

No. 14538 $\frac{1}{2}$

Supreme Court of Illinois

Smith

vs.

Dyer

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 235

1888

Smith

vs

Dyer

STATE OF ILLINOIS---THIRD DIVISION.

SUPREME COURT, APRIL TERM, 1863.

ALFRED SMITH

vs.

THOS. DYER *et al.*

} *Appeal from Superior Court of Chicago.*

ABSTRACT.

Bill filed 20th September, 1859, in the Superior Court of Chicago by Alfred Smith, of Connecticut. Alleges that on the 14th day of June, 1853, Asher Rossitter and Frances B. Rossitter, his wife, and Sheldon Graves and Mary Graves, his wife, executed a mortgage in fee simple on lots 5 and 6 in block 6 in Kinzie's addition to Chicago, in order to secure to Thomas Dyer \$16,000, secured to be paid by six promissory notes of even date with said mortgage, five of which were for the sum of \$3,000, each, payable respectively two, four, six, eight, and ten years after date, and the sixth note for \$1,000, payable eleven years after date—all payable to the order of said Thomas Dyer, at Marine Bank, Chicago, with interest at 6 per cent., payable annually, and which mortgage deed was executed in due form of law, and was duly recorded in the Recorder's office of Cook county and State of Illinois.

A copy thereof, together with the deed of assignment of same from Thomas Dyer to orator, is then given.

It is dated 14th June, 1853, Asher Rossitter and Frances Rossitter, his wife, and Sheldon Graves and Mary Graves, his wife, grantors, and Thomas Dyer, grantee, and recites that Asher Rossitter and Sheldon Graves are justly indebted to said Dyer in the sum of \$16,000, secured to be paid by six promissory notes of even date with said mortgage, five of them in the sum of \$3,000 each, payable respectively two, four, six, eight, and ten years after date, and the sixth for \$1,000, 11 years after date, all payable to Thomas Dyer, with 6 per cent. interest, payable annually, at Marine Bank. The grantors, to secure said notes, convey to said Dyer lots 5 and 6 in block 6 in Kinzie's addition to Chicago, with the condition that if said Asher Rossitter and Sheldon Graves, their heirs, etc., shall well and truly pay, or cause to be paid, to said Dyer, or his assigns, the said promissory notes, according to the intent and meaning thereof, that then and thenceforth the mortgage and the estate thereby granted shall cease, determine, and be void. The said mortgage further provides that if default shall be made in the payment of the

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7 Thomas Dyer's assignment of said mortgage to Alfred Smith, 11th
March, 1854, in consideration of \$12,000.

8 Thomas Dyer's acknowledgment of the assignment.

8 Bill alleges Dyer assigned said mortgage 11th March, 1854, by deed to
complainant, and that said deed of assignment was duly recorded in the Re-
corder's office of Cook county, Illinois, in book 17 of mortgages, page 215,
and at the same time indorsed in writing the several notes secured by said
mortgage, and that complainant is now the holder of such of them as are un-
paid, and that said Dyer has no interest in the mortgage or the debt thereby
secured.

8 The bill then sets out the deed of assignment, assigning said mort-
9 gage.

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11 Bill states that Asher Rossitter on or about the 25th of February, 1858, died, leaving Martha A. Rossitter his widow, Mary S. Leavitt, child, and Frank A. Leavitt, her husband, George W. Rossitter, son, and Charles D. Rossitter, his heirs-at-law, the last two infants, and that letters testamentary were issued on the estate of said Asher Rossitter, deceased, by the County Court of Cook county, State of Illinois, to John D. Pahlman, on the 8th day of March, 1858, who is now acting as executor; that said Asher died, having made a will appointing said Pahlman and John B. King executors; tha Pahlman alone qualified.

11 The bill further states that since the execution and recording of said mortgage several judgments operating as liens upon said mortgaged property have been rendered against said Asher Rossitter in his life-time, viz.: a judgment in Circuit Court of Cook county for \$6.80 costs in favor of N. Rikard; 11 judgment in favor of John F. Miller and Gilbert F. Davis, in same court, against said Rossitter and others, November 9th, 1857, for \$1,027.83 and costs; that in the same court, on 19th November, 1857, Haines H. Magie, surviving partner of John High, Jr., recovered judgment against said Rossitter 12 and others for \$1,210.66, besides costs; that on 27th November, 1857, in said court, said John B. King recovered judgment against said Rossitter and others for \$1,210 and costs; and in the same court George E. Boardman, Sheldon Graves, Albert Crosby, James S. Beach, and James E. Hays recovered a judgment against said Rossitter for costs; and in the Cook County Court of Common Pleas, Cyrus H. McCormick recovered, about February 7th, 1857, a judgment against said Asher Rossitter and others for costs of suit; and that Frank McKerwin, in same court, about November 9th, 1857, recovered a judgment against said Rossitter and others for about \$1,206 and costs; 12 and also, in same court, about the 6th day of November, Edwin Blackman, executor of John High, Jr., recovered judgment for about \$1,000.83 and costs; and in the same court, said Edwin Blackman, executor of John High, recovered a judgment about January, 1858, for about \$1,018 and costs against said Rossitter and others; and also, in a certain suit in said court, wherein 13 Asher Rossitter, John D. Pahlman, John Smith, and George Smith were plain tiffs, and the city of Chicago were defendants, a judgment, about June 15th, 1858, was rendered against plaintiffs for costs; and in the Superior Court of Chicago, George Richards, on or about the 15th of June, 1859, recovered judgment against Rossitter and others for the costs of suit, about \$14.60; and in the same court, Frederick Young recovered judgment against Asher

Rossitter and others for \$14.80; and in the same court, Charles Staats recovered, about June 15th, 1859, judgment against said Asher Rossitter for about \$14.75.

13 Bill charges all said judgments are liens.

13 Bill further charges that about the 18th July, 1857, said Sheldon Graves conveyed the undivided half of said mortgaged premises to William R. Smith by deed duly recorded. That one Francis A. McIntyre claims some sort of interest in said mortgaged property by deed of assignment from Rossitter, but that it is subsequent to complainant's right.

14 Bill further states that Martha A. Rossitter, wife of said Asher Rossitter has no claim for dower as against complainant, for the reason that she intermarried with said Rossitter subsequent to the making of said mortgage, and that said mortgage was given to secure the unpaid balance of the purchase money for said property.

14 Bill further states that Frances B. Rossitter, who signed the mortgage as wife of said Asher, is dead.

14 Bill further states that said A. Rossitter and S. Graves demised said premises to one James E. Hays by lease recorded in book 83, page 545, of records of Cook county, which lease said Hays assigned by deed of assignment to George E. Boardman and John H. Sahler, and that it is subsequent to complainant's rights.

15 Bill alleges he called upon said S. Graves and John D. Pahlman, executor of Martha A. Rossitter, widow, Mary S. Leavitt and Frank Leavitt, her husband, George W. Rossitter, and Charles D. Rossitter, and requested payment, but they refused to pay.

15 Bill makes Thomas Dyer, Martha Rossitter, Mary S. Leavitt, Frank A. Leavitt, George A. Rossitter, Charles D. Rossitter, John D. Pahlman, executor of A. Rossitter, deceased, John B. King, N. Rikard, John F. Miller, Gilbert F. Davis, Haines H. Magie, surviving partner of John High, Jr., Geo. E. Boardman, Albert Crosby, James S. Beach, James E. Hays, Cyrus H. McCormick, Frank Kerwin, Edwin Blackman, executor of John High, Jr., deceased, John D. Pahlman, John Smith, George Smith, City of Chicago, Geo. Richards, Phillip Smith, Frederick Young, Charles Staats, Sheldon Graves, Mary Graves, Wm. R. Smith, Mary J. Smith, Francis A. McIntyre, and James E. Hays, John H. Saylor, and John B. King, defendants, prays process, prays for an account of amount due and to become due upon said mortgage, and that amount due may be decreed to be paid within a day to be named by the court, and, in default, that the premises may be decreed to be sold and the amount due and to become due may be paid to complainant, and that Martha A. Rossitter and Mary A. Graves may be barred from all claim of dower, and that balance of proceeds may be applied according to the rights of defendants and for general relief.

17 Shumway, Waite, and Towne security for costs.

- 18 Præcipe for above defendants.
- 19 Summons, 23d September, 1859, against defendants to bill.
- 20 Return of Sheriff. Served on John D. Pahlman, Cyrus H. McCormick, Edwin Blackman, Francis A. McIntyre, John D. Pahlman, as executor of A. Rossitter, by delivering a copy to each of them 1st October, 1859, and on John Smith and George Smith by leaving a copy thereof at their usual place of abode with B. H. Skinner, he being a white person above the age of ten years, and also informing him of the contents thereof, the 1st day of October, 1859. The other defendants not found.
- 21 On 13th October, 1859, leave was given complainant to amend his bill by discontinuing as to Francis M. Kerwin, who is now deceased, and making Henry Stevens, his administrator, party defendant to the bill.
- 22 Summons against defendants, dated 2d November, 1859, but not including Henry Stevens, administrator of Kerwin.
- 23 Return of Sheriff. Served on Mary S. Leavitt, Frank A. Leavitt, C. D. Rossitter, and John B. King, both as to himself individually and as trustee named in the will of Asher Rossitter, and also on the City of Chicago, by delivering a copy thereof to each of the above named defendants (S. D. Ward, Comptroller, and John C. Haines, Mayor, of said city, being served as representing the City of Chicago,) the 25th day of November, 1859, and I also served this writ on the within named H. H. Magie by delivering a copy thereof to him, 28th November, 1859. The other defendants not found.
- 25 Alias summons, dated 19th November, 1859.
- 26 Return of officer. Served by delivering copies to S. Graves and Mary Graves, his wife.
- 27 Thomas Dyer enters his appearance on 7th March, 1860.
- 27 George Richards, Phillip Smith, Frederick K. Young, and Chas. Staats enter their appearance 9th March, 1860.
- 28 March 9th, 1860, bill taken for confessed against Haines H. Magie, Mary S. Leavitt, Frank Leavitt, John B. King, as trustee, and City of Chicago, George Richards, Phillip Smith, Frederick Young, and Charles Staats.
- 30 A pluries summons, dated 17th March, 1860.
- 31 Return of officer. Served on James S. Beach and Mary Jane Smith by delivering a copy thereof to each of them 28th March, 1860, and also on Wm. R. Smith by leaving a copy thereof at his usual place of abode with M. J. Smith, she being a white person over twelve years old and a member of his family, and also informing her of the contents thereof, this 28th day of March, 1860. Other defendants not found.
- 35 Pluries summons dated 14th June, 1860.

36 Return on last summons. The within named not found 30th June, 1860.

39 The answer of Sheldon Graves and wife denies all the allegations and statements of complainant's bill, except their conveyance of the property to W. R. Smith, and his mortgage back, filed 2d November, 1860.

40 Answer of W. R. Smith and wife filed 2d November, 1856, admits the execution of mortgage to Dyer to secure notes for about \$16,000 due on or about as specified, but have no personal knowledge or information sufficient to form a belief as to what are the precise facts or precise terms of note or
41 notes. Believe Dyer did assign the mortgage to complainant. Denies that any note became due 17th June, 1859. Don't admit that there are notes and interest secured by mortgage of Graves and Rossitter and their wives on the property mentioned to come due as alleged in complainant's bill. Admits conveyance alleged to defendant by Graves and wife and W. R. Smith to pay
42 one-half of the mortgage. Alleges that complainant has pledged and transferred to others the entire debt secured by said mortgage. Denies all the allegations not herein expressly admitted.

43 Cross-bill by W. R. Smith of discovery against complainant, alleging that
44 complainant had transferred the notes secured by the mortgage aforesaid.
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48 Complainant's replication to answer of W. R. Smith.

49 Complainant's replication to Graves and wife's answer.
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51 Second copy of W. R. Smith's cross-bill against complainant.
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56 Complainant's supplemental bill, reciting the allegations of original bill,
57 represents that, since filing the original bill, on the 17th day of June, 1860,
58 there became due and payable the annual interest on the first note of \$3,000
59 due in six years from its date, and on said note of \$3,000 due in eight years
60 from its date, and on the said note of \$3,000 due in ten years from its date,
61 and on the said note of \$1,000 due in eleven years from its date, amounting
62 to \$600. Prays process on said supplemental bill against parties to the orig-
63 inal bill.
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65 Complainant filed his answer to cross-bill of W. R. Smith on the 28th
March, 1861.

66 Answer denies that he was not the owner of notes and mortgage at insti-
tution of suit, unless the facts stated by him made it otherwise, which were
67 that, on 9th August, 1858, in consideration of \$10,000 loaned to him by the
Society for Savings, a corporation duly established in Hartford, on his credit,
he delivered to said Society for Savings the said four unpaid notes of Rossit-
ter and Graves, to hold as collateral, and to receive the proceeds if paid, and
he (complainant) then engaged and guaranteed to said Society that said four
notes should and would be paid to said Society at their maturity, and the
interest thereon semi-annually, and that he also engaged and promised that

he could and would pay to said Society the principal sums of the same (amounting to \$10,000) and accrued interest thereon on demand, and he then executed and delivered to said Society an assignment of said mortgage to secure said notes; that he did not indorse the said notes to said Society, nor was the assignment placed upon record; that in August, 1859, he took back from said Society the said four notes, and in lieu gave his own note.

Does not say that the mortgage was redelivered or reassigned to him.

Deposition of E. H. Haddock proves that property could not be sold in parcels without great injury.

Pages 82, 86, 87 and 88, contain continuances, and are not necessary to be abstracted.

ALFRED SMITH,	} Superior Court.
vs.	
THOMAS DYER, et al.	

Affidavit of non-residence, Edward P. Towne being duly sworn, says that he is one of the solicitors for the complainant in the above entitled suit; that all of the following named defendants, Geo. W. Rossitter, Martha A. Rossitter, N. Pickard, John F. Miller, Gilbert F. Davis, George E. Boardman, James E. Hays, Frank Kerwin, John H. Sayler and George A. Rossitter, as he is informed and believes, all reside out of the State of Illinois, so that process cannot be served upon them.

On the 18th of March, 1862, complainant filed proof of publication for the following named non-residents, viz.: George W. Rossitter, N. Pickard, John F. Miller, Gilbert F. Davis, George E. Boardman, James E. Hays, Frank Kerwin and Martha A. Rossitter, and the Court having inspected the proof of publication, find that due and legal notice had been given of the pendency of this suit according to the statute and that they are properly brought into Court and that Complainant is entitled to default against them. The order of Court then recites that it appearing that Charles D. Rossitter has been served and that said George A. Rossitter are infant defendants. T. B. Carter was appointed guardian *ad litem*, who filed their answer. The bill and supplemental bill were then taken for confessed against Thomas Dyer, Martha A. Rossitter, Mary S. Leavitt, Frank A. Leavitt, John D. Pahlman, executor of Asher Rossitter, John B. King, N. Pickard, John F. Miller, Gilbert F. Davis, Haines H. Magie, George E. Boardman, Albert Crosby, James S. Beach, James E. Hays, Cyrus H. McCormick, Frank Kerwin, Edwin Blackman, executor of John High, J. D. Pahlman, John Smith, George Smith, City of Chicago, George Richards, Phillip Smith, Frederick Young, Charles Staats, Frances A. McIntyre, John H. Sayler and John King.

T. B. Carter's answer as guardian *ad litem*.

Certificate of publication of notice to non-residence by publisher, from 7th August, 1860, to 4th September, 1860, inclusive.

- 96 The ordinary publication of notice of the pendency of the suit to Martha A. Rossitter, George W. Rossitter, N. Pickard, John F. Miller, Gilbert F. Davis, George E. Boardman, James E. Hays, Frank Kerwin, John H. Sayler, as non-residents.
- 101 Bill dismissed by Complainant as to John Smith, George Smith and Albert Crosby, and leave given to amend bill on 21st of March, 1862.
- 102 On 29th March, 1862, an agreement between Complainant and defendant, W. R. Smith, as to bond not necessary to be abstracted.
- 103 Complainant's amendment of his bill filed 22d March, 1862. Amends as follows: On last page, the prayer after the words to be by the Court fixed and they may be decreed to pay within a time to be fixed by your Honors, the amount due and in default of doing so, if said premises are indivisible that
 103 they may be ordered to be sold for the sum due as well as the sum to grow due, and the proceeds of said sale may be applied to pay the amount due and to grow due on said mortgage debt, or that said defendants may be decreed to pay within a time to be fixed the amount due and in default of their doing so, the whole of said debt may be declared to be due and payable, and said mortgaged premises may be decreed and ordered to be sold to pay the same.
- 104 Decree reciting that the cause came on for hearing upon the bill, answer of
 104 the infants Geo. M. Rossitter and Charles Rossitter by their guardian *ad litem*, and the answer of Sheldon Graves and wife and W. R. Smith and wife. The other defendants having failed to plead, answer, or demur, it is ordered that as to them the bill and supplemental bill be taken for confessed, and the cross
 105 bill of Wm. R. Smith, and the answer of Alfred Smith thereto, and the proof introduced at the hearing, and the depositions, and the court being fully advised, finds that Asher Rossiter and Sheldon Graves and their wives, on the 14th June, 1853, made to Thomas Dyer the mortgage in the bill described upon lots 5 and 6, in Block 6, in Kinzie's Addition to Chicago, in Cook County, State of Illinois, and that there is unpaid on said indebtedness secured by said mortgage the following described notes, viz.: the note of \$3,000, due in six years after date, with interest since June 14th, 1858; the note of \$3,000, due in eight years, with interest since June 14th, 1858; and the note of \$3,000, due in ten years, with interest since June 14th, 1858; and the note for 1,000, due in eleven years from the date thereof, with annual interest thereon since June 14th, 1858; and the court further finds that
 105 there is now due and payable and in default on said notes secured by said mortgage, the principal of the two first described notes, and the annual interest thereon since June 14th, 1858, together with the annual interest on the two notes due in ten and eleven years, since June 14th, 1858, to June 14th, 1861, and that there will be due on said indebtedness secured by said mortgage the further sum of the principal of the two notes due in ten and eleven years from date, and the interest thereon since June 14th, 1861; and they further find that the property constitutes a hotel, occupying both of said lots 5 and 6, and is indivisible and cannot be sold in parcels; that said Asher Rossiter departed this life, and that John D. Pahlman has been appointed his

proceedings, that thereupon W. R. Smith appealed upon bond in twenty days,
108 in penalty of \$200. Bond not necessary to be abstracted. Notes and mort-
gage not on file or copied, and not necessary to be abstracted, as no question
is made involving them.

WILLIAM R. SMITH, *Appellant*, }
 ag't } Appeal.
 ALFRED SMITH, *Appellee*. }

The appellant, William R. Smith, says that there are errors in the decree and proceedings of the court below, as shown in the foregoing record, to his prejudice, and he assigns the following as grounds for reversing said decree and proceedings, viz:

1st. The said inferior court erred in rendering a final decree therein before Frank McKerwin, a necessary party to said bill and named defendant therein, was brought before the court.

2nd. The said inferior court erred in not dismissing complainant's bill, and rendering the decree in behalf of complainant before Henry Stevens administrator of Francis M. Kerwin, dec'd alias Frank Kerwin, dec'd, who was a necessary party, and named as such in said proceeding, was brought before the court.

3rd. The said inferior court erred in rendering the decree herein without Albert Crosby, a necessary party, being brought before the court.

4th. The said inferior court erred in rendering the decree herein till John F. Miller and Gilbert Davis, alleged and shown in complainant's bill to be necessary parties, were brought before the court.

5th. The said inferior court acquired no jurisdiction over said John F. Miller, Gilbert F. Davis, or George W. Rositter, necessary parties, because the affidavit of non-residence was insufficient and not a compliance with the law.

6th. The said inferior court erred in the decree rendered herein, in directing that in the event of a sale of the property the whole debt should become due and be paid—in not giving more specific directions to the Master as to the sale than that it should be “according to the rules and practice of this court.”

7th. Said decree is erroneous in directing a sale in default of Sheldon Graves and John D. Pahlman failing to pay in thirty days the amount decreed as due, and not giving the right to any other one interested thus to pay and stop the sale.

8th. The decree is for too much.

9th. The decree is erroneous in decreeing all the costs against all the defendants, they not being jointly liable in any event.

10th. The decree is erroneous in not directing to whom the surplus of proceeds of sale, after paying amount decreed, if any, should be paid.

11th. The decree is erroneous in not providing for the right of redeeming said property from said sale but making the same absolute.

12th. The decree is erroneous in directing a payment of the whole debt out of the sale directed in any of the events provided for in said decree.

13th. The court erred in not dismissing the bill.

Wherefore, for the errors aforesaid, the appellant, William R. Smith, prays this court to reverse the decree and proceedings of the court below.

W. R. SMITH, *pro se*.

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Mr R Smith

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Alfred Smith

Abstract

United May 1863

J. Leland
cllc

THE SUPREME COURT

OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION—APRIL TERM, 1863.

ALFRED SMITH,
ats.
 WILLIAM R. SMITH, ET AL. }

BRIEF FOR APPELLEE.

In the printed abstract the title of the suit is incorrectly given. Alfred Smith was the complainant below, and is the appellee here. The appeal was taken by William R. Smith, who is the only party complaining of any errors.

The first error complained of that we will notice is, that certain parties were not properly brought into Court when the decree was taken. This objection, if true in fact, which it is not, as we know they were all brought in, though the record may not so

Filed May 16. 1863
L. L. Luma
CMR

state, would not avail anything to Mr. Smith. *None of these parties* are here raising the objection. A decree can be good as to part and bad as to others—and will only be reversed as to those against whom there is error. 4 *Porter's R.*, 65; 28 *Misso.*, (7 *Jones R.* 134.) The case is otherwise with judgments which are joint. The parties who are claimed not to be brought in are judgment creditors—and they are not necessary parties. 7 *Paige R.*, 548; 4 *Conn. R.*, 334. Even if they were, a party properly brought into Court cannot ask to have the decree reversed on that account. 4 *Porter's R.*, 65; 28 *Misso.*, (7 *Jones R.*, 131). It must be an error injurious to the party asking to reverse the decree. 23d *Ill. R.*, 36.

But we say the parties are properly before the Court. The suit is discontinued as to Albert Crosby, (page 101), and also as to Kerwin, (page 21), leave was granted to make his administrator a party, by an amendment of the bill. Previously Kerwin had been brought in by publication. By this entry the suit as to him is deemed discontinued, as no amendment was ever made to the bill, making the administrator a party.

Another objection is taken to the affidavit of non-residency. This affidavit conforms to the practice of the State, in the courts below. To require an affidavit to state *non-residency* upon other than information and belief, would require an impossibility. In most if not all cases, the only knowledge we have, or can gain of residence is upon information. William H. Seward resides in the State of New York. The knowledge of that fact is derived from information and belief to most if not all of the people of the State of Illinois. How can they *conscientiously* swear to it in any other way? So take a variety of other individuals more or less famous, and the same remarks apply.

If the statute had said it must be sworn to positively, we would have to conform to it, but the statute simply requires showing the fact; and this does not dispense with the necessity of issuing or trying to serve a summons. If this objection to the affidavit is tenable, it goes to nearly every suit commenced in chancery against non-residents. But as we have said before, the proper parties are not raising the question. 4 *Porter's R. (Ala.)* 28 *Misso. R.*, 134, and the objection will not avail the appellant, even if well taken.

All the mortgage debt was not due in this case—at the time the decree was taken, but the premises were indivisible. They could not be sold separately. A hotel occupying the frontage of the two lots,—\$8084—was then due and unpaid, besides the notes due in ten and eleven years. Much of this had been due for a very long time; the equity and right of the case demanded that if they failed to pay within the time ordered by the Court, that the whole premises should be ordered to be sold, and the money due and to become due, paid out of the proceeds of the sale, as ordered in the decree. *Baker vs Lehman, Wright R.*, 522; 3 *Bland R.*, 125; 8 *Porter R.*, 277.

He could any time before the sale, prevent it by paying the matured debt. 15 *Vermont R.*, 102.

This is a rule of law independent of the provisions of the mortgage. That provides that if default be made in the payment of said promissory notes, or any of them, or any part thereof, etc., then there is a right to enter, and foreclose by sale, and out of the money the mortgagee was authorized to pay the undue notes.

Now it does not lie in appellant's mouth to question such a decree as this, which is subject to redemption, when, by the very terms of the mortgage, the mortgagee could sell without redemption, under the power of sale in the mortgage. The copy of the notes and mortgage were left out of the record, but we have, by agreement, filed an amendment to the record, that the Court might see them. It is said the decree is too much. This can be seen not to be the case, by a reference to the notes. Nor is there any error in not providing for a redemption. The statute gives that right, and it exists unless cut off by the decree. Nor is it necessary that the decree should fix the parties rights to the surplus. When that surplus exists, they will order what to do with it. This brief has been made without any reference to the one for the appellant, it not having been seen by us.

WAITE & TOWNE,

Attorneys for Appellee.

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Filed May 16, 1863
T. L. C.

STATE OF ILLINOIS--THIRD DIVISION.

SUPREME COURT,

APRIL TERM, 1863.

WILLIAM R. SMITH, Appellant, }

vs. }

ALFRED SMITH, Appellee. }

Brief for Appellant.

This is an appeal by William R. Smith, one of the defendants in a suit in chancery in the Superior Court of Chicago, wherein Alfred Smith was complainant, and Thomas Dyer and others were defendants, instituted for the purpose of foreclosing a mortgage. The complainant obtained a decree, from which an appeal was taken to this Court.

The first question raised in this case is as to parties. I take it for granted as clear law, that it is erroneous to render a decree, in the absence of necessary parties, whenever such absence is apparent in the record, and that the absence of necessary parties, is an objection which any necessary party has a right to rely upon, either for the purpose of resisting a decree, and having a dismissal of the bill for that cause, if the defect be not remedied, or as a ground of reversal of a decree in the Supreme Court. This assumed, I assert that the appellant was, and is a *necessary* party, in this case, being a purchaser from Graves, the mortgagor, and holding his interest by conveyance (pages 4, 8, 6 of abstract) and as such

had, and has, the right to raise the objection of a want of necessary parties.

The next question is, were there any necessary parties not before the Court? I contend that judgment creditors of the mortgagor, having a lien on his interest, are necessary parties and for this I cite *Adams vs. Paynter*, Coll. 530. *2 Story's Eq. S. 1023*

It seems to me that it results from the principles of a Court of Equity and of plain justice. Courts of Equity are opposed to doing things by halves, opposed to exposing to sale and inviting purchasers of uncertain interests or defective titles, or to merely laying the foundation for further litigation when all having a right or enforceable claim are known and can be brought before the Court. Judgment creditors of a mortgagor, having a lien, if not necessary parties and therefore may be left out, must have the right to redeem the vendee under the foreclosure sale or else the judgment lien amounts to mere nothing. If they have, in such case, a right to redeem the vendee, then a sale under a proceeding by a mortgagee, where there are such creditors, amounts to nothing more, substantially, than a sale of the mortgage debt, accompanied with the right to have the mortgage property, unless some judgment creditor or other person not made a party but having a right to redeem, should pay the debt, and take the property; and this is all that the vendee would acquire under the foreclosure sale. Now the difference between buying the debt or the property, with rights of redemption out-standing, and buying the property itself clear of any such out-standing rights, is quite apparent. In the latter case, the purchaser would buy a certainty; in the former, an uncertainty, or rather almost a certainty that if his purchase was or should become a speculation, he would be redeemed; if it was not he would not be, but would be allowed to hold his perhaps undesirable purchase. This uncertainty as to what would be acquired by the purchase would deter bidders and produce a sacrifice of the property and therefore is inequitable. I have argued this question upon the principles as I suppose them, of a Court of Equity, without reference to our statute allowing redemption after sale, because I do not understand that that statute makes any change of the rules of pleading in equity or authorizes

the dispensing with parties deemed necessary before its passage.

If I am correct in supposing that judgment creditors were necessary parties, then it becomes material to know whether there were any who were not brought before the Court. The bill states (p 3 of abstract) that Albert Crosby, John F. Miller, Gilbert Davis and Frank McKerwin, were judgment creditors of Rossitter, the mortgagor, and had liens upon his interest in this mortgage property. As to Crosby, the suit was dismissed 21st March, 1862 (p 8 of abstract). As to McKerwin, he was not made party defendant to the bill, unless under the name of Frank Kerwin (p 4 of abstract), who subsequently appears in the record alternately as Francis M. Kerwin and Frank Kerwin. Assuming that Frank McKerwin, Francis M. Kerwin and Frank Kerwin, were intended for the same person it appears from the record (p 5 of abstract) that complainant, on the 13th of October, 1859, and before process had been served on him discontinued as to Kerwin on the ground that he was dead and made Henry Stevens as his administrator, a defendant in his stead upon whom no process was ever served and of whom no notice was afterwards taken in the case. It is true that Mr. Towne, one of complainant's solicitors, nearly a year afterwards, made affidavit that Kerwin, as he was informed and believed was a non-resident of Illinois, so that process could not be served on him (p 7 of abstract) and after publication, the Court after due examination of the proof recited in an order that due notice, according to the statute, had been given to Kerwin, of the pendency of this suit, and that he was properly brought into Court, and that complainant was entitled to a default against him, and thereupon the Court ordered the bill and amended bill to be taken for confessed against Kerwin, and all this after it was shown by the record that Kerwin was dead. But notwithstanding, this, it is established by the record, that Kerwin was a judgment creditor, having a lien, that he was dead on 13th October, 1859; that Henry Stevens was his administrator, and that neither Kerwin nor Stevens were ever brought before the Court. If judgment creditors were or are necessary parties in this case, then the decree is erroneous, because neither Ker-

win nor his administrator were before the Court. The decision as to Kerwin will virtually decide the question as to Crosby, Miller & Davis, and I shall therefore forego any remarks in reference to their position in the case. Again, there can be no doubt that the heirs of the deceased mortgagor, Rossitter, were necessary parties. One of them, George W. Rossitter, was named a defendant—was an infant (p. 3 of Abstract) and was never personally served with process, but was proceeded against as a non-resident. A guardian *ad litem* was however appointed for him and the guardian answered. I make two questions upon the proceedings as to George W. Rossitter: One is, that he should have been brought before the Court by notice, actual or constructive; and the other is, that neither the appointment of a guardian *ad litem*, and the guardian's answering, brought him before the Court, nor was the affidavit of non-residence sufficient to authorize the publication notice and thus bring him before the Court. The first is clear upon general principles as well as from almost innumerable decisions. Jurisdiction of the person interested as well as of the subject matter is essential in such proceedings as this. The second depends upon the meaning and validity of the 47th section and the meaning of the 8th section of the Chancery Act, 1 vol. Statutes, pages 139 & 144. The 8th section provides that when any complainant shall file in the office an affidavit "showing that any defendant resides or hath gone out of this State," the Clerk shall cause publication to be made. The affidavit filed (p. 7 of Abstract,) stated simply that George W. Rossitter, among others, as the affiant was *informed* and *believed* resided out of the State of Illinois. The affiant did not state from whom or from what facts he derived his information, so that others might decide whether he was too credulous or not. The affidavit does not follow either the language or the substance of the statute. It does not *show* that George W. Rossitter was a non-resident. It was designed to effect constructive notice of the pendency of the suit, and such being its design, to be good for anything, it should have strictly complied with the requirements of the statute, nor can its defects be supplied or aided by recitals in orders or decrees of the Court. Boyland *vs.* Boyland, 18 Ills. 552. Besides its

insufficiency being shown by its non-compliance with the statute. I think the insufficiency of the affidavit is established by the case of *Dyer vs. Flint*, 21 Ills., 84. That case arose upon an affidavit made under our attachment law, which requires an affidavit setting forth an indebtedness exceeding twenty dollars, &c., and among other grounds of attachment that the debtor is not a resident of the State. The Court say the requirements of the statute must be fulfilled. The creditor, or his agent, making the affidavit, cannot rely upon hearsay as to either—he must positively allege both the non-residence and the indebtedness. The almost exact similarity of the two statutes in reference to the affidavit makes that case a direct authority in this; I maintain therefore that George W. Rossiter was never brought before the Court by constructive notice by publication, and, as I said before, he never had actual notice so far as this record shows. I know of but two ways of bringing a party before a Court—the one is by actual, the other by constructive notice. I can conceive of no other. But there may be and there are different modes of giving constructive notice, and the question which I will now proceed to consider is whether the 47th section, before quoted, was intended to provide for and does provide for one of them. That section provides that “In any cause in equity it shall be lawful for the Court in which the cause is pending, to appoint a guardian *ad litem*, to any infant or insane defendant in such cause, whether such infant or insane defendant shall have been served with process or not, and to compel the person so appointed to act.” This is all of it that bears upon the question under consideration. It will be seen that it simply makes the appointment lawful whether the infant has been served with process or not—that is all. It does not declare its effect otherwise. It does not say that it shall dispense with notice or stand in the place of service of notice or be constructive notice to the infant. It does not repeal the law requiring notice expressly or by necessary implication; for a compliance with it is not at all incompatible with service of notice afterwards upon the infant. It simply legalizes the appointment whenever made during the progress of the cause. Notice should not be dispensed with where none is provided for in a statute.

A proceeding in a Probate Court by which a person was declared *non compos mentis* and his property put under the control of another without notice of the proceeding under a statute which did not require any notice, was declared void in *Chase vs. Hathaway*, 14th Mass. 223. The implication that notice was not necessary, was as strong under such a statute as under ours. But, if the legislature had declared that notice should not be necessary, or that the appointment of a guardian *ad litem* and his answering should amount to constructive notice, had they the power? In 9th Cranch, 126, 144, the court say that in all cases and by universal law, ^{no} one can be deprived of his property without notice, see 3 Vesey, Jr., 181. What would be the difference in substance between the legislature's declaring that the property in A's possession belonged to B, or that A's title to property which he claimed was invalid, and their authorizing a court to declare the same upon the ex parte application of B without any notice whatever to A? It would not be a judicial proceeding, because there would be no parties to decide between. What is the difference between the legislature's saying that ^{there} need be no notice, and their saying that notice to anybody but A shall be constructive notice to A? Who shall be the guardian *ad litem*, is generally at the dictation of the complainant's attorney under the control of the court, and is generally the clerk, but may be any one, and if the appointment of a guardian *ad litem* and his answering, had been declared by the legislature as constructive notice, it would have amounted to a declaration by the legislature, that A's property or rights might be taken from him by notice to any one except him—a declaration which could not have the force of law, because it would authorize the depriving persons of their property and rights without judicial proceedings, or anything bearing the semblance of judicial proceedings. But, if it should be urged that such a legislative declaration would be law for those within the jurisdiction of the legislature, then I insist that it cannot be as to non-residents; or, if it be urged that the court by virtue of its general guardianship over infants, has the power to appoint a guardian *ad litem* and dispense with notice to them, then I answer that the court has no guardianship over non-resident in-

fants, and that power would not reach this case, and besides if that view be correct, this statute was useless. But it will hardly be contended that without this section, other notice to the infant than the appointment of a guardian *ad litem*, could be dispensed with. I therefore urge that George W. Rossitter was never brought before the court, and the decree erroneous for that cause.

Another objection is, that the Society for Savings were not made a party to the proceedings. The mortgage had, previously to the institution of this suit, been assigned and delivered to that Society (page 6 of abstract,) and the case does not show that it was ever re-assigned or re-delivered. The legal title was, and is yet in that Society.

I next come to the decree. ^{Having} ~~Having~~ the question whether in any case of a debt payable by instalments where some of them are not due, and the property indivisible, and it is not shown that the property is insufficient security for the whole debt, principal and interest when matured, such a decree is proper,—I contend that in this case the decree is wrong in declaring that in the event of a sale, the whole debt—that not due as well as that due, shall be paid out of the proceeds. The mortgage provides for a sale of the whole premises (pages 1 and 2 of abstract,) not a part in any event, by the mortgagee or his assignee if default should be made in the payment of said promissory notes, or any one of them, or any part thereof, and in the event of a sale, the mortgage provides that out of the money arising from such sale, the mortgagee or assignee may retain the principal and interest which shall then (at the time of the sale) *be due* on said notes or any of them, and also all costs,—rendering the overplus of the purchase-money (if there should be any) to the mortgagors and their assigns, &c. There is no allegation of mistake in drawing the mortgage, and therefore there can be no pretence of one. The parties knew the property was indivisible—that the debt was payable by instalments—that some of them would become due before others, and might remain unpaid after maturity—that selling the mortgage property was only one of three modes of enforcing payment, and, with this knowledge, they stipulate that in case of default in any part of the debt, the mortgagee, if he

chooses, may sell the whole property—not less—retain the amount *then due* and pay over the balance to mortgagors. Nothing can be clearer or more distinct than that this was the agreement, and from it, it is perfectly plain that in no event and out of no property did the mortgagors intend or agree to pay the debt faster than it should become due, nor did the mortgagee bargain for a right to collect it faster than it should become due; nor was there anything unreasonable in this. In case of default the mortgagee could sue upon his notes or take possession of the property and appropriate its profits to his unpaid debt. It was and is as equitable and just that the mortgage creditor should be delayed in the payment of what is due as that the mortgage debtor should be hastened in the payment of what is not due, and from the stipulations in the mortgage they seem to have so considered. The complainant now asks a Court of Equity to violate this equitable rule—the agreement contained in the mortgage—and to do for him by a sale what, if he had himself made the sale, the contract under which he claims would have prohibited him from doing. I understand that the object of Courts, and especially Courts of Equity, is to carry out, not to violate, clear, distinct fair contracts of parties—to cause to be done precisely what would have been done, if the contract had been complied with or carried out by the parties themselves. The decree in this case violates the understanding of the parties and is for that cause erroneous.

Another objection to the decree is that it does not give the master any other directions as to the sale of the property, than that it shall be according to the rules and practice of the Court. It does not specify how he shall advertise, or how long he shall advertise, where he shall sell or between what hours, but leaves all these matters to him, and makes him, a mere ministerial officer, a judicial officer so far as to authorize him to decide what are the rules and practice of the Court as to sales of mortgage property. What are the rules and what the practice of the Court as to such sales? Are the rules and practice lawful? We can't tell. But it may be said that the question as to what the rules are and the practice is, and whether lawful or not, may be raised on a motion to set aside the sale,

or by objections to a conformation of the master's report of sale. To this I answer that the Court had no right to make a ministerial officer a judicial officer. That it subjects the purchaser to the hazard of the sales being in accordance with the rules and practice of the Court, and of those rules and that practice being lawful, and increases the chances of litigation and lessens the chances of the purchaser's obtaining the property, and therefore would deter bidders and tend to sacrifice the property at the sale.

Another objection is that the decree allows no one to pay the mortgage debt but Graves and Pahlman. The record shows that Graves had conveyed to appellant his interest in the property, and that appellant had assumed to pay Graves' portion of the mortgage debt. By the decree appellant has no right to pay the debt and prevent the sale and stop further costs, nor had the master a right to receive it from him. This certainly was wrong. Had'nt he, as purchaser of mortgagor's interest, a right to redeem at any time before the decree, and at any time before the equity of redemption should be foreclosed, which, under our practice, is not done till a sale or at least till the expiration of the 30 days after the decree within which payment was allowed. It makes no difference that appellant may have a year after the sale within which to redeem; for the right to redeem before the sale existed before and independent of our statute, and is not taken away by it, and is important and valuable because by its exercise costs and an increased interest could and would be avoided.

The decree is also erroneous in not directing to whom the surplus of proceeds of sale, after paying amount decreed, should be paid. 1 Monroe, 66.

The decree should provide for redemption. As it is, it would seem the Court intended an absolute sale.

Another objection is, the decree adjudges the costs against all of the defendants, when in a case such as this, where a Court of Equity would have no jurisdiction except for the mortgage, no decree for costs except out of the mortgage property could be made against any one. 5 Mon. 78; 6 J. J. Marshall, 28.

Appellant therefore asks for a reversal of the decree of the Court below.

W. R. SMITH, *pro. se.*

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, 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 and State, on the first Monday, being the Third day of March in the year of our Lord One Thousand Eight Hundred and Sixty Six and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable

John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Van H. Higgins }
Grant Goodrich } Judges.

Carlos Haven Prosecuting Attorney.

Anthony J. Heintz Sheriff of Cook County.

Attest,

Thomas B. Butler Clerk.

It is remembered that heretofore to wit:
on the 20th day of September in the year of
our Lord One thousand Eight hundred &
fifty nine there was filed in the office
of the Clerk of the Superior Court of
Chicago a certain Bill. Bond for Costs
and Process for Summons, which are
in the words & figures following, to wit:

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1
To the Honorable the Judges of the Superior Court of Chicago,
within & for the County of Cook and State of Illinois In Chancery.

Your Orator Alfred Smith of the City of Hartford and
State of Connecticut humbly complaining represents unto
your Honor that heretofore: to wit on the fourteenth day of
June in the year of our Lord Eighteen hundred & fifty three
Asner Rossiter and Frances B Rossiter his wife of the City
of Chicago - and Sheldon Graves & Mary Graves his wife
then of the State of New York, now of the State of Illinois ex-
ecuted a mortgage in fee simple to one Thomas Loyer
upon the following described real estate situated in
the City of Chicago County of Cook and State of Illinois:
to wit; All the following described Lots and parcels
of Land; viz; Lots numbered five (5) and six (6) in
Block Number one in the 1st Addition to Chicago and
which mortgage was executed in order to secure the pay-
ment to said Thomas Loyer of the sum of sixteen
thousand dollars - secured to be paid by six certain
promissory notes bearing date with said mortgage
five of which notes were for the sum of three thousand
and dollars each - payable respectively two - four -
six, eight - & ten years after date, and the sixth
note for one thousand dollars payable eleven years
after date - all of them payable to the order of said
Thomas Loyer with six per cent interest at the Ma-
rine Bank at Chicago Interest payable annually
and which mortgage deed was executed in due form
of law and was duly recorded in the Recorder's office

2
§
of Cook County and state of Illinois in Book Fifteen
of mortgages Page 630. And a copy of which together
with the Deed of assignment of the same from Thomas
Dyer to your orator is as follows. That is to say

"This Indenture made this fourteenth day of June in
the year eighteen hundred and fifty three. Between Asher
Rossitter and Francis S. Rossitter his wife of the city of Chicago
& State of Illinois. And Sheldon Graves and Mary Graves his
wife of Onondaga County State of New York, Parties of the first
part and Thomas Dyer of the City of Chicago aforesaid party
of the second part, Witnesseth that whereas the said Asher
Rossitter and Sheldon Graves are justly indebted to the
said Thomas Dyer in the sum of sixteen thousand dol-
lars secured to be paid by six certain promissory notes
bearing date the date of these presents, five of these notes
in the sum of three thousand dollars each. payable re-
spectively two, four, six, eight and ten years after date
and the sixth note for one thousand dollars payable
eleven years after date, all the notes payable to the
order of Thomas Dyer with six per cent interest at the
Marine Bank at Chicago, interest payable annually.
Now therefore the said parties of the first part for the better
securing the payment of the money aforesaid with in-
terest thereon according to the tenor and effects and true
intent and meaning of the said promissory notes. And
also in consideration of the further sum of one dollar
to them in hand paid by the said party of the second

part at the delivery of these presents the receipt whereof is hereby acknowledged have granted, bargained, sold remised, aliened and conveyed and by these presents do grant bargain, sell, remise, alien and convey unto the said party of the second part and to his heirs and assigns forever. All the following described lots and parcels of land, viz. lots numbered (3) five and (4) six in Block number (6) six in King's addition to Chicago, County of Cook and State of Illinois to have and to hold the same together with all and singular the tenements hereditaments privileges and appurtenances thereunto belonging or in any wise appertaining with the rents, issues and profits thereof; and also all the estate, right title, interest and claim whatsoever in law as well as in Equity which the parties of the first part have in and to the premises hereby conveyed unto the said party of the second part his heirs and assigns, and to his only proper use, benefit and behoof forever. Provided always, and these presents and upon the express condition we publish, that if the said Asher Rossitter and Sheldon Graves their heirs, executors, or administrators shall well and truly pay or cause to be paid unto the said party of the second part his executors administrators or assigns, the said promissory notes herein before described according to the true intent and meaning thereof, that there and thence forth these presents and the estate hereby granted shall cease, determine and be utterly null and void any thing herein before contained to the contrary notwithstanding.

And the said Asher Rossitter and Sheldon Graves for themselves their heirs executors administrators do covenant grant and agree to and with the said party of the second part his executors administrators and assigns the said promissory notes; and also that they will not at any time hereafter until said promissory notes shall be fully paid suffer said premises or any part thereof to be sold for any taxes or assessments; nor will they permit anything to be done nor do any thing in upon or about said premises that shall in any wise impair the value thereof, or weaken or impair the security intended to be affected under and by virtue hereof: But if default shall be made in the payment of the said promissory notes or any of them or any part thereof according to their tenor and effect or if the said Asher Rossitter and Sheldon Graves or either of them shall suffer or permit said premises or any part thereof to be sold for taxes or do or permit anything to be done upon said premises or any part thereof that shall impair or injure the value thereof, or tend to impair or weaken the security intended to be hereby affected that then and thenceforth it shall be lawful for the said party of the second part his certain attorney executor, administrators or assigns to enter unto and upon all and singular the said premises hereby granted or intended so to be; and to sell and dispose of the same, either by himself, themselves his or their attorney for that purpose constituted irrevocable and also all benefit and equity of redemption

of the said parties of the first part their heirs or assigns
therein at public vendue after having given sixty days
notice of the time and place of said sale (the sale to be
made in the city of Chicago) by advertisement in any one
of the daily newspapers that may at that time be pub-
lished in the city of Chicago. Personal notice to the said
parties of the first part their heirs executors adminis-
trators or assigns of the said sale being hereby expressly
waived. And as the attorney of the said parties of the
first part for that purpose hereby duly authorized -
constituted and appointed to make and deliver to
the purchaser or purchasers thereof a good and suffi-
cient deed or deeds of conveyance in the law for the
same in fee simple, and out of the money arising from
such sale to retain the principal and interest which shall
then be due on the said notes or any of them and also all
taxes and redemption money paid by the said party
of the second part for the redemption from law sales
of said premises or any part thereof together with the
costs and charges of advertisement and sale of said
premises rendering the over-plus of the purchase money
(if any there should be) unto the said Ascher Rossiter and
Sheldon Graves their heirs executors administrators or assigns
which sale as to be made shall forever be a perpetual
bar both in law and equity against the said parties of the first
part and their heirs and assigns and all other persons
claiming or to claim the premises or any part thereof
by from or under them or any of them.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in

the presence of

J. A. Howe

Asher Rossitter.

Frances S. Rossitter

Sheldon Graves.

May Graves.

State of Illinois

County of Cook ss. I Frederick A. Howe a Justice of the Peace in and for said County in the state aforesaid do hereby certify that Asher Rossitter & Frances S. his wife and Sheldon Graves who are personally known to me to be the same persons whose names are subscribed to the annexed deed appeared before me this day in persons and acknowledged that they had signed sealed and delivered the said instrument of writing as their free act and deed for the uses and purposes therein expressed and the said Frances S. Rossitter wife of said Asher Rossitter having been 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 without any compulsion of her husband and relinquished her dower to the lands and tenements therein mentioned and that she does not wish to retract the same, Given under my hands and official seal this fourteenth day of June A.D. 1853.

F. A. Howe Justice of the Peace (Seal)

State of Illinois
Cook County. I as I Frederick A Howe a Justice of the Peace
in and for said County in the State aforesaid do hereby
certify that Mary Leves wife of Sheldon Leves having
been 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 without any
compulsion of her said husband and relinquished her
dower to the lands and tenements therein mentioned and that
she does not wish to retract the same.

Given under my hand and official seal this sixteenth
day of October A.D. 1853.

F. A. Howe, Justice of the Peace (Seal)

Know all men by these presents, that I Thomas Ayer the
mortgage of this mortgage for and in consideration of
twelve thousand dollars to me paid by Alfred Smith of Wat-
ford Connecticut the receipt whereof I do hereby acknowledge; do
hereby assign, transfer and set over to the said Alfred
Smith his heirs & assigns all my right title and interest in
& to the within mortgage. Witness my hand and seal
this 11 March 1854.

In presence of }

A. Huntington

Thos. Ayer.

State of Illinois
County of Cook, ss. I Alonzo Huntington a Notary

Public within and for said City in the County and State
aforesaid, do hereby certify that on the 11th day of March A.D.
1854 Thomas Dyer personally known to me as the same
person whose name appears to the foregoing assignment
of Mortgage as having executed the same came before &
acknowledged that he had executed the same, freely & vol-
untarily for the uses and purposes therein expressed. In
testimony whereof I have hereunto set my hand and
affixed my seal Notarial the day & year above expressed.

A. Huntington.

Notary Public.

And your Orator further represents unto your Honor, that
on the eleventh day of March in the year of our Lord,
Eighteen hundred and fifty four said Thomas Dyer by
Deed of Assignment duly assigned said mortgage to your
Orator and which deed of Assignment was duly recorded
in the recorder's office of Cook County and State of Illinois
in Book 17 of Mortgages, Page 25 and at the same time
endorsed in writing to your orator the several notes se-
cured by said mortgage. And your orator is now the hol-
der of such of them as are unpaid, and being the notes
hereinafter mentioned and said Dyer has no interest in
said mortgages or the debt thereby secured.

And which deed of assignment is as follows. "Know all
men by these presents, that I, Thomas Dyer of the City
of Chicago County of Cook, and State of Illinois, for and in con-

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sideration of the sum of twelve thousand dollars to me in
hand paid by Alfred Smith of Hartford Connecticut the
receipt whereof I hereby acknowledge do hereby assign trans-
fer assign and set over unto the said Alfred Smith and
to his heirs and assigns all my right title and interest
in and to a certain mortgage given by Asher Rossit-
ter and Frances S. his wife of said Chicago and Sheldon
Graves and Mary his wife of Onondaga County New York
to the said Thomas Dyer to secure the payment of the
sum of sixteen thousand dollars by the said Rossitter
& Graves to the said Dyer which said mortgage is upon
the following real estate in the City of Chicago to wit. Lots
numbered five and six in Block numbered six (6) in
Kings Addition to Chicago, County of Cook & State of Illinois
dated June fourteenth A.D. 1853 and is duly recorded in
the Recorder's office of said County of Cook in said State of
Illinois in Book No 15 of Mortgages page 630. Witness
my hand and seal this 11th day of March A.D. 1854.

In presence of L. Board

Signed Thomas Dyer

Seal

And the same is duly acknowledged and recorded.

And your Orator further represents unto your Honors
that on the seven tenth day of June in the year of our
Lord eighteen hundred & fifty nine the note of three
thousand payable in six years became due and
payable the time limited for the payment of the same
having expired, and then also became on the same
date due and payable the annual interest on said

note and also on the note of three thousand dollars due in eight years from its date and also on the three thousand dollar note due in ten years from its date and also the annual interest on the note of one thousand dollars due & payable in Eleven years. Amounting to a large sum - to wit. the sum of six hundred dollars, the time limited for the payment of said interest then having expired, and thereby the estate of your Orator in said mortgaged premises became absolute in law.

And your Orator further represents unto your Honors that there is still due and unpaid on said mortgage the following additional sums to those above named namely, the note for the sum of three thousand dollars due & payable in eight years with annual interest; the note of three thousand dollars, due & payable in ten years with annual interest and the note of one thousand dollars due & payable in eleven years with annual interest. all of which three notes are wholly due & unpaid. the principal of which has not yet all matured, all of which is held by your orator. And your orator further represents unto your Honors that the premises covered by said mortgage is what is commonly called the Lake House in the City of Chicago and the same is indivisible, and all of the same will have to be sold entire.

And your Orator further represents unto your Honors that on or about the twenty fifth day of February,

Ad. 1858 said Asher Rossitter departed this life leaving the following heirs at law, namely, Martha A Rossitter widow on Mary S. Dearitt child & Frank A. Dearitt her husband, George W. Rossitter, son and Charles A. Rossitter the two last infants.

And that letters testamentary was issued on the estate of said Asher Rossitter deceased, by the County Court of Cook County in the State of Illinois to John D. Pohlman on the eighth day of March A.D. 1858, who is now acting & has qualified as executor upon said estate of Asher Rossitter deceased. That said Rossitter died making a will appointing said John D. Pohlman and John B. King executors that John D. Pohlman alone was qualified.

And your orator further represents unto your Honors that since the execution & recording of said mortgage several judgments operating as liens upon said mortgaged premises have been rendered against said Asher Rossitter in his life time but since deceased as follows. a judgment for \$6⁸⁰ costs rendered in favor of K. Rikard in the Circuit Court of Cook County Illinois. Another judgment rendered in favor of John S. Miller and Gilbert J. Davis in the same court against the said Asher Rossitter and others November 19. 1857 for One thousand and twenty seven dollars & eighty three cents, besides costs of suit; That on the same court on the 19th day of November A.D. 1857 Cassius H. Meakin surviving partner of John High Jr. partner under the

name & style of High & Magie recovered judgment against said Asher Rossitter with other for the sum of \$1210⁶⁶ besides costs of suit; and on the 27th day of November Ad. 1857. in the same court said John B King recovered judgment against said Asher Rossitter with other for the sum of \$1210. besides costs of suit. And in the same Court in a certain suit wherein Asher Rossitter and John O'Brien in chancery were, complainants and George E. Boardman & Sheldon Leves, Albert Crosby, James B. Beach and James E. Bayles a judgment was rendered against each party for costs of suit

And in the Cook County Court of Common Pleas within & for the County of Cook and State of Illinois Cyrus H. McCormick recovered about February 7. 1857 a judgment against said Asher Rossitter and other for cost of suit. And also Frank McKenison in the same Court about November 9. 1857 recovered judgment against said Asher Rossitter and other for about \$1206 besides costs of suit. And also in the same Court about the 6th day of November Ad 1857. Edwin Blackman Executor of John High & Co recovered judgment for about \$1000⁹³ besides costs of suit. And also in the same Court said Edwin Blackman executor of said John High recovered judgment about January 1th 1858 for about \$1018 besides costs of suit against said Asher Rossitter & other. And also in a certain suit in said Court wherein Asher Rossitter John S. Pahlman, John Smith & George Smith were plain-

tiffs and the City of Chicago were defendants a judgment
 about June 15th 1858 was rendered against the plaintiffs
 for costs. And in the Superior Court of Chicago, within
 & for the County of Cook and State of Illinois, George
 Richards - on or about the fifteenth day of June A.D. 1859
 recovered judgment against Asher Rossitter & others in the
 sum of about \$17 besides cost of suit. And in the
 same Court on or about the same day Phillip Smith
 recovered judgment against Asher Rossitter & others
 for the costs of suit, about 14⁶² Dollars. And in the
 same Court, Frederick Young recovered judgment
 against Asher Rossitter and others in the sum of
 \$14⁸⁰ or thereabouts, for cost; and in the same
 Court Charles Stato recovered about June 15 1859
 judgment against ^{said} Asher Rossitter for about 14⁷⁵
 Dollars.

All of which judgments are liens subsequent to
 your orator's said Mortgage, lien -

And your orator further represents unto your
 Honor that on or about the 18 day of July A.D. 1857 said
 Sheldon Graves conveyed the undivided half of said Mort-
 gaged premises - to one William R. Smith and the 20
 of July said Sheldon Graves and Mary his wife conveyed
 said undivided half to said William R. Smith - the latter
 deed evidently was made to correct some errors in the first
 and which deeds are duly accorded; and said Smith July
 18, 1857 gave a mortgage back or trust deed to said
 Sheldon Graves to receive certain moneys therein men-

tioned - whatever may be the situation of the conveyances between said Smith & Graves they are all subsequent to the rights of your orator. That one Frances & McEntyre claims some interest in said premises by virtue of a deed of assignment made by Rossitter, John H. Pohlman, George C. Smith & John C. Smith - but whatever the claim a right of said McEntyre may be, it is subsequent to the lien of your orator's mortgage.

And your orator further represents unto your Honor that Martha A. Rossitter, wife of said Asher Rossitter, deceased has no claim for dower as against your orator's mortgage for the reason that she intermarried with said Asher Rossitter subsequent to the making of said mortgage. And your orator further alleges that said mortgage was given to secure balance of unpaid purchase money and that for that reason, the said Martha A. Rossitter has no claim as against your orator's mortgage to dower.

And your Orator further represents unto your Honor that said Frances B. Rossitter who signed the mortgage as wife of said Asher Rossitter soon after signing the same departed this life - And he further represents unto your Honor that said Rossitter & Graves devised said premises to one James E. Hayes by lease recorded in Book 83 Page 545; of the records of Cook County Illinois; and which lease said Hayes assigned by deed of assignment to George E. Boardman & John H. Sahler; and which deed of assignment is duly recorded

but your Orator alleges that though the time limited by said lease has not expired the same has in fact been Consummated. ~~but whether Consummated~~ or not it is subsequent to your orators rights.

And your Orator further represents unto your Honors, that said sum of money above mentioned having become due & payable with the accretions of interest he called upon said Shulden Graved, John M. Pohlman the executor of said Asher Rossitter deceased Martha A Rossitter widow Mary A. Leavitt & Frank A Leavitt her husband; George W Rossitter and Charles D. Rossitter in a friendly manner and requested them to pay the same which they have neglected & refused to do. And your Orator further alleges that all the defendants herein named have neglected and refused to pay the same or any part of the same although often requested so to do.

And your Orator prays that the above named Thomas Dyer Martha Rossitter Mary J. Leavitt Frank A Leavitt George A Rossitter Charles D. Rossitter John M Pohlman executor Asher Rossitter deceased John B King, & Richard John Y. Miller Gilbert Y. Davis Waines H. Magic surviving partner of John High & George E Boardman Albert Crosby James S Beach James E Hoarce Cyrus H. McCormick Frank Keriven Edwin Blackman Executor of John High Jr deceased John M Pohlman John Smith, George Smith City of Chicago George Richards, Philip Smith Frederick Tenny Charles

state. Sheldon Graves Mary Graves William R. Smith
 Mary Smith Frances A. McIntyre and James E. Hayes
 John H. Sayler and John B. King parties named in the
 will of Asher Rossitt deceased. May be made par-
 ties defendant to this his bill of complaint, and that
 process of summons may issue against them in due
 form of law returnable according to law; and that
 they each of them (an answer under oath being here-
 by waived) may make full true & perfect answer to
 the above bill as if here again repeated. upon the best of
 their knowledge information & belief. And that an
 account may be taken of the amount due upon said
 mortgage; and also of the amount to become due
 And that the amount due may be decreed. To be
 paid to your orator within a day to be by the Court
 fixed. and in default of the same being paid that
 said premises may be decreed. To be sold - and the
 amount due & to become due may be paid to your
 orator; and that the said Martha A. Rossitt,
 Mary Graves may be barred from all claim of dower
 in unto said premises as against your orator on mortgage
 and the balance of the proceeds may be applied ac-
 cording to the rights of the defendants; and that he
 may have such other & further rights as may be
 equitable in the premises, & he will ever praye
 I humbly wait & Lorne
 Solicitor.

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Alfred Smith

Thomas Dyer et al

Superior Court of Chicago

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

Dated this 20th day
of September A.D. 1859

Samuel H. T. T. T.

Alfred Smith

Thomas Dyer
Martha A. Rosseter
Mary S. Leavitt
Frank A. Leavitt
George H. Rosseter
Charles D. Rosseter
John D. Pahlman
Executor of John Rosseter
deceased.
John B. King
H. Pickard

Samuel H. T. T. T.

John F. Miller

Gilbert J. Davis, James H. Mayes Surviving
 partner of John High Jr. George E. Board-
 man, Albert Crosby, James S. Beach, James
 E. Hayes, Cyrus W. McCormick, Frank Knicker,
 Edwin Blackman, Executor of John High Jr.
 John D. Pahlman, John Smith, George Smith,
 City of Chicago, George Richards, Phillip Smith
 Inverick Young, Charles Staats, Sheldon Traver,
 Mary Traver, William R. Smith, Mary Smith,
 Francis M. McIntyre, James E. Hayes, John
 H. Saylors, and John D. King trustee named
 in will of Asher Rowittier deceased.
 Please issue summonses for above.

And thereupon afterwards, to wit: on the 2nd
 day of the month of June aforesaid, there issued
 out of & under the Seal of said Court
 the proper writ of summonses, which said writ
 with the Sheriff's returns thereon and order is
 in the words & figures following, to wit:

State of Illinois
County of Cook

The People of the State of Illinois
to the Sheriff of said County, Greeting:
We command you that you summon
Thomas Ryan, Martha A. Rosetter, Mary E.
Leavitt, Frank A. Leavitt, George W. Rosset-
ter, Charles E. Rosetter, John D. Pahlman
Executor of Peter Rosetter deceased, John
B. King, W. Pickard, John F. Miller,
Gillbert A. Davis, James H. Magee surviving
partner of John Night Jr. George E. Board-
man, Albert Crosby, James C. Beach,
James C. Hayes, Cyrus A. McCormick, Frank
Kerwin, Edwin Blackman Executor of John
Night Jr., John D. Pahlman, John Smith,
George Smith, City of Chicago, George Richards,
Philip Smith, Frederick Young, Charles Staats
Sheldon Graves, Mary Graves, William B.
Smith, Mary Smith, Francis W. McIntire
James C. Hayes, John W. Saylor & John
B. King Executors named in the will of Peter
Rosetter deceased. if they shall be
found in your County, personally to do and
appear before the Superior Court of Chi-
cago, 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 October
next, to answer unto Alfred Smith
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 end orment thereon, in what
manner you shall have executed the same.

Witness Walter Kimball, Clerk
of our said Court, and the Seal
thereof, at the City of Chicago,
aforesaid, this 20th day of Sep-
tember A.D. 1859.

Walter Kimball Clerk

Served this writ on the within named John D. Pahl-
man, Cyrus H. McCormick, Edwin Blackman,
and Francis A. McIntyre, and John D. Pahlman as
Executor of Arthur Rosseter deceased, by deliver-
ing a copy thereof to each of them the 1st of
October 1859. And I also served out the within
named John Smith and George Smith by leav-
ing a copy thereof at their usual place of abode
with B. H. Skinner he being a white person
above the age of ten years, and also informing
him of the contents thereof, this 1st day of October
A.D. 1859. The other Defendants not found

in said County.

John Gray Sheriff
By Wm. D. Gray Deputy.

And afterwards to wit: on the 13th day of
October in the year aforesaid, said day being
one of the days of the October Term of
said Court the following among other
proceedings were had entered of record
in said Court, to wit:

Alfred Smith

Bill

Thomas Dyer et al

This day comes said Complainant by Shum-
way, Walter & Towne his Solicitors and out their
motion leave is given said Complainant to
amend his bill of Complaint herein by dis-
continuing as to Francis M. Kerwin who is deceased
and making Henry Stevens administrator of
said Francis M. Kerwin deceased, party de-
fendant to the Bill.

And afterwards, to wit: on the 2nd day of November in the year aforesaid, there issued out of & under the Seal of said Court, the People's writ of Alias Summons, which said writ with the Sheriff's return thereon indorsed, is in the words of figures following, to wit:

State of Illinois
County of Cook

The People of the State of Illinois
to the Sheriff of said County, Greeting;
We again Command you, that you
Summon Thomas Lyster, Martha A.
Propertter, Mary S. Laritt, Frank A. Laritt,
George H. Propertter, Charles D. Propertter, John
A. Pahlman, Executor of Peter Propertter, deceased,
John B. King, W. Pickard, John S. Milnes,
Silbert S. Davis, Haines A. Magie surviving
partner of John High Jr. George E. Bond-
man, Albert Caskey, James S. Beach,
James E. Hayes, Cyrus H. McCormick,
Frank A. Wirgin, Edwin Blackman, Executor
of John High Jr. John D. Pahlman, John
Smith, George Smith, City of Chicago, Joseph
Richardson, Philip Smith, Fredrick Young,
Charles Staats, Sheldon Doves, Mary Doves,
William R. Smith, Mary Smith, Francis

A. M. Antro, James E. Hayes, John W. Sailor,
 & John B. King Trustees named in the will
 of Ashes Rosetter.

if they shall be found in your County,
 personally to be and appear before the Superior
 Court of Chicago 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 December next, to answer unto
 Alfred Smith in his certain Bill of
 Complaint, filed in the said Court on
 the Chancery side thereof.

And I have given them and there his
 writ, with an endorsement thereon, in what
 manner you shall have executed the same.

Witness Walter Kimball, Clerk
 of our said Court, and the Seal
 thereof, at the City of Chicago
 aforesaid, this Second day
 of November A.D. 1839.

Walter Kimball Clerk

Given this writ at the within named May
 S. Learist, Frank A. Learist, (S. Rosetter,
 and John B. King both as to himself indivi-
 dually and as Trustees named in the will of

Asker Rossetter deceased, and also out the City of Chicago by delivering a copy thereof to each of the above named defendants (Samuel D. Hord Comptroller and John C. Higinis Mayor of said City being sworn as representing the City of Chicago), the 25th day of November A.D. 1857.

And also served this writ out the within named H. H. Magin by delivering a copy thereof to him the 28th day of November A.D. 1857. The other Defendants not found in my County.

John Gray Sheriff
By Wm. P. Gray Deputy.

And afterwards, to wit: out the 19th day of the Month of Jan^y last aforesaid. There issued out of said court and in the Seal of said Court. The Process with of Summons directed to the Sheriff of Marshall Co. which said writ, with the Sheriff's return thereon endorsed, is in the words figures following to wit:

State of Illinois
County of Cook
The People of the State of Illinois

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To the Sheriff of ^{Marshall} ~~Laure~~ County, Indiana:

We again Command you that you summon
Thomas Dyer, Martha S. Rosetter, Mary S.
Leavitt, Frank A. Leavitt, George W. Rosetter,
Charles D. Rosetter, John D. Pahlman, Executor
of Asher Rosetter Deceased, John B. King,
Chas. Pickard, John S. Miller, Gilbert S. Davis,
Homer A. Magee, Surviving partners of John
High Jr., George E. Boardman, Albert Crosby,
James S. Black, James E. Hayes, Cyrus H.
McGormick, Frank Kerwin, Edwin Blackman
Executor of John High Jr., John D. Pahlman,
John Smith, George Smith, City of Chicago,
George Richards, Philip Smith, Frederick
Young, Charles Frazer, Sheldon Graves,
Mary Frazer, William R. Smith, Mary
Smith, Francis A. McIntire, James E. Hayes,
John H. Sailor and John B. King, Parties
named in the will of Asher Rosetter Deceased,
if they shall be found in said County, per-
sonally to do and appear before the Su-
perior Court of Chicago, 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 December
next to answer unto Alfred Smith in his
certain Bill of Complaint, filed in the said

Count on the Chancery Side thereof.

And have got them and there this writ with our endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball Clerk
of our said Court, and the Seal
thereof, at the City of Chicago
aforesaid, this Nineteenth day
of November A.D. 1859.

Walter Kimball Clerk

Seal

I served this writ on the within named Sher-
old Graves & Mary Graves, by delivering
a copy thereof to them the 22^d day of
November 1859.

Thomas Ellis Sheriff of
Marshall County, Ill.

And afterwards, to wit: on the 7th day of
March in the year of our Lord One thousand
eight hundred and Sixty. Thomas Ayer
Defendant, by his Solicitors, filed his ap-
pearance, in the words figures following.
To wit:

The State of Illinois
Cook County. ss

Alex Smith

Thomas Ryer et al

Superior Court of Chicago

I do hereby waive the issue and service of
process in this case and enter my appear-
ance as of to-day
July 14 1860.

Thos Ryer by
Shumway, Waite & Horne
Solicitors -

And afterwards, to wit: on the 9th day of the
month of June last aforesaid, George Richards,
Philip Smith, Jacob Kuyoung & Charles
Staats filed, in the office of the Clerk of said
Court, by their attorney, their appearance,
in the words & figures following, to wit:

Alex Smith

Thomas Ryer et al

Superior Court of Chicago
In Chancery.

I do hereby enter my appearance for

George Richards. Philip Smith, Fredk.
H. Young, & Charles Staats in above Case,
George D. Crocker
Atty for above Defs.

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July 1. 1860

And afterwards, to wit: on the day & year last above-
said - said day, being one of the days of the
March Term of said Court. The following among
other proceedings were had & entered of record in said
Court, to wit:

Myrd Smith

Thomas Dyer, Henry Stevens Administrator
of Francis M. Kewin deceased, Haines W. Magie
Mary S. Leavitt, Frank Leavitt, John B. King
vs John B. King Trustees.

City of Chicago, George Richards, Philip Smith
Frederick Young vs Charles Staats & others.

This day again comes said Complain-
ant by Shumway, Walter Towne his Solicitors
and the personal service of process of Summons
issued in this Cause having been had on Haines
W. Magie, Mary S. Leavitt, Frank Leavitt,
John B. King, and John B. King as Trustees.

and City of Chicago only. And appearance of
 said Defendants. George Rickards, Philip Smith
 Frederick Young, and Charles Haas, being
 severally entered by George J. Crocker, their
 solicitor. On motion it is ordered each and
 all of said Defendants above named, plead Answer
 or demur to the bill of Complaint in this cause
 instant. And no plea, Answer or demurres
 being interposed by them or either of them nor
 by any one in their behalf, and being severally
 three times solemnly called in open Court
 and not appearing. It is ordered that said
 bill of Complaint filed in this cause be
 and the same is hereby taken as confessed
 against said Defendants above named and
 each of them. and it is ordered, that default
 of them and each of them be and is hereby
 entered herein, for want of an Answer to
 the bill of Complaint.

And afterwards, to wit: on the 17th day of
 the month & year aforesaid. There issued out
 of & under the Seal of said Court, the proper
 pluries writ of summons, which said writ
 with the Sheriff return thereon and ordered is
 in the more figures following, to wit:

State of Illinois
County of Cook

The People of the State of Illinois
to the Sheriff of said County. Meeting:
We Command you as we have often
before, that you summon Thomas Ayer,
Martha A. Prentiss, Mary S. Leavitt, Frank
A. Leavitt, George W. Rosetter, Charles D. Rosetter,
John D. Pahlman, Executor of Asher Prentiss
deceased, John B. King, N. Pickard, John S.
Miller, Gilbert J. Davis, Haines H. Magee,
Surviving partner of John High Jr. George
E. Boardman, Albert Crosby, James S. Benches,
James E. Hayes, Cyrus W. McCormick,
Frank Redwin, Edwin Blackman, Executor
of John High Jr. John D. Pahlman, John
Smith, George Smith, City of Chicago, George
Richardson, Philip Smith, Frederick Young,
Charles Haas, Sheldon Graves, Mary Graves,
William R. Smith, Mary Smith, Francis
A. McIntire, James E. Hayes, John W. Taylor,
and John B. King, Executors named in the
will of Asher Prentiss deceased, if
they shall be found in your County, per-
sonally to be and appear before the Superior
Court of Chicago, of said County of Cook,
on the first day of the next term thereof,
to be holden at the Court House in the

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City of Chicago, in said County, on the first
Monday of April next, to answer unto Alfred
Smith, 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 Kimball, Clerk
of our said Court, on the first
whereof, at the City of Chicago,
aforesaid, this 17th day of March
A.D. 1860

Walter Kimball CLK

Served this writ on James S. Beach and Mary
Jane Smith, by delivering a copy thereof to
each of them, this 20th day of March 1860.
And also on the within named William R. Smith
by leaving a copy thereof at his usual place of
abode, with Mary Jane Smith, she being a
state person over twelve years of age, and a
member of his family. And also informing
her of the contents thereof this 20th day of
March A.D. 1860. The other defendants not
found in my County.

John May Sheriff
By Wm. May Deputy.

And afterwards, to wit: on the 7th day of May
in the year aforesaid, There were filed in the office
of the Clerk of said Court, certain Demurrers
in the words & figures following, to wit:

Superior Court of Chicago
In Chancery.

The demurrer of Sheldon Graves one of the
defendants, to the bill of Complaint filed in
this Honorable Court, by Alfred Smith against
Thomas Dyer, this defendant and others.

This defendant by protestation not
confessing or acknowledging all or any of the
matters and things in the said Complaints
bill contained to be true in such manner
and form as the same are therein and thereby
set forth and alleged doth shew to the
said bill and for cause of demurrer
sheweth that the said Complainant has
not by his said bill made such a case
as will lie here in a Court of Equity to any
discovery from this defendant or to any relief
against him as to the matters contained in
said bill or any of such matters. And
that the said Complainant has made George
Richards, Phillip Smith and Frederick Young

defendants to said bill, who are shown by said bill to be unnecessary & improper parties by which the costs and expenses of this suit will be unnecessarily & improperly increased.

Wherefore and for divers other good reasons and causes of demurror appearing in the said bill this defendant doth deny thereto and prays the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to said bill, and the prays to be taxed dismised with his reasonable costs in this behalf sustained.

Sheldon Hares by
his Solicitor W. R. Smith.

Superior Court of Chicago
In Chancery

The demurror of William R. Smith one of the defendants to the bill of Complaint filed in this Honorable Court by Alfred Smith against Thomas Ayer and other and this defendant.

This defendant by protestation not confessing or acknowledging all or any of the matters and things in the said Complaint

onto bill Court aimed to be true in such man-
 ner and form on the same and therein and
 thereby set forth and alleged doth demur
 to the said bill, and for cause of demur
 sheweth that the said Complainant has
 not by his said bill made such a case
 as entitles him in a Court of Equity to any
 relief against the Defendant, or to any relief
 against him as to the matters contained in
 said bill or any of such matters. And that
 the Complainant has made unnecessary
 and improper parties Defendants to his said
 bill. thereby causing and incurring any increase
 of Costs and expenses in this suit. Wherefore
 and for ^{divers} other good reasons, and causes of
 demurres appearing in the said bill, this
 Defendant doth demur thereto and prays
 the judgment of this Honorable Court, whether
 he shall be Compelled to make any further
 or other answer to said bill, And he prays
 to be hence dismissed with his reasonable
 Costs in this behalf sustained.
 William R. Smith
 pro se.

And afterwards, to wit: on the 14th day
 of June in the year aforesaid, there came

out of and under the Seal of said Court. The
 Peoples writ of Habeas Corpus, which said
 writ, with the Sheriff's return thereon indorsed
 is in the words & figures following, to wit:

State of Illinois
 County of Cook

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

We Command you as we have before-
 fore Commanded you, that you summon
 Thomas Dyer, Martha H. Rosetter, Mary
 S. Learitt, Frank H. Learitt, George H.
 Rosetter, Charles D. Rosetter, John C.
 Pahlman Executor of Asher Rosetter de-
 ceased, John B. King, W. Richards, John J.
 Miller, Gilbert J. Davis, Haines W. Mayo
 surviving partner of John Hight Jr. George
 C. Bohdanow, Albert Crosby, James A. Beach
 James E. Hayes, Cyrus W. McLozwick, Frank
 Kewins, Corrin Blackman Executor of John
 Hight Jr. John C. Pahlman, John Smith,
 George Smith, City of Chicago, George
 Richards, Philip Smith, Frederick Young,
 Charles Haas, Sheldon Jones, Mary Jones,
 William A. Smith, Mary Smith, Francis
 A. McIntyre, James E. Hayes, John H. Sailor

And John B. King, Trustee named in the will of Asher Kettler, deceased, if they shall be found in your County, personally to be and appear before the Superior Court of Chicago, 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 July next, to answer unto Alfred Smith in his certain Bill of Complaint, filed in the said Court on the Chancery Side thereof.

And have you then met there this writ with an endorsement thereon, in what manner you shall have decreed the same.

Seal

Witness my latter Hand and Seal of our said Court, and the Seal thereof, at the City of Chicago aforesaid, this 14th day of June A.D. 1860

Walter Kimball Clerk.

The within named not found in my County.
The 30th day of June 1860.

John Gray Sheriff
By Chas. E. Perry, Deputy

And afterwards, to wit: on the 25th day of October in the year aforesaid, said day being one of the days of the October Term of said Court, the following among other proceedings were had and entered of record in said Court. to wit:

Alfred Smith

vs.

Bill in Chancery

Thomas Dyer, Harry Stevens, William R. Smith, & Mary Smith his wife.

Administrators of Francis W. Kerwin deceased
James H. Mayne, Mary S. Leavitt, Martha A. Rosetter, George H. Rosetter, Charles Rosetter, Frank Leavitt, John B. King, & John B. King
Sister named in the will of Ascher Rosetter,
City of Chicago. John D. Pahlman, Executor of
Ascher Rosetter and George Richa. & Philip
Smith, Frederick Young, Gilbert J. Davis,
John D. Pahlman, St. Pickard, John C. Miller,
George E. Boardman, Albert Crockett,
James Bender, James E. Hayes, (Jr.) St. McFermick,
Charles H. Hunt, Charles H. Hunt & Mary Hunt
his wife & others.
Edwin Blackman, Executor of John High Jr.
John Smith, George Smith, Francis A. McIntire,
Dr. H. Saylor.

And now again comes the said

Complainant - Alfred Smith by Shumway
 Waite & Forman his Solicitors And the said
 Defendants William R. Smith and Sheldon
 Graves by William R. Smith their Solicitor
 in this Court proper person also comes and said
 Defendants having filed their separate demurrers
 to the bill of Complaint filed herein by said
 Complainant and upon hearing counsel upon
 the demurrer of said Defendant William R.
 Smith to the bill and upon considering the prem-
 ises the Court finds that the demurrer is not
 sufficient - the demurrer of said William R.
 Smith is therefore hereby overruled, and upon
 hearing counsel upon the demurrer of the
 said Defendant Sheldon Graves to the bill of
 Complaint filed in said Cause and the Court
 being fully advised in the premises finds the
 demurrer of said Defendant Sheldon Graves
 not sufficient. the demurrer of said Defen-
 dant Sheldon Graves is therefore overruled.
 And it is further ordered by the Court that
 said Defendants William R. Smith and
 Sheldon Graves answer over within ten
 days from the date hereof.

And afterwards, to wit: on the 2nd day of November in the year aforesaid. There were filed in the office of the Clerk of said Court two certain Answers, in the words & figures following, to wit:

Superior Court of Chicago
In Chancery

The answer of Sheldon Graves and his wife Mary Graves to a bill in Chancery filed in the Superior Court of Chicago by Alfred Smith, ^{as plaintiff} three respondents and others.

These respondents deny all the allegations and statements in Complainant's bill contained, except the allegations and statement of the conveyance of the property therein mentioned by them to their co-defendant William R. Smith and the statement of his mortgage to respondent Sheldon Graves of the interest conveyed to him by Respondent Sheldon Graves, which allegations of conveyance and mortgage respondents admit. And having fully answered they pray that Complainant's bill may be dismissed and these respondents be decreed their costs in this behalf expended.

Sheldon Graves &
Mary Graves

W.R. Smith Counsel.

Superior Court of Chicago.
In Chancery.

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The Answer of William R. Smith and wife to a bill in Chancery filed in the Superior Court of Chicago in the State of Illinois by Alfred Smith against these respondents and others.

These respondents saying and receiving the benefit of exceptions to the many errors and misstatements in Complainants bill contained for answer thereto, or to so much thereof as they believe it is material for them to answer, say that they believe that Sheldon Graves wife and Asher Rosettler wife executed and about the time alleged a mortgage on the property mentioned to Thomas Rye to secure notes amounting to \$16,000 or thereabouts due or payable on or about the times specified but of these matters respondents have no personal knowledge, nor information sufficient to form a belief ~~that~~ as to what are the precise facts, or what are the precise terms of said mortgage or notes. Respondents do not know and have no information upon which they can form a belief as to whether the copy given in Complainants bill is a copy of the mortgage and of the certificate of acknowledgment thereof which was executed by said

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Graves & wife and Rosseter & wife to said Thomas Dyer; and therefore cannot admit that they are. Respondents believe that said Thomas Dyer did assign to Complainant the notes and Mortgage executed to him as aforesaid. Respondents believe that the notes secured by said Mortgage have been paid as stated in Complainant's bill, and that interest has been paid as therein stated.

Respondents deny that any note executed by said Rosseter & Graves secured by their mortgage to said Dyer, became due on the 17th day of June 1859. Respondents do not admit that there are notes and interest secured by mortgage of Graves & Rosseter & their wives on the property mentioned to become due, as alleged in Complainant's bill.

Respondents admit that Sheldon Graves & wife conveyed as alleged, one undivided half of the property. Heretofore admitted to have been mortgaged to said Dyer, to respondent William R. Smith. And respondents state that he is still the owner of the same. And that by agreement between said Graves and respondent William R. Smith, respondent W. R. Smith is to pay one half of the mortgage debt, which the said mortgage to Dyer was given to secure.

Respondents deny that said property is indivisible. It is 120 by 100 feet. Respondent William R. Smith states that he has been informed by Complainant.

and he charges the facts to be that Complainant has pledged, transferred and appropriated to other Banks in the Hartford Connecticut - the entire debt which is still unpaid and which is secured by the mortgage herein admitted to have been executed to said Thomas Dyer & to have been transferred to Complainant and which he alleges he is endeavoring to collect in this suit.

Respondent therefore denies, that Complainant was at the institution of this suit or the filing of this bill is the owner of or entitled to the unpaid debt secured by the mortgage herein admitted to have been executed to said Thomas Dyer, and which Complainant alleges he is endeavoring to collect - It does not belong to him - and he has no right to sue for or collect the same.

Respondents deny all the allegations and statements of Complainant's bill not herein before admitted or referred to, and having fully answered respondents pray that Complainant's bill may be dismissed and they allowed their costs in this behalf expended.

William R. Smith &
Mary J. Smith his wife.

And afterwards, to wit: on the day & year last
aforesaid, there was filed in the office of the Clerk
of said Court, a certain Cross Bill, in the name
of persons following, to wit:

Superior Court of Chicago
In Chancery

To the Honorable the Judges of the Superior
Court of Chicago in Chancery sitting.

Your Orator William R. Smith humbly
complaining would respectfully represent, that
on the 20th day of September 1859. Alfred Smith
filed in bill in Chancery in this Honorable
Court against your Orator. That on Graves &
wife. And Asher Rosetter's devisees, heirs and
heirs and others, in which bill the said
Alfred Smith alleged and stated that on the
14th day of June 1833. Shulam Graves & wife
Mary Graves and Asher Rosetter wife mort-
gaged to One Thomas Dyer lots five and six
in Block Six in Kings addition to Chicago
County of Cook and State of Illinois to secure
the payment of sixteen thousand dollars evi-
denced by six promissory notes of even date
with said mortgage five of which were for
the sum of three thousand dollars each, and
due respectively in 2, 4, 6, 8 & 10 years and the sixth

for one thousand Dollars and due 11 years from its date. - that said notes and Mortgage had been assigned to him by said Thomas Oyer - that all of them had been paid except the notes due in 1859, 1861, 1863 and 1864, and alleging that he was then the owner and holder of said notes due as aforesaid in 1859, 1861, 1863, and 1864. The said Alfred Smith also alleges that there were divers judgments against said Osher Rossetter but that they were all subsequent to the mortgage aforesaid and he was the holder of said judgments said Grace wife. said Rossetters devisee & widow & executor and your Orator this wife many defendants to his bill and he prays therein for a foreclosure of said mortgage, the ascertainment of the amount due him, thereon, and a sale of the premises covered by said Mortgage to pay him the whole unpaid amount secured by said Mortgage. He also prays process and general relief. Your Orator states that a portion of the defendants to said bill have been served with process but how many your Orator cannot tell from the papers in the case.

Your Orator states that he has filed his answer to said bill in which he has admitted the execution of a mortgage as aforesaid upon the property aforesaid for the purpose of securing notes as aforesaid, not however stating or admitting that the priced terms of said mortgage or notes.

were made - and not admitting that the copy given in Complainant's bill is a copy of the mortgage which was given by said Graves wife Rosetta wife to said Thomas Dyer. Your orator further admitted that said Thomas Dyer assigned the notes and mortgage executed as aforesaid to Complainant.

Your orator further stated that said Sheldon Graves wife had conveyed to your orator, one undivided half of the property aforesaid. Your orator agreeing with said Graves to pay one half of the debt secured by the mortgage aforesaid, and that your orator is now the owner of said half. Your orator further stated in said answer, that he has been informed by said Alfred Smith, Complainant in said Original bill, and your orator changed it to be true, that Complainant has pledged, transferred, and appropriated to others, Bankers in Hartford Connecticut, the entire debt which is still unpaid. And which is secured by the mortgage aforesaid which was executed by said Graves wife & Rosetta wife to said Thomas Dyer. Your orator in his said answer denies that said Alfred Smith was at the institution of his bank or is now the owner of or entitled to the unpaid debt secured by the mortgage aforesaid and stated that it did not and does not belong to him, and that the said notes were not and are not his property. - Your orator denies all the allega-

tion of Complainant's bill not answered or referred to
in his answer, and prayed for a dismissal of Complainant's
bill.

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Your Orator now states it to be true, upon in-
formation given to your Orator, that said Alfred
Smith Complainant in the original bill aforesaid
was not at the time of filing his bill aforesaid the owner
of the unpaid notes secured by the said mortgage
of said Grace wife and Rosetta wife to said
Thomas Ayer as before stated, but had transferred,
pledged or assigned to others in 14 articles (connections)
whose names are unknown to your Orator, the entire
unpaid debt secured by said mortgage, and that
he is not now the owner or entitled to the unpaid
notes, secured by said mortgage. And that Com-
plainant Alfred Smith has informed your
Orator that he has pledged, appropriated and
transferred to others, the debt aforesaid.

Your Orator now states that said Complainant
was not at the institution of this suit and is
not now entitled to the debt secured by the
mortgage aforesaid. Your Orator makes this
a Cross bill against the said Alfred Smith Com-
plainant, in the original bill aforesaid and
calls upon him to answer the allegations and
statements aforesaid, and especially that he
answer and say whether he was the owner
of the notes secured by the mortgage aforesaid.

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at the time of his filing his bill aforesaid. And also whether he is the owner of them (and) also to answer and say if he was, not or is not, who then was or is. Also to answer and say whether he has pledged, transferred or appropriated said notes to any one at or about the filing of his bill and whether they or either of them, or any portion of either of them now or was pledged, transferred or appropriated to any one or ones at the time of the filing of his bill or have been since or are now. And if so, to whom, when, for what purpose, upon what terms, and all about it. Also to answer and say whether or not he has (not) informed your Orator that he has appropriated the ~~plaintiff's~~ debt due upon the mortgage aforesaid, to others and transferred the same to them, in some way, and if so in what way. Your Orator calls upon said Alfred Smith to make full discovery as to the matters aforesaid fully, distinctly upon his oath. Your Orator makes said Alfred Smith defend out to this crop bill & says process against him.

W. R. Smith, pro de.
S. Marble Counsel.

And afterwards, to wit, on the 20th day of the month of June aforesaid, There were filed in the office of the Clerk of said Court certain Replications in the words & figures following, to wit:

State of Illinois
County of Cook. ss
Superior Court of Chicago In Chancery.

The Replication of Alfred Smith Complainant & to the Answer of W. R. Smith, Defendant.

This repli'ant saving and reserving to himself all and all manner of advantage of exception to the manifest insufficiencies of the said Answer, for replication thereto with. That he will aver and prove his said Bill to be true certain and sufficient in the law to be answered unto, and that the said Answer of the said Defendant is uncertain, untrue and insufficient to be replied unto, by this repli'ant, without this that any other matter or thing whatsoever in the said Answer contains material or effectual in the law to be replied unto, confessed and avowed, traversed or denied is true: all which matters and things this repli'ant

is and will be ready to aver and prove, as
 this Honorable Court shall direct, & pray
 as in and by his said bill he hath already
 prayed.

W. F. Waite

Comptrolr Solr

State of Illinois
 County of Cook Ill.
 Superior Court of Chicago In Chancery.

The Replication of Alfred Smith Com-
 plainant to the Answer of Shelton Graves and
 Mary Graves Defendants.

This replicant saving
 and reserving to himself all and all manner
 of advantage of exception to the manifold
 insufficiencies of the said Answer, for replica-
 tion therunto saith. That he will aver and
 prove his said bill to be true, certain & suffi-
 cient in the law to be answered unto, and that
 the said Answer of the said Defendants is uncertain,
 untrue and insufficient to be replied unto by
 this replicant: without this that any other
 matter or thing whatsoever, in the said Answer
 contained material or effectual in the law
 to be replied unto, confessed & avoided, traversed

or denied is true, all which matters & things
 this applicant is & will be ready to aver and prove
 as this Honorable Court shall direct; and
 prays as in & by his said bill he hath already
 prayed.

W. F. Waite.

Compt Solr

And afterwards, to wit: on the 12th day of December
 in the year aforesaid, W. R. Smith Defendant
 filed in the office of the Clerk of said Court, his
 certain Cross bill in the word figures following,
 to wit:

Superior Court of Chicago
 In Chancery.

To the Honorable the Judges of the Superior Court
 of Chicago, in Chancery sitting.

Your Orator William R. Smith humbly
 Complaining would respectfully represent, that on
 the 21st day of September 1854, Alfred Smith
 filed his bill in Chancery in this Honorable Court
 against your Orator, Thet and Grace wife of
 Meher Rozetters decess, his and executor &
 others, in which bill the said Alfred Smith al-
 leged and stated that on the 14th day of June

1853. Sheldon Graves wife Mary Graves and
Asher Rosetter wife mortgage to one Thomas
Dyer lots five and six in block six in Kriz's
Addition to Chicago, County of Cook, and State
of Illinois, to secure the payment of sixteen
thousand dollars, evidenced by six promissory
notes of even date with said Mortgage five of
which were for the sum of three thousand and
dollars each and due respectively in 2, 4, 6, 8 &
10 years and the sixth for one thousand dollars
due 11 years from its date. - that said notes and
Mortgage had been assigned to him by said
Thomas Dyer. - that all of them had been paid
except the notes due in 1859, 1861, 1863 and 1864.
and alleging that he was then the owner and
holder of said notes due as aforesaid in 1859,
1861, 1863 and 1864. The said Alfred Smith
also alleged that there were divers judgments
against said Asher Rosetter but that they
were all subsequent to the Mortgage aforesaid.
and he made the holder of said judgments said
Graves wife. said Rosetter's devisee or heir
or agent and his wife Mary defendants
to his bill, and he prays therein for a fore-
closure of said Mortgage, the ascertainment
of the amount due him thereon, and a sale
of the premises covered by said Mortgage, to
pay him the whole unpaid amount. Secured by

said Mortgage. He also prayed process and general relief - Your Orator States that a portion of the defendants to said bill have been served with process. but how many Your Orator Cannot tell from the papers in the Case. Your Orator States that he has filed his Answer to said bill in which he has admitted the execution of a mortgage as aforesaid upon the property aforesaid, for the purpose of securing notes as aforesaid, not however stating or admitting what the precise terms of said Mortgage or notes are or were, and not admitting that the copy given in complainant's bill is a copy of the mortgage which was given by said Graves wife and Rossetta and wife to said Thomas Lyster. Your Orator further admitted that said Thomas Lyster assigned the notes and mortgage executed as aforesaid to Complainant.

Your Orator further states that said Shelton Graves wife has conveyed to your Orator one undivided half of the property aforesaid. Your Orator agreeing with said Graves to pay one half of the debt secured by the mortgage aforesaid, and that your Orator is now the owner of said half.

Your Orator further stated in said Answer that he has been informed by said Alfred Smith, Complainant in said original bill, and your Orator charged it to be true, that Complainant has pledged, transferred and appropriated to other

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Bankers in Hartford Connecticut the entire debt
which is still unpaid, and which is secured by the
mortgage aforesaid which was executed by said
Graves wife & Rosette wife to said Thomas Dyer.
Your Orator in his said answer denied that said
Alfred Smith was at the institution of his suit,
or is now the owner of or entitled to the unpaid debt
secured by the mortgage aforesaid, and stated that it
did not, and does not belong to him and that the
said notes are not and were not his property.

Your Orator denied all the allegations of Com-
plainant's said bill not answered or referred to in
his answer, and prayed for a dismissal of Com-
plainant's bill.

Your Orator now states it to be true upon
information given to your Orator, that said Alfred
Smith Complainant in the original bill aforesaid,
was not at the time of filing his bill aforesaid,
the owner of the unpaid notes secured by the
said mortgage of said Graves wife and Rosette
wife to said Thomas Dyer as before stated,
but had transferred, pledged or assigned to others
in Hartford Connecticut whose names are now
known to your Orator, the entire unpaid debt secured
by said mortgage, and that he is not now the owner
or entitled to the unpaid notes secured by said mortgage
and that Complainant Alfred Smith has informed
your Orator that he had pledged, appropriated and

transferred to others the debt aforesaid. Your
 Orator now states that said Complainant was
 not at the institution of this suit and is not now
 entitled to the debt secured by the Mortgage
 aforesaid. Your Orator makes this a Cross bill
 against the said Alfred Smith Complainant in the
 original bill aforesaid. And calls upon him to
 answer the allegations & statements aforesaid. And
 especially that he answer and say whether he
 was the owner of the notes secured by the Mortgage
 aforesaid, at the time of his filing his bill aforesaid
 and also whether he is the owner of them now, also
 to answer and say if he was not or is not whether
 was or is, also to answer and say whether he had
 pledged, transferred or appropriated said notes to
 any one at or about the filing of his bill, and
 whether they or either of them or any portion of
 either of them were or was pledged, transferred or
 appropriated to any one or ones at the time of the
 filing of his bill or have been since or are now
 and if so, to whom, when, for what purpose, upon what
 terms and all about it. Also to answer and say whether
 or not he has not informed your Orator that he
 had appropriated the entire debt due upon the Mort-
 gage aforesaid, to others and transferred the same to
 them in some way & if so in what way. Your Orator
 calls upon said Alfred Smith to make full discovery
 as to the matters aforesaid, fully, distinctly upon his oath.

Your Orator makes said Alfred Smith defendant
to his Craps bill & prays process against him.
W. R. Smith prs

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S. Marble Counsel.

And afterwards, to wit: on the 28th day of the month
of year last aforesaid, said day being one of the days
of the December Term of said Court the following
among other proceedings were had & entered of record
in said Court, to wit:

Alfred Smith
vs
Thomas Ryer et al Bill.

And now again comes the
said Complainant by Messrs Waite & Torne his
solicitors, and on their motion it is ordered
that Complainant have leave to file his suppli-
mentary Bill in said Cause. whereupon the said
Complainant files his Supplemental Bill herein.

And thereupon on the day & year last aforesaid
the said Complainant files in the office of said
Clerk his certain Supplemental Bill, in the words
figures following, to wit:

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To the Honorable, the Judges of the Superior Court
of Chicago, within and for the County of Cook and
State of Illinois: Sitting in Equity.

Respectfully represents unto your Honors
your Prator Alfred Smith of the City of Hartford,
and State of Connecticut, that on or about the
twentieth day of September in the year of our Lord
One thousand eight hundred and fifty nine,
your Prator exhibited his Bill of Complaint,
in this Honorable Court against Edward Dyer,
Martha Rosseter, Mary S. Lewis, Frank W.
Lewis, George W. Rosseter, Charles S. Rosseter,
John D. Pahlman, Executor of Asher Rosseter
deceased, John B. King, N. Pickens, John J. Miller,
Gilbert J. Davis, James H. Magic, surviving
partner of John High Jr, George E. Bradenham,
Albert Crosby, James E. Beach, James E. Hayes,
Cyrus H. McCormick, Frank Kimwin, Corwin
Blackman, Executor of John High Jr deceased,
John D. Pahlman, John Smith, George Smith,
City of Chicago, George Richards, Philip Smith,
Frederick Gomez, Charles Staats, Silvan
Graves, Mary Graves, William R. Smith,
Mary Smith, Francis A. McIntyre, and
James E. Hayes, John H. Saylor and John B. King
parties named in the Bill of Asher Rosseter de-
ceased: Representing that therefore, to wit:

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on the fourteenth day of June in the year of
 our Lord one thousand eight hundred and fifty
 three Alster Rosetter and Frances B. Rosetter
 his wife of the City of Chicago. and Shels on
 Graves and Mary Graves his wife, then of the
 State of New York. now of the State of Illinois.
 executed a mortgage in fee simple to one
 Thomas Dyer upon the following described
 real estate, to wit: situated in the City of Chi-
 cago, County of Cook and State of Illinois.
 to wit: all the following described lots and parcels
 of land, viz: Lots number five (5) and six (6) in
 Block number six (6) in Kinzie's addition to
 Chicago. which mortgage was executed in order
 to secure the payment to said Thomas Dyer
 of the sum of Sixteen thousand Dollars. se-
 cured to be paid by six certain promissory notes
 of even date with said mortgage, five of which
 notes were for the sum of three thousand dollars
 Each and payable respectively two, four, six,
 eight and ten years after date, and the sixth
 note for one thousand dollars payable Eleven
 years after date. all payable to the order
 of said Thomas Dyer with six per cent interest
 at the Marine Bank at Chicago, which mor-
 tgage was duly executed in due form of law and
 recorded in the Recorder's Office of Cook County
 & State of Illinois. in Book fifteen of mortgages
 Page 630.

And which said Mortgage ^{was} on or about the Eleventh
 day of March, in the year of our Lord one thousand
 eight hundred and fifty four, duly assigned by
 said Thomas Cyer to your Orator. by deed of
 assignment bearing date the day and year last
 aforesaid, and which deed of assignment was
 duly recorded in the Records Office of Cook
 County, and State of Illinois in Book 17 of
 Mortgages page 215, and that the said notes
 secured by ~~the~~ said Mortgage were at the time
 last mentioned introduced in writing to your Orator
 and that your Orator was then the legal holder
 of such said notes as were then unpaid, and
 setting forth fully, and at large the said mort-
 gage and the assignment thereof, And also repre-
 senting that on or about the Seventeenth day of
 June in the year of our Lord one thousand eight
 hundred and fifty nine, the note of three thou-
 sand dollars, payable in Six years from date
 became due & payable, the time limited for
 the payment of the same being expired, and
 that there also became, on the same date, due
 and payable, the annual interest on said note.
 And also on the note of three thousand dollars
 due in eight years from its date. And also on the
 note of three thousand dollars due in ten
 years from its date. And also the annual
 interest on the note of one thousand dollars

due in eleven years from its date, amounting to a large sum, to wit: the sum of Six Hundred Dollars, the time limited for the payment of said interest then accruing & future, and that the same being & remaining unpaid, the estate of your Orator in said mortgage premises became absolute in law.

And further representing that there was still then due and unpaid on said mortgage the following additional sums of money, to those above named, namely: the note for the sum of three thousand dollars due and payable in Eight years with annual interest; the note of three thousand dollars due and payable in ten years with annual interest, and the note of one thousand dollars due and payable in eleven years with annual interest: All of which three notes were wholly due and unpaid, the principal of which had not then all matured, all of which was held by your Orator.

And further representing that the premises covered by said mortgage is what is commonly called the Lake House, in the City of Chicago, and that the same was indivisible and all of the same would have to be sold entire.

And further representing that on or about the twenty fifth day of February in the year of our Lord one thousand eight hundred and fifty eight, said Ascher Rossetter departed this

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life leaving the following heirs at law, namely,
Martha A. Rossetter, widow. Mary S. Leavitt
child of Frank A. Leavitt her husband, George
H. Rossetter son and Charles D. Rossetter the
two last infants. And that letters testamentary
were issued out the estate of said Ascher Rossetter
deceased. by the County Court of Cook County, in
the State of Illinois on the eighth day of March
A.D. 1858. to John D. Pahlman, who is now acting &
has qualified as executor upon said estate of Ascher
Rossetter deceased. That said Rossetter died
making a will appointing said John D. Pahlman
and John B. King executors - That John D.
Pahlman alone has qualified.

And further representing, that since the
execution and recording of said mortgage,
several judgments operating as liens upon said
mortgage premises were rendered against said
Ascher Rossetter in his life time. And since deceased
settling forth fully and at large said judgments
and in what Courts & by whom obtained. And
that the same were liens subsequent to the lien
of the mortgage of your Orator.

And further representing that said Sheldon
Graves and Mary Graves his wife subsequently to the
^{date of} recording of your Orator's said mortgage made
certain conveyances to William R. Smith of a
portion of said mortgage premises and received

61. a Mortgage or trust deed back upon the same, from said Smith, but that said conveyances and the liens thereof were all subsequent to the lien of your Orators mortgage, and that one Francis A. McIntyre claimed some interest in said premises by virtue of a deed of assignment made by said Rosetter, John D. Pahlman, George C. Smith & John E. Smith, but whatever the claim or right of said McIntyre might be, that it was subsequent to the lien of your Orators mortgage.

And further representing that Martha A. Rosetter wife of said Asher Rosetter deceased, had no claim for dower as against your Orators mortgage, for the reason that she intermarried with said Asher Rosetter subsequent to the making of said mortgage & also for the reason that said mortgage was given to secure balance of unpaid purchased money.

And further representing, that the said Francis B. Rosetter who signs the mortgage as wife of the said Asher Rosetter soon after signing the same, departed this life.

And further representing that said Rosetter & Grant devised said premises to said James E. Hays by deed recorded in Book 13 page 545. of the Record of Cook County Illinois: and which said Hays assigned to George E. Boardman & John H. Sutor

And which deed of assignment was duly recorded, but alleging that though the time limited by said lease has not expired, the same has in part been relimited, but whether relimited or not the same was subsequent to the lien of your Orator.

And further representing that said sums of money above mentioned having become due and payable with the arrears of interest he called upon said Sheldon Graves, John D. Pahlman as Executor of Stephen Rosseter deceased, Martha A. Rosseter widow, Mary A. Leavitt and Frank A. Leavitt her husband, George H. Rosseter, and Charles D. Rosseter, in a friendly manner, and requested them to pay the same, which they have neglected and refused to do. And alleging that all the defendants therein named has neglected & refused to pay the same or any part of the same. although often requested to do so.

And finally thereby praying, that an account might be taken of the amount due upon said mortgage, and also of the amount to become due, and that the amount due might be decreed to be paid to your Orator within a day, to be by the Court fixed and in default of the same being paid, that said premises might be decreed to be sold, and the amount due and to become due might be paid to your Orator: and that the said Martha A. Rosseter and Mary Graves

might be barred from all claim of dower in and to said premises as against your Orator's Mortgage. And that the balance of the monies might be applied according to the rights of the defendants. And that he might have such other & further rights as might be equitable in the premises &c.

And your Orator further represents that some of the said defendants appeared and put in their answer to the said original bill: as by the said Bill and answer and the replication of your Orator thereto (now remaining on record in this Honorable Court. reference being thereto had will appear.

And your Orator further represents, by way of supplement, that since the filing of the said original Bill, on the seventeenth day of June in the year of our Lord one thousand eight hundred and sixty-three became due and payable the annual interest on the said note of three thousand dollars due in six years from its date. And on the said note of three thousand dollars due in eight years from its date: and on the said note of three thousand dollars due in ten years from its date. And on the said note of One thousand dollars due in eleven years from its date, amounting to a large sum, to-wit: the sum of Six hundred dollars, the time limited for the payment of said interest then accruing &

pressed, and the said sum of money having become due & payable he called upon said defendants in a friendly manner & requested them to pay the same, which they have neglected & refused to do. And that said interest not being paid as aforesaid the estate of John Orator in said mortgage premises became absolute in law.

Upon Orator therefore brings process of subpoena against the said Thomas Dyer, Martha Rosetter, Mary A. Learitt, Frank A. Learitt, George W. Rosetter, Charles O. Rosetter, John D. Pahlman Executor of Alcher Rosetter deceased, John B. King, N. Pickart, John J. Miller, Gilbert J. Davis, Waives H. Magic, surviving partner of John High Jr. George E. Bondman, Albert Casby, James E. Beach, Cyrus W. McCormick, Frank Kirwin, Edwin Blackman Executor of John High Sr. deceased, John D. Pahlman, John Smith, George Smith, City of Chicago, George Richards, Philip Smith, Frederick Young, Charles Staats, Sheldon Graves, Mary Graves, William R. Smith, Mary Smith, Francis A. McIntyre and James E. Hayes, John N. Saylor, and John B. King parties named in the Will of Alcher Rosetter deceased, and that they each of them (on answer under oath being thereby sworn) may to the best of ^{and without} their knowledge, remembrance, information and belief.

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full, true, direct and perfect answer made to all and singular the premises, and that an account may be taken of the amount due upon said Mortgage, and also of the amount to become due. And that the amount due may be decreed to be paid to your Orator within a day, to be, by the Court fixed, and in default of the same, being paid. Said premises may be decreed to be sold and the amount due and to become due may be paid to your Orator. And that he may have such other and further relief as may be equitable, in the premises &c. and he will ever pray &c.

H. F. Watts
Comptroller Exor.

And afterwards, to wit: on the 28th day of March in the year of our Lord one thousand eight hundred & Sixty one. Alfred Smith Complainant, files in the office of the Clerk of said Court, his certain Answer to the Prop Bill of William R. Smith, which said Answer is in the words & figures following, to wit:

The answer of Alfred Smith to the bill in Chancery in the nature of a cross bill exhibited against him by William R. Smith in the Superior Court of Chancery within and for the County of Cook, and State of Illinois in Chancery.

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And now comes said Alfred Smith and saving and reserving to himself all and all manner of exceptions to said bill, and the many and manifold errors and imperfections therein contained answering says, That it is true that he did file a bill in Chancery as therein stated - that said bill is substantially as stated in said cross bill, but he refers to said original and supplemental bill for a statement of the terms and provisions of the same. That it is true that said William R. Smith has filed his answer to said bill - that your respondent refers to said answer as to what is admitted or denied or stated by said answer and neither admits nor denies the allegations in said cross bill in regard thereto.

Respondent further answering says, that it is not true as alleged in said cross bill, that at the time of the institution of the original bill in Chancery or suit in this case, your respondent did not own the said mortgage and notes thereby secured, or was not indebted to the debt secured by the mortgage aforesaid, and any allegation to that effect in said cross bill is untrue except as the following facts may tend to establish said allegation in said cross bill, but which he is

informed our beliver, and so charges the fact to be
donot pretend.

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That from the time when he received the said notes
from Thomas Dyer, in the year 1853. he, this respondent,
was and continued to be sole owner of said notes,
until the 9th day of August 1858. that on or about
said 9th day of August 1858. in consideration of
ten thousand dollars, by this respondent borrowed of
from the Society for Savings, a corporation duly
established in Hartford, on his own credit, he delivered
to said Society for Savings the said four unpaid
notes of Abner & Graves, mentioned in his bill, and
in said Crop bill, to hold as collaterals and to
receive the proceeds if paid. the same being then &
now unpaid. and this respondent then engaged
and guaranteed to said Society that said four
notes should and would be paid, to said Society,
at their maturity, and the interest thereon semiannually,
and also then engaged and promised that he could
and would pay to said Society the principal sum
of the same, amounting to ten thousand dollars & the
accrued interest thereon, on demand. and this respondent
also then executed and delivered to said Society an
assignment of said Mortgage given to secure said
notes.

The respondent further answering saith, that
in so much as he has promised and bound himself
to said Society for Savings, to pay back the full

Amount of said notes, or borrowed money with accrued interest on demand, whereby the said notes and mortgage would come back and belong to this Respondent. He did not assign said notes, to said Society. nor was the assignment of the mortgage security ever placed on record.

This Respondent further answering said that in the fore part of June 1839. and whilst said notes were to held by said Society, he received back the note for three thousand dollars, one of the said four notes, and which would become payable June 14/17 1839. to send the same to Chicago to collect. and receive the amount for the Society. for savings: that said note was not paid when due. that he waited until the latter part of August 1839. and after having paid as he did to said Society, the amount of one years interest, on said four notes, out of his own funds. viz. Six hundred dollars, he then, in Aug. 1839. took back from said Society the said four unpaid notes. and in lieu thereof he then executed and delivered to said Society his own note for ten thousand dollars, dated back to July 1st 1839. to which date, he this Respondent had previously paid. the accrued interest, and said Society then received and accepted his said note. in lieu of the said four unpaid notes for the same amount. and gave up to him the said four unpaid notes of Ropeter & Graves, and he has

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ever since and now does hold the same.

69 This Respondent also at the same time last aforesaid left in pledge with said Society for Savings, Satisfactory collateral security for his said note of ten thousand dollars consisting of one hundred and thirty shares of Railroad stocks, duly transferred by this Respondent to said Society, and which were worth more than the amount of his note aforesaid.

This Respondent further answering saith, that when he took back said four notes of Rapiter and Graves from said Society, and gave them his own note in lieu thereof, he fully expected to collect said four unpaid notes, and out of the proceeds thereof to pay his own note aforesaid to said Society, and that he then expected and believed that said notes of Rapiter and Graves might be collected in the short space of about sixty days, by sale of the mortgaged property under decree of Court, or otherwise, and he then so informed said Society for Savings, and promised to pay his the Respondent's note aforesaid to said Society, out of the proceeds of said unpaid notes of Rapiter and Graves when collected, which was altogether a voluntary promise or declaration on his part, and was not required by said Society.

That being disappointed in his expectation of speedily collecting said Rapiter and Graves notes this Respondent on the 12th day of June 1868. paid up to said Society, in full, the amount of his said

note for ten thousand dollars, so given in lieu of
said notes of Rossiter and Graves, and the interest
accrued thereon, and then took up and cancelled
his said note, and this Respondent is the sole owner
of said unpaid notes of Rossiter & Graves, and no
other person or persons has now or at any time since
has had any pledge, claim, lien or pretended of claim
in or to any or any part of said four unpaid notes,
or to the proceeds thereof, but the same now are and
ever since have been wholly owned by this Respond-
ent, free from any lien or appropriation whatsoever.

And this Respondent further answering saith
that he never at any time sold, pledged, transferred or
appropriated said notes of Rossiter and Graves, nor
any of them, nor the proceeds of any of them, to any
one or ones, person or persons, except to said Society
of Savings as aforesaid. nor did any one ever hear
from this Respondent any interest in the same except
as aforesaid. and this Respondent believes and
answers and is so advised by his Counsel learned
in the law, that at the filing of his bill aforesaid
he was the true and proper owner of said four unpaid
notes, of Rossiter and Graves, notwithstanding he
is indebted and promised said Society to pay out
to them so much of the proceeds of said four
notes as should suffice to pay up and satisfy his
the Respondent's note aforesaid to said Society.

This Respondent further answering says.

that when said bill to foreclose said Mortgage was filed, each and all of said four notes were in his hands, or his attorney with full right in him this respondent, to collect, compound or cancel said notes, at his own pleasure and discretion free from all control or interference of said Society or any other person. And that ever since the filing of his said bill, said notes have to been in his sole control and in his hands, or in the hands of his attorney, and that he is the sole and exclusive owner of said four notes, free from any pledge or appropriation of the same or any of them or of the proceeds of any of them.

This respondent further answering saith that he has never spoken to said Complainant on the subject that he has replied to a letter or letters of said William R. Smith, and has correspondence with him, that he cannot find copies of his letter or correspondence, nor does he remember what he may have written to said Smith in regard to the matters inquired of - And having fully answered the charge to be thereby dismissed - and that a decree may be rendered as on his original bill.

H. D. Waite
Complainant's Solicitor

Alfred Smith

The State of Illinois
Cook County
William R. Smith

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Alfred Smith

State of Connecticut, Hartford County J.

Alfred Smith being duly sworn says
that he is the above named defendant, and has
read the above answers and knows the contents
thereof, and that the several matters and things which
are stated as of his own knowledge are true in sub-
stance and fact, and the several other matters
and things are true as he truly believes.

Sworn to and subscribed

by said Alfred Smith

before me, this 22nd day
of March 1861. A.D.

Harmon W. Barbour

Justice of the Peace

State of Connecticut

Seal

By His Excellency William A. Buckingham
Governor of said State.

To all to whom it may Concern.
 Know Ye, That Henry H. Barbour was at
 the time of subscribing the annexed attestation
 a Justice of the Peace in and for the County of
 Hartford, in the said State, duly Constituted
 and Commissioned, and that to his acts and attestations
 as such, full faith and credit are and ought
 to be given in and out of Court; that the annexed
 attestation is in due form and by the proper
 officer; and that I believe the signature of
 said Henry H. Barbour thereunto to be genuine.

In Testimony whereof, I have caused
 the public Seal of the State to be
 hereunto affixed, at Hartford, in
 said State, this 25th day of March
 A.D. 1861

By His Excellency

W^m A. Buckingham.

John Boyd

Secretary of State.

And afterwards to wit on the 29th day of May
 in the year aforesaid. The said Complainant
 filed in the office of the Clerk of said Court his
 certain answer, to the certain other Capt Bill of
 Mr R. Smith, in the more figures following, to wit

The Answer of Alfred Smith to the bill in
Chancery in the nature of a Crag bill exhibited
against him by William R. Smith in the Superior
Court of Chicago, within for the County of
Cook and State of Illinois - In Chancery -

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And now comes said Alfred Smith & saying &
reserving to himself all and all manner of
exceptions to said bill & the many & manifold
errors & imperfections therein contained answer-
ing says, that it is true that he did file a bill
in Chancery as therein stated - that said bill is
substantially as stated in said Cross bill - but
he refuses to said Original & Supplemental bill
for a statement of the terms & provisions of the
same. That it is true that said William R. Smith
has filed his answer to said bill - that your
respondent refers to said Answer as to what is
admitted or denied or stated by said Answer.
and whether admits or denies the allegations in
said Crag bill in regard thereto.

Respondent further answering says.
that it is not true as in said Crag bill alleged
that ~~that~~ at the time of the institution of the original
bill in Chancery, or suit in this case, your
respondent did not own the said Mortgage
and notes thereby secured or was not entitled
to the debt secured by the mortgage aforesaid.

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and any allegation to that effect in said Crop bill is untrue, except on the following facts may tend to establish said allegation in said Crop bill, but which he is informed and believes & so changes the fact to be - do not so tend.)

That from the time when he received the said notes from Thomas Dyer, in the year 1833. he was and continued to be the sole owner of said notes, until the 9th day of August 1858. That on or about the said 9th day of August 1858. in consideration of ten thousand dollars by this Respondent borrowed of and from the Society for Savings a Corporation duly established in said Hartford, on his own Credit, he delivered to said Society for Savings the said four notes of Roscoe & Francis mentioned in his bill as collaterals, and in said Crop bill, the same being then and now unpaid. And this Respondent then engaged and guaranteed to said Society that said Notes would and should be paid to said Society at their maturity, and the interest thereon Semiannually; and also then engaged and promised that he would and could pay the principal sums of the same (amounting to Ten thousand dollars) and accrued interest thereon on demand. And this Respondent also then executed and delivered to said Society an assignment of said mortgage given to secure said notes. This Respondent further answering such.

that he did not endorse said notes, neither was his assignment of said Mortgage ever recorded.

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This respondent further answering said that in the fore part of June 1839. and whilst said notes were so held by said Society he received back the note for ten thousand dollars, one of the four, and which would become payable June 14/17 1839. to send the same to Chicago, to collect and receive the amount for the said Society for Savings. That said note was not paid when due, that he waited until the latter part of August 1839. and after having paid to said Society out of his own funds, the amount of one years interest on said four notes viz Six Hundred Dollars. he did take back the said four notes, and in August 1839. he executed and delivered to said Society his own. This respondents note for ten thousand dollars dated back to July 1st 1839. to which date he had previously paid the interest accrued, in lieu of said four notes of Ropsten and Graves for the same amount, and at the same time, said Society gave up to him. said four notes. and he has ever since, and does now hold the same.

This respondent also then left in pledge, with said Society for Savings, satisfactory collateral security for his said note for ten thousand dollars. Consisting of One hundred and thirty shares

of Rail Road Stock which were worth more than the amount of his note aforesaid.

77 This respondent further answering said, that when he took back said notes of Rossiter & Graves from said Society and gave them his own note in lieu thereof he fully expected to collect the said four notes, and to pay with the proceeds thereof, to said Society his own note given as aforesaid. And that he then expected and believed that said notes of Rossiter and Graves might be collected in the short space of about sixty days by sale of the mortgaged property under a decree of Court or otherwise, and he then so informed said Society for Savings and promised to pay said Society the proceeds of said unpaid notes of said Rossiter and Graves when collected in payment of his this respondents own note aforesaid, which was altogether a verbal promise on his part, and not required by said Society - that being disappointed in his expectation of speedily collecting said Rossiter & Graves notes he on the 15th day of June 1860, paid to said Society for Savings in full the amount of his note aforesaid for ten thousand dollars, given in lieu of said Rossiter & Graves notes, and the interest, and then took up and cancelled his said note, and that this respondent is the owner of said four unpaid notes of Rossiter &

& Graves, no person or persons since has at any time had or now has any pledge of, lien upon or interest in the said four Rossiter & Graves notes or any of them, but the same are now and ever since have been wholly owned by this respondent.

And this respondent further answering saith that he never at any time sold, pledged, transferred or appropriated said notes of Rossiter & Graves or any of them to any one or ones person or persons except to said Society for Savings, nor did any one have any interest in the same, other than as aforesaid. and this respondent believes and answers and is so advised by his Counsel learned in the law, that at the filing his bill aforesaid he was the true and proper owner of said four unpaid notes of said Rossiter & Graves, notwithstanding he intended and promised said Society to pay over the proceeds to them, when collected for the purpose of liquidating and paying his own note as aforesaid.

Respondent further answering says that when said bill to foreclose said Mortgage was filed, said notes were in the hands of Respondent, or his attys & have ever since been in his or his attys hands.

Respondent further answering says, that he has never spoken to said Complainant on the subject - that he has replied to letters

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of said Smith and had correspondence with him, that he cannot find copies of the same. And cannot state the contents thereof - nor does he remember what he may have written to said Smith in regard to the matters inquired of. And having fully answered the writ to be hence dismissed &c, and that a decree may be rendered as in his original bill
W. H. Waite

Solicitor for Respondent Alfred Smith

The State of Illinois
Cook County ss
William R. Smith
vs
Alfred Smith

In Chancery
Superior Court of
Chicago

State of Connecticut. Hartford County ss.

Alfred Smith being duly sworn says that he is the above named defendant and has read the above answer and knows the contents thereof. and that the several matters and things which are stated as of his own knowledge are true in substance & fact. & the several other matters and things are true as he truly believes.

Sworn to & Subscribed before me

this 22^d day of March A.D. 1861.

Harmon H. Barbour

Judge of the Peace.

State of Connecticut.

Seal

By his Excellency William A. Buckingham
Governor of said State.

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To all whom it may Concern:
Know ye, That I Herewith H. Barbour was at
the time of subscribing the annexed attestation
a Justice of the Peace in and for the County of
Hartford in the said State, duly constituted
and commissioned, and that to his acts and
attestations as such full faith and credit
are and ought to be given in and out of Court;
that the annexed attestation is in due form and
by the proper officer; and that I believe
the signature of said Henry H. Barbour
hereunto to be genuine.

In Testimony whereof, I
have caused the Public Seal
of the State to be hereunto affixed
at Hartford, in said State, this
22^d day of March A. D. 1861.
W. A. Buckingham

By his Excellency

John Boyd
Secretary of State.

And afterwards, to wit: on the 10th day of January in the Year of our Lord one thousand eight hundred & sixty two. Said day being one of the days of the January Term of said Court the following among other proceedings were had entered of Record in said Court, to wit:

Alfred Smith

vs Billie Channing

Thomas Ayer & others

And now at this day again comes the parties to this Cause and upon agreement of the Solicitors for both parties it is ordered that this Cause be set for hearing on Tuesday the fourteenth day of January Nextant —

And afterwards, to wit: on the day and year last aforesaid there was filed in the office of the Clerk of said Court, a certain deposition in the more figures following, to wit:

In the Superior Court of
Chicago.
Alfred Smith
vs
Thomas Lyon et al

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To W. R. Smith
Deft. Atty

You will take notice,
hereby that on the 12th day of January A.D.
1862 at 10 o'clock A.M. of said day or as
soon thereafter as counsel can be heard, we
shall commence to take the testimony of
C. H. Harbeck & other witnesses, in the above
case, said testimony to be taken at the office
of Ezra Scott Martin in Chancery in said
City of Chicago, the Examination to be
continued from day to day till completed,
and said depositions are to be read out the part of the
plaintiff in the above case.

Dated this 20th
day of December A.D. 1861.

Walter Brown
Atty

State of Illinois
County of Cook J. P.
Edward P. Brown being
duly sworn says that on the 20th day of December

1861. he served a copy of the within notice on
W. R. Smith one of the defendants and Solicitor
for the defendants in said case, by handing
him a copy thereof on said day.

Subscribed and sworn to Edward P. Towne

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this 2 day of Jan'y 1862
before me.

Edw Scott
Master in Chancery of
the Superior Court of Chicago

State of Illinois Superior Court of Chicago
County of Cook In Chancery

Alfred Smith

vs
Thomas Reynolds

The deposition of Edward
H. Haddock, a witness produced sworn and
examined before me Edw Scott one of the Masters
of said Court, on the part of the Complainant
in the above entitled cause, and taken pursuant
to the annexed notice, at my office in the City of
Chicago, this second day of January A.D. 1862,
at the time therein named, at which time and
place appeared Mr Towne for Complainant vs
one appearing for the defendants.

Edward H. Hadduck is witness, produced, sworn and examined on the part of the Complainant deposes and says.

1st Q^y State your name, age, residence, occupation, and do you know the parties to this Suit?

Aⁿ Edward H. Hadduck, Fifty years old, reside in Chicago - I have retired from business. I know the Complainant and Defendants, Thomas Loper, W. R. Smith, Martha Popiter, & Cyrus W. McCormick and Sheldon Graves.

2^d How long have you resided in Chicago.

Aⁿ Nearly twenty nine years. Twenty nine years past Spring.

3^d State whether or not you are acquainted with Lots numbered Five and Six in Block number Six in King's addition to Chicago. and if so how long have you known said property and what building if any stand thereon?

Aⁿ I am acquainted with the property. I have been acquainted with it for twenty eight years. It is covered mostly by what is called the Lake House.

4 What Kind of building is the Lake House, and what portions of said lots are covered by it?

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 Answer It's a Brick House, and nearly the whole or quite is covered by the buildings. There may be a small portion on Kinzie Street not covered, a portion of the lower story of the building is finished for stores - and the balance of the building is finished for a hotel - all connected together.

5 State whether or not said property could be sold in lots, without seriously injuring the value of the property.

Answer I don't think it could.

6 Why not?

Answer It is so constructed, that it cannot be divided, without serious injury. Being constructed for a hotel, it would be most advantageous that it should be sold to gether, and it would bring much more if so sold, than if sold in separate lots

Subscribed and sworn to before me this Second day of January A.D. 1862.

E. W. Haddock.

Ja Scott
 Master in Chancery
 of the Superior Court of Chicago

Superior Court of Chicago
In Chancery
Alfred Smith

vs
Thomas Lyewit

State of Illinois
County of Cook

J. D. Scott

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Master in Chancery of the Superior Court of
Chicago, do hereby certify that on the second
day of January AD 1862, the foregoing deposi-
tion was taken before me at my office in
the City of Chicago, as the part of the Com-
plainant in the above entitled Cause, pursuant
to the notice hereto annexed and at the time
therein named - that before the commencement
of the examination of the witness whose name is
subscribed to the said deposition - he was duly sworn
by me according to law and that after the same
was taken, the interrogatories and answers thereto,
as written down, were read over to the said witness
and thereupon the same was signed and sworn to
by this said witness before me at the place
and on the day and year last aforesaid.
Dated January 2^d 1861.

J. D. Scott
Master in Chancery of
the Superior Court of
Chicago.

And afterwards, to wit, on the 14th day of the month year last aforesaid, said day being one of the days of the January Term of said Court, the following among other proceedings were had entered of Record in said Court, to wit:

Alfred Smith
 Thomas Dyer ^(vs) Bill in Chancery
 and others

And now at this day again comes the parties to this Cause by their Solicitors and upon agreement of Counsel made now had in said Court it is ordered that this Cause be and is hereby continued for hearing until the coming in of the Court on Friday Morning next.

And afterwards, to wit on the 17th day of the month year aforesaid, said day being one of the days of the January Term of said Court, the following among other proceedings were had and entered of record in said Court, to wit

Alfred Smith
vs
Bill in Chancery
Thomas Dyer & others

This day again comes the parties to this Cause by their Solicitors as aforesaid, and upon further agreement of the parties made now here in open Court, it is ordered that this Cause be and is truly further continued for hearing, to Tuesday next.

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And afterwards, to wit on the 11th day of the month of June aforesaid, said day be also one of the days of said Term of said Court, the following among other proceedings were had entered of record in said Court, to wit:

Alfred Smith
vs
Bill in Chancery
Thomas Dyer & others

This day again comes the parties to this Cause by their Solicitors and upon the further agreement of the parties made now here in open Court it is ordered that this Cause be and is truly further continued for hearing until coming in of the Court on Thursday morning next.

The State of Illinois
Circuit Court
Alfred Smith

Thomas Dyer 3 } Superior Court
of the City

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Edward P. Torne being duly sworn
says that he is one of the Solicitors
for the complainant in the above
subscribed suit, that all of the
following named defendants
~~George~~ George W. Rossiter, Martha Rossiter
A. Parker, John F. Appleton, Albert
F. Davis, George E. Bradman, James
E. Mayo, Frank Kimball, John H. Harkins
& George W. Rossiter

as he is informed and believes
all reside out of the State of
Illinois so that process cannot
be served upon them

Subscribed and sworn to before me this
before me this

It is stipulated that the above is
substantially a copy of the affidavit

and has been sworn to before me this day & date at the City of Chicago
Notary Public

and shall be taken and considered
a part of the record of this case - so
far as to make the plaintiff in
error to raise any question upon
the ^{substance} ~~form~~ of said affidavit.

Wm. B. Borne

Att'y for defendant in
error.

And afterwards, to wit, on the 18th day of
March in the year aforesaid, said day being one
of the days of the March Term of said Court
the following among other proceedings were
had entered of record in said Court, to wit:

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Alfred Smith

vs Bill to Foreclose Mortgage

Thomas Ayer

George W. Rosseter

H. Pickard

John D. Miller

Gilbert D. Davis

George E. Boardman

James E. Hayes

John H. Sailor

Frank Kerwin, Matthew A. Rosetter

Charles D. Rosetter

Marv L. Leavitt, John R. King Trustees named in Will of
Alfred Rosetter.

Mark H. Leavitt, John D. Pahlman, John Smith, George Smith,

City of Chicago, George Richardson, John D. Pahlman ^{of Alfred Rosetter deceased} Executors,

Philip Smith, Frederick Grang, Charles Strauch,

Francis A. McIntyre, John R. King, James H. Hayes

Surviving partners of John Wright deceased, Albert Cady,

James C. Beach, Cyrus M. McCormick, Corwin

Blackman Executor of John High.

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This day came the Complainant
and having filed proof of publication for
the following named non resident defend-
ants namely, George W. Rosetter, St. Richard
John D. Miller, Gilbert J. Davis, George
E. Boardman, James E. Hayes, John H
Sailer, Frank Kumin and Martha A. Rosetter
and the Court having duly inspected the proof
of publication do find that due legal notice
has been given of the pendency of this suit accord-
ing to the Statute in such case made and provided
and that they are properly brought into Court
and that the Complainant is entitled to default
against them - And it appearing to the Court
that Charles D. Rosetter has been duly served
with process and said George St. Rosetter an infant
defendants, therefore it is ordered that J. B. Carter be
and hereby is appointed guardian ad litem of said
infant defendants Charles D. Rosetter and George
St. Rosetter, and said J. B. Carter having accepted
said appointment appeared and filed his answer.
and it appearing to the satisfaction of the Court
that Thomas Syer, Mary J. Leavitt, Frank A.
Leavitt, John D. Pahlman Executor of Peter
Rosetter deceased, John B. King, James W. Major
Surviving partners of John High deceased, Albert

James S. Beach, James S. Beach, Cyrus McCormick, Edwin Black-
 man. Executor of John High deceased John D. Pahlman
 John Smith, George Smith, City of Chicago, George
 Richards, Philip Smith, Frederick Young, Charles Staats,
 Francis A. McIntyre, John B. King Trustees named in the
 will of Ashur Rosseter. have been duly served with process
 and are properly in Court. And that the Complainant
 is entitled to default against them, and they and
 each of them and the above named parties brought
 in by publication are ruled to plead answer or
 demur to said bill forthwith and they and each
 of them having failed to plead, answer or demur
 to said bill, it is ordered adjudged and decreed that
 said bill and supplemental bill as against said
 Thomas Dyer, Martha A. Rosetter, Mary J. Leavitt,
 Frank A. Leavitt, John D. Pahlman Executor
 of Ashur Rosetter deceased, John B. King, A. Robinson
 John J. Miller, Gilbert J. Davis, Haines H. Magic surviving
 parties of John High, George E. Boardman, Albert Crosby,
 James S. Beach, James S. Hayes, Cyrus W. McCormick,
 Frank Kemwin, Edwin Blackman Executor of John High,
 John D. Pahlman, John Smith, George Smith, City
 of Chicago, George Richards, Philip Smith, Frederick
 Young, Charles Staats, Francis A. McIntyre,
 John H. Sailor and John B. King Trustees named
 in the will of Ashur Rosetter deceased be and
 truly is taken as confessed.

And after rans. to wit, on the day & year last
aforesaid. Thomas B. Foster Guardian ad litem -
files in the office of said Clerk his certain Answer,
which is in the words & figures following, to wit:

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The State of Illinois
Cook County ss

Alfred Smith
Thomas Dyer et al In Presence

Now comes the said
George W. Rossiter and Charles D. Rossiter
infant defendants by J. B. Foster their guard-
ian ad litem appointed by the Court, and for
Answer to said bill files by said Alfred Smith
against Thomas Dyer et al in the Superior Court
of Chicago, within & for said County of Cook
and State of Illinois.

And now comes the said Charles
D. Rossiter and George W. Rossiter infant
defendants by J. B. Foster their Guardian
ad litem and say that they are infants of
tender years and unacquainted with their rights
And they ask the Court to protect them in
in their rights -
J. B. Foster Guardian ad litem for
George W. Rossiter & Charles D. Rossiter

And afterwards, to wit: on the day and year last aforesaid. there was filed in the office of the Clerk of said Court, a certified copy of the publication notice, which is in the error of figures following.

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To wit:

This is to certify, that a notice of which the one annexed is a copy was published in the Chicago Daily Evening Journal a Newspaper printed and published in the City of Chicago, County of Cook and State of Illinois. from successive weeks, the date of the first paper containing the same, being the 7th day of August 1860, having been published and issued on that day, and the date of the last paper containing the same being the 4th day of September 1860, being published and issued on that day, and that I have received six Dollars for publishing the same.

Dated at Chicago, March 18th 1862.
John L. Wilson Publisher.

State of Illinois
County of Cook

Superior Court of Chicago.

Alfred Smith

September Term 1860

Thomas Myer

Martha A. Rositter

Mary J. Leavitt

Frank A. Leavitt

George W. Rositter

Charles D. Rositter

John D. Pahlman

Executor of Ascher Rositter

John B. King

H. Pickard et al. (with)

John J. Miller

Gilbert J. Davis

James H. Magee surviving partner of John High Jr.
George E. Boardman, Albert Groshy, James S. Beach
James E. Hayes, Cyrus H. McLaughlin, Frank Kierwin
Cornel Blackman Executor of John High Jr. John D.
Pahlman - John Smith, George Smith, City of Chicago
George Richards, Philip Smith, Frederick Young
Charles Staats, Sheldon Graves, Mary Graves, William
R. Smith, Mary Smith, Francis W. McIntyre, James
E. Hayes, John H. Sailor, John B. King parties
named in the will of Ascher Rositter.

Affidavit of the non-residence of Martha

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A. Rositter, W. Pickard, John J. Miller, Gilbert J. Davis, George E. Boardman, James E. Hayes, Frank Kirwin, John H. Sailor and George W. Rositter none of the defendants above named. Defendant above named, having been filed in the office of the Clerk of said Superior Court of Chicago - Notice is hereby given to the said Martha A. Rositter, George W. Rositter, W. Pickard, John J. Miller, Gilbert J. Davis, George E. Boardman, James E. Hayes, Frank Kirwin, John H. Sailor and that the complainant files his bill of Complaint in said Court, on the Chancery side thereof, on the twentieth day of September 1859, and that a summons thereupon issued out of said Court against said Defendants returnable on the first Monday of October next (1859) as is by law required.

Now, unless you, the said Martha A. Rositter, W. Pickard, John J. Miller, Gilbert J. Davis, George E. Boardman, James E. Hayes, Frank Kirwin, John H. Sailor and George W. Rositter shall personally be and appear before said Superior Court of Chicago of Cook County, on the first day of the next term thereof, to be holden at Chicago, in said County, on the first Monday of September 1860, and plead, answer or demur to the said Complainant's 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.

Walter Kimball
Walter & Thomas Compt's Sol'r Clerk.

State of Illinois
Cook County

E. S. Overlock being duly

Sworn deposes & says that the above notice of
publication is a true copy of one issued from the
Clerk's office of the Superior Court of Chicago
by me as one of the Clerks thereof, at the time
in said notice mentioned & that the above is a
true copy thereof.

Subscribed & sworn to before

me this 21st day of
January A.D. 1862

E. S. Overlock
Clerk

E. S. Overlock

And afterwards, to wit: on the 19th day of the
month and year aforesaid, there was filed in the
office of said Clerk a certain notice in the
words & figures following, to wit:

41
In the Superior Court of Chicago
of the March Term A.D. 1862

Alfred Smith

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Thomas Ryer et al
vs
J. W. R. Smith Esq
Atty for Defs. Sir

You are hereby notified
that on the 19th day of March 1862, at ten o'clock
A.M. of said day or as soon thereafter on the open-
ing of said Court as Counsel can be heard, we
shall call up the above entitled Cause for
the final hearing thereof.

March 17th 1862.

Wm. F. Waite
Atty. Atty.

State of Illinois
Cook County

L. C. Clarke being duly
sworn deposes and says that he deposited a
true & perfect copy of the above notice in the
Post office in the City of Chicago Illinois, that
he himself made the copy, and placed the same
in an envelope, and addressed the same to William
R. Smith Chicago Illinois and paid a one cent
postage stamp on the postage thereon, and that he
also handed a true copy of the same to W. F. Waite to

delivered to said Smith.
Subscribed & sworn to before me this
19th day of March A.D. 1862

C. C. Clarke.

Edward P. Towne

Notary Public

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State of Illinois
Cook County

Horace J. Waite being
duly sworn deposes and says that on the 17th day
of March A.D. 1862. He left a copy of the within
notice handed him by the above named C. C. Clarke
at the residence of William R. Smith in the City
of Chicago by handing the same to a boy over
ten years of age who came to the door of the
residence of said Smith.

Subscribed and sworn to H. J. Waite

On 19th day of March 1862.

E. P. Towne Not Pub.

And afterwards, to wit, on the 21st day of the month
and year aforesaid. said day being one of the days of
the March Term of said Court. the following among
other proceedings were had and entered of record in
said Court, to wit:

12.
Alfred Smith Bill

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Thomas Ayer
George W. Rappetter
Martha A. Rappetter
Mary S. Leavitt
Frank C. Leavitt
John D. Pahlman Executor of Sister Rappetter's estate.
John B. King
Mr. Rickard
John F. Miller
Gilbert F. Davis
Napier H. Magie Surviving partner of John High.
George E. Boardman - Albert Crosby
James S. Beach
James E. Hays
Cyrus H. McCormick.
Frank Kervin
Edwin Blackman Executor of John High
John D. Pahlman
John Smith.
George Smith.
City of Chicago
George Richards
Phillip Smith
Frederick Young
Charles Straus
Francis W. McIntyre

John H. Saylor And

John B. King Trustees named in the Will of Peter
Berkett Deceased.

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This day again James said
Complainant by Harts & Torne his Solicitors
and on their Motion it is ordered that the Bill
in this Cause be and is hereby dismissed as against
the said John Smith, George Smith and Albert
[probelly] three of the Defendants in above entitled Cause
and further ordered that Complainant have leave
to amend his Bill of Complaint by to-morrow morning.

And afterwards to wit, on the 24th day of the month
of March aforesaid, said day being one of the days of the
March Term of said Court, the following among
other proceedings were had and entered of record in
said Court to wit:

Alfred Smith

vs
Thomas, Defendant

Bill to Foreclose

And now again comes the parties
to this Cause and on Motion of the Defendants
in said Cause it is ordered that leave be and is hereby
given to amend the answer filed - by to-morrow
morning.

And afterwards, to wit: on the 29th day of the month
year aforesaid, there was filed in the office of
the Clerk of said Court, a certain stipulation in
the words & figures following, to wit:

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State of Illinois
County of Cook *vs.* The Superior Court of Chicago
In Chancery. of the March Term A.D. 1862.

Alfred Smith Complainant

²⁴
Thomas Ryer et al Defendants.

It is hereby stipulated and agreed
by and between the said Alfred Smith and the
said William R. Smith that the appeal bond
in the above entitled case in the penal sum
of two thousand dollars as fixed by the Court
to be executed within twenty days from this
date, that the sureties in said bond and the
condition thereof may be approved and prescribed
by one of the judges of the above named Court,
at any time, within said term, and that no
advantage shall be taken on account of an
appeal bond not being executed or the sureties
of such bond not being named or approved at
the present term of said Court. Said bond
to be filed as of 6 day.

March 29th 1861.

H. F. Wente
Comptroller
S. Marble
Attorney for
William R. Smith.

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And afterwards, to wit, on the day & year last
aforesaid said day being one of the days of the
March Term of said Court, the following among
other proceedings were had and entered of record
in said Court to wit:

Alfred Smith

^{vs}
Thomas Dyer

Martha W. Ropetter

Mary S. Leavitt

Frank A. Leavitt

John D. Pahlman Executor of Ashes & Co. the decedent.

John B. King - George W. Ropetter.

H. Pickard.

John J. Miller

Gilbert F. Davis

Haines W. Mayo surviving partner of John High Jr.

George E. Boneman.

James S. Beach

James E. Hayes

James H. McSparrick

Thomas K. Remwin

Ermy Blackman Executor of John High Jr.

Charles D. Rosetter.

John D. Pahlman

Sheldon Graves & wife

City of Chicago.

William R. Smith & wife

George Richards

Philip Smith

Frederick Young

Charles Staats

Francis A. McIntyre

John A. Sailer & Co

John B. King *Interposed* in the will of Asa Rosetter Deceased.

This cause came on for hearing upon the bill - answer of the infants defendants George W. Rosetter and Charles D. Rosetter by their Guardian ad Litem, and the answer of Sheldon Graves & wife & William R. Smith & wife - The other defendants having failed to plead answer or demur, it is ordered that as to the defendants who have failed to plead answer or demur said bill and Supplemental bill be taken and hereby are taken as confessed.

And the copy bill of said William R. Smith.
 and the answer of said Alfred Smith thereto.
 And proof introduced at the hearing and the
 depositions, and the Court being fully advised in
 the premises do find that Ascher Rosetter and
 Sheldon Graves and their wives Frances S.
 Rosetter wife of said Ascher Rosetter and Mary
 Graves wife of said Sheldon Graves on the 14th day of
 June A. D. 1853. made to Thomas Coyer, the Mort-
 gage in said bill described to secure certain indebted-
 ness therein described, upon the following described
 property, lands, and parcels of land situated in the
 City of Chicago, County of Cook, and State of
 Illinois, namely Lots Five (5) & Six (6) in Block
 Six (6) in King's addition to Chicago - and that
 there is unpaid on said indebtedness secured by said
 Mortgage the following described notes, to-wit:
 the note of three thousand dollars due in
 six years after date, with the interest thereon
 since June 14, 1858. the note of three thousand
 dollars due in eight years - with interest
 thereon since June 14, 1858. and the note of
 three thousand dollars due in ^{from date} ten years, with
 the annual interest thereon, since June 14th
 1858, and the note of \$1000 due in eleven years
 from the date thereof with the annual interest
 thereon since June 14, 1858. And the Court
 further finds that there is now due and payable

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And on default on said notes secured by said Mortgage the principal of the two first described notes, & the annual interest thereon since June 14. 1858. together with the annual interest on the two notes due in ten & eleven years since June 14. 1858. to June 14. 1861. And that there will be due on said indebtedness secured by said Mortgage the further sum of the principal of the two notes due in ten and eleven years from the date thereof, and the interest thereon since June 14. 1861.

And they further find that said property covered by said Mortgage constitutes what is known as the "Lake House" in the said City of Chicago, built for the purposes of a hotel, and which said Lake House occupies both of said Lots numbered Five (5) and Six (6) in Block Number Six (6) in King's addition to Chicago, ^{in the} County of Cook and State of Illinois, and that the said property covered by said mortgage, is wholly indivisible, and cannot be sold in parcels but must be sold entire and undivided. And that said Asahel Rossetter has departed this life - and that one John C. Pahlman has been appointed an Executor upon the estate of said Asahel Rossetter deceased, and that there is now one due and unpaid, and on default upon said notes secured by said Mortgage the sum of Eight thousand & Eighty four dollars (\$84-)

dollars; besides the notes due in ten & eleven years. And
 the interest hereafter to become due thereon:
 Thereupon it is ordered, ^{adjudged and} decreed and ~~adjudged~~ that
 unless the said Sheldon Graves and John D. Hallman
 Exentors upon the estate of Asher Rofetter deceased
 pay to the said Complainant the sum of Eight
 thousand and eighty four dollars over due and
 unpaid, and in default with interest thereon from
 the date of this decree, within thirty days from the
 date of this decree together with ^{the} costs of this
 suit. And in default then of said mortgage
 premises be sold entire and undivided by the Court
 the Master in Chancery of this Court, according to
 the rules & practice of this Court. And out of the pro-
 ceeds of said sale he pay the costs of this suit
 & pay the Complainant said sum so over due and
 unpaid as aforesaid. namely said sum of Eight
 thousand and eighty four dollars and interest
 thereon from the date of this decree, and the prin-
 cipal due upon said two notes due in ten & eleven
 years, namely one note of three thousand dollars
 & one note of One thousand dollars with the
 interest thereon from the 14th day of June A.D. 1861.
 up to the date of sale.

And it is further ordered, adjudged and
 decreed that if default be made in the payment
 in the time above specified of said sum of Eight

thousand & eighty four now over due unpaid and
 their premises be sold, the Complainant may be-
 come the purchaser at said sale, and may
 bid at such sale, not only said sum of
 eight thousand and eighty four dollars, with
 interest, but also the further sum of four
 thousand dollars, and the interest thereon since
 June 14, 1861. being the two notes, now yet due.
 And the Master in Chancery shall issue a
 certificate of sale, to the purchaser or purchasers,
 at such sale. And that the defendants pay the
 costs of these proceedings. And thereupon the
 defendant William R. Smith gave notice
 of appeal to the Supreme Court, which the
 Court allowed upon his giving bond in ⁽²⁰⁾testimony
 in the sum of Two Thousand
 dollars. with ^{one of the Judges of} ~~notice~~ ^{be approved by this Court.}

And it is further ordered that the Com-
 plainant be allowed to with draw the notes
 mortgage & assignments thereof offered in evi-
 dence upon leaving copies of the same with
 the Clerk of this Court.

And afterwards to wit: on the 18th day of April in the year aforesaid, the said William R. Smith filed in the office of the Clerk of said Court his certain Appeal Bond, in the words of figures following, to wit:

Know all men by these presents that we William R. Smith of the City of Chicago, in the County of Cook and State of Illinois principal and Israel Smith of the County of Putnam and State of Illinois surety are fully and firmly bound unto Alfred Smith in the penal sum of two thousand dollars lawful money of the United States of America for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents. Sealed with our seals and dated the 29th day of March A.D. 1862.

Whereas the ^{said} above named Alfred Smith died on the 29th day of March A.D. 1862 and at the March term A.D. 1862 of the Superior Court of Chicago, a decree in the said Court for the ^{foreclosure} of a certain Mortgage, in a certain suit in said Court then pending, wherein the said Alfred Smith was complainant and one Thomas Oyer and the said William R. Smith and others were defendants. And whereas the said William R. Smith has prayed an appeal from said decree to the Supreme

Court in and for the said State of Illinois according
 to the form of the Statute in such cases made
 and provided: And which appeal is granted, upon
 the execution of this bond: Now therefore the con-
 dition of this ^{above} obligation is such, that if in the
 event the said William R. Smith shall fail to
 prosecute his said appeal with all due diligence
 and with effect in the said Supreme Court, or
 the said decree shall be affirmed in and by the
 said Supreme Court. Let the said William R. Smith
 shall well and truly pay to him the said Alfred
 Smith all such damages as the said Alfred
 Smith shall sustain by reason of said appeal,
 including in such damages the reasonable rent
 of said mortgaged premises, during the pendency
 of said appeal, and the said damages that may
 be awarded by the said Supreme Court, on affirm-
 ance of the decree aforesaid or dismissal of this
 appeal and the costs of ^{said} ~~this~~ appeal, then the above
 obligation to be well and virt-let to remain
 in full force and effect.

William R. Smith *WRS*

Israel Smith *IS*

Approved

John M. Wilson C.J.
Superior Chief Chicago

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State of Illinois
County of Cook } The Superior Court of Chicago

In Chancery
Alfred Smith Complainant
Thomas Ogden and other Defendants.

State of Illinois
County of Putnam } ss.

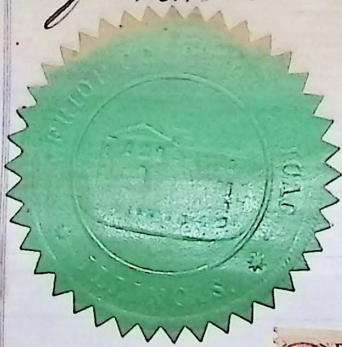
Israel Smith states that he
is a resident of Illinois and that he has property
in the State of Illinois, subject to execution of the
value of more than two thousand dollars over
and above all his debts and legal liabilities
Subscribed and sworn
to before me by Israel
Smith on this the 14th day
of April A.D. 1862.

Israel Smith

A. B. Gurnea Justice of the Peace
in and for Putnam County State of Illinois.

State of Illinois
County of Cook

I, Thomas B. Carter
Clerk of the Superior Court of Chicago, within
& for the County of Cook & State of Illinois.
Do hereby certify, that the foregoing is a full
true & complete transcript of all the papers on
file in my Office, and all proceedings and
decrees made & entered of record in said
Court, together with the Appeal Bond filed,
in a certain cause wherein Alfred Smith was
Complainant & Co. Thomas Dyer & others were
Defendants.



Witness my hand and the seal
of said Court at the City of
Chicago, in the County & State
aforesaid, this 13th day of
April A.D. 1863.

Thomas B. Carter

Clerk

In the Supreme Court of the State of Illinois
Third Division.

William R. Smith. Appellant

Ag't

Appeal.

Alfred Smith

Appellee

The appellant William R. Smith says
that there are errors in the decree and
proceedings of the court below as shown
in the foregoing record to his prejudice
and he assigns the following as grounds
for reversing said decree and proceedings
viz.

1st The said court erred in rendering a final decree therein before Frank McKinnis a necessary party to said bill and named deft therein was brought before the court.

2nd The said inferior Court erred in not dismissing complts bill and rendering the decree in behalf of complt before Henry Stevens administrator of Francis McKinnis dec^d alias Frank McKinnis dec^d who was a necessary party and named as such in said proceeding was brought before the court.

3rd The said inferior court erred in rendering the decree herein, without Albert Crosby a necessary party being before the court.

4th The said inferior court erred in rendering the decrees herein till John S. Miller & Gilbert Davis, alleged & shown in complts bill to be necessary parties were brought before the court.

5th The said inferior court acquired no jurisdiction over said John S. Miller, Gilbert F. Davis or George W. Rossitter, necessary parties because the affidavit of non-residence was insufficient and not a compliance with the law.

6th. The said inferior court erred in the decree rendered herein, in directing that in the event of a sale of the property the whole debt should become due and be paid - in not giving more specific directions to the Master as to the sale than it should be "According to the rules & practice of this court."

7th. Said decree is erroneous in directing a sale in default of Sheldon Graves & John E. Pahlman failing to pay in 30 days the amount decreed as due, and not giving the right to any other one interested thus to pay and stop the sale.

8th. The decree is for too much.

9th. The decree is erroneous in decreeing all the costs agt all the debts they not being jointly liable in any event.

10th. The decree is erroneous in not directing to whom the surplus of proceeds of sale after paying amount decreed if any should be paid.

11th. The decree is erroneous in not providing for the right of redeeming said property from said sale but making the same absolute.

12th. The decree is erroneous in directing a pay

ment of the whole left out of the sale
directed in any of the events provided for
in said decree.

18th. The court erred in not dismissing the
bill. Wherefore for the errors aforesaid
the appellant William R. Smith prays
this court to reverse the decree and pro-
ceedings of the court below.

W R Smith pro se

In the Supreme Court
William R Smith

Alfred Smith } Appeal from
} book

And now comes said defendant
at Bar Alfred Smith and
says there is no error in said decree
and proceedings and prays that
said judgment may be affirmed
with out it

Walter Borne
Atty for Appellee

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William R. Smith

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Alford Smith

Filed April 23^d 1863

L. L. Lums
Clerk

Fees.

\$25.50 paid

L. O. Carter Clerk