

8761

No. _____

Supreme Court of Illinois

John R. Randall

vs.

Jacob Longer

71641  7

Louisville Ill
August 7th 1838

G. S. Preston Esq

Sir

I herewith Enclose
to You a Transcript of a decree entered
in Clay Circuit Court which I wish
You to file in Your office & issue
a Summon against Jacob Senger
adms &c, directed to the Sheriff of
Clay County for Service on defendant
Send the Summons so that Service
can be made in time for the case to
be decided at next Term of Supreme
Court

Yours Respectfully

W. Stoker atty
for Plff in Error
43

Randall

vs.

Longer adms.

} Error to Clay.

Additional authorities for
Defendant in error.

If the record recites that due notice was given
by publication, it will be presumed that the
Court had evidence before them showing the legality
of the publication, Peake vs. Reed 14 Missouri 82,
Wright v. Marsh, See & Delavan 2 Greenes Iowa Rep. 75,

Randall

vs,

Singer adm^r;

Additional Brief for
Defendant in error,

State of Illinois }
Clay County } Of the October term
of the Clay County Cir-
cuit Court

To the honorable Justice Hearlin Judge of the fourth
Judicial Circuit Embracing the County of Clay
In Chancery sitting

Humbly Complaining I sheweth unto your honor
your orator Jacob Singer administrator of the Estate
of Jacob Micenhammer decd of the County of Clay &
State aforesaid that on or about the 15th day of May
A.D. 1849 John R. Randall became & was indebted to
your orator as administrator of aforesaid, in the sum of
two hundred & ninety six dollars, and being so indebted in
order to secure the payment of the said Sum of Money he
the said John Randall Made & Executed unto the said Jacob
Singer ^{administrator as} aforesaid, one note of hand for the sum of two hundred and
ninety six dollars, Executed the 15th day of May 1849, Payable
twelve Months after ^{the} date thereof, and in order further to
secure the payment of the said note of hand for the sum
aforesaid, and the said John R. Randall being or pretending
to be seized & possessed of a certain lot or parts of land herein
after mentioned, executed & delivered unto the said Jacob Sing-
er administrator as aforesaid a certain indenture of Mortgage
bearing date the 15th day of May ^{A.D.} 1849 made by the said
John R. Randall party of the first part and Jacob Singer
administrator of the Estate of Jacob Micenhammer party
of second part, du & by which said indenture of Mortgage
the said party of the first part did grant, bargain sell & con-
vey unto the said Jacob Singer administrator as aforesaid
& to his successors forever three lots of ground lying & being
situate in the County of Clay & State of Illinois & known &
described as the South half of the East half of the South
West quarter of section No five (5) Township No (2) North
of Range No (6) East (forty) acres The North West quarter

of the North East quarter of section No (8) Township two
North of Range (6) East (40) acres. The South West quar-
ter of the South East quarter of section No five, Township
two, North Range 6 East (40 acres)

Do have and to hold the said premises together with all and
singular the rights, profits, benefits and appurtenances there-
to belonging or in any wise appertaining to the only proper
use & benefit of the said party of the second part & to his
successors forever. Provided always that these presents are
upon the following conditions. That the said party of the
first part, to wit: John R. Russell has this day exe-
cuted & delivered unto the said party of the ^{second} part, to wit:

Jacob Souger administrator, his certain obligatory note of
hand, bearing even date herewith and to the said Jacob Sou-
ger of said for the amount of two hundred & ninety six
dollars due twelve months after date hereof as will more fully
appear by reference to said note. Now if the said par-
ty of the first part shall well & truly pay or cause to be
paid said note as above described according to the tenor
& effect thereof then this obligation to be void anything
therein expressed to the contrary notwithstanding.

And your orator further shews that the said indenture of
Mortgage was in due form of law acknowledged before Jas
Monical a Justice of the peace in & for said County and duly
recorded in the office of the recorder at Louisville in Book
C Page 283 on the 2^d day of July 1849 to which inden-
ture of Mortgage & Registry your orator begs leave to refer.

Your orator further shews that the said note for the sum of
two hundred & ninety six dollars, has long since been due &
payable, and although the said J. R. Russell has often been
requested to pay said note yet he has not paid said note nor
any part thereof but so to do has ^{refused} to wholly ^{refused} to pay
any part thereof, and the said note still remains due & payable
together with such interest as has accrued thereon. Wherefore
your orator solicits the aid of this Hon Court in the

Collection thereof and to that End prays that the said
defendant may be enjoined to make true, full & perfect
answer to all & Singular the charges above set forth, fully &
particularly according to the best of his ~~ability~~ knowledge
& belief as if the same were being repeated and the partic-
ularly interrogated thereto and that the said defendant may
be decreed & ordered to pay to your orator the principal
sum of Money now due and such interest as may be due
or shall hereafter become due and payable together with
the costs & charges in this behalf expended by a short day
to be appointed by this Honorable Court and in default
thereof that this defendant and all persons claiming
under him may be foreclosed of & from all Equity of
Redemption in & to the said Mortgage premises and
may by order & decree of this honorable Court be sold &
out of the money arising from the sale thereof your orator may
be paid the amount due him on said note together with
all costs & charges by your orator in this behalf expended
& sustained, and that your orator may have such other
and further relief in the premises as may be proper
& agreeable to equity and good Conscience. And may your
honor grant to your orator the peoples writ of Subpoena
under the seal of this honorable Court directed against
the said John R. Russell as aforesaid causing him to be
& appear at the next term of this Court to be holden at
Yonerville in October next and to stand to & abide by
such order & decree as may be made in the premises and
may be in accordance with Equity & good conscience
and as in duty bound I shall ever pray & c

Wm. Stoper

Solicitor for Court

Jacob Souger
adms Compt

State of Illinois }
Clay County } The people of the State of Illinois
to the Sheriff of said County Greeting: We command
you to summon John R. Randall to be & appear before
the Circuit Court of Clay County on the first day of
the next term thereof, to be holden at the Court house
in Louisville on the third Monday in the Month of October
next to answer unto Jacob Souger administrator touching the
matters & things contained in his bill for foreclosure of
Mortgage, filed in our said Court on the Chancery side thereof;
and of this writ Make legal Service & due return
at the time & place aforesaid and have you there this
Writ &c. Witness Francis Apperson Clerk
of our said Court at Louisville
this 4th day of August A. D. 1850
Francis Apperson Clerk

Jacob Souger adm^r &c. } October the 19th 1850
vs } Ret not found 10
John R. Randall } S. B. Walker Sheriff
Summon }

State of Illinois }
Clay County } Personally appeared before me the
undersigned Wm. Stoker adm^r of Jacob Meisenhammer
who after being duly sworn deposes & says that he
is informed and doth verily believe that John R.
Randall hath gone out of this State, to wit: gone to
California and further this affiant says not
Sworn to & Subscribed } Wm. Stoker
this 10th day of August }
A. D. 1850 }
Francis Apperson Clerk }

At a Circuit Court begun & held at the Court house in Louisville within and for the County of Clay and State of Illinois on Monday the 21st day of October A. D. 1850 present the honorable Justin McArthur Judge thereof the following order & decree was had & Entered of Record to wit:

Jacob Souger assign of J. Bill for foreclosure
Jacob Misenhamm assign of J.

vs

John Randall. Now at this day came the Complainant by his solicitor and the defendant being three times solemnly called came not but made default. And it appearing to the satisfaction of the Court that due notice had been given according to law by publication of the pendency of this suit whereupon it is ordered and decreed by the Court that the matters & things in Complainant's bill set forth & adjudged be taken for confessed as against the said defendant & this cause coming on to be heard on bill exhibited & proofs. It is finally ordered & decreed by the Court that the Mortgage premises be sold to wit: The South half of the East half of the South West quarter of Section five (5) Township two North of Range six East 40 Acres, And the North West quarter of the North East quarter of Section Eight Township two North of Range six East 40 Acres; and the South West quarter of the South East quarter of Section five Township two North Range six East 40 Acres. After twenty days Equity Subject to twenty days redemption. And that Abraham B. Walker be appointed Commissioner to sell & convey said premises, under this decree and after paying the said Complainant the sum of two hundred & ninety six dollars with interest on the same from the 15th day of May 1850 the amount of Indebtedness set forth in said Mortgage. Together with his Costs herein expended and that he report his actings under this decree to the

next term of this Court to which time this Cause is Court
inued & C. Witness Francis Apperson of the said Cir
cuit Court of said County & the seal thereof at Louis
ville the 28th day of November A. D. 1850
Francis Apperson Clerk

Sold on the 31st day of December A.D.
1850. To Hiram R. Harris for the
Sum of \$296. S. B. Walker Comr

Jacob Souger Administrator
of Jacob Meisenhammer dec'd } Bill for foreclosure
vs
John R. Randall }

The undersigned a Commissioner appointed
under a decree of this Court rendered herein at the Octob
er term 1850 Respectfully Reports.

That on the 31st day of December A.D. 1860
after having given the legal notice I proceeded to sell at
public vendue the lands and appurtenances described in
said decree To wit, The South half of the East half
of the South West quarter of Section five Township two
North of Range six East 40 Acres, The North West qua
rter of the North East quarter of Section Eight Towns
hip two North of Range six East 40 acres, And also the
South West quarter of the South East quarter of section
five Township two North of Range six East 40 acres

Whereupon Hiram R. Harris became the purchaser of the
same at & for the sum of two hundred & ninety six dollars
after having offered ^{the} three separate lots according to the above
description he being the highest & best bidder therefor and
the said Hiram R. Harris having fully paid up the said
sum of Money, I thereupon executed to him a deed for
the above lands & appurtenances, I also paid over to said

Complainant the said sum of two hundred and ninety
six dollars after deducting therefrom the costs &c
All of which is Respectfully submitted.
S. B. Walbridge,

Received & Approved in Open Court March
24th 1851. filed March 24th 1851
W. Apperson Clerk

State of Illinois
Clay County I. Jackson P. Heringate
Clerk of the Circuit Court of said County do
Certify that the foregoing transcript is a correct
Copy of all the papers, orders, decrees & report of
Commissioner &c, in the case to which they apper-
tain. this June 25th A. D. 1852

In testimony whereof I have hereunto
Subscribed my name as Clerk as of
oresaid. & affixed the seal of said
Court at my office in Louisville
Jackson P. Heringate Clerk

Jacob Souyer ad
vs
John R. Randell

Copy of Papers &c.

Case Decree Entered
October Term 1850

Filed Sept 12th 1853
J D Prista clk
by D Baughapt

Repaid \$5.00

Heat. C. J. This was a bill in chancery to foreclose a mortgage. A summons was returned not served. An affidavit of the non residence of the mortgagor appears in the record, and the decree of foreclosure states, that "it appears to the satisfaction of the court, that due notice has been given by publication of the pendency of this suit." There is nothing else in the record to show that the defendant was before the court. This is not sufficient to support the decree. In order to sustain a decree by default, it should affirmatively appear that the defendant has been regularly brought into court. A complainant is not entitled to a decree pro confesso, until the defendant has been served with process, or has been regularly notified of the pendency of the suit. The latter must have actual or constructive notice of the proceeding against him, before his default can be properly entered. The record fails to show any such notice in this case. The statute prescribes the mode in which a non-resident defendant is to be brought into court. It requires an advertisement to be published in a newspaper for four successive weeks, "containing notice of the pendency of such suit, the names of the parties thereto, the title of the suit, and the time and place of the return of the summons in the case". This advertisement is the act of the clerk, and it performs the same office as process. It is as much a part of the record of the case, as is the summons issued to the sheriff.

Vairin v. Edmonson, 5, Gilman, 270. It is not enough for a decree to recite that the defendant has been duly served with process, or that he has been regularly notified of the pendency of the suit; but the summons or advertisement should appear in the record, so that this court may determine whether the statute has been complied with.

(371-2) The decree must be reversed, and the cause remanded

Randall & Singer
Opinion
Heath

Randall

as } Error to Clay
Singer Adm }

The Counsel for Defat in Error Submits
the following Brief

1st Error assigned - Summons was issued & returned
Not found, as per Record

2nd Constructive Notice was given by publication

3 The Mortgage was before the Court, which was suf-
ficient Evidence to authorize the decree
When decree is taken by default, It is not neces-
ary to preserve the Evidence

3rd Scam 294

4th " 135

The report of Commissioners is a part of the decree
or Judgment & If Defat below was dissatisfied
he might have objected to the Rep. of Com

4th Scam 156

4 Affidavit of Non Residence was filed ^{"per} publication"
Made in a newspaper, as per Record

5 Under the laws & practice of Courts of Illinois, There
is no strict foreclosure of a Mortgage - The premises
Can only be sold

6th True, no provision made for disposal of Surplus of
Sale & none was necessary, for it is the legal
duty of the Commissioners to report the Surplus
if any to the Court & the Court will order the
disposition of the Surplus

3rd Gilman 547

But in this Case there was a deficit instead
of a Surplus, & no one being injured, even if it is
Error, this Court will not interfere

7 The 20 days Equity of Redemption, is sufficiently clearly giving deft below, 20 days time to Surpcede sale by paying the debt

8 The time of Redemption (20 days) is reasonable - The time given is a matter of practice, and is regulated by the discretion of the Court

2nd Ann. ^{U.S.} Digest page 279 - Sec. 157

9 The decree though informal is substantially good. As to amt of Judgement vide

Milman vs Bank of Ill 1st Gill 667

2nd U S Dig page 142 - Sec 111

" " " " Sec 113

Procher & Houts

Atty for Deft in Error

John R. Randall

vs

Jacob Singer Adam

Brief submitted by
Defendants Counsel

This case on motion of the plaintiff is
dismissed brought by the Plaintiff in error

STATE OF ILLINOIS, } ss.
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Clay* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Clay*

County, before the judge thereof, between

Jacob Singer Admtr of
Complainant and
John R Randall

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

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

Jacob Singer
admr of

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said notice, together with this writ.

Jacob Singer admtr of

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *12th* day *September* in the year of our Lord, one thousand eight hundred and fifty-*three*

A P Pruster Clerk of Supreme Court.
by D B angb acpy

W. B. D. Holcher Sheriff of Clay County, State of Missouri
 note by James H. Jackson & J. S. Holcher to the Court
 and return to Jacob Singer a sum of \$1.20 for the same
 by copy of this writ as directed by the Court 5th 1843
 W. B. D. Holcher Sheriff of Clay
 County Missouri

John R Randall
 vs
 Jacob Singer
 admts H.

Subpoena

Sheriff's fee
 Serving writ 50
 Mileage 12 miles 60
 Returning 10
 \$ 1.20
 J. B. Holcher J. C. Costly

THE COURT OF CLAY COUNTY, MISSOURI
 IN THE Spring of
 1843

Jacob Longes
adms vs,

vs
John, R. Randall

Transcript

Amended Record

Filed 15th Nov 1854

Henry D. Preston M

By A. Schuster D.C.

At a Circuit Court began and held
at the Court House in the Town of Louisville
within and for the County of Clay & State of
Illinois. On the 21st day of October A.D. 1857
Present the Honorable Justin Kearse Judge
of the said Court.

The following Cause came
on to be heard by Petition, ^{had it entered of record} & the following were
Jacob Souger adm^r of }
Jacob Misenheimer dec^d } Bill for Foreclosure
vs }
John R. Randall }

State of Illinois }
Clay County } Of the October Term
of the Clay County Circuit
Court A.D. 1857

To the Honourable Justin Kearse
Judge of the fourth judicial Circuit embracing the
County of Clay In Chancery sitting —

Humbly Complaining Sheweth unto Your
honour Your Orator Jacob Souger administrator
of the Estate of Jacob Misenheimer dec^d
of the County of Clay & State aforesaid. That on
or about the 15th day of May A.D. 1849 John
R. Randall became & was indebted unto Your
Orator as administrator aforesaid in the
Sum of Two hundred & ninety Six Dollars, and
being so indebted in order to secure the payment
of the said Sum of money he the said John R.
Randall made & Executed unto the said Jacob
Souger administrator as aforesaid one note
of hand for the Sum of Two hundred and
ninety Six Dollars Executed the 15th day of May

1849 payable twelve months after the date
thereof and in order further to secure the payment
of the said note of hand for the sum aforesaid
and the said John, N. Mandell being or pretending
to be seized & possessed of a certain lot or tract of
land herein after mentioned executed and delivered
unto the said Jacob Souger administrator as
aforesaid a certain Indenture of Mortgage bearing
date & ~~date~~ the 15th day of May A.D. 1849 made
by the said John, N. Mandell party of the first
part and Jacob Souger administrator of the
Estate of Jacob Micenhammer party of the second
part. In & by which said Indenture of Mortgage
the said party of the first part did grant bargain
sell & convey unto the said Jacob Souger administrator
as aforesaid and to his Successors forever three
lots of ground lying & being situate in the County
of Clay & State of Illinois and known & designated
as the South half of the East half of the South
West quarter of Section No (3) Township No (3) north
of Range No (6) East forty acres, The north West
quarter of the North East quarter of Section No (8)
Township two north of Range (6) East (40) acres
The South West quarter of the South East quarter
of Section No (3) Township two north of Range (6)
East (40 acres) To have and to hold the said
premises together with all and singular the rights
profits benefits and appurtenances thereto belong-
ing or in anywise appertaining to the only
proper use & benefit of them of the said party of
the second part & to his Successors forever
Provided always that these presents are upon the

following Conditions That the Said party of the first part (To wit) John R Randell has this day Executed and delivered unto the Said party of the Second part (To wit) Jacob Souger administrator his writing obligatory or note of hand bearing even date herewith and to the Said Jacob Souger aforesaid for the amount of Two hundred & ninety Six Dollars due twelve months after the date thereof as will more fully appear by reference to Said note, now if the Said party of the first part shall well and truly pay or cause to be paid said Said note as above described according to the tenor and effect thereof then this obligation to be void any thing expressed to the contrary notwithstanding

And Your Orator further Shews that the Said Indenture of Mortgage was in due form of law acknowledged before Jas Moniel a Justice of the Peace in & for the Said County, and duly Recorded in the office the Recorder at Lewisville in Book E, page 283 on the 9th day of July 1849 to which Indenture of Mortgage & Registry Your Orator begs leave to Refer

Your Orator further Shews that the Said note for the sum of Two hundred & ninety Six Dollars has long since been due and payable and although he the Said J. R. Randell has been often requested to pay said note, Yet he has not paid said note, nor any part thereof, but so to do has hitherto wholly neglected & refused to pay any part thereof and the Said note still remains due & payable together with such interest as has accrued thereon

Wherefore Your Orator solicits the aid of this honourable Court in the collection thereof and

to that end prays that the said defendant may be
enjoined to make true full & perfect answer to all
& singular the Charges above set forth fully &
particularly according to the best of his knowledge &
belief as if the same were being repeated and he
particularly interrogated thereto and that the said
defendant may be decreed and ordered to pay to Your
Orator the principal sum of money now due and
such interest as may be due or shall hereafter
become due and payable together with the costs &
charges in this behalf expended by a short day
to be appointed by this Honourable Court -
and in default thereof that this defendant and
all persons claiming under him may be foreclosed
of and from all Equity of Redemption in & to the
said mortgaged premises. And may by order and
decree of this honourable Court be sold, and out
of the money arising from the sale thereof Your
Orator may be paid the amount due him on said
note together with all costs & charges by Your Orator
in this behalf expended & sustained, and that Your
Orator may have such other & further relief in the
premises as may be proper & agreeable to Equity &
good Conscience. And may Your Honour grant
unto Your Orator the Peoples writ of Subpoena under
the Seal of this honourable Court directed against
the said John R. Randall as aforesaid causing
him to be and appear at the next term of this Court
to be holden at Lewisville in October next and to
stand to and abide by such order & decree as may
be made in the premises & may in accordance with
Equity & good Conscience and as in duty bound

Shall ever pray &c
Jacob Longer adm^r } Wm Stokes Solicitor
Compl^r } per Compl^r
Filed Aug^y 4th 1830
J Apperson Clk

State of Illinois }
Clay County } The People of the State of Illinois
to the Sheriff of Said County Greeting—
We Command You to Summon John W Randall
to be & appear before the Circuit Court of Clay
County on the first day of the next term thereof
to be holden at the Court house in Louisville
on the third Monday in the month of October
next to answer unto Jacob Longer adm^r &c
touching the matters & things contained in his Bill
for Foreclosure of Mortgage filed in our said
Court on the Chancery Side thereof and of this
Court make legal return & due return at the
time & place aforesaid and have You then take
this Court Witness Francis Apperson Clerk of our
Said Court at Louisville the 7th day of
August A D 1830 Francis Apperson Clerk
Not returned Oct 19th 1830 not found
S. B. Walkersheff

State of Illinois }
Clay County } Personally appeared before me
the undersigned Wm Stokes attorney of Jacob
Longer adm^r of Jacob Meenhamer who after
being duly sworn deposes and says that he is
informed and doth verily believe that John W

Randell hath gon out of this State to wit gon
to California and further this affiant sayeth nor
sworn to & subscribed before, 3 Wm. Stoker
me this 10th day of August 3
1856 3

Francis Apperson Clerk

This Indenture made this fifteenth day of May
in the Year of Our Lord one thousand eight
hundred and forty nine Between John R
Randell of the County of Clay and State of Illinois
of the one part & Jacob Senger administrator
of the Estate of Jacob Muenhimer deceased of
the County & State aforesaid of the Other part.

Witnesseth that the Said John R Randell for
and in consideration of the Sum of Two hundred &
ninety Six Dollars to him paid by the Said party
of the Second part the Receipt Whereof is hereby
acknowledged hath granted bargained & sold &
by these presents doth grant bargain sell alien &
Confirm unto the Said party Second part as
Such administrator & to his Successors in office
forever all that tract or parcel of land situated
in the County of Clay in the State of Illinois to wit
The South half of the East half of the South west
quarter of Section five in Township two north of
Range Six East containing forty acres & the North
west quarter of the ~~Sixth~~ North East quarter of Section
Eight in Township two north of Range Six East
containing forty acres also the South west quarter
of the South East quarter of Section five in Township
Two north of Range Six East containing forty acres

To have the premises aforesaid with all privileges
& appurtenances thereunto belonging or in anywise
appertaining to him the said Jacob Souger
administrator as aforesaid and to his Successors
in office forever, Provided always that these
presents are upon the Express Condition that if
the said John R. Randle his heirs Executors or
administrators shall pay or cause to be paid to
the said Jacob Souger as such administrator or
his Successors in office the sum of Two hundred
and ninety six dollars by the expiration of Twelve
Months from the date hereof together with the
Interest that may accrue thereon in manner partic-
ularly Specified in a certain note or obligation
bearing even date with, executed by the said John
R. Randle to the said Jacob Souger as such admin-
istrator then and from thence forth these
presents ~~to~~ Every thing herein contained shall cease
or be void anything herein to the contrary to the
contrary notwithstanding

In Witness Whereof the said party of the first part
has hereunto set his hand & seal the day & Year
first above writing
signed sealed & delivered in presence of
John R. Randle
James Monick

State of Illinois
Clay County

I James Monick a Justice of the Clay County
Peace of said County do certify that John R. Randle
whose signature appears to the foregoing Mortgage and
who is personally known to me to be the person

described in and (Who executed the same, did acknowledge the same to be his free and voluntary act and deed for the uses and purposes therein mentioned, Given under my hand and seal this 15th day of May 1849

James Monick J.P.

Jacob Longer admits of
Jacob Misenhimer died

vs
John R. Randall

Bill for Foreclosure

Now at this day comes the Complainant by his Solicitor and the defendant being three times solemnly called came not but made default and it appearing to the satisfaction of the Court that due notice had been given by publication of the pendency of this Suit, Whereupon it is ordered and decreed by the Court that the matters and things in Complainant's bill set forth and alleged be taken for confessed as against the said Defendant and this cause coming on to be heard on Bill Exhibits & proofs it is finally ordered and decreed by the Court that the Mortgage premises be sold, To wit; The South half of the East half of the South west quarter of Section five (5) Township Two north of Range Six East 40 acres, and the North west quarter of the North East quarter of Section eight Township Two north of Range Six East 40 acres and the South west quarter of the South East quarter of Section five Township Two north of Range Six East 40 acres

after twenty days Equity Subject to Redemption
and that Strother B. Walter be appointed
Commissioner to Sell and Convey Said premises
under this decree, and after paying the Said Compla-
inant the Sum of Two hundred and ninety
Six Dollars with interest on the Same from
the 15th day of May 1830 the Amount of indebtedness
set forth in Said Mortgage together with
his costs herein expended and that he report
his actings and doings under this decree to the
next term of this Court to which time this
Cause is Continued &c,

Justin Hartin Judge
at a Circuit Court began and held at the
Court house in Lewisville within & for the
County of Clay on the 3dth day of March A.D.
1831 Present the Honorable Justin Hartin
Judge of the Said Court. The following order
was had & entered of Record

Jacob Longer admr of }
Jacob Muenhimer died } Bill to foreclose,
vs }

John R. Randall } At This day comes the
Commissioner appointed herein to make Sale &c
and made the following Report which is read &
approved by the Court and made a matter of Record
in the words & figures following to wit

Jacob Longer administrator of
Jacob Muenhimer died

vs. } Bill for foreclosure
John R. Randall } The undersigned Commis-
sioner appointed under a decree of this Court rendered

herein at the October Term 1830, Respectfully Reports
that on the 31st day of December A.D. 1830 after having
given legal notice I proceeded to sell at public
vendue the lands and appurtenances described
in said decree, To wit The South half of the
East half of the South east quarter of Section
five Township two north of Range Six East
40 acres The north west quarter of the North East
quarter of Section eight Township two north of
Range Six East 40 acres And also the South
West quarter of the South East quarter of Section
five Township two north of Range Six East 40
acres Whereupon Hiram, R. Jarvis became the
purchaser of the same at and for the sum of
Two hundred and ninety six Dollars, after having
offered the three separate Lots according to
the above Subdivision he being the highest
and best bidder therefor, and the said Hiram
R. Jarvis having fully paid up the said sum of
Money I thereupon executed to him a deed for
the aforesaid lands and appurtenances I also
paid over to said Complainant the said
sum of Two hundred and ninety six Dollars
after deducting therefrom the costs &c,
all of which is Respectfully submitted.

Commissioner allowed \$1250 J. S. B. Walker Comr.

State of Illinois J. S.
Clay County J. Jackson P. Mungate
Clerk of the Circuit Court of said County do certify
that the foregoing is a true and correct transcript
of all the papers on file in my office and ^{also} of the

decree rendered by the Clay Circuit Court in
the cause to which they appertain wherein
Jacob Sanger Administrator is Complainant
vs John R. Randall is defendant.

Given under my hand and the
Seal of the said Court at Louis-
ville this 29th day of September
A.D. 1854.

J. P. Hargate Clerk

In the Supreme Court First Grand Division
Nov term at D 1854

John W. Randall plaintiff error

vs
Jacob Dougan adm^r } error to Clay
of Jacob Wisenhausen }

and now on this day came the
plea in error by Richard, S. Nelson ~~defendant~~
~~his~~ attorney and says that in
the record and process in the above
styled cause there is manifest error
in this the Judgment therein was rendered
in favor of the complainant whereas the
Judgment of the Court ought to have
rendered in favor of the defendant

and for assigning errors specially
the 1st defendant first that it does not appear
from the record that the defendant was ever
summoned to appear ~~at the~~ before the
Circuit Court of Clay County, to answer Complain^t's
Bill

2nd That it does not appear from the
record after that any process actual or
constructive was ever served upon him
the 1st defendant previous to the rendition of
said Decree against him

3rd That the said Decree rendered against
him the 1st defendant without any proof

4th That no affidavit of nonresidence was
filed in the Clerk's office, or notice of pending
of said suit in a public newspaper previous
to the rendition of said decree as required by law

5th That the Decree rendered in said cause
is erroneous in this that Judgment of foreclosure
was not first rendered before a sale of the premises

was decreed by said Court,

6th That there is no disposal of the Surplus of monies arising from the sale of the mortgaged premises stated on the face of said decree - if such surplus should remain after the payment of the debt & costs there is no mention

7th That said Decree provides that the premises be sold after 20 days equity subject to redemption which order and Decree of said Court is too indefinite and uncertain

8th That the time limited by said Court in its decree after which the premises were to be sold is unreasonably short

9th That the said Decree of said Court is too uncertain and generally vague as to render it unintelligible and for these and divers other errors in & record and proofs contained the plaintiff in before says that there is manifest error therein and that in the rendition of said decree rendered there in the said Circuit Court of Clay County manifestly error wherefor for these causes a first the plaintiff prays that the judgment ~~above~~ and the decree ~~above~~ be annulled reversed and be held for naught &c

Richard S Nelson atty
for the plaintiff

Comes The Defat in Error by his counsel and says that there are no errors whatever in the said Record & proceedings; but on the contrary thereof that the said decree and proceedings of said Court are regular, certain & legally sufficient and this he is ready to verify wherefore he
Becker & Houts
attys for Defat

No 8

John R Randall

^{vs}
Jacob Senger

Error to Clary

Opinion by
Just. C.J.

Decree reversed and
the Cause remanded

Opinion copied & sent
off

No 8

November 1854

John R Randall

^v
Jacob Senger

Error to Clary

Opinion by
Just. C.J.

8761

Decree reversed &
Cause remanded

No 8

Jacob Senger

^{vs}

John R Randall

Error to Clary.

~~These papers were found
on the table of the~~

These papers were found
on Atty's table after the
Adjournment of Court
Nov. Term 1854.

Reversed & remanded