

No. 13546

Supreme Court of Illinois

De Wolf

vs.

Hayden.

STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division.

No. 259.

1860

De Mall
N X

2546

Supreme Court
of term of 1860 -

Hayden

vs

Adams et al

On appeal

Considerations & Authorities
by Appelles -

Part 1st

The evidence of the complainant is
insufficient to establish the alleged
forgery -

for to do this it must be to the
same extent as would be sufficient
to convict a party charged with the
crime -

As an analogous case

See *Horseman*

Bryant 11th *Scrimmon* Rep § 107

that the rule in this respect is the same
in Civil and Criminal cases

See *Giles*

Don Livingston & Son

Confort 61st *ECL* Rep § 653

But the evidence in this case of the
Complainant does not go to the point of
proving or tending to prove the forgery
of the release — but is entirely
confined to the acknowledgment —

It may be true that there is a mistake
in the date of the acknowledgment —
it may be true that Hayden could
not have been in Cook County where
it purports to have been made upon
the day it bears date — yet it still may
have been genuine —

It may be true that Allen the witness
does not recollect taking the acknowl-
edgment — yet he may have done so —
all trivial matters like this readily escape
from the memory — particularly when
occurring at the time the mind is otherwise
occupied —

The acknowledgment may have been taken
by some ^{other} justice of the peace since
the Court cannot intend that the witness
is the only justice named Nathan Allen
in the State — or in the County —

The acknowledgment may not have
been taken at all and still Hayden
may have executed the release —

One circumstance is significant - There is a subscribing witness to the release he was not produced - his testimony would have aided the complainant or destroyed his case -

The release was not produced - perhaps it could not have been - if so, and it is a forgery it is the complainant's misfortune - and in this case as one of two innocent parties must suffer ~~in~~ the damage must fall upon the complainant -

for it is an affirmative fact (and not as stated in Appellants brief a negative) and must be fully proved to entitle the complainant to the relief prayed -

Point 4th At Common Law to enable a defendant to acquiesce to the release of a prior grantee - Corroboration of warrant was necessary -

11th Kent's Commentaries pp 426 & 427
Rae's Commentaries of 11th ed pp 426 & 427
pp 426 & 427 et notes -

One circumstance is significant - There is a subscribing witness to the release he was not produced - his testimony would have aided the complainant or destroyed his case -

The release was not produced - perhaps it could not have been - if so, and it is a paper, it is the complainant's misfortune - and in this case as one of two innocent parties must suffer ~~in~~ the damage must fall upon the complainant -

for it is an affirmative fact (and not as stated in Appellants brief a negative) and must be fully proved to entitle the complainant to the relief prayed -

Point 4th At Common Law to enable a detainer to acquire title to convey to the benefit of a prior grantee - Comenents of warrant were necessary -

11th Kent's Commentaries pp 426 & 427
Raele on Comenents of title pp 11 & 12
pp 426 & 427 et seq.

By our Statute this occurs when the
grantee must signpost to convey an
"Estate in fee simple absolute"
Revised Statutes Chap 24 § 7-

A mortgagee estate is not a "fee simple
absolute" - but a "base or conditional
fee" -

4th Kent's Commentaries pp 3. 5. & 9

2nd Blackstone's Commentaries pp 158. 104 & 109

Coast on Real property pp 943. 946. 947. 948
965 & 2302 -

a Lost claim does not pass a
subsequently acquired title

Rankin

Comr } 19th Illinois Rep p 630 -

Now do the words "Grant herein & all in
Complainant's Mortgage as implied covenants
help the case for they are not general
Covenants of title as understood by the common
Law but -

only imply a covenant that the grantor
has done no act to interfere with the
granted estate as to "Seizin"
"quiet enjoyment" - "except incumbrances
as by him"

2
Porter v. ...
Milkie } 19th Illinois Rep p 235-

a covenant for quiet enjoyment (known as
general covenant) does not pass on
after acquired estate

Rankin on Covenants of Title p 238 & 239, 240

this covenant goes to possession and not
to title

5th Johnsons Rep p 121-

a deed of bargain and sale without
covenant of title warranty will not
pass a subsequently acquired title
Rankin on Covenants of Title p 411-

Covenants of Seizen and against incum-
brances do not run with the land
Rankin on Covenants of Title pp 340, 348, & 353

But see Broken (if it is) as made
11th Illinois Rep p 240-

Porter v. ... is based upon the fact that there
was no record of the equitable interest
it shows to have been in Adams at
the time of his giving the mortgage to Com-
plainant - Nor did the defendant

have notice actual or constructive of it
at the time he (S'Wolf) took his deed
of trust — Therefore the
testimony is irrelevant —

Point 6th

but if
the Mortgage would carry any estate
it shows that at the time, Adams
had only an equitable interest in
three fourths of the Slave which was the
proportion he had paid for —

Therefore no larger share than this
was covered by the Mortgage — and
the complainant can in no view of
the case have a decree of foreclosure
against more than $\frac{3}{4}$ —

Point 5th This point is well taken — and in this
respect the decree is erroneous —
for the Court below could not by decree
debar the defendants from the right of
redemption. See Revised Statutes Chap 27 § 12424 —

It is respectfully submitted
that if the Court can consistently
pass upon all the points raised
so that the parties may understand
their rights in the premises it will

be a saving of expense to them
and also prevent the necessity
of their again appearing before you
H. M. S.

I am, Sir,
Yours for appearance

Yours
H. M. S.

259

D'Gofferal

Hayden

on appear

Aug 1881

Prin^g & An^g Chanc^g
of App^g 11 an 4

by Chickering

Shirley

in

222

159
Dwight Ette

Hayden

a part of the
Record

Filed Apr 30. 1860
L. Leland
Clerk

State of Illinois
County of Kane

I H. D. Barry,
County Judge of and for the said County
in the State aforesaid, do hereby certify
that Cyrus Adams and Ellen E. Adams
his Wife personally known to me as the
persons whose names subscribers to the
annexed Mortgage, appeared before
me this day, in person and
acknowledged that they signed, sealed
and delivered the said instrument of
writing, as their free and voluntary
act, & for the uses and purposes
therein set forth. And that the said
Ellen E. Adams being by me examined,
Separate and apart, and out of
hearing of her said husband,
and the contents and meaning of
said instrument of writing having
been by me made known and
fully explained to her, she acknowledged
that she had freely and voluntarily
executed the same, and relinquished
her dower to the said land and tenements
therein mentioned without compulsion
of her said husband, and that she
does not wish to retract the same.

Given under my hand this
12th day of March A.D. 1855.
H. D. Barry
County Judge of Kane County.

On the back of said Mortgage is
the following.

State of Illinois }
County of Cook } ss

No 60. 437. Filed for Record
June 20/55 and Recorded in Book
20 of Mortgages page 592.
L. H. Moore Clerk.

State of Illinois }
Cook County } ss

I Walter Kimball Clerk
of the Superior Court of Chicago do hereby certify
that the foregoing is a true copy of a cer-
tificate of acknowledgment on certain
Mortgage now on file in my office signed
by Cyrus Adams Keller & others, in the case of Albert Hayden
vs Cyrus Adams & others, & I do further
certify that in making the Record of
said cause for the Supreme Court of
Illinois, the above certificate of acknowl-
edgment was omitted, by the Clerk
through mistake.

Certified under my hand
& Seal of said Court of Chicago
this 20th day of April 1866
Walter Kimball
Clerk

State of Illinois / of April term
Supreme Court of / A.D. 1860

William D. Chapman
Appellant

vs
Alfred Hayden
Appellee

On appeal from
the Superior Court
of Chicago

Assignment of Errors

And now come the appellants by J. W. Chickering
attorney and say that there is manifest
error in the proceedings and judgment aforesaid
inasmuch as the use of the release thereof, on account
of which error the said judgment ought to be
reversed

And for a specification of such errors the
appellants shew to the Court the following

1st-

The Court below erred in admitting the testimony
of witness Fickham, and his contract with
the defendant Adams as to the purchase of the
said Adams of the lands and premises in
controversy —

2nd

The Court below erred in the decree rendered
adjudging the use of release of mortgage
let forth in complainant's bill adjudging to

be a forgery and to be null and void ~

3rd The Court below erred in ordering a sale of the Mortgage premises without redemption and that upon such sale the master immediately give a deed thereof to the purchaser

4th The Court below erred in adjudging that the lien of the Complainant's mortgage upon the premises therein described was superior to, and entitled to a priority over those of the defendant D'Wolf & the defendant Eddy

5th The Court erred in decreeing a foreclosure of the Mortgage premises against the appellants ~~against the defendants~~

6th The Court below erred in adjudging that the mortgage of Complainant had a priority over the claims of the defendant D'Wolf & Eddy & the other defendants to one fourth part of the Mortgage premises ~

7th The Court below erred in adjudging that the proceeds arising from the sale of the Mortgage premises should in the first place be applied to the payment of the Mortgage debt of the Complainant ~

8th The Court below erred in decreeing that after the sale should be made of the mortgaged premises by the Master the defendants should be forever barred and foreclosed of & from all equity of redemption and claim of, in and to the mortgaged premises.

9th The Court below erred in decreeing that the defendants should immediately after the sale ordered to be made by the Master of the above mortgaged premises, surrender immediate possession thereof to the purchaser.

10th The Court below erred in rendering the decree in this case in the terms and to the effect as rendered.

And for these and other manifest errors in the record thereof the appellants pray that the same may be reversed annulled, set aside and for ought held.

And that they may have judgment for their costs.

Jas. Livingston
Att'y for appellants

Albert Hoyden

^{vs}
William F. Dwyer

Supreme Court
April Term 1860

And the said Albert
Hoyden By W. D. Barry his attorney
Comes & says there is no error
in the record & proceedings of
- said or in giving the said judgments
of said & therefore he prays that the
said judgments may be affirmed
By W. D. Barry
Atty for Hoyden

Filed Apr 25. 1860

L. Delamater

Clerk

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United States of America
State of Illinois, Cook County } ss.

Heas before the Honorable the
Judges of the Superior Court of Chicago, within and for the County
of Cook, and State of Illinois, at a regular term of said Superior
Court of Chicago, begun and holden at the Court House in the
City of Chicago, in said County & State, on the first Monday, being
the fifth day of March in the year of Our Lord, One Thousand
Eight Hundred and Sixty, and of the Independence of the
United States of America, the Eighty Fourth.

Present The Hon. John M. Wilson, Chief Justice of the
Superior Court of Chicago,

Wm. N. Higgins, Esq. Grant Goodrich, Judges

Prosecuting Attorney

John Gray Sheriff of Cook County

Walter Kimball, Clerk

Be it remembered, that heretofore, to wit: on the twenty third
day of November, in the year of Our Lord One Thousand, Eight
Hundred and fifty seven, Albert Hayden filed in the office
of the Clerk of the Court of Common Pleas, for Cook County,
his certain Recipo, Bill, and Affidavit, in words and figures
following: to wit:

Albert Hayden

vs.

Cyrus Adams

William F. D. Wolf

Philander Edsall

In the Cook County Court of Common Pleas,
In Chancery

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On filing the Bill in the above entitled cause, the Clerk will please issue a summons against defendants, returnable at the February Term 1858 - directed to the Sheriff of Cook County -

Harvie & Miller

To Walter Kimball Esq
Clerk of s^t Court }

Complts Solrs

"Bill" State of Illinois }
Cook County } ss.

To The Honorable John M. Wilson,
Judge of the Cook County Court of Common Pleas, In Chancery
Presiding: *Complaining*, sheweth unto your Honor, your
orator Albert Hayden of the County of Kane in the State of
Illinois, that on the twelfth day of March, in the year of our
Lord One Thousand Eight Hundred and fifty five, Cyrus Adams
being justly indebted to your Orator in the sum of Two Thousand
Dollars, secured to be paid by one certain promissory note, bearing
date the day and year aforesaid, and due and payable one year
thereafter, for better securing the payment of the money aforesaid,
with interest thereon, according to the tenor and effect of ^{the} said
promissory note, did with Ellen E. Adams, his wife, execute
under their hands and seals, and deliver to your Orator, a
mortgage bearing even date with the said note, whereby the
said Cyrus Adams and Ellen E. Adams, granted and conveyed
unto your orator in fee, all that certain piece or parcel of
Land, situated in the County of Cook, and State of Illinois,
and described as follows, to wit, The South West quarter of the

of Section Eleven
Range thirteen
containing

32a
Your orator further shews unto your honor, that the said
sum of Two Thousand dollars with interest from the 12th day
of March A.D. 1855 still remains due and unpaid by your
orator on the said promissory note and mortgage.

North East Quarter, of the North East Quarter ^{of} Section Eleven
(11.) in Township Thirty Nine (39) North of Range thirteen
(13). East of the Third Principal Meridian, containing
ten (10) acres more or less, with a condition therein contained
for redemption of the said premises, on payment by the
said Cyrus Adams to your Orator of the said sum of Two
thousand Dollars and Interest at the time and in manner
specified in the said promissory note. Which mortgage
was duly acknowledged, and afterwards recorded, in the
Recorder's office of the County of Cook aforesaid in Book
Twenty of Mortgages page 592, as by the said Mortgage
with the Certificate of acknowledgment, and the Recording
said indorsed thereon, and ready to be produced as
the Honorable Court shall direct, will more fully appear.
And your Orator further shews unto your Honor, that
amongst the records of Cook County aforesaid there is recorded
in Book 22 of Mortgages - page 592. a Document purporting
to be a release of the before mentioned mortgage, and to
bear date the 31st day of October A.D. 1855. which document
was filed for record on the said last mentioned day, and
is in the words and figures following, to wit:

Albert Hayden to Cyrus Adams. - Release.

I, Albert Hayden of Kane County, State of Illinois, do hereby
certify that a certain mortgage bearing date the twelfth day
of March in the year, One Thousand, Eight Hundred Fifty five,
and made and Executed by Cyrus Adams and Ellen E. Adams
his wife, of the first part to me the said Albert Hayden of
the second part, and recorded in the Recorder's office of Cook

145 County in the State of Illinois, in Book 20 of Mortgages at page 592. on the Twentieth day of June 1855. is fully paid, satisfied, and discharged, Dated this 31st day of October A.D. 1855.

In presence of

Albert Hayden (L.S.)

James H. Hubbard }

But your orator expressly charges that the said document is a forgery, that he never executed the same, or any other deed or document, operating or intending to operate as a release or discharge of the said mortgage, nor did any consideration for any such release or discharge ever pass between the said Adams and your orator, but on the contrary your orator insists that since the date of the said pretended release, the said Adams has on two occasions paid to your orator a years interest on the said mortgage of Two Thousand Dollars, as a subsisting mortgage debt, the years interest due on the 12th day of March A.D. 1856, and the years interest due on the 12th day of March A.D. 1857, and the same sum of Two Thousand Dollars, with interest from the last mentioned day, still remains justly due and owing to your orator on his said mortgage.

And your orator further shews unto your honor, that he is informed and believes that William F. D'Wolf, Philander Edely Benjamin B. Quimby, James G. M. Clery, Geo. C. Lawrence, and Charles W. Sargent, have or claim some interest in the said mortgaged premises, as purchasers, mortgagees or otherwise, which interests, if any, have accrued subsequent to the lien of the mortgage of your orator and are subject thereto.

And your orator further shews unto your Honor, that the said

1860

State of Illinois of April Term
Supreme Court of A.D. 1860

William D. Chapin
Appellant

vs
Albert Hayden
Appellee

On appeal from
the Supreme Court
of Chicago

Assignment of Errors

Now come the appellants by J. W. Chickering
attorney and say, that there is manifest
error in the proceedings and judgment aforesaid
inasmuch as the facts of the record thereof, on account
of which the said judgment ought to be
reversed

And for a specification of such errors the
appellants shew to the Court the following

1st-

The Court below erred in admitting the testimony
of witness Fickham, and his contract with
the defendant Adams as to the purchase of the
said Adams of the lands and premises in
controversy -

2nd

The Court below erred in the decree rendered
adjudging the deed of release of mortgage
set forth in complainant's bill adjudging to

be a felony and to be null and void ~

3rd The Court below erred in ordering a sale of the Mortgage premises without redemption and that upon such sale the master immediately gave a deed thereof to the purchaser

4th The Court below erred in adjudging that the lien of the Complainant's Mortgage upon the premises therein described was superior to, and entitled to a priority over those of the defendant D'Arf & the defendant Eddy

5th The Court erred in decreeing a foreclosure of the Mortgage premises against the appellants ~~and against the defendants~~

6th The Court below erred in adjudging that the Mortgage of Complainant had a priority over the claims of the defendant D'Arf & Eddy & the other defendants to one fourth part of the Mortgage premises ~

7th The Court below erred in adjudging that the proceeds arising from the sale of the Mortgage premises should in the first place be applied to the payment of the Mortgage debt of the Complainant ~

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premises, are a scanty security for the said sum of Two Thousand Dollars and interest, and that he has several times applied to the said Cyrus Adams, for payment of the same, principal sum and interest, or to release to your Orator the Equity of redemption of the said mortgaged premises, but the said Adams has refused to pay the same or to release to your orator the said Equity of redemption, pretending amongst other things, that the said debt was discharged by the said pretended release, whereas your Orator charges the contrary thereof to be true, and that the said release is a forgery. -

In consideration whereof, and inasmuch as your Orator is remediless according to the strict rules of Common law, and can only have relief in a Court of Equity, where matters of this nature are properly cognizable and relievable. To the said therefore that the said Cyrus, Adams, William F. A. Hoff, Philander Edey, Benjamin F. Quimby, James G. McClellan, George E. Lawrence, and Charles W. Sargent, may, full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged (such answers to be without oath, their answers on oath being hereby waived) as fully and particularly as if the same were hereinafter repeated, and they thereunto distinctly interrogated, and that not only as to the best of their knowledge and remembrance, but also as to the best of their several and respective information, hearsay and belief, and that an account may be taken by and under the direction of this Honorable Court, of what is due and owing to your Orator for principal and interest, on his said mortgage, and

that the said pretended release, may by the decree of the said Court, be declared to be null and void, and that the said Defendants some, or one of them, may be ordered to pay to your Orator what is due him, on taking such account as aforesaid, together with his costs of this suit, by a short day to be appointed by this Honorable Court for that purpose, or in default thereof, that the said Defendants and all persons claiming under them or either of them may be absolutely barred and foreclosed, of and from all right and Equity of redemption in or to the said mortgaged premises and Every part thereof, or otherwise; that the said mortgaged premises be sold by and under the direction of this Honorable Court, and the proceeds of such sale applied in payment of the amount due your Orator as aforesaid, and that your Orator may have such further or other relief in the premises as the nature of the Case may require and to your Honor shall seem meet;

May it please your Honor; to grant unto your Orator the Summons of the People of the State of Illinois to be directed to the said Cyrus Adams, William F. D. Stolf, Philander Edely, Benjamin F. Quimby, James L. McClay, George E. Lawrence, and Charles W. Sargent, thereby commanding them, and every of them at a certain day and under a certain pain therein to be specified, personally to be and appear before this Honorable Court, then and there to answer all and singular the premises, and to stand to, perform and abide, such order and decree as to your Honor shall seem meet. And your Orator shall ever pray.

Harvie & Miller Compt Solicitors

Albert Haydon
By Harvie & Miller His Solicitors

"Affidavit"
7th

State of Illinois,
Cook County }

(In the Cook County Court of
Common Pleas, of the
February Term A.D. 1858.

Albert Hayden }
vs

Cyrus Adams }

W. F. De Wolf & }

Philander Edely }

In Chancery—

Albert Hayden of St. Charles, Kane
County, State of Illinois, being duly sworn, deposes
and says that Cyrus Adams, one of the defendants
in the above entitled cause, is not a resident of the
State of Illinois, but is a non-resident of said state

Albert Hayden

day of November A.D. 1857.

Halter Kimball, Clerk

And afterwards, to wit: on the
twenty third day of November A.D. 1857. there was issued
out of the Clerks office of the Cook County Court of Common
pleas, a Chancery Summons, a copy of which, together
with the Sheriffs Return thereon, is in the following
words and figures, to wit:

"Summons"

Chancery Summons, Cook County Court of Common Pleas
State of Illinois }
Cook County } ss.

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

Summons

8th -

We command you that you summon Cyrus Adams, William F. D. Wolf and Philander Eddy, if they shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas, of said County of Cook on the first day of the next term thereof, to be holden at the Court House, in the City of Chicago, in said County, on the first Monday of February next to answer unto Albert Hayden in his certain Bill of Complaint, filed in the said Court on the Chancery side thereof. And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same. Witness Walter

SEAL

Kimball, Clerk of our said Court, and the seal thereof at the City of Chicago, aforesaid this twenty third day of November A.D. 1857
Walter Kimball. Clerk.

Sheriff's Endorsement

Served this writ on the within named William F. D. Wolf and Philander Eddy, Cyrus Adams not found in my County by delivering a copy thereof to him the 27th day of November 1857.

2 Fers	1.00
2 Copy	1.00
2 Miles	10
1 Return	10

Paid by plaintiffs atty \$2.20

John L. Wilson Sheriff

By S. Mills Depy.

And afterwards, to wit: on the fifth day of January, One Thousand Eight Hundred & fifty Eight, William F. D. Wolf and Philander Eddy, ^{dependants,} by their Attorney J. N. Chickering filed in the Clerks Office of the Cook County Court

Answerth of Common Pleas, their certain answer in words and figures, following, to wit:

W.F.D. Wolf

P. Eddy

State of Illinois

Cook County Court

of Common Pleas

Of Term of January

A.D. 1858.

Albert Hayden

vs

Cyrus Adams

William F.D. Wolf

Philander Eddy

et al.

Bill in Chancery

to

Foreclose a Mortgage

The joint and separate answers of William F.D. Wolf and Philander Eddy, to the bill of Complaint of the said Complainant exhibited in this case.

These respondents now and at all times, saving and reserving to themselves all and all manner of benefit and advantage that they or either of them, might or could take, by way of exception or otherwise to the many contradictions, uncertainties and imperfections in the said bill of Complaint contained, for answer thereto or to so much thereof as these respondents are advised by counsel it is necessary or proper for them to make answer to. For answer thereto, respectively say "That they have no knowledge or information except what is derived from the allegations of said complainant's bill, and that therefore they cannot admit the

indebtedness of the said Cyrus Adams to the Complainant as is alleged in his said Bill, therefore upon their belief they deny that their Co-defendant, Cyrus Adams is at this time indebted to the said Complainant in the sum of Two Thousand Dollars, or in any sum whatever, therefore these respondents insist that the said Complainant be required to make strict proof of such indebtedness, if any there be. And these respondents have no knowledge or information, except as is derived from the allegations of the said Complainant's Bill and the records of Cook County as to the Existence of the Mortgage from their Co-defendant Cyrus Adams to the said Complainant as is described in his said bill - they admit that such a Mortgage is upon the said records. but for the reasons aforesaid, they neither can or do admit or deny its being genuine and truly and in good faith Executed by the said Cyrus Adams. And insist that the said Complainant be required to make strict proof thereof, and also of the Consideration for which the same was given. And these respondents further answering deny that there remains due from their Co-defendant Cyrus Adams the sum of Two Thousand Dollars and interest thereon from the 12th day of March A.D. 1857. or any other sum of money to the said Complainant upon the Mortgage in his said Bill of Complaint mentioned. Nor have these respondents any knowledge or information other than the allegations contained in the said bill of Complaint, respecting the payment of interest

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upon the indebtedness therein mentioned, by their codefendant Adams, to the said Complainant.

And these respondents further answering admit that there is upon the record of Deeds and Mortgages in the recorder's office of Cook County, State of Illinois, a Deed of Release, Executed by the said Complainant, and acknowledged in due form of law before Nathan Allen Esq a Justice of the Peace (at the time of such acknowledgement) of Cook County aforesaid, that the same is recorded in Book 22 of Mortgages - Page 293. and these respondents insist upon the aforesaid deed of release as a full and complete bar to all the relief prayed for by the said Complainant in & by his said Bill of Complaint - And these respondents deny that the same is a forgery, but on the contrary allege that the same is the act and deed of the said Complainant, and these respondents further insist, that whether or not the said release is the act and deed of the said Complainant, yet the same being upon the records of Cook County, as above alledged, and the same remaining so upon record, without objection from the said Complainant, and without any notice given by him of its alleged forgery until after the rights and interests of your respondents in and to the before described mortgaged premises had accrued as is hereinafter set forth and alledged, the said Complainant is barred in Equity and estopped from alledging aught against the above described deed of release, and he is

bonds thereby to the full extent of its purport and effect. — And these respondents further answering deny that the above described mortgaged premises are a scanty security for the said Complainants Claim of Two Thousand Dollars and interest, but on the contrary insist that the said premises are of a value far exceeding that amount. And these respondents having no knowledge or information except what is derived from the statements of said Complainants Bill of Application made by the said Complainants to their Codefendant Adams, for payment or release of Equity, or of any refusals or pretences of the said Adams, as are in the aforesaid bill of Complaint alleged. — Can neither admit or deny the same, but they insist that if important to the issues raised in this case, the ^{said} Complainant be required to make strict proof thereof. But these respondents again deny that the aforesaid release is a forgery.

And this respondent D'Wolf admits that he has some claim or interest in the above mentioned mortgaged premises, but that he holds such claim or interest only as a trustee for James G. Macclay & Benjamin F. Quimby (who he insists are proper parties to this suit and without whom this Honorable Court cannot make a final decree in this case) and the following is the nature, origin and extent of your Orators claim and interest in and to the above

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mentioned mortgaged premises. On or about the second day of November in the year Eighteen Hundred & fifty five the aforesaid James G. McClay & Benjamin F. Quincy made a loan of money to the said Defendant, Cyrus Adams to the Amount of Twenty Six Hundred Dollars, payable in one year from the said last mentioned date, and in order to secure the payment thereof the said Defendant Cyrus Adams, made Executed and delivered to this respondent D. Wolf a Deed of trust duly acknowledged upon certain lands and premises therein described, and among others the mortgaged premises in the said Complainant's bill described. for the use and benefit of the said McClay and Quincy, which said Deed of trust is duly recorded in the office of the Recorder of N. H. County aforesaid in Book No. 99. of Deeds page 627. to which said Deed of Trust and the record thereof your respondents for greater certainty refers.

And in pursuance of the condition and provisions of the said Deed of Trust, this respondent hath sold the above mentioned mortgaged lands and premises to George E. Lawrence, and Charles W. Sargent, whom this respondent believes now to be the owners thereof. And the said respondent Philander Eddy answering admits that he has a claim and interest in the above mentioned mortgaged lands and premises, and which he obtained in good faith, and for a valuable consideration, without notice of the

pretended claim of the said Complainant as set forth and alleged in his said bill, and the following is the nature, Origin, and consideration of this respondents aforesaid claim and interest. On or about the 8th day of May in the year Eighteen - Hundred and fifty six, this Respondent loaned to his Co-defendant Cyrus Adams the sum of Fifteen - Hundred Dollars, and as a Security for the repayment of said sum of Money, the said Cyrus Adams and Ellen E. his wife executed and delivered to this respondent a mortgage of that date upon the land and premises described in the said Complainants bill, and which said Mortgage of this Respondent is duly acknowledged and recorded in the Records office of Cook County in Book 143 of Mortgages Page 24. and which for greater certainty this respondent would refer. And subsequently on or about the 24th day of September A.D. 1857. the said Cyrus Adams for a valuable consideration assigned and released to this Respondent, his Equity of redemption in the above described mortgaged premises as will more fully appear, by the deed of conveyance thereof, executed by the said Adams, and recorded in the Records office of Cook County aforesaid in Book 144. of Deeds Page 493.

And both of these respondents further answering say that their respective Claims and demands for money due to them from their Co-defendant, Adams

1515

are still due and unpaid, and their claim to and lien upon the above described mortgaged premises is still in full force and effect, in no wise satisfied, cancelled, vacated or annulled.

And these respondents William F. D'Wolf and Philander Eddy further answering say, that at the time of the executing and delivering by their Co-defendant Adams to the said Complainant of the Mortgage in his said bill set forth & described, the said Cyrus Adams had no title to the lands and premises in the said Complainant's Mortgage described, and thereby conveyed, but that the said Adams acquired title to the said lands and premises afterwards to-wit: on the 11th day of April in the year eighteen hundred and fifty-five as per the deed thereof to him, bearing that date, and recorded in the office of the recorder of Cook County aforesaid in Book 99. of deeds page 589. and to which reference is made, will more fully and at large appear, and the aforesaid mortgage of the said Cyrus Adams to the said Complainant does not purport to convey an "estate in fee simple absolute" nor does the same contain any covenant of warranty, wherefore these respondents say that no estate or title passed from the said Cyrus Adams to the said Complainant, by effect of or in virtue of the aforesaid mortgage to him as described in his aforesaid bill of complaint - and these respondents insist upon the facts last above set forth and alleged as a full and complete bar to all the relief prayed for by the said

16th

Complainant in and by his said bill, and pray that they may have the full benefit and advantage of the same, as they therefore rely, as though the same were specially pleaded to such relief.

Wherefore these respondents not admitting any of the allegations in the said Bill of Complaint contained and now herein and hereby traversed and avoided or confessed and denied to be true, but as they have as they believe fully answered each and all of the material allegations in the said Complainant's Bill contained, they pray to be hence dismissed with their reasonable costs and charges in this behalf most unjustly sustained.

Philander Eddy &

Wm. F. Wolf

J. N. Chickering

Clerk of the Court

At J. N. Chickering their atty

And afterwards, to wit: on the twelfth day of July A.D. 1858 Albert Hayden filed in the office of the Clerk of the said Court, a certain Deposition, in words and figures following, to wit:

Deposition

Deposition of Oliver Kingsbury of Kane County in the State of Illinois, a Witness aged about thirty seven years, produced, sworn and examined before A. R. M. Wayne a Justice of the Peace in and for said County and State aforesaid on the second day of July A.D. 1858. at the office of said A. R. M. Wayne, in the town of St. Charles in said County, in a certain cause now pending and undetermined in the Cook County Court of Common Pleas, wherein Albert Hayden is Complainant.

17th and Cyrus Adams, William F. Wolf and Benjamin F. Linnibry are defendants; on the part of said Complainant,

First Interrogatory - State your age, occupation and where you reside?

Ans. My age is thirty seven years, I live in St. Charles, Kane County, Occupation Keeper of an Eating House; and Town Auctioneer.

2nd Int. State how long you have resided in St. Charles.

Ans. Ever since June 25th A.D. 1850.

3rd Int. State whether you are acquainted with Albert Hayden Complainant in this suit, & if so, how long have you been acquainted with him?

Ans. I have known him for seven years.

4th Int. State whether you ever acted as Auctioneer in selling Dry Goods and Clothing for the Complainant, and if so state where it was, when it was, and how long the sale continued?

Ans. I have acted as Auctioneer in selling dry goods and Clothing for the Complainant, the sale commenced on the first day of November A.D. 1855. at the store owned by Thomas H. Collins in the town of St. Charles, Kane County, and continued seven days.

5th Int. State in what Capacity said Complainant acted in employing you to sell said goods & Clothing.

18th

Ans. As Assignee for Frank Dollinger.

6th Int. State where you was the day before said Sale Commenced?

Ans. I was at my Drug Store, and at the place where the sale took place in St. Charles.

7th Int. State if you know where the Complainant, Albert Hayden was, during the day before said Sale Commenced

Ans. I saw him at the store of Thomas H. Collins, where the Sale took place.

8th Int. State the year, the month & the day of the month, that you saw Albert Hayden, Complainant at the store of Thomas H. Collins spoken of in your last answer.

Ans. I saw him in the year A.D. 1855. in the month of October and on the 31st day of the month.

9th Int. State the time of day, you saw him there as near as you can recollect.

Ans. It was some time during the day, between nine o'clock A.M. and four o'clock P.M.

10th Int. State whether you saw him more than once, and if so how many times during the day - State according to your best recollection?

Ans. I think I saw him a number of times, but don't recollect how many.

Oliver Kingsbury

Deposition of Thomas H. Collins, of Kane County in

19th

the State of Illinois, a witness aged about forty three years produced, sworn, and Examined, before A.R. McWayne, a Justice of the Peace in and for said County and State aforesaid on the 2nd day of July A.D. 1858. at the office of said A.R. McWayne, in the town of St. Charles, Kane County, aforesaid in a certain cause now pending and undetermined in the Cook County Court of Common Pleas; wherein Albert Hayden is Complainant and Cyrus Adams, William F. DeWolf and Benjamin F. Quimby are defendants; on the part of said Complainant,

First Int. State your age, Occupation, and where you reside

Ans. My age is forty three years, Occupation Tailor, Residence St. Charles, Kane County, Illinois.

2nd Int. State whether you are acquainted with Albert Hayden Complainant in this cause, and if so, how long have you been acquainted with him?

Ans. I am acquainted with him, have known him ever since the year 1840.

3rd Int. State if you recollect when a certain sale at Auction took place in the town of St. Charles, of Dry Goods & Clothing belonging to Frank Dollinger, in which Albert Hayden acted as assignee? If so, State where it was, where it was, and who acted as Auctioneer.

Ans. I recollect that such a sale took place. It was about the first of November 1855. at my store in the town of St. Charles, and Oliver Kingsbury acted as Auctioneer.

20th) 4th Interrogatory - Did Oliver Kingsbury ever act as Auctioneer in the sale of Dry Goods and Clothing at your store except on one occasion, if so state the number of times

Ans. He never did act as Auctioneer in my store, except on one occasion, and that was the sale of Dollingers Goods.

5th Int. State whether you recollect of seeing said Hayden, the day before said Auction commenced, and if so, state the number of times you saw him during said day.

Ans. I recollect of seeing him the day before said auction commenced, I saw him, and was with him from about Eight O'clock to Eleven O'clock A.M. and from about half past one O'clock to four O'clock P.M. on that day.

6th Int. State whether Albert Hayden the complainant in this suit was with you the day before said Auction commenced, of the sale of Dollingers Dry Goods & Clothing, on which occasion Oliver Kingsbury acted as Auctioneer; State fully and particularly all you know upon the subject.

Answer to 6th Interrogatory. - I know that Albert Hayden was in my store the day before said sale. I was with him from about 8 O'clock A.M. to Eleven, and from about half past one O'clock P.M. to four.

Thomas H. Collins.

Deposition of Stephen Fellows of the County of Kane and State of Illinois a witness aged about years, produced Sworn, and Examined before A.R. McWayne, a Justice of the Peace, in and for said County and State aforesaid, on the

2151- 2nd day of July A.D. 1858. at the office of said A.R. McHenry in the town of St. Charles, Kane County aforesaid, in a certain cause now pending and undetermined, in the Cook County Court of Common Pleas, wherein Albert Haydon is complainant and Cyrus Adams, William F. DeWolf, and Benjamin F. Quimby are defendants; on the part of said complainant:
First Interrogatory. State your age, Occupation and where you reside?

Ans. My age is sixty one years. Occupation a farmer, and I reside in Campton, Kane County, Illinois, about four miles west of the village of St. Charles. -

2nd Interrogatory - State how long you have resided in Campton

Ans. About fifteen years.

3rd Int. State whether you are acquainted with Albert Haydon complainant in this suit? If so, how long have you been acquainted with him.

Ans. I have been acquainted with him thirty five or forty years.

4th Interrogatory - State whether you ever had a settlement with Frank Dollinger of Book Accounts, between yourself and said Dollinger, If so state what year it was, what season of the year it was; where it was; what hour of the day it was; and who was present:

Ans. I did have a settlement with Frank Dollinger. I think it was in 1855. in the fall of the year, at the store of Thomas R. Collins in the town of St. Charles, at about one O'Clock P.M. and Albert Haydon, Thomas Collins and Elister Dollinger were present.

5th Interrogatory - State how long you remained in the room at the time of said Settlement, and whether the said Collins, Dollinger & Hayden remained in the room when you left.

Ans. I should think about an hour; and that Hayden Dollinger and Collins all remained in the room when I left -

6th Int: State at what hour of the day you left said room

Ans. I think it was about two o'clock P.M.

7th Int State whether there was any Memorandum of said Settlement with Dollinger made upon said Dollingers books at the time said Settlement was made

Ans. & 7th Interrogatory - There was a Memorandum made upon Dollingers books of said Settlement. I think I saw him from the time at that time, which was placed upon his books.

Int: 8th ~~State whether you recollect~~ ^{when} a certain Sale at Auction took place in the town of St. Charles of Dry Goods & Clothing, belonging to Frank Dollinger, in the Store of Thomas H. Collins. If so, State when it was?

Ans. I do; and I think it was in the fall of 1855. about the last of October or first of November.

9th Int: State whether the Settlement you had with Dollinger above referred to, took place, before or after the said Sale. If before, how long?

Ans. It took place before the sale, I think the day before.

Stephen Fellows

State of Illinois, Kane County, ss.

Fees 2320
Justice \$2.50 for said do certify that the foregoing depositions of
Const. J. D. Rousell Thomas H. Collins, Oliver Kingsbury, and Stephen Fellows,
Swing Sept 1, 75 were taken by me at the time and place mentions
Witnesses 1.50 in the captions thereof; that the said Witnesses were
\$4.75 first duly sworn; and that the said depositions
were carefully read to the said Witnesses, and
signed by them;

Dated this 2nd day of July A.D. 1858. —

A. R. M. Wayne

Justice of the Peace

Replication And afterwards to wit; on the first day of August
in the year last aforesaid, Albert Hayden by his
attorney John C. Miller, filed in the office of the Clerk of
said Court his Replication, in words and figures
following, to wit:

State of Illinois

Cook County } ss. In the Cook County Court of Common Pleas.

Albert Hayden

vs

Cyrus Adams, William F. D. Wolf } In Chancery
and Philander Eddy }

The Replication of Albert Hayden
complainant to the answer of the Defendants, William
F. D. Wolf and Philander Eddy.

This complainant saving and reserving unto himself
all and all manner of advantage of exception to the same.

24th

-ifold insufficiencies of the said answer, for replication thereunto says, 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 defendants D'Wolf and Eddy, is uncertain, untrue and insufficient to be replied unto by this Complainant; 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 Complainant is, and will be ready to aver and prove, as this Honorable Court shall direct, and humbly prays as in and by his said bill he has already prayed.

John C. Miller, Complainant's Solr.

- Order -

Nov 5th 1858.

And afterwards, to wit: on the fifth day of November in the year last aforesaid, said day being one of the days of the November term of the Cook County Court of Common Pleas. the following among other proceedings was had in the said Court, and Entered of record, to wit:

Albert Hayden

{

Bill

Cyrus Adams, Williams

{

J. D'Wolf & Philander Eddy

{

This day comes the said Complainant by Harrie Miller his solicitor, and the said defendants by Eastman & Beveridge their solicitors also come, and

25th

"upon agreement of the parties in open court, it is ordered that the bill in this cause be referred to the master in chancery to take proof and report thereon to this court."

And afterwards, to wit; on the twenty fourth day of May, in the year of Our Lord One Thousand Eight Hundred and Fifty Nine, Albert Hayden, filed in the office of the Clerk, of said Court, the Complainants Depositions, and stipulation, in words and figures following, to wit:

"Depositions"

State of Illinois } Cook County Court of Common Pleas
Cook County } In Chancery.

Albert Hayden

vs
George Adams
William L. Hulbert
Phelander Eddy

Complainants Depositions

The Depositions of witnesses taken produced and sworn before L.C. Paine Freer, Master in Chancery of Cook County, at his office in the City of Chicago, by consent and agreement of the respective parties, the Depositions when taken to be used on the trial of the above entitled cause, on the part and behalf of said Complainant.

Interrogatories propounded to Francis Dollenger

1 What is your name, age, occupation, and place of residence, and do you know the parties to this suit or either and which of them, and how long

have you known them or either of them?

Ans.

My name is Francis Dollenger, I am 29 years of age, am a Tailor by trade, and reside in Chicago, I know the complainant, have known him nearly five years, I do not know the defendants.

2 Where did you reside in the summer and fall of A.D. 1855?

Ans In St. Charles, Kane County, Illinois

3 State if you know where the complainant resided in the summer and fall of A.D. 1855?

Ans.

In St. Charles Kane County Ills

4 State if you know where Albert Hayden was on the 31st day of October A.D. 1855?

Ans.

He was in St. Charles, Kane County, Illinois

State how long, and what part of the day, that you know he was there

Ans.

He was there pretty near all day that is from about 8 O'clock in the morning till noon, when he went to get his dinner, he then returned after dinner and remained till about 8 O'clock in the Evening

6 State how you know that Albert Hayden was at St. Charles, on the 31st day of October 1855?

Ans.

I had been to work for him, assisting him in closing out an assignment of goods, a stock assigned by myself to him for the benefit of Creditors. The next day which was on the first day of November, we commenced to sell those goods at Auction, and on the 31st day of October, we arranged the store for the purpose of the sale, shifted around the counters and placed the

goods in the back part of the store.
7 State what time in the morning of the 1st of November, 1855, you saw Albert Haydon, and where was he when you saw him?

Ans I saw him when he came unto the store - I think it was between 8 & 9 O'clock in the morning, that was the first saw him, and it was at my store where the goods were at St. Charles.

8 State whether you made a settlement on the 31st day of October A.D. 1855 with one Stephen Fellows and if so when it was, and all you recollect in relation to it?

(Jury objected to by Defendants Solicitor)

(Jury waived by Compts. Solr.)

Do you have any recollection of doing any business with a man by the name of Stephen - Fellows, at or about the 31st day of October 1855. if so state what the business was, and all you recollect in relation to it, and where the same took place

(Jury objected to by Deft)

Ans.

I recollect that Mr. Fellows, came in to the store and asked me how much he was owing yet, I can't recollect what day this took place, but a Memorandum was made of it in my book, I looked in the book, and examined the account, and told him it was three dollars, which he paid me, and I gave him credit for the same in the book, and the book

will show what day it was.

9 State if you recollect now what day of the month and what month and ~~the~~ year that the settlement was made between you and Stephen Fellows.

Ans. It was made on the 31st day of October A.D. 1855.—

Cross Examined—

1 X Do you say that you can recollect, independent of the memorandum made on the book you speak of, that Fellows paid you three dollars on the 31st day of October A.D. 1855.?

Ans. Yes, I recollect from that talk between Mr. Hayden and Mr. Fellows, that Hayden said to Fellows, that we would commence to-morrow to sell those goods at Auction.

2 X Why then in answer to a direct interrogatory did you say you did not recollect the day?

Ans. It did not come to mind right off that Hayden and Fellows spoke to each other.

3 X Did you see Hayden on the 31st October 1855, between the hours of 6 & 8 O'Clock in the morning, if so how many times did you see him?

Ans. I don't think I saw him between those hours.

4 X Did you see him on that day between the hours of six and ten O'Clock in the Evening if so, how many times?

Ans. He was in the store from after Supper time till about

29th 8 o'clock in the evening. I did not see him after that, that evening.

5th X Did you see him between the hours of 10 A.M. on the 31st Oct. to 4 P.M. if so how much of the time was he in your presence.

Ans. He might have been there at 10 o'clock A.M. and staid till 11 o'clock A.M. and then went home to dinner, he generally was then then he came back in about an hour, and he was there all the afternoon, except to step out once in a while for a few minutes.

6th X Have you a distinct recollection that Hayden went home to dinner Oct 31st about 11 o'clock, or is your answer based upon his general habits in that respect?

Ans. I saw him on that day that it was 11 o'clock and he generally went home about that time.

7th X At what o'clock did you first see Hayden on that day, and at what o'clock did you last see him on that day?

Ans. I saw him first in the morning between Eight and nine o'clock in the morning, and I saw him last about 8 o'clock in the evening.

8th X Did you see him on the 30th October, if so what time in the morning?

Ans. I did see him on that morning between 8 & 9 o'clock.

9th X Did you see him on the 28th 27th 26th and 25th October A.D. 1850. if so, at what time on those respective days did you so see him and where?

Ans. The 28th was Sunday. I don't think I saw him, I could not say positively as to the 27th 26th and 25th days, whether I saw him or not.

10 X Did you see him on each of the first five days of November, if so, at what time on those respective days did you see him and where?

Ans I saw him the 1st 2nd 3rd and fifth days of November the 4th was Sunday, I saw him in the store (my store) from 8 o'clock in the morning till 9 o'clock in the evening.

11th X Have you had any conversation with Mr. Haydn the Comp^t or any of his Counsel, as to what he wishes to prove by you, or anything in regard to what your testimony in this case would be?

Ans I had a conversation with Complainant then that he came to me last week, and stated that he would have to take my affidavit that he was in St. Charles on that day. I have not conversed with any other person on the subject.

Direct Resumed.

1 State if you know what Haydn was doing on the 31st Oct 1855?

Ans. He was in the store, sitting there, not doing anything in particular, in the afternoon we moved the counters around, and took the goods back, and he assisted a little.

2 Whose goods were these?

Ans. They had been mine, I had made an assignment of them to Mr. Haydn, and he sold them out.

3101-7 3 How were the goods sold at Auction or otherwise?

Ans. At first we sold them at retail, and on the 1st November we commenced selling them at auction

4 State if you recollect the time that you made an assignment of the goods to Hayden, and also at what time he took possession of them?

Ans. I made the Invoice of my goods on the 11th October and handed to Eastman to draft the assignment, The deed of Assignment was dated on the 11th or 16th day of October, I can't say whether it was dated when I gave the Invoice to Eastman, or when Hayden took possession, which was on the 16th October 1858.

5 Who had the possession, Custody, and Control of the goods after Hayden took possession?

Done to and Subscribed
before me this 13th day
of January 1859.

L. C. D. Fries

Master in Chancery, Cook Co.

Francis Dollinger

Interrogatories propounded to Nathan Allen on the part of Complainant

1 What is your name, Occupation, and Residence, and do you know the parties to this suit?

Ans. My name is Nathan Allen, I am an Attorney at law by occupation and reside in Chicago. I know all the parties to this suit.

3222) 2 How long have you known Albert Hayden & Cyrus Adams?

Ans. About twenty years.

3 State where you resided on the 31st day of October A.D. 1855.

Ans. In Chicago.

4 State what was your business at that time?

Ans. I was acting as a Justice of the Peace.

5 State whether you ever took the acknowledgements of a Deed of Release, from Albert Hayden to Cyrus Adams.

Ans. Well! I should say I never did; that is my best recollection.

6 Where did you hold your office on the 31st day of October, 1855. State the Street and number?

Ans. It was on Randolph Street, between Canal & Clinton Streets, South side of the street, cannot tell the number.

7 State how far your Office was from the house in which you resided at the time.

Ans. About two miles.

8 State at what time you usually got to your office in the morning, and at what time you left in the evening.

Ans. I was rather erratic in my attendance at the office. I never got there before eight in the morning and went away when I was a mind to. Probably I generally left the office at 4 or 5 o'clock in the evening.

332a 9 If you had taken the acknowledgment above referred to in the month of October or November 1855. would you be likely to remember it

(Int. objected to by def^ts Sol^r)

Ans I think I should be likely to remember it, if I had taken such acknowledgement, from the fact that I was well acquainted with Albert Hayden and Cyrus Adams, and I have not the least recollection of any such circumstance

10 State whether you have any recollection of taking the acknowledgment of a deed of release of a mortgage from Adams to Hayden such release executed by Hayden to Adams?

Ans I have no recollection of it and don't think

you will ever recollect ever seeing Albert Hayden at your house in Chicago

(Int. objected to as irrelevant)

Ans I never saw him at my house to my knowledge

Crossexamined

1x Do you recollect all the acknowledgements you took in 1855?

Ans No. I don't recollect taking any, I did not do a very extensive business in that line, I might have taken some that I don't recollect.

2x In taking acknowledgements did you invariably put in the dates in the Certificates, or was the

34th dates sometimes filled in by others?

Ans. I always put in the dates so far as I recollect.

3 X You sometimes took acknowledgments out of your office, did you not?

Ans. Yes, I have done so, but can't particularise an instance.

4 X If you met a person on the street who wanted to acknowledge a Deed, you would drop in where you could get a pen and do it, would you not?

Ans. Yes! I would.

A. Allen

I am to and subscribed

before me this 14th day

of February

A.D. 1859.

Master in Chancery Cook Co.

I, L. C. Paine Freer, Master in Chancery of Cook County, State of Illinois, do hereby certify that the above and foregoing depositions were taken before me at my office in the City of Chicago, by consent and stipulation of the Solicitors of the respective parties, the said witnesses having been first duly sworn according to law, the depositions to be used on the trial of the above Entitled Cause, on the part and behalf of said Complainant, Chicago May 24th 1859. L. C. Paine Freer

Master's fee \$8.

Paid by Compt. Sales

Master in Chancery, Cook Co.

3511

The Superior Court of Chicago.

Albert Hayda

vs

Cyrus Adams et al }

Upon hearing before the Court this 24th day of May A.D. 1859. Edward J. Tinkham called as a witness by Complainant and being sworn to testify in the cause, to interrogatory propounded by the Complainant -

Did you at any time sell to Cyrus Adams the land described in the bill in this suit "Bill handed to witness to read description" Witness answered "Yes"

Interrogatory - When did you sell it and in what manner?

Answer - On the 1st day of January A.D. 1853. upon the terms and conditions of a certain Contract, signed and sealed by Cyrus Adams and myself & dated January 1st A.D. 1853. and marked "Exhibit S." -

Interrogatory - Were any payments ever made on said Contract by said Adams & Co, when and what amount was paid?

Answer - The full amount of the consideration was paid. The first payment was made on January 1st A.D. 1853. amounting to \$368⁸¹/₁₀₀. The second payment on the third day of January A.D. 1854. amounting to \$350⁰⁰/₁₀₀. The third payment on Eighteenth day of January A.D. 1855. amounting to \$331²⁵/₁₀₀. The balance was paid to me before the delivery of

3612

the Deed, but I have no means of ascertaining the
Exact date - ^{In answer to a cross interrogatory he answered} The deed was not delivered until October
31st A.D. 1855.

Edward J. Tinkham

Subscribed & Sworn to
before me this 24th day
of May A.D. 1859.

W. Kimball, Clerk

3612

And the following stipulations were filed in the case
viz:

Stipulation

April 14. 1856.

Superior Court of Chicago

Signed

Chancery

It is stipulated that the record shall
show among other things that the defendants by the counsel
upon the hearing of said cause, objected to each and every
of the interrogatories propounded to the Witness E. J. Tinkham
that the trust deed from def't Adams to def't D'Wolf
was dated acknowledged and recorded on the 2^d day of
Nov^r 1855. that the mortgage from def't Adams to def't
Eddy was dated & acknowledged 8th May 1856. & recorded
June 17th 1856. that the deed from E. J. Tinkham to def't
Adams was dated on the 13th April 1855 & was recorded
the 31st Oct. 1855. all of the above conveyances being
as alleged in the pleadings of the property in controversy,
all which facts appear by the records in the Recorder
Office of Cook Co. and the abstract thereof by J. M.
Parker, referred to in the Stipulation filed herein.

1. January 1856

John C. Miller
J. N. Chickering
Capt & Solicitor
at Law

Albert Hayden

vs

James Adams Et al.

In Chancery

It is stipulated between the parties to this suit, that if on the hearing the Court should be of opinion, that the bill is defective for want of parties, or that other parties should have been made parties to this suit, the Com-plainants will amend their bill instantaneously, by adding thereto the proper parties and the Defendants so made parties to this suit, will enter their appearance and that the cause may be disposed of by the same decree as if they had been parties to the original Bill and answer, and the decree entered accordingly - The abstract of title of J. M. Parker dated October 31. 1855. is to be taken as prima facie Evidence of the date, and time and place of the record of the various con-

37th / -verances therein specified.

So Agreed this 24th day of May A.D. 1859.

W. D. Barry atty
Complainant

J. N. Chickerling
atty Deft.

And afterward, to wit; on the twenty fifth day of May One Thousand Eight Hundred & Fifty Nine, was filed in the office of the Clerk of Said Court a Certificate of Publication, in words and figures following, to wit:

Certificate
of
Publication
This certifies, That the appended Chancery Notice Albert Hayden vs Adams et al. has been published in the "Chicago Daily Democrat" a newspaper printed and published in the City of Chicago, County of Cook and State of Illinois, four weeks consecutively, commencing with the first day of December 1857. and that I have received six dollars for publishing the same.

John Wentworth
Publisher
By Recd.

Chancery Notice

State of Illinois

County of Cook } ss.

Cook County Court of Common Pleas.
February Term A.D. 1858.

Albert Hayden

vs

Cyrus Adams,

W. F. DeWolf and Philander Eddy

In Chancery

3815

Affidavit of the NonResidence of Cyrus Adams
defendant above named having been filed in the office
of the Clerk of said Cook County Court of Common Pleas.

Notice is hereby given to the said Cyrus Adams
that the Complainant filed his Bill of Complaint in
said Court on the Chancery side thereof, on the twenty
third day of November 1857. and that a Summons
thereupon issued out of said Court against said de-
fendants, returnable on the first Monday of February
next (1858.) as is by law required.

Now, unless you, the said Cyrus Adams, shall
personally be and appear before said Cook County
Court of Common Pleas of Cook County, on the first
day of the month of February thereof, to be holden at
Chicago in said County on the first Monday of
February 1858. and plead, answer or demur to
the said Complainants Bill of Complaint, the same
and the matters and things therein charged and
stated will be taken as confessed, and a decree
entered against you according to the prayer
of said bill.

W Kimball, Clerk

Harriet Miller, Complainants Solrs

Chicago Nov 25. 1857.

And afterwards, to wit: on the twenty fifth day
of May, in the year of Our Lord, One Thousand
Eight Hundred & Fifty Nine, said day being one

39th

of the days of the May Term of the Superior Court of Chicago, the following among other proceedings was had in the said Court, and Entered of record to wit:

Order
May 25. 1859

Albert Hayden

In Chancery

Bill

Cyrus Adams,

Wm. H. DeWolf

vs Philander Eddy

"And now comes the said Complainant by Harvie & Miller his Solicitors, and file herein due proof of publication of notice to the said defendant Cyrus Adams, of the pending of this Suit against him, said publication of notice having been made in conformity with the rules in such case made and provided and on motion of said Complainant said defendant plead, answer, or demur to Complainant's bill of Complaint in this cause instant and being called three times solemnly in open Court, comes not, and makes default, which is ordered to be taken, and is hereby Entered of record, Wherefore it is ordered that Complainant's bill be taken as confessed as against said defendant Cyrus Adams for want of an answer."

Decree

And afterwards, to wit; on the twenty seventh day of March in the year of our Lord, One Thousand, Eight Hundred and Sixty, said day being one of the days of the said Court, the following, among other proceedings was had in the said Court and

1105

of record, to wit:

Abut Hayden

In Chancery

vs

Cyrus Adams, William F. Detholf,
Philander Eddy, Benjamin F. Limby
James G. McClay, George E. Lawrence
and Charles W. Sargent

This cause coming on to be heard,
upon the Bill of Complaint taken as confessed as against
the Defendant Cyrus Adams, and upon the pleadings and
proofs as regards the said defendants William F. Detholf,
Philander Eddy, Benjamin F. Limby, James G. McClay, George
E. Lawrence, and Charles W. Sargent, and counsel for the said
Complainant and for the said defendants, William F. Detholf
Philander Eddy, Benjamin F. Limby, James G. McClay, George E.
Lawrence, and Charles W. Sargent, having been heard, and deliberation
being thereupon had, It is adjudged, declared and decreed, and
this Court doth adjudge, declare and decree, that the deed
of Release, mentioned and set forth in the said Complainant's
bill, and therein charged by the said Complainant
to have been forged, be and the same is hereby declared to be null
and void, and that the record thereof in the Records office
of Rock County aforesaid, in Book 22. of Mortgages page
592. be also cancelled, and that the promissory note and
Mortgage mentioned and set forth in the said Complainant's
Bill, be established and confirmed, and the Court doth adjudge
declare and decree, that the amount due to the said Complainant

11150 - and upon the said note and mortgage is the sum of Two Thousand, Seven Hundred and thirty Dollars, that all and singular the said mortgaged premises mentioned in the said Bill of Complaint, and therein described as follows, to wit: All that certain piece or parcel of land, situated in the County of Cook and State of Illinois, and described as follows, to wit; The Southwest Quarter of the North East Quarter of the North East Quarter of Section Eleven (11) in Township Thirty Nine (39.) North of Range Thirteen (13). East of the Third Principal Meridian, containing Ten Acres, more or less, be sold at public Auction, under the direction of one of the Masters in Chancery of this Court, unless previous to the said sale, the said Defendants, or some or one of them, pay to the said Complainant the amount due the said Complainant, Twenty Seven Hundred and thirty Dollars, more or less, principal and interest on the said mortgage, together with Interest thereon from this date and the Complainant's costs of this Suit - That the said sale be made at the City of Chicago in the said County, that the said master give public notice of the time and place of such sale, according to the course and practice of this Court, and that the Complainant, or any of the parties in this cause, may become the purchaser or purchasers of the mortgaged premises on the said sale, that the said master execute a deed to the purchaser, or purchasers of the said mortgaged premises on the said sale, and that the said master pay to the said Complainant, out of the proceeds of such sale, his costs in this Suit to be taxed, and also the sum due to the

147th ^{and} Said Complainant for Principal and Interest on the said
note and Mortgage, as aforesaid, together with Interest thereon
from this date, or so much thereof as the purchase
money of the said mortgaged premises, will pay of the
same, and that the said Master take his receipt for
the amount so paid, and file the same with his report,
and that he bring the surplus moneys arising from the
said sale, if any there shall be, into Court, without
delay, to abide the further order of the Court; and it
is further ordered, adjudged and decreed, that after
such sale, the said Defendants and every of them, and
all persons claiming, or to claim, by, from, through,
or against any of them, be for ever barred
and forever disabled from all equity of redemption and
claim, of or to the said mortgaged premises, and every
part and parcel thereof; and it is further ordered and
decreed, that the purchaser or purchasers of the said mortgaged
premises at such sale, be let into the possession thereof,
and that any of the parties in this cause, who may be
in possession of the said premises, or any part
thereof, and any person, who since the commence-
ment of this suit, has come into possession, under
them or either of them, deliver possession thereof to such
purchaser or purchasers, on production of the Master's
Deed for such premises and a certified copy of the Order
confirming the report of the sale; and it is further ordered
and decreed, that if the moneys arising from said sale
are insufficient to pay the amount due to the said

153200 complainant, with interest and costs as aforesaid, that the said master specify the amount of such deficiency, in his report of the sale, and that on the coming in and confirmation of the said report, the defendant Cyrus Adams, who is personally liable for the payment of the debt, secured by the said note and mortgage, pay to the said complainant the amount of such deficiency with interest thereon from the date of such last mentioned report, and that the complainant have execution therefor against the said Cyrus Adams -

And thereupon the defendants prayed an appeal to the Supreme Court of this State, which is allowed upon the filing an appeal bond in the penal sum of Two Hundred Dollars, with William F. DeWolf as principal and Benjamin F. Quimby as surety. Such bond to be filed with the Clerk of this Court at any time before the fifth day of April A. D. 1860.

And afterwards to wit; on the twenty ninth day of March in the year last aforesaid, William F. DeWolf, filed in the office of the Clerk of said Court his appeal bond, in words and figures following to wit;

Appeal
Bond Know all men by these presents that we, William F. DeWolf, as principal and Benjamin F. Quimby as surety are held and bound unto Albert Hayden in the penal sum of Two Hundred Dollars, for the payment of which, well

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and truly to be made, we do hereby jointly and severally
and firmly bind ourselves, and our respective heirs, executors
and administrators, by these presents sealed with our respective
seals and dated this the

The condition of the above obligation is such, that whereas
the above bounden Albert Hayden has lately obtained a
Decree in the Superior Court of Chicago on the Chancery
Side thereof against one Cyrus Adams, the above bounden
William F. — and others from which said decree the
above named defendants in such suit have prayed
an appeal to the Supreme Court of the State of Illinois,
Now, if the said defendants and appellants, shall duly
pay the costs of appeal, and shall pay the judgment
costs, interest, and damages, that may be awarded in case
the aforesaid Decree shall be affirmed, then the above ob-
ligation shall be void and of no effect, otherwise the same
shall remain in full force and effect —

William F. D'Wolf (Seal)
Cory: F. Quincy (Seal)

4511 Copy of note given by Cyrus Adams to Albert Hayden.

St. Charles March 12th 1855.

"Adam's note
to
Hayden."

\$2000.

On or before the twelfth day of March 1856. for
Value received I promise to pay to Albert Hayden, or order Two
Thousand Dollars with interest at twelve per cent for money loaned
Cyrus Adams.

Said note being Endorsed as follows: viz
\$200. Received on the within note one years interest amounting
to Two Hundred Dollars. March 12th 1856. —

\$200 Received on the within one years interest, amounting
to Two Hundred Dollars. March 16th 1857.

Filed May 24th 1857
W. Kimball, Clerk

Exhibit 3
referred to
in
Pinkham's
Testimony

Articles of Agreement, made this first day
of January in the year of Our Lord One Thousand
Eight Hundred & Fifty Three, Between Edward J. Pinkham
of the City of Chicago, County of Cook, and State of
Illinois of the first part, and Cyrus Adams of the
same place of the second part Witnesseth, that if
the said parties of the second part shall first make the payments,
and perform the covenants hereinafter mentioned, on his
part to be made and performed, the said parties of the first
part, hereby covenants and agrees to convey and assure
to the parties of the second part in fee simple, clear of all
encumbrances whatever, by a good and sufficient warrantee
deed, the following lot, piece, or parcel of ground, viz:
The South West quarter of the North East Quarter of the North
East Quarter of Section Eleven (11) in Township Thirty Nine
(39) North of Range Thirteen (13) East of the Third Principal
Meridian, containing ten (10) acres more or less. And
the said parties of the second part hereby covenants and
agrees to pay the said parties of the first part the sum of
Twelve Hundred and fifty dollars (\$1250.) in the

11/15

manner following: One fourth thereof in Cash, the receipt of which is hereby acknowledged, and the balance in three Equal annual payments, on the first day of January in each subsequent year, with Interest at the rate of Six per cent per Annum. Payable in advance at the time of each payment on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments, or impositions that may be legally levied or imposed upon said lot; and in case of failure of the said party of the second part, to make either of the payments, or perform any of the covenants on his part, the party of the first part, shall have the right to declare the Contract forfeited and determine to take possession, and to have and retain all payments that shall have been made upon said Contract. It is mutually agreed, that all the covenants and agreements herein contained, shall extend to and be obligatory upon the heirs executors, administrators and assigns of the respective parties. In Witness Whereof, The parties to these presents have hereunto set their hands and seals the day and year first above written

Signed, Sealed and Delivered, Edward J. Tinkham. (S)

1 In presence of Cyrus Adams. (S)

"Endorsements on the Back of the above"

Received Chicago 2 Jan'y 1854. Three Hundred & fifty Dollars, being the 2nd payment due on the within Contract.

Edw. J. Tinkham

State of Illinois
County of Cook } ss.

I, Walter Kimball Clerk of the Superior Court of Chicago in and for said County (formerly the Cook County Court of Common Pleas.) do hereby certify that the foregoing is a full, true, and complete transcript of all the papers on file in my office, and of the proceedings entered of Record in said Court in ~~the case of~~ Albert. Hayden is Complainant and Cyrus Adams, William F. Wolf, Philander Eddy



Walter Kimball Clerk of the Superior Court, at the City of Chicago in said County. This 14th day of April 1860
(Walter Kimball) Clerk,

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Hayden appelle
vs
Adams et al.
Appellants

Rec'd April 18, 1860
L. L. L. L.
C. L.

Fees \$12.50
Paid by
J. W. Chickering
W. H. H. H. H.