Mr Prescott,

" Objected too, "

To the best of my knowledge he knew nothing of it until the Note was paid.

124. Are you aware whether he knew of it at the time you got the extension of Miss Kitchel & Lupton

He did not

What was the value of the watch you let Mr Prescott have.

The watch & chain was valued at 140. dollars

What was your inducement to let it go so cheap
" Objected too "

To save the Company from being troubled with
my individual affairs. The balance for which
I gave the watch & chain was 70. or 80, dollars

You stated in your cross examination that you
informed Mr Nichel that you had been disap-
pointed in the collection of some debts & therefore
wanted an extension. Did you state to him
whether those debts were due to you individ-
ually or not & what did you say about those
debts.

I stated there was due me for Lumber when I
was carrying on the Lumber business on my
own account & one of the parties I named who
owed me a large sum. namely John Allen
the builder.

When was Mr Montague first in-
formed of this transaction between you & Mr
Prescott,

As I understood, it immediately after
the note was paid. as Mr Savidge one of
the firm of Young Savidge & Co informed me
that he had told Montague of it.

Do you know of your own

19th

knowledge when Mr Montague was first informed of it.

I do not

John B. Young

know resumed.

1st
"

When was this Note of Prescotts paid at what time.

A few days, some 2 or 3 days after the Note was given Kitchel & Laston - above spoken of.

John B. Young

Direct resumed.

You spoke of seeing the extension noted on the Book did examine the entry.

I was standing by and saw it done. I looked at the entry.

John B. Young

State of Illinois
Winnebago County

I Morris B. Durick Clerk of the Circuit Court in & for the County & State aforesaid, hereby certify that the foregoing Deposition was taken before me & by me at the office of Francis

Barnes Coq in the City of Rockford
Commencing on the 29th day of November
and ending on the 30th day of the same
Month A D 1858. And that the same Dispos-
ition was signed & sworn to by the
Defendant at the time the same was
taken, and in my presence

Morris B. Derrick
Clerk of the Circuit Court

Witness Fees of B. Young 2 dgs 2.00

M B Derrick Com^{rs} Fee 8.00

Endorsed: Filed December 1/58. Wm. H. H. Sh. 10.00

III. Deed from Margaret Young and John B.
Young her husband to Samuel S. Montague

To save the expense of copying, the Parties agree
that this deed was an indenture of bargain and
sale with covenants and warranty in the usual
form, dated 30 March 1858. and expressed that in
consideration of \$1250. Margaret Young and her hus-
band. granted, bargained, sold, enjoyed and
confirmed to Samuel S. Montague, a tract of land
described as follows. Beginning at the South
East corner of the North half of the South East
Quarter of Section ten (10) Township forty four
(44) North range one (1) East of the third (3)

principal meridian. Thence running north on said Section line nine hundred and fifty (950) links. Thence West nine hundred and ninety (990) links. Thence South nine hundred and fifty (950) links. Thence East nine hundred and ninety two (992) links, to the place of beginning, Containing Ten (10) Acres more or less, Saving and excepting a certain Trust deed to the Loan Fund Association of the City of Rockford,

IV. A mortgage from John B. Young and Margaret Young his wife, to Robert H. Hatch in trust for the benefit of the Rockford Loan Fund Association.

To save expense of copying this Deed, the parties agree, that it is an indenture dated 23 March 1857, between John B. Young and Margaret Young his wife of the first part, and Robert H. Hatch, of the second part; That it recites: "That whereas, the said party of the first part is justly indebted to the Rockford Loan Fund Association for the use of the members thereof upon his certain Bond of even date herewith in the sum of Twelve Hundred and Fifty Dollars, Conditional to pay said Association or its agents for the use of the members of said Association the sum of Thirteen Dollars and thirteen cents ($\$13.\overset{13}{100}$) per month on the

Second Monday in each and Every Month until the termination of said Association: And also for the payment of all fines which may be incurred by and charged to him pursuant to the articles of said Association during said period, and for the performance of all covenants and agreements and promises, Entered into by him as a member of said Association, and a subscriber to the stock thereof, And also that in case of default in payment of any or either of said Monthly payments or any part thereof then the whole sum received by him of said Association, shall be immediately due and payable upon such default being made The receipt being \$ 125.00 and being desirous of securing the prompt payment of the said Money to be paid, or the due performance and fulfillment of the matters and things to be performed and fulfilled as aforesaid: And the said indenture therefore, in consideration of one dollar, Conveys the same tract of land described in the deed, to Samuel Montague in fee to the said Hatch, In trust with power of sale on default of performance.

V. Deposition of Samuel S. Montague, as follows, to wit:

Richard Montague

As

Edward N. Kitchel

Et als

Deposition of Samuel S. Montague taken before me in the above entitled cause at the office of Francis Barnap Esq in the City of Rockford in the County of Winnebago & State of Illinois on the first day of April 1859, by the Complainant, the Defendant Kitchel being present with Counsel. The said witness first being duly sworn did depose and say as his answers are hereinafter written down to the hereinafter Interrogatories propounded to him as follows,

Richard Montague

vs

Edward M Kitchel
 Reubin P Layton
 John B Young &
 Samuel I Church

What is your name, age occupation & where do you reside.

My ^{name} is Samuel S Montague I am 28 years old, reside in Rockford in the County & State, Civil Engineer

Are you about leaving the State

I expect to soon.

Are you acquainted with the parties to this suit both Complainant & Respondents & how long have you known them respectively

Ans The Complainant is my Father & I have known Deft Church 7 or 8 years & John B Young I have known about 1 1/2 years - I have no acquaintance with Mrs Titchel & Layton.

Do you know the Tract of Land mentioned in the amended Bill in this cause

I have seen the Land as it has been shown to me. I never surveyed it. nor do I know the exact bounds

Do you hold a Deed to that tract of land & if you do who made that Deed. when was it made & for what purpose

" Objected to "

Ans. I hold such a Deed it was executed by John B. Young & Margaret Young his wife. It was made the 30th of March 1858. It was made to me ^{to} secure certain debts that John B. Young was owing to Montague Savidge & Co & some other matters

6th Inty. Do you or not claim a beneficial interest to your-
65 self under that deed

Ans. I do not.

7th Inty. Was or not the purposes for which that deed
was made reduced to writing.

18th They were not, to my knowledge.

Can you state what kind of debts that
deed was given to secure

His personal A/c that he was owing to
the firm of Montague Savidge & Co.
At the time he retired from the firm of
Young Savidge & Co. & private A/cs of his
own that he was owing different parties
in Town who claimed to offset their A/c
against Young, Against what they owed
the company & the amount for which
Richard Montague the complainant
was holden for on a note to Messrs. Kitchel
& Lupton as security for John B. Young
in case complainant was obliged to
pay said note

Can you state whether there was a prefer-
-ence between these classes of demands

No Sir I can not.

7. Can you state whether it was understood between the parties at the time that the Complainant was a going to resist the payment of the Judgement in favor of Ritchel & Layton & against John B. Young & Complainant. State what you know about it

" Objected too "

I understood the Complainant intended to resist the payment of said Judgement. he told me so when the Deed was delivered to me

11 5 Can you state the amount of the direct Apc which Montague Savidge & Co claimed of John B. Young.

" Objected too "

I can not state the exact amount. I understood it to be between 150 & 200 dollars the Apc against him besides the amounts of those who claimed offsets as before stated.

12th Inty

Were you present on the first day of January 1859 at a trial before James B. Manlove Esq between Montague Savidge & Frasers & Leonard & Joseph Schmourer & if you were was there evidence given at that trial of an Apc of Leonard & Joseph Schmourer

67

against Young & if there was, what was
the amount of that etc

(Objected too)

Ansⁿ I was not present at any such trial

13th Int^s Was the tract of land encumbered at the time
you received the Deed of it - And if it was
how, and to what amount, & was there any
& what agreement about removing that
incumbrance

("Objected too")

I understood, at the time I received it that
there was an incumbrance of about five
hundred dollars, by a Mortgage to the Rockford
Loan Fund Association there was an
understanding that I was to pay off said
incumbrance

Have you paid it or any part of it.

I have paid part of it. Some thing over two
hundred dollars, Cant state the exact
amount

13th Int^s About what is the probable value of that
Land

We have considered it worth a Thousand
dollars & have offered it for sale at that
price. but the most I have been -

offered for it is seven hundred dollars on
time, but no specified time mentioned

11. *Ans.* In your opinion is it likely to be sold for one
thousand dollars

(Objected too)

I dont think there is any prospect of it at
present

12. *Q.* What was the ground of your estimate
of its value at one thousand dollars

I estimated it at the price which lands
had been sold for the year before +
taking into consideration ^{the} depreciation of the
price of Real estate, I deducted from 30 to
50 per cent

What amount in your opinion would that
Land bring if offered for sale at
Auction

Objected too

Ans. I dont know as I have any opinion
I dont know what Land is selling for +
I dont think it would bring Five
hundred dollars in cash now

19th Ints.

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What was to be done with the surplus of the Money for which that Land might be sold, if any after the satisfaction of the trusts which you have spoken of.

Ans.

It was to be paid to Mrs Young wife of John B. Young.

Was there any reason stated by the parties at the time of that conveyance why that surplus money should be paid to Mrs Young & if there was what was that reason

" Objected to "

There was an understanding at that time that the Surplus Money was to be paid to her, because the Land belonged to her, but no special reason given

Now you state whether or not she voluntarily or without solicitation offered to convey that Land for the purposes you have mentioned
(Objected to)

I was told she did, but never heard her say any thing about it.

Samuel S. Montague

State of Illinois
Muncieago County

I, Morris B. Derrick
Clerk of the Circuit Court in & for the County
& State aforesaid hereby certify that the
foregoing Deposition was taken before me
& by me at the office of Francis Burnap
Esq in the city of Rockford on the first day
of April 1859. and the same was signed
& sworn to by the deponent at the time
the same was taken & in my presence
Morris B. Derrick
Circuit Clerk

Swy 1 Wit 115
B Derrick taking dep 257
p 335

Edwrs ed.:

Filed April 1/59
M. B. Derrick Clk.

And on the seventeenth day of June, - in the
June term of the said court, in the year one
thousand eight hundred and fifty nine, the
following orders were entered in the said cause
to wit,

Present, Honorable Anson S Miller, Judge.

1851
resubst
no 129
71

Richard Montague

Edward V. Mitchel
Reuben J. Layton
John B. Young
Samuel D. Church

Injunction

By agreement of the parties, they now appearing by their Solicitors, Hunter Savidge appears in Court, is sworn and testifies, which testimony is taken to be used on the hearing of this cause.

And on the hearing of said cause said Testimony of Hunter Savidge was read, as follows:

"Said he was acct with Mr. Montague know J B Young was known & yes Montague has told me that he sign'd a note with Young to Mr. Mitchel for abt \$200 -

Mont. told me that Mr. Young had been telling abt that he mount bel'd a piece of Land of abt 10 as in security for that note - he sd tht if he was oblig'd to pay Mr Mitchel that note he was to receive the amt he had to pay out of the land & to redeem the rest -

72
he s^d it was a fact that he did hold this land — but he was only to hold it in trust to secure this note: if he dint have to pay it then he was to redede it to Young Said he was willing to do this any time —

Whatever he had to pay he was to take out of the land & redede the rest. he has told me this severat times. — } I think it was it was the

1st day of July — that Mont first told me of having sign^d the note — on the 1st day of Aug after Mont. tol^d me that young told him he'd have to take care of the note as he young wasnt able to pay it — Mont. s^d he had suppos^d it was p^d but young told him it had been renew^d — Mont s^d he abus^d young so much about having renew^d the note that he young propos^d to turn out # he s^d that he held the land in Trust to pay the note — he did not state that he had any other claims on the land — I think he s^d he h^d a trust-deed. The 1st time he spok^d about the trust deed the only objection he spok^d of was that the note h^d been renew^d — mention^d that as a reason why he shoul^{nt} pay the note. Never spok^d of that except at the 1st conversation — never giv^d any other reason.

the land in security
73 if he took it. — This was in Aug. 1857.

I saw Mont. every month that season — I must be mistaken as to the month — it must have been a month or two later —

The 1st time that he spoke of it the note was not due — he merely spoke of having signed it — the next time was about 30 after this that he told me it had matured & had been renewed & he had taken the security. Mr. Mont's expression was that the note had been renewed

I should say the 1st conversation was the first of Aug or Sept

I was here in Oct Nov & Dec it must have been one of those times —

I remember the fact that the 2^d conversation was after the maturity of the note. — I was in the habit of seeing Mr. Mont every 30 days — about the first of each mo

and on the sixth day of September,
in the September Term of said County
Court in the year of our Lord

one thousand eight hundred and
fifty nine, the following orders were
entered in said cause, to-wit:

Present:

Honorable Anson S. Miller, Judge.

no 96
75

Richard Montague
vs
Edward W. Kitchel
Nathan J. Layton
& others

Injunction

This cause having been submitted to the Court upon a motion to suppress the deposition of John B. Young, on the ground that he was interested in the event of the suit, and that motion having been resumed to the hearing and this cause having been heard upon the bill, answer and proofs and the same having been considered by the Court. It is ordered that the said deposition be suppressed for the cause aforesaid, and the complainant excepts thereto, And it is further ordered adjudged and decreed that the bill of Complainant in this cause be dismissed. And thereupon the Complainant moves the Court for leave to file a petition for a rehearing and it is ordered by the Court that he have such leave.

Answer S. Miller.

And on the tenth day of September 1859 this Complainant filed the following petition, That is to say

In the Winnebago County Court,

September Term 1859

Richard Montague }
 sext }
Edward N. Mitchell }
Reuben P. Layton }
John B. Young and }
Samuel J. Church }

In Chancery

The petition of Richard Montague, the above
named Complainant

Respectfully shows

That he this

petitioner was surprised by the setting aside of
the deposition of John B. Young, on motion
made and reserved to the hearing in the above
intituled cause, and that he had relied confidently
upon his deposition to prove the material allegations
of his bill of complaint, and had been advised
by counsel that he was a competent witness to
prove the said allegations, and this petitioner
further shows that he believes he shall be able to
prove the said allegations by evidence other than
the said deposition, if he can have an opportunity
to do so at another hearing of the said cause,

And this petitioner further shows, that
he has been informed that the ground for
the setting aside of the said deposition

al by amendment after, in return
w to,

*was not insisted upon by counsel and ^{it} was,
that if the judgment in the bill of complaint
mentioned was set aside as to this petitioner.
It must also be set aside as to the said
Young. And that therefore the said Young
has an interest in this suit, because that by
the setting aside of the said Judgment as
to him he would be relieved from liability for
the said costs. And further, That in order
to remove the said interest of the said
Young, Her this petitioner is willing and
hereby offers to waive that part of his said
bill which prays that the said Judgment
may be set aside, and take a decree for
a perpetual injunction against the collection
of the said Judgment

This petitioner therefore prays that he may
have a new hearing of the said cause
Including the said motion to set aside the
said deposition

Richard Montague

State of Illinois }
Winnebago County } ^{SS}

Richard Montague the above
named complainant maketh oath and saith that
the foregoing petition is true

Richard Montague

Sworn at Rockford in the County of
Winnebago, this day of September
1859 before me

Wm Hulin Clerk of Court,

Endorsed:

Winnebago County Court
Richard Montague

at
Edward V. Mitchell

vs
Petition for rehearing
Dothers

Filed Sep 10. 1859
Win Hulin, Clerk.

Dunnup.

And on the seventeenth day of March in the
March term of the said Court. In the year of our
Lord one thousand eight hundred and sixty,
The following order was entered in the said cause:
That is to say,

Present the Honorable Anson S. Miller,
Judge of the said Court.

Richard Montague }
 agt
 Edward N Mitchel }
 Reuben P Layton } Injunction.
 John D Young }
 Samuel S. Church }

This day come the parties by their Solicitors respectively. And the petition for a rehearing in this cause having been heard and considered, It is ordered that the said petition and the motion thereon heretofore made by the Complainant, be overruled. And the said Complainant excepts to the opinion of the Court in this behalf. And thereupon it is ordered adjudged and decreed that the injunction in this cause be dissolved, And the bill of Complaint herein be dismissed, And it is further ordered and decreed, that the defendants herein have and recover of the said Complainant their costs and charges herein expended, and that they have execution therefor.

And now to wit on the first day of the April term of the Supreme Court of the state of Illinois, before the Honorable the Justices of the said Court, at the Court-house in Ottawa, in the County of La Salle, comes the said Richard Montague, by Burrage & Harvey his solicitors, and says, that in the record aforesaid, and in the making of the record aforesaid, there is manifest error in this, that the said County Court sustained the said motion to set aside the deposition of John B. Young, whereas by the law and the rules and practice of Courts of equity the said motion ought to have been overruled. And also there is error in this, that the said County Court ought not to have allowed the defendants Edward N. Kitchel and Reuben P. Layton to amend their answer to the bill of complaint after replication to the said answer, and after the deposition of John B. Young had been taken in the said cause, without shewing any cause for such amendment. And there is error in this, that the motions of that said Montague to strike out the said amendment ought to have been sustained. And also there is error in this, that the judgment and decree of the said County Court was made and given in favor of the defend-

unto, and was that the said bill should be dismissed; whereas by the rules of law and equity, the decree ought to have been in favor of the said Richard Montague, for the relief prayed by the said bill of complaint. And also there is error in this, that the said County Court to have given a new hearing in the said cause, in accordance with the petition of the said Montague in that behalf. And the said Richard Montague prays, that the judgment and decree aforesaid for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for naught, and that he may be restored to all things which he hath lost by occasion thereof.

Burnap & Slaney,
Solicitors for Plaintiff in error.

State of Illinois

Supreme Court

Edward N. Kitchell

Ruben P. Sayton

John B. Young

and

Samuel J. Church *def'ts in Error*

ads

Richard Montague

Plaintiff in Error

Error to
the Winnebago
County Court

And the said
defendants in Error above named,
by James M. Hight their Attorney,
Come and Say, that there is
no such Error in the records
of the proceedings in the above
entitled Cause in the Court
below, as is by the plaintiff in
Error in his above assignment
of Errors thereof supposed.

James M. Hight
Atty for Def'ts in Error

Supreme Court

Edward N. Kitchell

Reuben P. Dayton

John B. Young



Samuel J. Church
defendants in Error
Ads

Richard Montague

Plaintiff in Error

Joinder in Error

Richard [unclear] [unclear]
agt.

Edward N. Kitchel,
Reuben P. Layton,
John B. Young and
Samuel J. Bunker.

Record
and assignment of errors.

Filed April 23 1865
L. Island
Clark

Burns & Harvey.