

14489

No. _____

Supreme Court of Illinois

Merryman

vs.

David

71641  7

STATE OF ILLINO
SUPREME COURT,
Third Grand Division.

No. 133

Merryman

Law

Mr. Justice Walker delivered the opinion of the Court.

~~Walker~~ It appears from the evidence in this case, that appellant, previous to the sale of the lands to appellee, had been corresponding with Gugg for its purchase, and had the right to purchase on the terms proposed by Gugg, within a given time. ~~That the time had not expired~~ But that time had expired, and there is no evidence, that appellant had accepted the offer. It also appears that he represented, that he had purchased the lands, or was acting as a kind of agent for the owner. He said to ~~one~~ ~~or both~~ of the sons of appellee that he was getting the same for the price, for which he gave for the lands. He fairly represented that the title was in Gugg, and informed the sons of appellant, that when he obtained the title it would be subject to a mortgage of one thousand dollars, and it seems, that appellee agreed to pay it, which he afterwards did. He also ^{requested} ~~informed~~ them, that when he delivered the first deed, that it should be returned to be cancelled, and an other given when he obtained a deed from the

owner, which was afterwards done, and ~~the~~ appellee notes were given up and new ones substituted. ~~The~~ appellant assigned as a reason, that it would not look well for his duty to appear on record prior in date to the deed to him from the owner.

~~The~~ Appellee at various times and to different persons expressed himself as well satisfied with the purchase. He said the land was worth thirteen dollars per acre, and that if appellant had asked ten he would have given it, instead of eight dollars per acre. He said to different persons, that he supposed appellant had made something on the purchase and he hoped appellant had. That he was satisfied with the purchase. He went on and paid all of his notes to appellant, but one hundred and forty five dollars, after the purchase. His expressions of satisfaction with his purchase, and the supposition, that appellant had made a speculation were all after the purchase, some of them as late as the next spring following. There is no evidence, that the land was not worth thirteen dollars an

are as stated by appellee.

It seems, that appellant ~~was~~
 at no time proposed to act as appel-
 =lee's agent in the purchase. If he pro-
 =posed to act as the agent of any one,
 it was of Gregg. It does not appear from
 the evidence, that appella^{nt} ever told ap-
 =pellee, that he was selling to him at
 the same at which he purchased. Nor
 does it appear that either of appellees
 saw informed him, that ~~the~~ appellant
 had so stated to them. Appellee instead
 of supposing he was getting the lands
 at the same price, declared that he
 thought appellant would make some
 thing and new he had he would. This
 seems to repel, all presumption, that he
 expected or believed, that he was to have
 the lands at the same, that appellant
 gave for them. It also clearly shows,
 that appellee did not regard appellant
 as his agent in the purchase. It is true
 that Missilla said testified, that he
 further thought appellant was Gregg's
 agent and was getting the lands the
 same as if the deed had been directly
 from Gregg to him. But when this
 evidence is taken in connection with
 appellee's declarations, it would seem

that these declarations only related to the title and not the price.

It seems then, that the only thing in which appellee was misled was as to appellants being Sugg's agent. Has he any interest in the relation that appellant occupied to Sugg. Appellant having assumed to be Sugg's agent, if recognized as such had no right to speculate upon his principal. He was bound to the utmost good faith to his principal, and had no right to realize a profit off of the fund with which he was acting. Having received more than he accounted for to his principal, if he was an agent, he would be liable to his principal to refund the amount retained, beyond his compensation. But the rights, duties and liabilities of an agent do not attach to other persons than the principal. And in this case it is not claimed, that appellant was the agent of the appellee nor can the appellant be liable to him as an agent. If appellant has acted in bad faith with his principal, it does not concern appellee.

He has acquired, all that he purch

= and. Nor is there any pretense, that
 he was deceived as to the quality,
 or value of the land, or the title.
 There was no misrepresentation made
 as to quality, quantity or value
 of the land. Appellee purchased at a
 price he was willing to give, and
 he seems to have been well satis-
 fied with this ~~part~~ transaction. ~~He~~
 And we are unable to perceive, that
 he has sustained any ~~any~~ injury.
 Had appellant been his agent it would
 no doubt have been different. If any
 fraud was committed it was upon the
 owner and not upon appellee as a
 purchaser. We are aware of no prin-
 = ple of law or morals, that would ren-
 = der appellant liable to appellee in
 this transaction.

The decree of the court must be
 reversed. Decree Reversed.

Thomas Merryman

188 vs 143

Wm David

Opinion by
Walter J.

Recorded Book 13
pp 79, 80,

Comp

Thomas Merryman }
vs } App. from Merce
Uri David } 3

Reply for Appellee to the
Brief of Appellant by
W. C. Gandy

II. The Court of Chancery
had jurisdiction of the case
presented by the Bill.

I admit that relief will
not be granted in equity where
damages for a fraud or de-
ceit only ~~is~~ are sought, be-
cause they may be recovered
in an action at law, but this
is not the only object of this
suit.

The Appellee had sued the Ap-
pellant on two notes that had been
obtained by misrepresentation
& the Bill was filed to enjoin
the prosecution of ~~these~~ suits
& prevent a recovery & thus
deprive the Appellant from reaping
the fruits of his fraud. The
Court having jurisdiction for

the purpose of the injunction, could I ought to proceed to dispose of the whole controversy and award the damages for the money wrongly paid.

If the only object of the suit was to recover back the money paid with interest then the case cited by Appellants counsel would be in point, but such is not the fact.

It may be said that the party had a good defence at law against the notes & could recover for the money paid in an action on the case.

It is not true that David had a good defence at law. He could not show fraud in the execution of the notes & that alone would be sufficient to defeat the notes on the ground that they were procured by fraud.

. . . *Reece vs Allen* 5 Gilman 241

There was not a failure of consideration, because the legal title passed & that was a good consideration.

But even if this were otherwise, the party would not be driven to the expense of two suits; equity interferes to avoid such a result.

The party would not be required to pay over the money & take the risk of recovering it back.

Equity always interferes by Injunction to prevent a recovery that is against good conscience & this may be done either before or after judgment.

2 Story Eq. Jur. §§ 874, 885, 886.

And when once jurisdiction for the purpose of the Injunction is obtained, the Court will dispose of the whole controversy.

2 Story Eq. Jur. § 885

Bradley v. Bosley 1 Barb Ch. 125

But it is too late after answering without objection to insist that there is a remedy at law when the Court of equity can grant complete relief.

Grandin v. Le Roy et al 2 Paige 509.

II.

The question presented is whether the Appellant by fraud procured the notes enjoined & the money decreed to Appellee & if so then the decree should be affirmed.

I do not understand that it is material whether there was a relation of principal and agent between Gregg & Merryman or David & Merryman. If David was deceived & imposed upon substantially as charged in the Bill the case is made out. It is true that if Merryman acted as the agent of David he could not deal for himself, but that would not enhance the wrong committed.

It is clear that Merryman was speculating off of David & made \$420 out of him by false representations & fraudulent acts.

The decree ~~has~~ is sustained by the principles of justice & due equity between the parties.

M. C. Gandy

Thomas Merryman

vs

Uri David

Brief for the
Appellee by

W. C. Gandy

State of Illinois Mercer Circuit Court
Mercer County &

Plead before the Honorable Charles B. Lawrence Judge
of the South Judicial Circuit of the State of Illinois
at a Circuit Court held in and for said County begun
and held at the Court House in the Town ofledo in said
County on the first Monday in the Month of September
in the year of our Lord One thousand eight hundred
and Sixty One, it being the second day of said Month
in said year In Chancery sitting.

Then Present Honorable Charles B. Lawrence Judge
James M. Morrison Clerk
Anderson H. Rodgers Sheriff

Be it known that heretofore to wit: on the 21st day of April
A.D. 1861 came B. J. Burnett & Son Solicitors for Uri David
and filed in the office of the Clerk of the Circuit Court of
said County a Bill of Complaint against Thomas
Merryman together with an Order for writ of Injunction
thereon made by the Judge of said Court and also his
appeal Injunction bond which bill of Complaint
Order for writ of Injunction and Bond are in the
words and figures following to wit:

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State of Illinois }
County of Mercer } September Term A.D. 1861 of the
Mercer County Circuit Court.
To the Honorable: The Circuit Court
at within and for the County of Mercer
and State of Illinois:

Your Orator Uri David, of said
County, respectfully sheweth unto this
Honorable Court that on or about
the tenth day of July A.D. 1856, he was
in the vicinity of the residence of
Thomas Herryman, defendant herein,
for the purpose of purchasing lands
in said County: that he made enquiries
of said defendant as to any lands
for sale in his neighborhood; that defendant
was anxious your Orator should
settle ^{near} him, and expressed great willingness
to assist your Orator in finding land
and in making purchase thereof. The said
defendant then showed your Orator the
following described lands, to wit: The East
half of the East half of Section thirty
two and the West half of the South West
quarter of Section thirty three in
Township Number fifteen North of
Range Number One West, then
and there representing to your Orator
that John S. Gregg, the owner of said lands

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lived in Ohio; that he, the said John S. Gregg, had no agent to sell said lands except defendant; that he, defendant was authorized to sell said lands for the sum of nineteen ^{hundred} and twenty dollars, and that said lands could not be bought of the owner for any less sum, that said lands were well worth said sum, and that your Orator could not do any better than to take the lands at that price. Your Orator relying upon said representations, made no further enquiries as to said lands, and agreed with ~~defendant~~ that he would purchase the same at the said price of nineteen hundred ^{and} twenty dollars, the said defendant then and there undertaking for your Orator to consummate the contract with the owner of said lands for the title thereof, (your Orator advancing to said defendant ten dollars, for that purpose).

II

Your Orator further sheweth that subsequently to the time above mentioned, to wit, August 12th 1856, the said defendant came to the residence of your Orator near Wataga in Knox County Illinois, and represented to your Orator that he ^{had purchased said land for your Orator that he} had paid nineteen hundred and twenty dollars for the

same, that he had taken a deed in his own name to save expense, that he had given a Mortgage upon said premises for one thousand dollars of the purchase money, and had paid the balance of nine hundred and twenty dollars, and that he was then ready with deed from himself and wife to convey said lands to your Orator subject to said Mortgage of one thousand dollars; that he had, not then with him the deed from said Gregg to himself, that the same had been sent to Ohio for acknowledgement, and had not then been returned, And your Orator relying on said statements so made by defendant took said deed from defendant and wife and paid him, said defendant five hundred and ninety dollars, cash in hand and gave his note for forty dollars payable in a few days, and two other notes for one hundred and forty dollars each with ten per cent interest, one due September first 1856, the other due September first 1857, making in all the sum of nine hundred and twenty dollars, and assumed the payment of the one thousand dollar Mortgage given by said defendant upon said premises as aforesaid.

Your Orator further sheweth that

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on or about the 29th day of August A.D. 1856
the said defendant came to your Orator
and desired him to give up the deed
heretofore mentioned, as having been
given August 12th 1856, and take another
deed like the first excepting the date, which
was August 29th 1856, which last mentioned
deed is hereto attached as part of this
Bill and marked exhibit "A." alledging
as a reason, that by some mishap his
deed from Gregg, the owner of the
lands, bore date subsequent to the 12th of Au-
gust 1856. The date of the deed first made
by defendant and wife to your Orator's
Said defendant also requested your Orator
to give him two other notes of one
hundred and forty dollars each in place
of the two notes for same amount here
inbefore mentioned, given August 12th
1856. — And your Orator relying
upon the statements so made by defendant,
gave defendant the said deed of August
12th 1856, and took the new deed of Au-
gust 29th 1856, and also took up the two
notes of one hundred & forty dollars each
dated August 12th 1856, & gave two other
notes of like amount, dated August
29th 1856, and due and payable at same

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III

time of the two notes dated August 13th 1856,
Your Orator further sheweth
that he has paid the Mortgage of One thousand
dollars, given by said defendant upon said
premises as aforesaid, and that he has paid
the note of forty dollars given August 13th 1856
and has also paid one hundred and thirty
five dollars on the two notes of one hundred
& forty dollars each given August 29th 1856,
all of which payments your Orator alleges
were made without any knowledge of the
fraud and deception practiced upon
your Orator by said defendant as hereinafter
charged.

Your Orator further sheweth
that suit has been commenced upon the two
notes last above mentioned, by the said de-
fendant and against your Orator
and that said suit is now pending and und-
etermined in the Circuit Court of Mercer
County State of Illinois, on the common
law side thereof.

IV

Your Orator further complaining
charges that at the time of the first interview
between your Orator and defendant, to wit
July 10th 1856, the said defendant was not the
agent of John S. Gregg, the owner of said
lands, nor was the price of said lands ninety
hundred and twenty dollars, but only fifteen

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hundred dollars, and that the said John S. Gregg had an agent by the name of William F. Wright living in an adjoining Township to defendant, and but a few miles distant from the land here inbefore mentioned, and that said Wright as the agent of said Gregg only ^{asked} fifteen hundred dollars for said lands, this sum being the full value of the same; and that the said defendant well knowing the premises, but contriving to cheat and defraud your Orator and to keep your Orator from making any further enquiries as to any person having the agency to sell said lands or as to the price asked by the owner for the same, falsely and fraudulently made the representations here inbefore mentioned as having been ^{made} July 10th 1856.

V
Your Orator further charges that at the time here inbefore mentioned to wit; August 12th 1856, the said defendant had made no purchase of said lands either for himself or your Orator, but said defendant well knowing that said lands could be bought for fifteen hundred dollars of William F. Wright, agent of said Gregg five hundred dollars, cash in hand, the balance of one thousand dollars on time

Secured by Mortgage on the premises, and well knowing that he or your Orator could purchase said lands on the terms and for the price last aforesaid at any time, and in order that he might get the money from your Orator with which to purchase said lands, and with intent to cheat and defraud your Orator, made the representations hereinbefore charged as having been made August 12th 1856.

Your Orator further charges that not until after the 12th of August 1856, to wit; August 13th 1856, and not until after the defendant had obtained the money and notes from your Orator as aforesaid, did the said defendant make any purchase or contract for the purchase of said lands, and when he, defendant did purchase the same he purchased of William P. Wright the agent, and not of Gregg the owner of said lands, paying five hundred dollars of the money obtained from your Orator on the 12th of August 1856 as hereinbefore charged, taking a deed from said Wright as Agent of said Gregg, in his own name and giving a mortgage on said premises to secure

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The payment of one thousand dollars of the purchase money thereof and that the reasons given by defendant to your Orator for the exchange of deeds hereinbefore mentioned as having been made August 27th 1856, were fully and fraudulently made to deceive your Orator, and to conceal & cover up the evidences of the frauds hereinbefore charged against him, the said defendant,

Your Orator further sheweth that he has not a safe and sufficient remedy in the suit at law now pending against him upon the promissory notes hereinbefore mentioned, but is only fully relieved therefrom and can only have recovery of the monies paid thereon and the other monies hereinbefore mentioned as having been obtained by defendant from your Orator, in a Court of Equity, where matters of this kind are properly ^{Cognizable and} tryable, To the end therefore that the said defendant may upon his corporal oath full true direct and perfect answers make, according to the best of his knowledge information and belief to all and singular the charges and matters aforesaid as fully in every respect as if the same were here again repeated and he thereunto particularly interrogated,

In consideration whereof your Orator prays that the said defendant Thomas Merryman, his Counselors, Attorneys and agents may be restrained by injunction issuing out of and under the Seal of this Honorable Court from proceeding further against your Orator in the suit upon said notes commenced and now pending in the Circuit Court of Mercer County, State of Illinois, wherein the said defendant Thomas Merryman is plaintiff and your Orator is defendant.

And your Orator prays that he may be heard in his allegations herein concerning of the monies obtained of your Orator by defendant, and not appropriated to the payment of the purchase money of the lands herein mentioned, and ^{that} an account may be taken of the amount so obtained with the interest thereon, that the said defendant be decreed to stand charged as trustee of your Orator for such monies and that it be ordered and decreed by this Honorable Court that he pay the same to your Orator within a short day to be named by this Honorable Court and that in default thereof your Orator have Execution against the goods and chattles, lands and tenements of said

defendant to make the monies so decreed to be paid to your Orator the same as upon Executions issued upon judgment at law, and that said defendant be decreed to deliver up said notes sued on in said suit at law to be cancelled, and that suit thereon be perpetually enjoined and that your Orator may have such other and further relief in the premises as shall be agreeable to equity & your Orator will ever pray &c

May it please your Honor to grant unto your Orator the writ of injunction to be issued out of & under the Seal of this Honorable Court directed to the said Thomas = Sherryman, his counsellors, Solicitors agents and Attorneys, commanding them & each of them absolutely to desist and refrain from proceeding further in the said action at law above mentioned until the further orders of this Honorable Court in the premises &c) Uri David
By B F Burnett & Son
His Solicitors

State of Illinois
County of Mason

On this third day of August A D 1861 personally came before ~~me~~ the undersigned Uri David & made oath that he had read the foregoing bill of complaints and know

the contents thereof; that the same is true
of his own knowledge, except as to
matters therein stated to be on his infor-
mation and belief and as to those matters
he verily believed them to be true

Subscribed & Sworn to before me this } Uri David
3rd day of August A.D. 1861 }
Elias Willets N.P. }

Let the Clerk of Mercer County issue the writ
of injunction as prayed for in the foregoing
bill, upon the complainant first filing a
bond in the penal sum of five hundred
dollars, with security to be approved by the
Clerk, conditioned, ^{as required by the statute} ~~by~~ ~~the~~ ~~same~~ in such cases
~~provided~~.

August 12th 1861

C. P. Lawrence
Judge of 10th Judicial
Circuit

Exhibit "A"
This Indenture, made and entered into this
29th day of August in the year of our Lord
one thousand eight hundred and fifty six betw-
een Thomas Merryman and Mary Estlin
Merryman his wife of the County of Mercer
of the first part and Uri David of the
County of Venoz and State of Illinois of the
second part, Witnesseth, that the said party of

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of the first part, for and in consideration of
the sum of one thousand nine hundred and
twenty dollars, paid by the said party of the seco
nd part, the receipt ^{of which} ~~whereof~~ is hereby acknowle
ged, do, by these presents, grant, bargain and
sell, unto the said party of the second part his
his heirs and assigns a certain tract or parcel
of land, situated in the County of Mercer and
State of Illinois and known and described as
follows to wit; The West half of the South
West Quarter of Section thirty three (33) and
East half of the South East quarter of Section
thirty two (32) Also the East half of the
North East Quarter of Section thirty
two (32) in Township fifteen North of
Range one West of the fourth principle
Meridian in Mercer County and State
of Illinois containing according to Survey
thereof two hundred and forty acres
be the same more or less. It being
expressly understood that a Mortgage given
by the said party of the first part to John S.
Gregg of the County of Belmont and State of
Ohio, for the sum of one thousand dollars
(being a part of the purchase money due from
the party of the first part to the said John S.
Gregg) due one half thereof in one year
and the remainder in two years from the twenty

day of August in the year first above written
with interest at ten per cent per annum;
shall be paid at Maturity by the party of the
second part, the amount of said Mortgage
being included in the one thousand nine hun
dred and twenty dollars the receipt of which
is herein acknowledged. Together with all
and singular the hereditaments and apperten
ances thereunto belonging or in anywise
appertaining, to have and to hold the said pre
mises as above described with the appertenance
unto the said party of the second part, his heirs
and assigns forever, And the said party of
the first part, for themselves and heirs, executors
and Administrators, do hereby covenant to
and with the said party of the second part
his heirs and assigns, that they are well
seized of the premises above conveyed, as of a
good and indefeasible estate in fee simple
and have good right to sell and convey the same
in manner and form as aforesaid; that
the said premises are free from all incum
brances; and that the above bargained
premises in the quiet and peaceable pos
session of the said party of the second part
his heirs and assigns, against the claims of all
persons whomsoever they will forever warrant
and defend. In testimony whereof the

#

The said party of the first part have hereunto
 set their hands and seals This day and year first
 above written. Signed sealed and delivered in
 presence of us
 Thomas S Wincaid } Thomas Merryman
 Mariana Wincaid } Mary E Merryman

State of Illinois }
 Henry County }
 SS. I, Thomas S Wincaid a justice of the peace
 in and for said County, do certify that
 on this day appeared before me Thomas Merry-
 man and Mary E Merryman his wife, whose
 names appear signed to the foregoing Deed of
 Conveyance, and who are personally known
 to me to be the identical person whose
 name are subscribed to said Deed as having
 executed the same, and acknowledged that they
 have executed the same as their voluntary act
 and deed for the uses and purposes therein
 expressed. And Mary E Merryman wife of
 the said Thomas Merryman having been by me
 made acquainted with the contents of said deed
 and being by me examined seperately and apart from
 her husband acknowledged that she had exe-
 cuted the same and relinquished her dower to
 the premises conveyed, voluntarily, freely and
 without any compulsion of her said husband
 and that she has no desire to retract the same
 Given under my hand and seal this twenty ninth

day of August eighteen hundred and fifty
1854 Thomas D. Vincaid's J.P.

Upon the back of said Exhibit is the following endorsements, to wit: No 10.328 W 357
Filed 18th Nov 1857 J. C. Senter Clerk Paid \$1.00
No 10.328 State of Illinois Menard County J. C. Senter Clerk
or Circuit Court Aledo 18th Nov 1857. I certify that
the within Deed was duly recorded in this
office, in Volume W of deeds, on page 362
J. C. Senter Clerk and Ex-Officio Recorder

And upon the back of said
Bill is the following endorsements, to wit:
Uri David vs Thomas Merryman, Bill
for injunction &c Filed 21st August
1861 J. M. Cannon Clerk, Burnett & Son
Compts. Solids,


5-


Know all men by these presents, that we Uri David, as principle & Henry Gaagland as surety, of the County of Mercer and State of Illinois, are held and firmly bound unto Thomas Merryman of the County aforesaid in the penal sum of Five Hundred Dollars, for the payment of which well and truly to be made we bind ourselves our heirs Executors, and administrators, jointly, severally and firmly by these presents. Witness our hands and seals This 21st day of August A D 1861

The condition of the above obligation is such that whereas the above named Uri David has obtained an allowance of an injunction in the Circuit Court of Mercer County State of Illinois, to restrain the above named Thomas Merryman, from proceeding further against the said Uri David in a certain suit now pending in the said Circuit Court of Mercer County aforesaid, on the common law side thereof wherein the said Thomas Merryman is plaintiff & the said Uri David is defendant, until the matter thereof can be heard in equity, now if the said Uri David, shall pay all money and costs due to the said Thomas Merryman in the said suit at law aforesaid; and all costs and damages that shall be ~~awarded~~ ^{awarded} against him, in case the said injunction shall

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be dissolved, then this obligation shall be void
otherwise to be ^{& remain} in full force and virtue in
law

Uri David 

Henry Keagland 

Upon which appears the following endorsement
to wit: Uri David vs Thomas Morgan
Injunction Bond, Approved & filed this
2nd day of August 1861 of Attkisson Clerk

Upon the filing of which Bill, Order and
Bond Writ of Injunction and summons
issued herein in the words and figures
following to wit:

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State of Illinois
Mercer County

To Thomas Merriman and to his counsel
Attorney Solicitor and Agents and each
and every of them. Greeting;

Whereas Uri David has lately filed his
certain Bill of complaint in Chancery in
our Circuit Court of Mercer County
and State of Illinois, against you the said
Thomas Merriman, defendant, to be relieved
touching the matters therein complained of
and which Bill is still there depending, We
therefore, in consideration of the premises
and of the particular matters in the said
bill set forth, do strictly enjoin and
command you the said Thomas Merriman
and all and every the persons before
mentioned and each and every of you
under the penalty of the law there enfor-
cing that you and every of you do abso-
lutely desist and refrain from all fur-
ther proceedings in a certain suit now
pending in the Circuit Court of Mercer
County and State of Illinois, on the common
law side thereof wherein you, the said Thomas
Merriman, are plaintiff, and the said
Uri David is defendant, in the said Bill
mentioned, until the further order of our
said Court of Chancery to the contrary;

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Witness James M Mannon Clerk of our
said Circuit Court at Alledo, this 21st
day of August A.D. 1861 James M Mannon Clerk

v The Sheriff of Mercer County to execute

Upon the back of said Writ is the
following endorsement, to wit;
Filed 24th August 1861 of M Mannon Clerk

Upon which Writ is the following endorsement, viz;
David as Merryman, Writ of Injunction

Sheriff's fee Serving writ .60

23 miles travel 1.15-

Return $\frac{10}{\$1.85-}$

S W Rodgers Sheriff

Filed 24th August 1861

J M Mannon Clerk

State of Illinois }
Knox County }

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

We Command you to Summon
Thomas Merryman if he be found in your
county, personally to be and appear before the
Circuit Court of said County on the first
day of the next term thereof to be held at the
Court House in Alton, on the first
Monday in the month of September next,
to answer to a bill of complaint, filed in
our said Circuit Court, on the Chancery
side thereof, against him by Uri David.
And have you then and there this writ,
and make return thereon in what manner
you execute the same.

Witness, James M. Mannon, Clerk of our
Circuit Court, and the seal thereof, at
Alton, this 21st day of August in the year of
our Lord one thousand eight hundred and
sixty one
James M. Mannon
Clerk

Seal
E. D.

Upon which is the following endorsement, vizt
No 158 Uri David vs Tho^s Merryman Chancery
Summons. Honor Circuit Court Ill, 2^d Sept
term A.D. 1861 Sheriff's fee

Service of Summons	50
Returning " "	10
Making copy	50
33 miles travel	115
Total	\$225-

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W. Rodgers Sheriff

23

Filed 21 August 1861 of No. 10000 Clerk

And afterwards to wit on the 5th day of September
A.D. 1861 being one of the days of the September term 1861
of said Court the following Order was made in said
Court to wit:

Uri David

vs

Thomas Merryman

Injunction &c

158

On Complainant's motion it is ordered and
ruled by the Court that Defendant Plead or answer herein
by Tuesday morning next.

And afterwards to wit on the same day and
year last aforesaid came the said defendant and
entered his motion, accompanied by the following
reasons for the dismissal of this suit to wit:

Uri David } Motion to dismiss Bill &
 vs } dissolve injunction
 Thomas Merryman

Reason for Motion

- 1 There is not sufficient Equity on the face of the bill
- 2^o The Bill is defective & informal & insufficient
- 3^o Another Bill of the same kind & almost word for word & in the same case has been decided by the Court & dismissed & therefore the Bill cannot & ought not to be sustained
- 4th Taking the statement in the Bill as true the plaintiff has an adequate remedy at law

Shaddon & McCoy
 D. A.

Upon which is the following endorsement, viz;
 David vs Merryman 158 Reason for motion
 to dismiss & c c Filed 5th September 1861

J. H. Cannon Clerk

And afterwards to wit: on the 11th day of September 1861 and being also one of the days of the said September Term 1861 of said Court the following proceedings were had in said cause to wit:

Uri David

158
 24

vs
 Thomas Merryman

Injunction vs
 this day cause decided

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by his solicitor and filed his answer to Complainant's
bill herein

Which answer so filed by the Defendant
on the said 11th day of September A.D. 1961 is in
the words and figures following to wit:

7
1
State of Illinois, County of Mercer ss. September Term A.D. 1861 Circuit Court

vs David W. Thomas Plaintiff. In Chancery

The answer of the said Thomas Henryman to the Bill of Complaint of the said David W. Thomas, for respondent saving & reserving to himself all & all manner of benefit of or advantage to the many errors, imperfections, & insufficiencies of the said Bill, for answer thereto or to so much thereof as is material to be answered, says that on or about the 10th day of July A.D. 1856 he admits that the said complainant was in the vicinity of your respondent for the purpose of purchasing lands in said County; that said complainant made enquiries of this defendant as to lands for sale in his neighborhood; that defendant was anxious said complainant should settle near him & expressed great willingness to aid said complainant in finding land & in making purchase thereof & that he showed said complainant the lands described in said Bill. But this defendant utterly denies that at that time or at any other time he represented to said complainant that John S. Gregg, the owner of said lands, lived in Ohio or that said John S. Gregg was the owner thereof nor that said Gregg had consent to sell said lands, but this defendant, but on the contrary that this defendant then & there told the said complainant that he would sell said lands to said complainant & this defendant avers & charges that at that time he had negotiated & purchased such lands of the said John S. Gregg as hereinafter stated. This respondent further avers & charges that at that or any other time he represented to said complainant that he was authorized to sell said lands in any other than his own right; but admits it to be true that he did at the time in said Bill stated represent to said complainant that said lands could be bought for \$1,720 ^{the} but as this defendant then & now thinks and charges, he, this defendant, had the sole right to sell the same, that the said representations as to price last stated, was the only price at which the same could be bought, that being the price put upon the same by this defendant & that he represented said sum as the price at which they could be bought of this defendant & of no one else & without defendant charges that he was at that time the owner of said land as hereinafter stated.

II

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That said lands could not be bought for any less sum, He further admits that he did represent as charged, that said lands were well worth that sum & that said complainant could do no better than to take said lands at that price, your respondent further admits that said complainant agreed to purchase the same as stated in said bill of your respondent, but utterly denies that he then & there or at any other time undertook for said complainant to consummate the contract in said bill charged with the said Gregg & utterly denies receiving from said complainant ten dollars or any other sum for the purpose charged in said bill, but on the contrary avers the fact to be that he sold in his own right, & not otherwise, the said lands to said complainant at the price aforesaid as hereinbefore stated & that at the time last aforesaid, he did receive ten dollars from said complainant as a part of the purchase money for the same & to bind the bargain, at the express request of said complainant for that purpose only.

[[[

Your respondent further answering says that he had long previous to the time aforesaid opened a correspondence with said Gregg who was a long time previous to said 10th of July A.D. 1856 the owner of said lands, for the purchase thereof on his own account & with a view of selling them at a profit, that he finally succeeded in purchasing the same of said Gregg at the price of fifteen hundred dollars, one third to be paid in hand & the remainder in two equal payments of five hundred dollars each, payable in one & two years with ten per centum per annum interest, to be secured by a mortgage from your respondent to said Gregg on said lands; that he finally closed said purchase of the said Gregg on or about the 25th day of May A.D. 1856 procured a Power of Attorney to William Pitt Wright then & now of Rock Island County, bearing date May 24th A.D. 1856 authorizing him to convey said lands; that this defendant on or about the 10th day of May A.D. 1856 received from said Gregg a letter dated the 4th day of May A.D. 1856 informing this defendant that he would buy said lands for fifteen hundred dollars; that to said letter the respondent shortly afterwards wrote to said Gregg accepting said proposition and agreeing to purchase said lands at said price, and that afterwards some

Time in June 1856 this respondent received from said Gregg another letter dated the 25th day of May A.D. 1856 informing this respondent that he had sent to said Wright the Power of Attorney aforesaid.

IV

Your respondent further answering says that as soon after the receipt of the information last aforesaid, as he could get the money required as the advance payment on said land, to said Gregg (the precise time he does not now remember, but thinks it was before the execution of the deed to him to said land from said Gregg by said Wright his attorney in fact) he paid the same over to said Attorney in fact for said Gregg; that said advance payment was paid with this respondent's own money & before he had received any money at all from said Complainant, except said ten dollars advanced as aforesaid; that after this respondent had so purchased said land of said Gregg and agreed upon the precise terms of payment with said Gregg & his said Attorney in fact, the said Complainant agreed with this respondent to purchase the said land for the sum of \$1,920⁰⁰ one thousand nine hundred and twenty dollars, of which was to be paid upon the execution & delivery to said Complainant of a deed of conveyance therefor from your respondent; that said agreement was made on or about the 12th day of July A.D. 1856 & this respondent at the same time informed said Complainant that he had purchased said land, that this respondent had not then received a deed for the same but would in a short time; that ^{this respondent} to secure the remainder of the purchase money, to wit; one thousand dollars being the last payment he owed on said land, he ~~was~~ would have to give a mortgage on said land to secure the same, payable five hundred dollars in one year & five hundred dollars payable in two years from date, with ten per cent. interest from date; that said Complainant should pay this respondent six hundred & forty dollars in hand upon the execution & delivery by this respondent of his deed of conveyance to said Complainant of said land; that said deed should be subject to the said mortgage so to be given, and for the balance of said purchase money said Complainant was to execute to this respondent & two

Promisory notes for one hundred & forty dollars each one payable one year from date, the other payable two years from date both with interest at ten per cent. from date, your respondent expressly ^{charges} that upon the making of said agreement which was by Parcel the said complainant paid to the respondent the said sum of ten dollars for the sole purpose of binding said bargain; that at said time said complainant well knew that this respondent had purchased said land & held them in his own right as herein stated & offered them for sale to said complainant in his own right and in no other or different manner whatsoever.

Your respondent hereto appends exhibits marked **A & B** which he makes part of his answer, being letters received by him from said Gregg relative to the purchase by him of said lands from said Gregg as aforesaid and as evidence of the facts therein stated, and referred to in the answer.

Your respondent further answering says that afterwards, to wit: on the 15th day of August A.D. 1856 he procured from said Gregg through his said attorney in fact a deed of conveyance to said land and at the same time executed & delivered a mortgage on said land to said Gregg's said attorney in fact to secure the payment of the said sum of one thousand dollars, payable in sums of Five Hundred Dollars each in one and two years with ten per cent. interest thereon; that shortly afterward (the precise time your respondent does not now remember but before the 29th day of August A.D. 1856) this respondent conveyed by deed said lands to said complainant in the consideration of \$1,720⁰⁰ which said conveyance was then & there accepted by him; that said complainant upon the execution & delivery of the deed last aforesaid to him, paid to your respondent the sum of Five Hundred & ninety dollars & executed his two notes to this defendant and one for one hundred & forty dollars with ten per cent. interest from date, one payable in one year & the other in two years from date with ten per cent. interest from date, and at the same time also another note for forty dollars on either on demand or in thirty days after date, your respondent is not

VI

certain which. Your respondent further answering says that afterwards the said Complainant applied to this Defendant for a new deed to said premises, alleging as a reason therefor that there was some mistake in the deed before executed to him by this Defendant as aforesaid; that your respondent complied with said request & executed another deed to said Complainant to said land, in the same consideration & subject to the mortgage of one thousand dollars executed to Gregg by this Defendant as aforesaid as said prior deed had been subject; which said last mentioned deed bears date the 29th day of August A.D. 1856; that the said notes for one hundred & forty dollars each payable as aforesaid & executed as aforesaid, were at the same time last aforesaid, at the said Complainant's request surrendered and in lieu thereof two others for the same amount each were executed by said Complainant & delivered then & there to this Defendant bearing date on the said 29th day of August A.D. 1856 one payable on or before the 1st day of September 1857 & the other on or before the 1st day of September 1858 with interest thereon at 10 per cent per annum.

VII

And your respondent further answering admits that he went to Complainant's residence near Watoga in Knox County Illinois, but does not remember the precise time, but thinks it may have been on or shortly after the 15th of August A.D. 1856, but denies that he represented to said Complainant at that or any other time, that he had bought the said land for the said Complainant or that he had paid nineteen hundred and twenty dollars therefor or that he had taken a deed in his own name to save expense, but admits that he then represented to said Complainant that he had given a mortgage on said land for one thousand dollars of the purchase money. He further denies that he then & there or elsewhere at any time represented to said Complainant that he had paid the balance of nine hundred & twenty dollars, but charges the truth to be that he represented to said Complainant then & at all times when in conversation about it then & afterwards that he had paid five hundred dollars on said land & no more. He further denies that at the time & place last aforesaid he did represent to said Complainant that he had then a deed of

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 conveyance to complainant for said land from himself & wife, subject to
 said mortgage, but charges the truth to be that he then expressed to complainant
 a readiness to make such conveyance, and he further denies that he then & there-
 last aforesaid or at any time told said complainant that he had not
 then with him the deed from Breyg to himself or that the same had been
 sent to Ohio for acknowledgment & had not then been returned. He further
 admits the payment of said \$590⁰⁰ as charged & the receipt from
 complainant of a note for \$40, and the other notes in said bill stated
 payable as stated herein before but not otherwise. He further admits
 that said complainant assumed the payment of said mortgage as
 herein stated & as in said bill charged.

VIII

This respondent further answering denies that he went to said com-
 plainant in or about the 29th day of August 1856 or at any other time
 & desired said complt. to surrender the deed first executed to him
 for said lands by this respondent & take another deed like the first
 excepting the date which was August 29th 1856 alleging as a reason that
 by some mishap his deed from Breyg bore date subsequent to the said
 12th day of August 1856, or requested said complainant to give two
 other notes of \$40, each in place of the other two notes of that
 amount. Your respondent further admits that said complainant
 has paid said mortgage as charged - that he has paid said note
 of \$40⁰⁰ & that he has paid said sum of one ~~hundred~~ hundred
 & thirty five dollars, but denies that said last amount was paid on
 said two notes of \$40⁰⁰ each but charges that it was paid on the
 said \$40⁰⁰ note, first one. Your respondent admits that suit
 has been commenced on the two, one hundred and forty dollar notes
 and that said suit is now pending as charged in said
 bill.

IX

Further answering he admits that on the 10th of July A.D. 1856 he was not the agent of said Gregg & that he was not at any time the agent of said Gregg & that as to the charge in said Bill as to Gregg's price of said lands he knows nothing further than is stated in this his answer. He admits that said Gregg had an agent by the name of William P. Wright as charged in said Bill, but denies that Wright, agent as aforesaid, only asked \$1500⁰⁰ for said lands but avers the fact to be that said Wright asked more & that this respondent was induced to correspond with said Gregg as herein stated, with a view of getting the lands at a less price than said Wright asked for said lands. And respondent denies that on the 12th day of August A.D. 1856 he had made no purchase of said lands, but avers the fact to be as hereinbefore stated. Your respondent further denies that he paid said Five Hundred dollars out of the money he received from said Complainant, but avers that he paid it out of his own money as herein before stated.

X

The said respondent further answering denies all & every charge or charges in said Bill contained of fraud, deceit, misrepresentation or any other charge impugning the integrity and honesty in the matter in said Bill stated & charged, of this respondent, but on the contrary he avers that in all and every respect he acted fairly, honestly, and faithfully towards the said Complainant.

And this respondent denies all unlawful purpose or intent or act or acts charged in said Bill without this that any other matter or thing material or necessary for this respondent to answer unto & not herein well and sufficiently answered, confessed or avoided, traversed or denied is true to the knowledge of this respondent. All which matters & things this respondent is ready to verify, maintain, aver and prove as this honorable

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Court shall direct and humbly prays to be dismissed
hence with his reasonable costs and damages by him
in this behalf most wrongfully sustained.

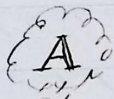
W. C. C.

Thomas Merryman

State of Illinois
County of Mercer } On this 11th day of September A.D. 1861 personally
appeared before the undersigned Clerk of the
Circuit Court of said County, the above named Thomas Merryman
who being first duly sworn on his oath doth depose and say
that the matters & things in the foregoing answer are true to the
best of his knowledge and belief and further he saith not.

Gave to and subscribed before } Thomas Merryman
me date last aforesaid.

J. M. Manson, Clerk
By A. P. Brown Deft.



May 4th 1850

Mr. Merryman Sir I received your letter of the
18th which was gratifying to me to hear from you,
I stated last fall that if you would take all my
lands at \$5.00 per acre that you want have it but
I gave out of hearing from you intirely. I had maid
other arrangements & gave one half of my lands to
Wicks my son he lives in Logan County Ohio and I am
told that he has sold his half for \$2,200. now I will

give you the description of Wicks Land that you may
 know which is mine & will give the plot and mark his
 with H in all the places that you may see mine. I
 believe that as far as I no more that you may have
 mine for \$1500 pay down all you can and the
 balance may lay back on the terms that you spoke
 of, now I will give the plot below and you may do
 as you please a bout taking it, I shall otherwise
 P. Wright to make the Deed to them that rise the
 land do no more but my respect to you all
 Goed By Thomas Merriman John S Gregg

if you take my land
 at that you must

let me know soon

I shall not be
 bound to stand at

80

mine

Wicks
40

Ⓜ

that offer longer
 then this month or
 six weeks for I can

mine

80

mine

80

Wicks
40

Wicks

100

3 3

Ⓜ

trade it off for more then that

be sure and do all that your going to in that time

IB

May 25th 1856

Mr Merriman Sir, I can inform you that
 Wicks has not sold his Land yet and you can have the

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hole of it at what I said you might have mine for
 wick was \$6.25 per acre I have sent Pitt Wright the
 Power of a Turney To act for me and Hicks. The payments
 will be easy if secured I want you to write soon and
 let me no where the Mail Road send whether Threw it
 or just it or not, I will know that the Land, is loc at
 that. Pitt Wright tells me that there sough Perra is
 seling at 20 Dollars per acre. I am convince that you
 can double your money in a short time. I would not
 sell a tole if I did not want to settle up my business.
 I can find bid for your property and do well but I
 would prefer seling if I could. Nothing more at
 presant but remain Yours

Jno. T. Frey

Mrs David
 vs.
 Wm. Merryman

Answer

Filed 11th Sept. 1861
 J. M. Warner
 Clerk

and afterwards to wit: on the 12th day of
 September 1861 came the said Complainant
 Mrs David and filed his Replication to Defendants
 answer herein in the words and figures following to wit:

State of Illinois }
 Merer County }
 vs }
 David }
 vs }
 Thomas }
 Herryman }
 Merer County Circuit }
 Court September term }
 AD 1861 }

The replication of
 Uri David Complainant, to the answer of
 Thomas Herryman Defendant.
 This replicant seeing and reserving to himself
 all and all manner of advantage of exception
 to the manifold insufficiencies of the said
 Answer, for replication therunto saith; That
 he will aver and prove his said Bill to be true
 certain and sufficient in the law to be answered
 unto; and that the said answer of the said
 Defendant is ^{uncertain} untrue and insufficient to be
 replied unto by this replicant; without this,
 that any other matter or thing whatsoever in
 the said answer contained, material or
 effectual in the law to be replied unto, confessed
 and avoided, traversed or denied, is true,
 all which matters and things this replicant
 is & will be ready to aver & prove as this honorable
 Court shall direct & prays as in & by
 his said Bill he hath already prayed

Burnett & Son
 Comptrol Solicitors

Upon which appears the following endorsements
 to wit; Uri David vs Thomas Herryman,
 Replication Filed 12th Sept 1861 of McManer
 Clerk

State of Illinois }
Mercer County }
To Thomas Merryman or S W McCoy
his Solicitor

You are hereby notified that I will on
the seventh day of November AD 1861 at
ten o'clock A.M. of said day at my residen-
ce in Richland Grove Township in said
County of Mercer before John W Peterson a
justice of the Peace of said County, take the
deposition of William B Harris a resident
of said County and State, to be read as
evidence at the trial of a certain cause
now pending and undetermined in the Cir-
cuits Court of said County on the Chancery
side thereof wherein you are defendant
and I am Complainant, when and
where you may attend if you see fit and
cross examine said witness

Oct 23rd 1861

Uri David
By Burnett & son
his Solis,

Upon the back of said notice appears
the following endorsement, to wit:
J. B. Burnett by duly sworn depositions
and says that I received a notice of which
the within is a true copy on Samuel
McCoy, on the 26th Oct 1861

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Subscribed and sworn to before me } Benjamin F. Burnett
this 7th day of November AD 1861 }
Justice of the Peace } J. B. Congley Justice of the Peace

State of Illinois
Mercur County

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Uri David

vs

Thomas Merryman

Deposition taken
before J. B. Conley, J.P.
Pursuant to notice herein attached

William B Harris a witness produced on the part of the Plaintiff in the above entitled cause first being duly sworn to testify the truth in relation to the matter in controversy in a suit now pending in the Circuit Court of Mercur County State of Illinois on the Chancery side thing wherein Uri David is Plaintiff and Thomas Merryman defendant deposed and says he is thirty eight years old his Residence Viola Mercur Co Ills. is acquainted with Uri David and Thomas Merryman the parties in this suit, in the latter end of June or beginning of July 1857 I was at the residence of Thomas Merryman Defendant Mr Merryman Uri David and myself came out on the lands now occupied by Mr Uri David the above named land is in Richland Grove Township consisting of three eighty acre lots, at that time there were John and Joseph Davids breaking a part of the land, a conversation occurred between Mr Uri David Mr Thomas Merryman and myself, Mr Merryman

congratulated himself upon getting Mr
Uri David as a neighbor stated that
there had been several to purchase this land
but that he did not wish to see them get
it as he thought they would not make
neighbors suitable he then stated that
he had acted as kind of agent for the
owner of the land Mr Clegg who lived
in Ohio and that he Mr Clegg had
went and purchased the land for Mr Uri
David so as to have him as a neighbor
Subscribed and sworn } Wm B Harris
to before me this 7th day of }
November A D 1861 }
J. B. Longley J.P. }

And I further certify that said deposition
was carefully written out by me & read
over to said witness, Wm B Harris, who
then subscribed & made oath to the same
and that said deposition was taken in pur-
suance of the notice here to attached, at
the residence of Uri David in Richland
Grove Township in said County of
Munich, on the Seventh day of October
A D 1861 at 10 o'clock A M
Given under my hand & official seal this 7th
day of October A D 1861 J. B. Longley
Justice of the Peace

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Upon which appears the following address
ment, to wit; Opened & Filed 29th
April 1862 J. H. Shannon Clerk

State of Illinois
 Mercer County

To Thomas Murrinman: You are hereby notified, that I will on the 22nd day of February A.D. 1862, between the hours of ten & eleven o'clock A.M., of said day at my residence in Richland Grove Township, in the County of Mercer, State of Illinois, take the depositions of William F. Wright and wife residents of Rock Island County Illinois, and Joseph W. David, John S. David, Menzella David, Thomas Wincaill, Jacob Boggs & Joseph Murrinman, residents of Mercer County Illinois, and Harmon a resident of Henry County Illinois, to be read as evidence at the trial of a certain cause now pending and undetermined in the Circuit Court of said County of Mercer on the Chancery side thereof wherein you are defendant and I am complainant, when & where you may attend if you see proper, and cross examine said witnesses

Dated this 7th day of February 1862. Uri David

State of Illinois
 Mercer County } Uri David being by me first duly sworn on his oath says that he on the 8th day of February A.D. 1862 served the within notice on Thomas Murrinman therein named by delivering to said Murrinman a true & correct copy thereof at that date,
 Uri David

Subscribed and sworn to before me this 23rd day of Feb'y 1862
 C. M. Way Master &c

State of Illinois
 Mercer County } In the Circuit Court of said County

Uri David } In Chancery, Bill for Injunction
 vs } Discovery &c now pending. The Testimo
 Thomas Mummery } ny of Wm F Wright, Thomas S Wincaid and
 John C David, witnesses produced sworn
 and examined on the part of said Complainant
 before Chas M Way the Master in Chancery
 of said County at the hour of eleven o'clock
 A M on the 23rd day of February A D 1862 in
 pursuance to the order of said Court and
 the notice hereto duly given,
 And the said Wm F Wright - being by me first
 duly sworn in the above cause on his oath
 to the following Interrogatories makes answer
 thereto as follows

Interrogatory 1st What is your name, age and place of residence?

Ans My name is Wm F Wright. I am about thirty four years of age. I reside in Coal Valley Township in Rock Island County Illinois.

Int 2 Are you acquainted with the parties to this suit or either of them. If yes state how long you have known them or either of them?

Ans I am acquainted with both of the parties to this suit I believe I became acquainted with Thomas Messer ^{or 1836} in 1855 I have been acquainted with Uri David some three years,

Qut 3rd Are you acquainted with the lands described as East half of East half of Sec 33 and the West half of the South West quarter of Sec 33 in Township 15 North Range one West of the 4th Principal Meridian in the County of Mercer and State of Illinois, If yea how long have you known them, and who was the owner thereof at the time you first knew them?

Ans I am acquainted with the lands, I think I have known them since the year 1835. John S. Gregg and Elias H. Gregg were the reputed owners of said lands at that time. The lands was entered by Elias H. Gregg, but the lands so entered was afterwards divided and the above tracts became the lands of John S. Gregg.

Qut 4th Do you know the residence of the said John S. Gregg, If yea, state where his residence then and where now does he reside

Ans His residence was in 1855 in Belmore Co. State of Ohio, and he still resides there and has resided there since 1855.

Qut 5th Do you or do you ~~not~~ not know of the said John S. Gregg selling said lands If yea state when and to whom?

Ans He sold said Lands, He sold said Lands to
45 Thomas Menjman the defendant on ~~the~~
the 15th day of August 1856,

Int 6th Did he in said sale make said sale him
self or did he make said sale by Attorney?

Ans He made the sale by attorney,

Int 7th Who was the Attorney through whom the
said sale was made?

Ans I was

Int 8th When did you receive your power of
Attorney to sell said lands and what was the
price at which you were to sell the land.

Ans I think it was the Spring or Summer of 1856
that I received it; the price was fifteen hundred
dollars on the Lands above described by me

Int 9 Was the power of Attorney of which ^{you} speak
a general power of Attorney to sell to any
person or did it authorize the selling of
the lands to any particular person?

Ans I do not recollect whether it was a general
power of Attorney to sell to any one or
whether to some particular person

Int 10th Of whom did you receive the power of
Attorney?

Ans I received it of John S. Gregg and Elias G. ^{Gregg}
I believe

Int 11th Have you received more than one power
of Attorney to sell said lands prior to the 15th

of August 1856?

Ans

I received but one

Int 12

Is that Power of Attorney Recorded, If yes state where and in what office

Ans

The Power of Attorney is recorded, It recorded in the Recorder's office of Mercer County Illinois

Int 13th

Did you under and by virtue of said power of Attorney sell said lands. If yes when & to whom did you convey the same?

Ans

I did sell the said lands under said Power of Attorney on the 15th day of August 1855 to Thomas Merryman

Int 14

At the time of executing said deed whose were you and who was present?

Ans

I believe I was at my residence, My wife might have been present. I know no one else

Int 15

What was the price paid for said lands? How much down what kind of money & how was the balance if any secured?

Ans

The price paid was Fifteen Hundred Dollars I think there was five Hundred dollars paid down of which the principal part was in gold mostly in Twenty dollar pieces to the best of my recollection there was between twenty ^{five} and seventy five dollars in Bank Bills. The balance was secured by a mortgage on the lands sold

Int 16th Look at the Mortgage to this deposition attached (marked Exhibit 'A') and say whether or not that is the mortgage referred to in Answer to the last above Interrogatory?

Ans I have looked at it and it is the same mortgage by me above referred to.

Int 17th At the time Merryman paid you said sum of five hundred dollars as above testified to by you, did he say of whom he received said money so paid you. If yes of whom did he say he received said money?

Ans, I don't recollect of his telling me of whom he received it.

Int 18th Prior to Merryman paying you said sum of five hundred dollars of which you have hereinbefore testified, was there any agreement between you and him that you would sell him the said Lands. If yes whose was the terms & conditions of said agreement and was the agreement in writing or by parol?

Ans I don't recollect of any agreement, I have no recollection of any writing and do not recollect of any agreement by parol prior to the time of making the sale to Merryman.

Int 19 At any time after receiving the power of Attorney hereinbefore by you mentioned and previous to the 13th day of August 1856

would you in pursuance of said power have sold said land to David or any other person for the sum of Fifty Hundred dollars

Ans I would have sold it to any person at that price. If I had not previously contracted to sell it to any one else

Int 20th How far, in the year of 1856 did you reside from said Lands.

Ans Som nine or ten miles

Int 21st State if you remember on what Bank or Banks the Bills you speak of in answer to Interrogatory 15th were?

Ans I do not know the Banks but some of it was Canada money,

And the said Wright on his Cross examination to the following Interrogatories makes answer as follows,

X
Int 1st Did you ever receive more than one power of Attorney to convey said Lands,

Ans I received two

Int 2 About what time did you receive the first power of Attorney to convey said Lands

Ans In the Spring or Summer of 1856,

Int 3 State the reason why you received the second power of Attorney,

Ans The first power of Attorney I received was considered insufficient, I think from the fact it failed to give the numbers of the Lands

Q 4 Who first suggested to you that the first power
4-9 of Attorney was insufficient?

A 4 I do not recollect who,

Q 5 At the time Gregg sent you the second
power of Attorney did he inform you
that he had been corresponding with them
as Merryman in regard to the sale of said
lands

A 5 I don't recollect of any correspondence
between him & me to that effect,

Q 6th You say that the deed was executed at your
own house. Do you recollect before whom
it was acknowledged

A 6 I said I believed it was executed at my house.
I do not remember before whom it was
acknowledged.

Q 7th Do you recollect before whom the Mort-
gage was acknowledged?

A 7 I do not positively,

Q 8 Do you know whether they were both
made and both acknowledged at the same
time?

A 8 I do not recollect

Q 9th Are you acquainted with the hand writing
of Mr John S Gregg?

A 9 I have seen it. I have corresponded with him.
(It is here agreed and stipulated between the
parties to save time that the Exhibits attached

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to the defendants answer herein & marked "A" and "B" respectfully are the genuine letters of John S. Gregg addressed to, and received by Thomas Merryman)

Subscribed & sworn to before } W. P. Wright
me this 22nd day of July 1862 }

C. M. King Master

The clerk will tax the fees of W. P. Wright as witness at the sum of \$1.50

And the said Thomas S. Wincaid being by me first duly sworn in the above case on his oath to the following Interrogatories make answer thereto as follows:

Suit 1 What is your name ^{your} age and place of residence?

Ans My name is Thomas S. Wincaid, I am in my forty fourth year, I reside in Mason County Illinois.

Suit 2nd Are you acquainted with the parties to this suit or either of them, If you state how long you have known them or either of them?

Ans I am acquainted with the parties to this suit, I have known Merryman for some 15 or 20 years, I have known David Sizer the year 1856

Suit 3rd Are you acquainted with the Ch. of the Ep?

of Sec 32 and the W^{1/2} of the S W q^r of Sec 33 in Township 15 North Range One West of the 4th P M in the County of Mercer & State of Illinois. If you how long have you known them, Who when you first knew them was the reputed owner, and how far did reside from said Lands?

Ans I am acquainted with the Lands, I have known them for about 25 years the reputed owner at that time was Uncle Sam, A Mr Gregg of Ohio was the reputed owner of said Lands in 1856,

Int 4th Were you in the year 1856 an acting Justice of the Peace in and the County of Mercer & State of Illinois?

Ans I was

Int 5th Were you at any time during the year 1856 called upon to take the acknowledgement of any deed or deeds, If you from whom and to whom was said Deed or Deeds to said lands made

Ans Thomas Merryman called on me at different times to acknowledge two deeds. The deeds were from himself to David I think that Merryman's wife joined in the acknowledgment,

Int 6th Were said Deeds alike or were they different? If not alike in what did they differ

And They differed in dates alone I believe
Q^u 7th Look at the deed attached to the complainants Bill in this cause & marked Exhibit A and state whether it is one of the Deeds you took the acknowledgement of, and if you state whether it is the first or last one so acknowledged.

Aⁿs I have looked at and examined it. It is one of the Deeds, and from the date it bears I suppose it is the last one executed & acknowledged.

Q^u 8 How long prior to the acknowledgement of this Deed was the other Deed acknowledged and was it, the first deed like this one except in date,

Aⁿs It was between two and three weeks and the first deed was like the last except in the dates

Q^u 9th Did Merryman at the time of the acknowledgement of the first Deed you mention give you any reasons for giving away the Lands therein described. If you state what he said,

Aⁿs I don't recollect of his saying anything more than he was selling those Lands, I was not surprised at Merrymans selling the Lands because I had heard before that he was trying to sell the said Lands.

Int 10th

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At the time of taking the acknowledgement of the second deed did Merryman give any reasons for making this second deed? If you state what reason he gave

Ans.

He gave as the the reason for making the second deed, because he said ^{that} the deed he had first made to David bore date prior to the date of the deed from Gregg to himself.

Int 11th

Did, or did not Merryman at the time of the acknowledgment of either of said deeds say that if he could sell said lands that he was going to buy them?

(The defendants Counsel objected to the Q^u as being leading)

Ans

I don't recollect;

X

And the said Kincaid on his cross examination to the interrogatories following makes answer as follows:

Q^u 1st

Did not Merryman say also as a reason at the time of making the second deed, that there was some mistake in the first power of Attorney sent to convey those lands?

Ans

I don't recollect as any thing was said about the power of Attorney. The reason he gave as I understood, that he was expecting his deed from Ohio sooner and for that

reason had dated the first deed to David prior to the one from Ohio, and when his deed came on he had to make the second deed so that it would bear date later,

Subscribed & sworn to before }
me this 22nd day of July 1862 } Thomas Wincaid
(C. H. Key Master)
(Don't claim his fees)

And the said John S. David being by me first duly sworn to testify in the above cause on his oath to the following interrogatories makes answer thereto as follows.

Int 1st What is your name, ^{your} age, and place of residence
Ans My name is J. David. I am about 34 years of age. I reside in Richland Grove Township Mercer County Illinois.

Int 2nd Are you acquainted with the parties to this suit or either of them. If yes, ^{State} how long have you known them or either of them?

Ans I am acquainted with the parties, Mr David is my father. I have acquainted with Mr Morrison since August 1866.

Int 3rd Are you acquainted with the E^{1/2} of the Sec 32 and the W^{1/2} of the S^{1/2} Sec 33 in Township 15 North Range one West of the 4th E. T. in the County of Mercer & State of Illinois

If you state how long you have known the said lands, and who at this time occupies said Lands.

Ans I am acquainted with the Lands, I was over the lands the first time in August 1836 My father occupies the W¹/₂ S^W¹/₄ 33 in said township & Range. I occupy the E¹/₂ of the S^E¹/₄ of said Sec 32, and my Sister Marcella David owns the E¹/₂ of the N^E¹/₄ of Sec 32. She does not occupy it, it being opened and uncultivated land.

Q^uest 4th Where did you reside and with whom did you reside in year 1836?

Ans I lived in Henderson Township in Knox County Illinois. I resided there with my father.

Q^uest 5th Did you see the defendant Merryman at the residence of your father in the year 1836 If yes at what time was he there?

Ans I saw him at the residence of my father. He came there on the 11th day of August 1836.

Q^uest 6th Do you know the business that brought him there. If you state what his business was particularly and what transpired between your father and Merryman in regard to purchasing lands, what lands were purchased if any, what was done in reference thereto and give the particulars?

Ans Merryman said his business was to sell my

father lands, on the morning of the 13th of August 1856. The parties went together to Wataga as they said to have something fixed in the deed concerning making the deed subject to a mortgage which mortgage as was their stated Mr Merryman was to give on the lands for \$1000.⁰⁰. The land he was selling was the ^{lands} above named, after their return from Wataga they had a deed for said lands from Merryman to father, I and my brother Joseph was there on that day to go to Keokuk and examine the Records -

Qst 7th Was there any writing made at that time in your presence, if you state what said writing were and who signed them if any were signed

Ans There were some notes written by Mr Merryman, there were three of these notes, one a note of forty Dollars made by father to Merryman & falling due in the fall, of the other two notes were for one hundred & forty dollars each made by father to Merryman due in one & two years from date?

Qst 8th Look upon the three notes attached to this deposition & marked Exhibit B and say whether or not they are the notes executed on the occasion above referred to by you

Ans I have examined said notes, I am not positive but I should think they are the same notes.

Q^{ns} 10th What was done with said notes on that day
57 of their execution or shortly afterwards?
Ans I took the notes into my possession at that
time, I took them with me to Keithsburg
on that day. The next day I came back to ^{Mr} Mer-
ryman with the notes in my possession & on
the morning of the 14th August 1836 I gave
the notes to him.

Q^{ns} 11th Was there any money paid on the said 12th
day of August 1836 or shortly afterwards if
you state to whom, & by whom it was paid
and state the circumstances of the payment
Ans There was no money paid on the 12th but on
the 14th day of Aug. 1836 I paid Merryman
\$590. - Father gave me this money on the
12th Aug 1836 to be paid to Merryman if the
records in regard to sd land was found
to be as Merryman had represented. This
money I took to Keithsburg and carried
the money until I paid it over to Mr
Merryman on said land on the mo-
rning of the 14th day of August 1836. At
the same time of paying the money handed over
the three notes.

Q^{ns} 12th When you were paying the money & the notes to
Merryman on the morning of August 14th
1836 what did Merryman do - Did he give
you any deed for your father. If you

State to what lands, and if said deed was the same you saw at your father on the 12th day of August 1836 and whether it was subject to any Mortgage & what was the amount of said Mortgage and who was the deed acknowledged before

Ans He gave me a deed for my father for the lands herein before described it was the same deed that I saw at my father in Kenoy County, It was subject to a Mortgage of one thousand Dollars on the premises so deeded, the Deed was acknowledged before Thomas Kincaid I believe,

Q^{nt} 13th What kind of money did you pay to Merryman for your father on said lands and did Merryman say anything about paying out said money, if yes to whom did he say he must pay it & for what?

Ans I paid mostly in Gold, the most of the pieces was \$20. I think there was some where between forty & sixty Dollars in paper money, I don't know on what Banks said paper money was. Merryman said that he must go and pay the money to the man he got the said land of that day.

Q^{nt} 14 Did you have any conversation with said Merryman about the payment of this money after the said 14th day of August 1836. If you

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Ans

State what that conversation was
Perhaps two weeks after payment of the money
Merryman told me that he did not pay the
money over that day but that he went & paid
it the next day after.

Int 15th

After the said 14th day of Aug 1836 did said
Merryman have any conversation with you
about exchanging Deeds with your father

And did he send any word by you about
exchanging deeds, If you state what word he
sent and what reason he gave for exchanging
deeds?

Ans

He did. As I was just leaving Merryman
house on one day about one or two weeks
after receiving the deed for father Merryman
asked me if my father had got his deed on rec-
ord yet. I told him I thought not as he had had
no opportunity. He then told me to tell father
or to come up to his house. to exchange
Deeds with him, that is to take up the first
deed and he to give father another because
the Deed he held from Gregg was dated after
the deed made by him (Merryman) to father.
and ^{it} would show bad on record in that case.

Int 16th

What was the date of the deed given to you by Mer-
yman on the morning of the 14th of August 1836
and was said Deed signed by the wife of Mer-
yman?

Ans

The date of the Deed was the 19th day of August 1856. I think I think the deed was signed by Merryman's wife,

Qst 17

Did Merryman say anything to you or in your presence when at your father's in Henderson on the 12th of Aug 1856 that you when at Kei-
Thsburg searching the Records would not find the Record of any deed to him for said lands. If
yea what reason did he give for not having
his deed on record.

Ans

He did then & there say that we would find no
deed on record from Gregg to him because
he had no deed from Gregg yet. Don't know
as he gave any other reason.

Qst 18

Did you ever have any conversation with Mer-
ryman about his getting more for said lands
from your father than he Merryman had
paid to Gregg. If yea what was that conver-
sation?

Ans

He told me at the time of the purchase that
father was getting the land for the same he was
to pay for it that he Merryman was making
nothing on the lands. The next summer I said
to Merryman I thought he was making some
thing on the land that I thought that he got the
land for \$1500. He asked me how I made
that out.

Qst 19th Did you ^{ever} hear Merryman say anything about the

purchase of those lands as to what relation he sustained in the transaction. Whether as principal to sell or as ^{an} Agent to buy for your father. If you state when and where and what you have heard him say?

Ans

On the 13th day of August 1856 I was on the land with Merryman & my brother Joseph looking over the land Merryman said he was selling the land as agent, that Mr Gregg was the owner. I asked him why the Deed did not come direct from Gregg to father. He said it was handier to have the deed ~~to~~ (Merryman) and then he ~~conveyed~~ deed to father. That it would make no difference as father was getting the land at the same price that Gregg was selling at.

John L. David

(Cross examination waived by Deft)

Subscribed and sworn to before me this 22nd day of July 1862 C. M. Key Master
Clerk will take the fees of John L. David at \$1.00

Exhibit 'A'

This Indenture made this Fifteenth day of August in the year of our Lord one thousand eight hundred and fifty six between Thomas Merryman of the County of Mercer and State of Illinois of the first part, and John L. Gregg of the County of Belmont and State of Ohio of the second part

Witnesseth, that the said party of the first part
 for and in consideration of the sum of one
 thousand Dollars paid by the said party of the
 second part the receipt of which is hereby ack-
 nowledged, do by these Presents grant, bargain, sell
 and convey unto the said party of the second
 part his heirs and assigns three certain tracts
 or parcels of land situated in the County
 of Mercer and State of Illinois, and described as
 follows, to wit: The West half of the South west
 quarter of Section thirty three (33) the East half of
 the South East quarter of Section thirty two
 (32) and the East half of the North East quarter
 of Section thirty two (32) all in Township
 fifteen⁽¹⁵⁾ north of Range one (1) west of the
 fourth principal Meridian in Mercer County,
 Illinois containing in all two hundred and
 forty acres more or less. To have and to
 hold the said premises as above described, with
 the appurtenances unto the said party of
 the second part his heirs and assigns forever.
 And the said party of the first part for
 themselves and their heirs executors and adm-
 inistrators do hereby covenant to and with
 the party of the second part his heirs and assi-
 gns, that they are well seized in fee simple
 and have good right to sell and convey the
 same, that they are free from all incum-

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-bracket, and that they above bargained premises
 in the quiet and peaceable possession of the
 said party of the second part his heirs and
 assigns against the claims of all persons
 whom soever he will forever Warrant and
 defend. Provided nevertheless that if the
 said Thomas Moryman party of the first
 part his heirs, executors, or administrators
 shall well and truly pay to the said party of
 the second part, their heirs, executors, admin-
 istrators, or assigns, the just and full sum
 of one thousand dollars as follows ~~Five~~ ^{Five} hundred
 and dollars in one year from this ^{date} and
 Five hundred dollars in two years from
 this date for which two promisory notes
 is given for five hundred each with ten
 per cent interest from date and
 dated with these presents, now provided the
 said party of the first part shall pay the two
 said promisory notes when they shall ^{Respectively} _{be}
 due and payable, that then and thenceforth
 these Presents, and every thing herein contained
 shall be null and void. In testimony
 whereof the said party of the first part had
 herunto set his hand and seal, the day
 year first above written, by Thomas Moryman
 Signed, Sealed & delivered in presence of

State of Illinois }
 Mercer County } ss J. H. G. Calhoun a Justice of the ^{peace} & Notary
 Public for said County, do certify that on
 this day appeared before me Thomas Merryman
 personally known to me, to be the identical person
 whose name are subscribed to ~~his~~ ^{said} deed and
 acknowledged that they had executed the same
 as his voluntary act and deed, for the uses
 and purposes therein expressed.

Given under my hand and seal, this Fifteenth day of August,
 1856
 J. H. G. Calhoun

Justice of the Peace & Not Pub. Ill.
 Upon the back of which appears the following
 endorsements, to wit: Filed for Record
 August 15th 1856, No 986. Recorded 22nd
 Sept 1856 in Nov "D" Pages 239 & 240 J. B. Cabeler
 State of Illinois }
 Mercer County } ss No 986. Recorded Sept 22nd 1856 in Vol. D
 of Mortgage conveys on page 239 & 240
 Attorney Thos B Cabeler ^{Recorder} ^{County Court} & Recorder
 April 3rd 1857 Paid on the
 within Mortgage five hundred dollars in
 full of the first payment except the interest
 & August 3rd 1858 Paid on the within Mortgage ^{\$22.17}
 one hundred and sixty dollars. Oct 13th 1858
 Paid on the within Mortgage one hundred
 dollars. Dec. 7th 1858 Paid on the within
 Mortgage one hundred dollars and ²⁵/₁₀₀ dollars
 Dec 24th 1858 Paid seventy five (75.00) dollars on
 the within Mortgage.

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April 30th 1869 Recd on or the within (23)
twenty five dollars.

Oct 24th 1869 Received on the within (Mortgage
(\$154.^{33/100}) one hundred and fifty four dollars
and thirty three cents being in full Principle
and interest W F Wright Agent for John S. Gray

Exhibit 'B'

\$40.00

Henderson Knox Co Illinois August 12th 1856 On or
before the first day of Oct. next I promise to pay to
the order of Thomas Merryman the sum of forty
dollars with ten per cent interest for value rec^d.

\$140.00

Henderson Knox Co, Illinois August 12th 1856
On or before the first day of Sept 1857 I
promise to pay to the order of Thomas Merryman
the sum of one hundred and forty dollars
with ten per cent interest for value rec^d.

\$140.00

Henderson Knox Co Illinois August 12th 1856
On or before the first day of Sept 1858 I promise
to pay to the order of Thomas Merryman the
sum of one hundred and forty dollars with
ten per cent interest ^{per date} for value rec^d.

Upon the back of the foregoing
deposition is the following endorsement, to wit,
Uri David vs Tho^s Merryman, For comp

Witness, Testimony of Wm F Wright Thomas
Pancake & John S David Masters for \$5.00 Filed 24th April
1867 - J. M. Manner U.S.

State of Illinois }
 Mercer County }
 In the Mercer Circuit Court
 vs
 In Chancery Bill
 Thomas Meryman for Injunctive &c

The Testimony of Samuel Chaney, Elizabeth Chaney, Joseph M. Meryman & George R. Bolton, witnesses produced and sworn and examined on behalf of said Defendant before Wm. Wray the Master in Chancery of said County on this 3rd day of April A.D. 1862 by agreement of the parties, notice being hereby expressly waived and both parties appearing.

The said Samuel Chaney being by me first duly sworn in the above cause on his oath to the following Interrogatories makes answer thereto as follows

Int 1st What is your name, age and place of residence?

Ans My name is Samuel Chaney, age 24 years residence Mercer Co. Ill.

Int 2nd Are you acquainted with the parties to this suit or either of them? If you are how long you have known them or either of them?

Ans I am well acquainted with both parties, have known Deft since I was about 8

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years old have known Complainant some
four years

Sub 3^d Did you or did you not ever hear the complainant in this suit say anything about the purchase of lands from the defendant. If so state at what time & place you heard him & what he said in relation to the purchase thereof?

Ans I did hear Complainant speak of the purchase of lands from Defendant, it was the first time the parties ever met apparently at or near the residence of Thomas Merryman the def.
After the parties had introduced themselves, Complainant said, that he had heard or understood that he had land to sell or asked him if he had lands to sell Complainant asked the price of the lands Defendant told him eight dollars per acre. The parties then went into the house, not a great while after the parties come out and Complainant told me that he had purchased the lands and as he thought he had got it cheap enough and that if Merryman had asked ten dollars per acre he would have taken it as quick.

Sub 4th Did you or did you not at this time or at any other time hear the complainant say anything about whether Defendant made any thing on the sale of lands spoken of,

Ans Complainant asked me at our time I do not remem

ber the exact time but after complainant had bought the land if I knew how much Defendant paid for the Land. I told him no

(Cross examination waived) Samuel Albany
(Witness does not claim fees)

And the said Elizabeth Chang being by me first duly sworn on her oath to the following interrogatories following makes answer as follows

Int 1st What is your name age & place of residence

Ans My name is Elizabeth Chang, age sixty five
Reside at Richland Grove Menard County
Illinois.

Int 2nd Are you acquainted with the parties to this
suit or either of them. If you state how long
you have known them or either of them.

Ans I am acquainted with both the parties. I have
known Mr Merryman from a child I
have known Mr David about five years.
Mr Merryman is my son in law.

Int 3rd Did you or did you not at any time
since August 1856 hear complainant say
anything in relation to the purchase of land
from the defendant. If you state at what time
& place, and what you heard him say. State
fully all that he did say in relation to the
price & how he liked his bargain?

Ans I have heard him speak such purchase since

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August 1886. at the residence of Defendant soon after the purchase of the Lands Mr David said he was perfectly satisfied with his bargain and said that he would not then look at thirteen dollars per acre for the land, he hoped that Mr Merryman would make something for his trouble in selling the Lands and thought he would, that he had been to a great deal of trouble, this was soon after he made the bargain and might be two months after the bargain, these were the same lands in controversy and on which David now lives

Elizabeth Chaney

(This not cleared)

(cross examination waived)

And the said Joseph Merryman being by me first duly sworn in the above cause on his oath to the following Interrogatories makes answer as follows.

Int 1st What is your name, age & place of residence

Ans My name is Joseph H. Merryman, I am 40 years of age I reside in Mercer County, Illinois

Int 2nd Are you acquainted with the parties to this suit or either of them, if you state how long you have known them or either of them?

Ans I am acquainted with the parties to this suit I have known Defendant from boyhood he is

my brother, I have known David some five
or six years.

Q^{uest} 3rd Did you or did you not at any time since
August 1836 hear the complainant say anything in
relation to his purchase of lands from the defend-
ant, of you. State the time & place and what
he said in relation to the price paid how
he was satisfied and whether or no Defend-
ant had made anything on the lands, state
fully all that you have heard him say that
may be advantageous in this suit?

(I^{nter} excepted to as leading and general in char-
acter)

A^{ns} I have since August 1836 heard complainant speak
of the purchase of lands from Defendant. In the
fall of 1836 at my house heard complainant say
that he would have paid more if defendant had
asked it of him, that he was satisfied with the
price, and he expected that defendant had made
something, and hoped he had. In the Spring
following I heard him make similar remarks.

Q^{uest} 4th Did you or did you not at any time since
August 1836 hear the complainant say anything
in regard to the relationship which existed
between the complainant & defendant in the sale
& purchase of the lands in controversy. If so
what did he say?

A^{ns} I don't think that I have.

Q^{nt} 5th If you have heard Complainant say anything since August 1836 relative to what Defendant made on the sale of the lands in controversy stating fully what it was?

A^{ns} I have never heard Complainant state any definite amount but said that he expected he ~~made~~ something and that he was satisfied with his purchase. I understood that he was satisfied with the purchase he had made and also satisfied that Defendant had made something in selling, this was in the Fall of 1836 and Spring of 1837.

X The said Morgan on his cross examination to the interrogatories makes answer as follows.

Q^{nt} 1st Do you know of the time complainant purchased from Defendant the lands in question?

A^{ns} I do not know from personal knowledge the time of purchase.

Q^{nt} 2 Do you know the time when Defendant got his deed for said land from Wright & do you know the amount he paid when he got said deed?

A^{ns} I do not know when he got the deed from Wright. Don't know how much money he paid.

Q^{nt} 3^a Do you know the time when Defendant first claimed to be the owner of said lands?

A^{ns} I do not.

Int 4th Do you know of Defendants ever claiming said
lands. If you state when?

Ans He claimed said lands in the season of 1836. I
think about harvest time which is usually the
last of July or 1st of August

Int 5th Do you remember the particular place and
who was present when Defendant claimed to
be owner of said lands?

Ans I do not.

Int 6th How near did you live to the Defendant in
the summer of 1836. And how often did
you see each other?

Ans About 125 rods. and saw ~~each~~ other
frequently some times every day sometimes
every two or three days.

Int 7 Do you know the circumstances of Deft in
the summer of 1836 what was his occupation
& if a farmer how large a farm did he
occupy?

Ans I don't know his circumstances he was improv-
ing a farm the improvements were put upon
40 acres & occupied 40 acres

Int 8th Do you know of the Defendant having any
other resources other than the farm he occ-
upied that summer. If you state what they
were

Ans He had a house & lot in Moline. He had
other lots in Moline. He was one of a comp

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-any in a Poor Lash & Blind factory

Sub 9 Do you know of his making sale of any of the property last above mentioned in the summer of 1836. If you state what prices & what he received in cash if any

Ans I do not personally

Sub 10 Do you know of Defendant receiving any sum of money in the summer of 1836 If you state of whom he received it?

Ans I do not know of his receiving any money

of Mr. Merryman

Subscribed & sworn &c

C. H. Key Master &c

The Clerk will tax the fees of Mr. Merryman at \$1.00

C. H. Key Master

And the said George R. Bolton being by me first duly sworn on his oath to the following interrogatories answers as follows.

Sub 1st What is your name age & place of residence?

Ans My name is George R. Bolton, age 26 reside in Menard County Illinois.

Sub 2nd Are you acquainted with the parties to this suit or either of them. If you how long have you known them or either of them?

Ans I am acquainted with the parties to this suit. Have known Deft about 8 years and the complainant about six years

Sub 3rd Since August 1836 did you or did you

not hear ^{the} Complainant say anything respecting
the purchase of lands of Defendant. If you when
& where & what he said?

Ans

I heard David the Complainant speak of
Purchasing Land of Dept since August 1856
this talk was at my fathers house shortly
after he said he had purchased the land
he said he paid eight dollars per acre for the Land
he asked me what I thought the Land was worth.
I told him he got the Land cheap enough
or as cheap as Land was selling. He told
me the Land was worth more than he gave
for it. That it was worth ten dollars per
acre, he said he supposed that Mr Merry
man made ~~an~~ speculation on the land
but that he did not care that he got the
Land cheap enough. We had conversation
about the purchase at other times once
at the Complainants house in Henderson Knox
County Ill. & he then said Mr Merryman
would be sick of his bargain when he found
out what a coal bank and Stone quarry
there was on the land, This is all that
I recollect of the conversation at the time.
But 4th State if you know what Land Complainant
had reference to in the conversation by
you above named?

Ans

The Land he is now living on he had

hands then breaking it up for him.

Geo R Bolton

The Clerk will pay the fees of Geo R Boulton
at \$1.00

Key Master

(Cross Examination of Boulton (revised))

Upon the back of the foregoing depo-
sitions are the following endorsements, to-wit:
Cris David (vs J. Merriman, For Defend
ant. Testimony of S. J. Chaney, E. Chaney,
Jos. W. Merriman & G. R. Bolton Master of
\$2.00
\$2.00
Dated 24th April 1862 J. M. Mannon Clk

State of Illinois }
 De Witt County }
 vs
 David

In the Circuit Court of said County
 vs
 In Chancery
 Thomas Messymann }
 Bill for injunction
 & discovery.

The testimony of Mary E. Wright, Joseph W. David, and Marcella David, witnesses produced and sworn and examined on the part of said complainant before C. McHenry the Master in Chancery of said County at the hour of eleven o'clock A.M. on the 3rd day of April A.D. 1863, by agreement of parties not being expressly waived. And the said Mary E. Wright being by me first duly sworn in the above case on her oath to the following Interrogatories makes answer as follows

Qut 1st
 Answer

What is your name, age, and place of residence
 My name is Mary E. Wright, my age is thirty years to day. I reside in Rock Island County Illinois

Qut 2

Are you acquainted with the parties to this suit or either of them? If you state how long you have known them or either of them.

Ans

I have been acquainted with the complainant about three years and with the defendant about five years.

Int 3^d Are you the wife of Wm F Wright a witness
sworn in this case.

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Ans I am.

Int 4th Were you ever present on the occasion of
your husband giving to Merryman a deed
of lands. If so when and where was it what
lands, how much was paid down if any,
what kind of money, how was the balance
if any received, what was said by Merryman
about the money & of whom he got it, if any
thing?

Ans It is my impression that I was present but
I am not positive about it. If I was present
it was at my own house think it was on
the 15th day of August 1856 but of this, I am
not positive I don't know the numbers, they
were lands owned by my father John S Glegg
of Ohio. Saw the money paid some was
Canada money and remainder gold twenty
dollar pieces but I don't know the amount,
my husband has frequently told me how much
but I do not now remember the amount
he told me. I think a Mortgage was given
to secure the balance of the money but for
what amount I do not know. Some of the
money that was paid to my husband by Merryman
was Canada money & my husband hesitated to

1 1 P
takes, when Berryman said that if he could do nothing with it to return it to him and he would return it to the man of whom he got the money who as I understood it was the man to whom he ^{had} sold the land, and of whom he had got the money the day before.

And said Miss E. Wright on her cross examination to the following interrogatories make's answer as follows,

Int 1st Was there any deed & Mortgage acknowledged at your house on the day the money was paid?

Ans They were written or drawn there I think but I do not know whether they were acknowledged there or not.

Int 2nd Who wrote the deed & Mortgage?

Ans They were written by either Mr Berryman or my husband, I can't say which.

Int 3rd Are you certain that they were written at your house, at all?

Ans. I think so but am not certain of it.

Int 4th Was the deed passed over from Mr Wright to Mr Berryman and the Mortgage passed over from Mr Berryman to Mr Wright, at the time the money was paid?

Ans I do not know whether they were passed or not.

Int 5th Do you know where the deed and Mortgage were acknowledged?

Ans I think at Keithsburg,

Int 6th Was there any person at your house at that time before whom the acknowledgment of the deed and mortgage could be taken?

Ans There was not,

Int ~~7th~~ Do you know of any correspondence between Mr. Meryman & your father John S. Gregg prior to this sale about the purchase of these lands by Mr. Meryman?

Ans I do not know of any,

Mrs M E Wright

Subscribed sworn &c C M Key Master

Clark will tax the fees of Mary E Wright at the sum of \$7.50,

And the said Joseph W David being by me first duly sworn in the above cause on his oath to the following interrogatories makes answer thereto as follows

Int 1st What is your name, age, & place of residence?

Ans My name is Joseph W David, I am 25 years of age, I reside Menard County Illinois,

Int 2nd Are you acquainted with the parties to this suit or either of them. If you state how long you have known them or either of them?

Ans I am acquainted with the parties, the complainant is my father & I have known him ever since I can remember, I have known defendant since the 11th day of August 1861.

Int 3^d Where & with whom did you reside in the year
 summer of 1856?

Ans I resided near Watagus in Henry County Illinois
 with my father.

Int 4th Did you see the defendant at your fathers house
 at any time during the summer of 1856 and
 if you what was his business there if you know,
 and if to make any conveyance of lands or had
 lands, what was the price to be paid how much
 down, how much on time, if any mortg-
 age was to be given or any assumed
 what was the amount thereof, did Merripen
 say anything about a mortgage on the land he
 was conveying, if you what did he say, who had
 given a mortgage if any on the land, and
 what was the amount thereof, had he any
 deed of said land with him and from & to
 whom was said deed given?

Ans I saw defendant at my fathers house the first
 time on the 11th day of August 1856, he
 was there also on the morning of the 12th of
 August 1856 staying over night of the 11th
 and leaving on the morning of the 12th. The
 defendant then said he had come to see why
 my father had not been up to see him about
 some lands, and to close up a bargain which
 had been made between he & fathers some three
 weeks prior in regard to said land & to the

their said bargain to give the deed & receive the
 money therefor the lands, ^{he} came to sell and bargain
 were $W\frac{1}{2}$ & $S\frac{1}{2}$ q^r Sec 33 and the $E\frac{1}{2}$ & $E\frac{1}{4}$ Sec
 33 also $E\frac{1}{2}$ N² q^r Sec 32 in Township of
 Richland grove Mercer Co Illinois being the
 same lands on which my father & John Davis
 now resided the price as I understood it was
 to be eight dollars per acre, my father was to
 pay down \$640, by giving in cash \$600, & a note
 of \$40, to be ^{paid} in the coming fall and was to
 have time on \$1280 ^{or} There was one thousand
 dollars assumed in the deed to my father, the
 balance was in two notes of \$140, ^{or} each one
 due in a year from coming fall & the other
 in two years from the coming fall said
 notes bearing interest at 10 per ct, I did
 not hear him say anything about a Mortgage
 then existing, I heard nothing of any Mortgage
 except the one to be given by father to defend
 act, which was inserted in the deed and was
 for the sum of \$1000, ^{or} I understood from
 conversation of the parties that there was a Mos-
 tyage on the land and my father was to pay
 this Mortgage which was for \$1000, I believe, this
 Mortgage I understood had been given by Mr. Mes-
 syman, Messyman had a blank deed for said
 lands with him in which was inserted a clause
 in which my father was to assume a Mortgage

of \$1000, ^{or} then existing on the land. The deed was from defendant & wife to my father

Int 5th

What do you mean in your last answer by saying that your father was to give a Mortgage which was to be inserted in the deed?

Ans

I mean that he was to pay a Mortgage already given and which was a condition to be inserted in the deed.

Int 6th

Did you or did you not in connection with the transactions in ^{answer to} the 6th Interrogatory go to Keithsburg Mercer County Illinois If you for what purpose and at whose suggestion, Was there any ^{thing} said to you, about how you would find the Record. If you who said it & what was said, and what papers & moneys if any did you take with you?
(Defendant's Counsel excepted to the above interrogatory)

Answer

I did go to Keithsburg in that connection I went to search the records in regard to the tracts of land already described. I went at the instance & suggestion of my father, I think I think we were told that the records would show the title of the Lands in John Snuff I was told this by defendant, he Perryman said that we would find the title in John Snuff We took three notes one for \$40, to be paid in the coming fall, and two of \$140, ⁰⁰

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each. one due in one year from the coming fall & the other in two years from the coming fall, drawn by my father payable to Thomas Merryman, He took also \$590, of money to pay on this land

Ques 7th

Look upon the notes here exhibited attached to the deposition of John S David and marked exhibit "B" and say whether or no these are the notes you & your brother took with you to Keithsburg and state if you know when and where said notes were executed and in whose handwriting they are.

Ans

I think ^{that} they are the same notes, they were executed on the morning of the 17th day of August 1856 at my fathers house near Mataga Henry County Illinois. I think they are in the handwriting of Thos Merryman

Ques 8th

For what purpose did you take said notes & money spoken of in answer to interrogatory No 6th, and what did you do with the notes or money or with both?

Ans

We took them for the purpose of giving them to defendant, if we found the same as ^{we} Merryman had said. After some explanation from Alex Merryman about the records we on the 14th day of August 1856

handed the notes and the money over to dependant,

Q^{nt} 9th What was the day & Month you paid said notes and money to Merryman as testified to in your last answer, & what did he Merryman say (if anything) about paying out said money? What kind of money was paid & did Merryman give you anything for your father, If yea what was it? If a deed to what lands, what was the date thereof and was there any assumption or of a Mortgage in said deed, by whom & to whom given, who was the acknowledging officer, Had you seen the deed before, was or was not it the same deed Merryman showed to your father on the 12th of August 1856 mentioned by you in answer to interrogatory fourth,

(Interrogatory excepted to ^{by dependant} as leading)

Ans

We paid the money & notes on the 14th day of August 1856 Merryman said that he was that day or the next day to pay it over to the man of whom he bought ~~the~~ ^{land} The money was paid principally in gold, The gold was principally in twenty dollar pieces, there was about \$400 ^{paid} in Canada Bank Bills, Merryman gave a deed to us for father for the land by

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me before mentioned. This deed bore date not later than the 14th day of Aug. 1856 I think it was dated the 12th of August 1856, I think a mortgage was assumed in said deed for \$1500.⁰⁰ The deed was given by Dyer's wife to complainant. The deed was acknowledged before Thomas Winsade. I think I had seen said deed before. It was the same one shown by Merryman to my father on the 12th August 1856 as mentioned by me in answer to interrogatory 4th.

Ans 10

Did you or did you not in company with Merryman and any other person on or about the time of paying Merryman the money & notes heretofore testified to, go out upon the lands mentioned in the deed from Merryman to your father, if you did Merryman say anything as to who was the owner of said lands and for whom he was acting in the purchase thereof and whether your father was getting the Saulds at the same price he Merryman paid Gregg or make any excuse for the deed coming in his Merrymans name if you stated and particularly all that was said on such occasion.

(Excepted to as being generally leading)

Ans

On the evening of the 13th day of August

1856 in company with deft. & John S. David's
went out on the Lands mentioned in the
deed from defendant to father, I do not
know as there was anything said as to who
was the owner of the lands, I understood
that Merryman was acting as Agent for
Mr Gregg, I did not at that time hear
Merryman say any thing to the effect that
father was getting the land at the same price
that he gave Gregg, but I heard Merryman
say so the next morning, I understood from
Merryman that there was then a deed in
Ohio from Gregg to Merryman to be
acknowledged by Gregg and that was the
reason of father's receiving a deed from
him Merryman.

Int 11th Did you or did you not at any time
hear Merryman say any thing about your
father getting the lands testified of by you
as cheap as he Merryman got them,
and did you or did you not hear him
Merryman, assign any reason why the
deed should come to Gregg Merryman
& then from Merryman to your father, or
why said deed did not come direct from
Gregg to your father?

Ans

I did hear him say that my father was
getting the lands in question at cheap as

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he was getting them, I heard him say so on the 14th August 1856 and before that time at my father's house near Wataga Knox Co, Ill, and many times after I am not able to say what reason he did give why the deed did not come direct from Gregg to my father.

Qnt. 12th After the giving of the deed by Merryman to you for your father's at above state by you did Merryman at any time say any thing to you about the exchange of said deed & if yes what did he say, when & where what circumstances did he say in,
(Interrogatory excepted to by dep^t)

Ans I did hear him say something about exchange of Deed In the month of September 1856 he wished father & Mother to come up and make a visit, he said he wished to exchange deeds with father because the deed he had given to father bore date prior to the one he had received from Gregg, and that it would look bad on the record and asked if father had put his deeds upon record yet, this was about the 1st of September 1856

Qnt 13th How do you know the date of the transaction related by you at Wataga and the going to Keithsburg & the payment of the note & money

R

to Merryman, and what are your means of knowing said dates?

Ans

I did at that time and prior and since and now keep a journal in which I recorded these dates at the time of the transactions, and have consulted the said journal in fixing the date of these transactions. Did you at the time Merryman was at your father's on 12th August 1856 or at any other time hear Merryman say any thing about having received any money of your father on the purchase of the land in question prior to the said 11th August 1856. If yes what was said.

Int 14th

Ans

On the 14th August 1856 Merryman acknowledged that he ^{had} received ten dollars of father some three weeks prior thereto on the purchase of said lands.

And the said Jos W David on his cross examination makes answer to the following interrogatories as fol,

Int 1st

Did your father and Merryman make an exchange of deeds according to the request of Mr Merryman as you have hereto stated in your examination in chief.

Ans

I suppose they did, I often saw a deed from Merryman to father conveying the ^{same} lands and of a later date than that of the first deed.

Subscribed sworn &c

Attest My Master

Clerk tax gas &c David fee at \$1.00

And the said Mercella David being by me first duly sworn on her oath says as follows. My name is Mercella David reside in Mercer County Illinois, I am the daughter of Complainant. I know Defendant have known him since the summer of 1866. I know the lands in controversy. My father & brother John B David reside on said lands now. I have heard defendant speak about these lands when my father was talking about buying them. Land he thought Merryman was agent for Gregg for selling the lands. When Merryman was at our house after the bargain for said lands was made my mother said to him that we thought we were buying the lands of Mr Gregg. Mr Merryman said that it was just the same to us as if we had. That his taking the deed in his Merrymans name was only to facilitate the business and to make father less trouble that it came to us the same as if we had got it direct from Mr Gregg, and that if we had waited a short time longer we would have had to give ten dollars

per acre. I cant say exactly when this conversation was, but it was after the bargain was made, but it was after the 11th of August 1856

And on her cross examination she further on oath says,

The way in which I understood that Merryman was agent for Gregg was from hearing father say so
Subscribed ~~and~~ ^{Marcella David} C. M. Key Master
The clerk will tax fees of Marcella David at \$1.00
C. M. Key
Master,

Upon the back of said Deposition is the following endorsement, to wit:
Uri David vs T Merryman Custin
ory of Mrs Wright of W David Miss
David. For Complaint Masters fees \$3.85
Filed 24th April 1862 J. M. Mamon Clk

And afterwards to wit on the 29th day of April AD 1862 being
~~one~~ one of the days of the said April Term AD 1862 of said
Court the following proceedings were had in said cause to wit:

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Uri David vs T Merryman
Injunction &c

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This day this cause again coming
on for hearing and the Court not being fully satisfied

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in the premises Orders and decrees that this cause be referred to the Master in Chancery to take and report the proofs herein, which Decree of reference is as follows to wit,

State of Illinois }
Mercer County } } Mercer Circuit Court

Uri David }
vs }
Thomas Berryman & c }

In Chancery for Duquoin

Go the said Thomas Berryman or S. M. McCoy of S. Thompson his attys.

Take notice that by virtue of an order & decree of said Court rendered in the above cause at the April term 1862 of said Court the undersigned Master in Chancery for said County will, at the hour of ten o'clock P.M. on the 11th day of August AD 1862 at my office in said County, proceed to compute the amount received by said defendant from said complainant & not applied on the purchase of the premises described in the complainants bill in this cause filed. When and where you can be in attendance, if you wish and, offer any legal & proper evidence, or suggestion or arguments as you may desire; I further notify you that I will report such finding to the Court which said report I will file with the Clerk of said Court on the 1st day of September 1862

July 30th 1862
I do hereby accept service of the above notice by a copy being
this day served July 30th 1862
C. M. King Master & c
S. M. McCoy
Atty for Defts

State of Illinois }
Mercer County } ³⁸⁸ The Mercer Circuit Court
Do the September Term AD 1862

vs }
Thomas Merryman } In Chancery on Bill for
Injunction relief &c

To the Honorable Chas. B Lawrence presiding
judge of the 2nd judicial Circuit in said
State, sitting as a court of Chancery in and
for said County, at the above named term
of said Court, The subscriber, Master
in Chancery, in and for said County, duly
appointed by leave of Court would report,
that in pursuance of the order and decree
of this Court, rendered at the April
Term thereof AD 1862, in which said order
said Master was requested by the Court to compute
& report to the Court the amount of money
paid by said David to said Merryman over and
above the amount said Merryman actually
paid for the tracts of land in this cause
mentioned, he has taken the proofs relative thereto
& finds, 1st That said Merryman paid for said
lands the sum of Fifteen Hundred dollars.
2nd That the said David paid to said Merryman
over and above the said sum of \$1500.00 1st the
sum of one hundred and forty dollars or over
about the 14th day of August 1856. And the interest

thereon from that date to the 1st day of September 1862 at the rate of 6 per cent per annum amounts to the sum of Fifty & 75/100. 2nd The sum of One hundred and ten dollars or or about the 29th day of Sept 1857, and the interest due thereon from that date to this 1st day of Sept 1862 at the rate of 6 per cent amounts to the sum of \$32 45/100. And finally 3rd The sum of Twenty five dollars or or about the 11th day of Feby, 1859, and that the interest due thereon from that date to this 1st day of September 1862 at the rate of 6 per cent per annum amounts to the sum of \$5.25/100. 3rd That the whole amount thus over paid by the said David to the said Messymen of Principles and 6 per cent interest thereon at this date is the sum of Three Hundred Sixty three and 45/100 Dollars, ~~all~~ of which amount \$275⁰⁰ is principal and \$88.45/100 is interest thereon in the manner & at the rate above stated,

All which is respectfully reported this 1st day of September AD 1862

The \$5⁰⁰

Master in Chancery &c

Upon the books of which is the following orderments, to wit; Bond of David and Thomas Thompson, Chancery, Report of Master in Chancery of Great State at the Special Term 1862 and the Court having examined said report and being fully satisfied therein

approves the same and renders the following decree to wit:

State of Illinois Mcrae County Circuit Court
In Chancery, September Term AD 1862.

Uri David ————— Complainant

vs

Thomas Berryman ————— Defendant

Be it remembered,
at the April Term of said Court, held at
Alledo in said County AD 1862 this cause
then and there being ready for hearing, then
came the parties by their Solicitors, and this
cause came on to be heard on Bill of Complaint
of plaintiff and answer of defendant, and
the replication thereunto together with the
exhibits and testimony, and was argued
by counsel. In consideration whereof the
Court did find the equities of the case
with complainant and adjudged him
to have the relief prayed for,
And it appearing among other things prayed
for was that, an account might be taken
of certain monies charged in complainant's
bill of Complaint, at having been paid to
defendant, and not by him appropriated in
the purchase of the land in complainant's
bill mentioned, and the Court not being
fully informed and advised in the premises
it was ordered that the same be referred to
Caleb Hays Master in this Court to ascertain

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the amount thereof and report the same at the next
 term of this court, And the said Master having
 reported the amount of monies so received and the
 interest thereon to be on the first day of September
 AD 1862 Three hundred sixty three 457.00 dollars
 and it appearing that said report is true and
 correct the same is hereby confirmed, and now
 at this Term of Court this cause coming on for
 a final hearing and decree upon the matters
 heretofore found to be true upon the bill of Com-
 plaint and answer of defendant and replication of
 thereto, together with the exhibits and testimo-
 ny examined and considered at the April
 Term, and the report of C. H. May Master herein
 confirmed at this term of Court, In consi-
 deration whereof the Court do find the equities
 of the case with complainant and that he is
 justly and equitably entitled to the relief prayed for
 It is therefore ordered adjudged and decreed that
 the two promisory notes in complainant's bill
 mentioned as being for one hundred and
 forty dollars each and bearing date August 29th
 1836 and upon which suit is now pending
 in the Circuit Court of Mercer County
 & State of Illinois wherein the said Thomas Morganman
 is plaintiff and the said Uri David complain-
 ant herein, is defendant, to be delivered up
 to Complainant herein to be cancelled and

That said notes be held for naught, and that the injunction heretofore granted in this case enjoining proceedings in said suit at law is hereby made perpetual. And that the said Thomas Meryman defendant herein stand charged as trustee to Levi David plaintiff herein in the sum of three hundred sixty three 45/100 dollars and interest thereon from the date of this decree.

And it is further Ordered adjudged and decreed that the said Thomas Meryman pay said sum of three hundred sixty three & 45/100 dollars within thirty days from date of this decree to complainant, together with his costs of suit herein to be taxed and in default thereof complainant have Execution for the same as in case of judgments at law

C. B. Lawrence

Upon the back of which is the following endorsement, to wit;

Levi David vs Thomas Meryman,

Final decree. D. 1535

Filed 1st Sept 1862 of the Meryman Ck
B. H. Burnett & Son

Complainant's Solicitor

Thereupon came Defendant and prayed an appeal to the supreme Court of his State, which prayer the Court grants upon condition that the defendant give security in the sum of

Eight Hundred Dollars in twenty days from this date with
John S. Thompson as security.

And afterwards to wit: on the 20th day of September
AD 1862 came the said Defendant and filed his appeal
bond herein in the words and figures following to wit:

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Know all men by these presents that we Thomas
Merryman principal and John S. Thompson security
both of the County of Mercer and State of Illinois are
held and firmly bound unto Uri David of the
same place in the penal sum of Eight hundred
Dollars lawful money of the United States for the payment
of which well & truly to be made we bind ourselves our
heirs, Executors & Administrators jointly, severally & firmly
by these presents Witness our hands and seals This 15th
day of September 1862.

The condition of the above bond is such that
whereas the said Uri David before the Circuit
Court in and for the County of Mercer & State of
Illinois & on the Chancery side of said Court at
the September Term 1862 of said Court did obtain
a final order & Decree of said Court against said
Thomas Merryman for the payment by said Merry-
man to said David the sum of Three hundred
Sixty three & $\frac{45}{100}$ Dollars (\$363.⁴⁵) in thirty days
and further perpetually injoining the said Merryman
from from the collection of ~~two~~ certain provi-
sory notes then sued on in said Court, and
for all costs in said Chancery suit made & expended
from which said final order & decree of the said
Court, the said Thomas Merryman the defendant he the
prayer & appeal to the Supreme Court of the
State of Illinois. Now if the said Thomas Merryman
shall well and truly pay or cause to be paid unto said David

whatever judgments orders or decrees & all costs interest
& damages in case said order & decree shall be affirmed
and shall stand by & perform all & every decree of
said ^{Supreme} Court & shall duly prosecute this said appeal,
then the foregoing bond to be void otherwise to remain
in full force and effect.

Thomas Merryman *TB*

John Thompson *JB*

Upon this appear the following endorsement
viz: *Uri David vs Thomas Merryman Appeal*
Bond Filed 20th September 1862

of Abner Hannon Clerk
By A P Brown D. C. J.

State of Illinois,

Mercer County & J. James M. Maunon Clerk of the Circuit
Court in and for said County in the State of Illi-
nois do certify that the foregoing is a full true and complete copy
of the foregoing order of Court of said Court at the September
Term thereof A.D. 1861: of the lib and bond filed therein, of the writ
of Injunction and Summons issued in said case of the
Defendants reasons for his motion for the dismissal of the bill,
of Defendants answer; of Plaintiffs Replication;
of the notice given by the Master in chancery; of the Masters
Report and of the Decrees rendered therein also of the appeal bond
filed therein; also a full and true copy of all the record in said
case also a full copy of the evidence in said case, and
which includes a full and true copy of all the record

and files of said Court, all of which appears to me
to be correct books and files of my Office.

In Testimony of which I hereunto set my name
and affix the seal of our said Circuit Court at
Office in Aledo this 7th day of April 1863



J. M. Wagoner Clerk
By N. P. Brown Deputy

Now comes the said Thomas Mer-
dymour Appellant by Glover Cook & Camp-
bell his Attornies and says that in the
record ^{of record} aforesaid and in the recitation of
the Decree aforesaid there is manifest error
in this to wit

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ERRORS ASSIGNED.

- 1st. The Court erred in finding the equities in said case, to be with the said complainant.
- 2d. The Court erred in confirming the report of the masters in said cause.
- 3d. The Court erred in rendering the decree aforesaid in manner and form aforesaid.

B. C. Cook

143 188

Merriman

David

Filed April 22nd 1863

L. Leland
Clerk