

8792

No. _____

Supreme Court of Illinois

Rogers

vs.

Willey

71641  7

At a Circuit Court
begun and held in and for
the County of Montgomery and
State of Illinois - the following
proceeding was had -
November Term AD 1848 - in Pitt

(Copy of Bill)

" State of Illinois } In the Circuit Court
" Montgomery County } of said County
" of the November
" Term AD 1848
" In the honorable the presiding
" Judge of said Court sitting in Chancery
" humbly complaining Shrovetts
" unto your honor your Orator
" Aquilla Whitley of the County of
" Montgomery and State of Illinois
" that on or about the twenty third day
" of March AD 1848 one Levi A Rogers
" whom your Orator prays may
" be made defendant to this his Bill of
" Complaint being seized as pretending
" to be seized of certain lands and
" real estate situated in the County of
" Montgomery aforesaid and being
" indebted to your Orator in the sum

of Eighty dollars to become due and
 payable on or before the twenty third
 day of September AD 1848 in Order
 to secure the payment of the said
 sum of money to your Orator made
 Executed and delivered to your Orator
 a certain Indenture of Mortgage
 upon the following described
 real estate to wit The North West
 quarter of the South West quarter
 of section twenty three in Township
 nine North Range three West contain-
 ing forty acres. And your Orator
 further sheweth unto your Honor
 that said Indenture of Mortgage
 after having been duly acknowledged
 before the proper officer was on the
 said twenty third day of March
 AD 1848 duly recorded in the office
 of the recorder of said County of
 Montgomery as appears by the certificate
 of record thereunto attached which said
 mortgage herewith filed and marked
 (A) your Orator prays in any he
 made part of this his Bill of Complaint
 and your Orator would further
 show unto your Honor that on
 or about the said twenty third day
 of September AD 1848 said Levi A
 Rogers paid to your Orator the
 sum of thirty Dollars part of the
 sum of Eighty dollars so ~~as~~ secured

as aforesaid by said Indenture of Mortgage
And your Orator charges that the sum
of fifty Dollars the residue of said Mort-
gage Debt remains still due and unpaid
together with the interest due thereon from
the said twenty third day of September
1848 And your Orator further charges
that one Daniel Rogers of the County
of Montgomery and State of Illinois
and whom your Orator prays may
also be made defendant to this Bill
Combining with said Levi A Rogers
to defraud your Orator and to
deprive him of his said debt and
the benefit of his said mortgage
and equity pretends that he is seized
in fee of the said premises so mortgaged
to your Orator and that he has some
interest therein and pretends that
the said Levi A Rogers had no title
to the said premises at the time of
the execution of the said Indenture
of Mortgage to your Orator all of which
your Orator alleges is untrue and
charges that the said Daniel Rogers
as against your Orator has no title
or claim to the said mortgaged
premises whatever all of which
actions and doings are contrary
to equity and good conscience In
consideration of all which may
it please your Honor to order and

and that an account may be taken
 of what is due and owing to you
 as creditor - for principal money and
 interest on the security of the said Mortgage
 premises And that the said Levi A Rogers
 may be decreed to pay unto you
 Orator what shall appear to be justly
 due and owing to him on the taking
 of said account together with the costs
 of this suit by a short day to be appointed
 by this Court for that purpose And in
 default of such payment that the
 said dependents and all persons
 claiming under them may be absolutely
 barred and foreclosed of and
 from all right and equity of
 redemption in and to the said
 Mortgage premises and every part
 thereof And may it please your
 Honor to grant unto your Orator
 the people most gracious writ of
 Subpoena to be directed to the said dependents
 and commanding them at a certain
 day and under a certain pain therein
 to be limited personally to be and
 appear before your Honor in this Honorable
 Court and there and there full
 time direct and perfect answer make
 to all and singular the premises and
 further to stand to and perform such
 further order directions and decrees therein as to
 your Honor shall seem meet And your Orator shall
 ever pray &c

E. G. Rice
 for complainant

(which said bill bears the following
endorsement to wit)

" Filed October 21st 1848

" " H. Rowntree Clerk

" " By E. W. Rice D. Clerk

(Copy of Mortgage)

" This Indenture made this Twenty
" third day of March in the year of
" our Lord one Thousand Eight Hun=
" dred and forty Eight Between Levi
" At Hogs of the County of Montgomery
" and State of Illinois of the first
" part And Aquilla Wiley of the
" same County and State of the
" second part Witnesseth that the
" said party of the first part for and
" in consideration of the sum of
" Eighty Dollars to him paid by the
" said party of the second part the
" receipt whereof is hereby acknowl=
" edged has granted bargain sold
" conveyed and conveyed And by these
" presents does grant bargain sell
" release and convey to the said party
" of the second part his heirs and
" assigns forever all that certain piece
" or parcel of land situate lying &
" and being in the County of and
" State of aforesaid and known disig=
" nated and described as follows
" to wit: The North West quarter
" of the South West quarter of Section

Twenty three of Township nine North
 of Range four West containing forty
 acres. Together with all the privileges
 and appurtenances to the said land
 in any wise appertaining and belonging
 to have and to hold the above granted
 premises to the said party of the second
 part his heirs and assigns to his use and
 behoof Forever And the said party of the
 first part for himself & his heirs executors
 and administrators does covenant with
 the said party of the second part his heirs
 and assigns that he is lawfully seized in
 fee of the above granted premises that they
 are free from all Incumbrance that he the
 said party of the first part has good
 right to sell and convey the same to the
 said party of the second part as aforesaid
 and that he will and his heirs executors
 and administrators shall warrant and
 defend the same to the said party of the
 second part his and assigns against
 the lawful demands of all persons
 provided always And this Indenture
 is made in this express condition
 that if the said party of the first part
 shall on or before the 2³rd day of September
 1848 pay or cause to be paid to the said
 Aguille P. Wiley his heirs Executors and
 Administrators the sum of Eighty dollars
 together with whatever interest may
 have accrued thereon agreeable to the
 tenor and effect of a certain promissory

"Not bearing even date with those presently
 "Then this Mortgage to become null and
 "void - otherwise to remain in full force
 "and virtue. In testimony whereof, ^{and} the said
 "party of the first part has hereunto set
 "his hand and seal on the day and year
 "first above written. Signed, sealed, and
 "and delivered in presence of

Levi A. Rogers ^{Seal}

"State of Illinois Montgomery County } set
 "I John Newen an acting Justice of the
 "Peace in and for said County do hereby
 "certify that Levi A. Rogers whose signature
 "appears to the foregoing Mortgage deed and
 "who is personally known to me as the
 "identical person named in and who
 "executed the same on this day appeared
 "before me and acknowledged that he had
 "signed, sealed and delivered the same
 "for the uses and purposes therein set
 "forth In witness whereof I have hereunto
 "set my hand and seal this 23^d day of
 "March A.D. 1848

John Newen J. P. ^{Seal}

State of Illinois Montgomery County }
 "I E. G. Rice Recorder of said County do
 "certify that the foregoing deed and certificate
 "of acknowledgements are duly recorded in my
 "office in Book G page 215 & 216
 "March 23^d 1848
 E. G. Rice Recy

(Which Mortgage bears the following
 endorsement) Filed October 4th 1848

W. Prosser Clk
 By E. G. Rice J. Clk

(Copy of Note)

Six months after date I promise to pay
Aquilla C Wiley or bearer the sum of Eighty
dollars for value Recd this 23^d day of
March 1848

Levi A Rogers
(which note bears the following credits
(Received on the within note \$30.00
Sept 23^d 1848 A.C. Wiley

(Filed Note 7th 1850 Robert W. Davis Clerk

(Copy of Summons)

State of Illinois Montgomery County &
The people of the State of Illinois to the Sheriff
of Madison County Greeting we Command
you to Summon Levi A Rogers and Daniel
Rogers if to be found in your County personally
to be and appear before the Circuit Court
of said County of Montgomery on the first day
of the next Term thereof to be holden at the
Court house in Hillsboro in said County
of Montgomery on the first Monday in
November next to answer a certain Bill of
Complaint filed in our said Court on the
Plainers side thereof against them the said
Levi A Rogers & Daniel Rogers by Aquilla C.
Wiley for foreclosure of a mortgage. and have you
then there this writ and make return
in what manner you execute the same
Witness Hiram Rountree Clerk of our said
Court at Hillsboro this 14th day of October
A.D. 1848

Hiram Rountree Clerk

(8) By Wm W. Anderson

Neither of the within named defendants are
to be found in my County Oct. 24th 1848
Shff Secy A. Miller Shff M.C. Ill
Retz 12p

State of Illinois Montgomery County. By
The People of the State of Illinois to the
Sheriff of said County Greeting we command
you to Summon said A. Rogers and
Daniel Rogers, if to be found in your
County personally to be and appear before
the Circuit Court of said County on the
first day of the next term thereof to be
holden at the Court house in Hillsboro on
the first Monday in November next to
answer a certain bill of Complaint filed
in our said Circuit ^{Court} on the Chancery side
thereof against them the said Levee A. Rogers
& Daniel Rogers by Aquilla C. Wiley for the
foreclosure of a Mortgage And have you then
there this writ and make return in what
manner you execute the same Witness

Hiram Rountree Clerk of our said
C. D. S. } Court at Hillsboro this 4 day of
C. } October 1848 Hiram Rountree Clerk
Served by reading and leaving copy with
Daniel Rogers Levee A. Rogers not found

Serving - 50
Copy - 50
Returning \$ 11 1/2

M. J. Blockburger Shff

State of Illinois }
Montgomery County } The people of the state of Illinois
To the Sheriff of said County Greeting

We command you to Summon Levi A. Rogers
and Daniel Rogers to appear before the Circuit
Court for the County of Montgomery, on the
first day of the next term to be holden at
the Courthouse in Hillsboro, on the first Monday
in June next to answer to "certain Bill of
Complaint filed in our said Court on the
Chancery Side thereof by Aquilla C. Wiley against
them the said Levi A. Rogers and Daniel Rogers
for foreclosure of mortgage And have them there
this writ. Hiram Rountree Clerk of our
said Court at Hillsboro, this 23rd day November
in the Year of our Lord One Thousand Eight
Hundred and forty eight Hiram Rountree Clk
(L.S.) The within Levi A. Rogers not found found
May 21 1849

returning — 13 $\frac{1}{2}$
M. J. Blockburger Sheriff

State of Illinois Montgomery County }
The people of the state of Illinois to the Sheriff
of Montgomery County Greeting we command
you to Summon Levi A. Rogers ^{and} Daniel Rogers
if they can be found in your county personally
to be and appear before the Circuit Court of
said County on the first day of the next
term to be holden at the Court House in
Hillsboro on the first Monday in June next
to answer a certain bill of Complaint filed in
our said Court on the Chancery Side thereof
against them by Aquilla C. Wiley for the foreclosure
of a Mortgage

and have you then and there this writ
and make return thereon in what manner
you execute the same Witness R.W. Davie
Clerk of our said Court at Hillsboro this
19th day of May 1849

R.W. Davie Clerk

The within named defendants are not
to be found in my County June 14 1849

A. Miller Shff
Sheriff Fees Ret. 12 1/2

Sum 2nd 1849

Aquilla C. Wiley Comptl

vs In Chancery

Levi A. Rogers and David Rogers defts

This day came the complainant by his
Solicitor and on his motion this suit
is continued and alias Summons awarded
against the deft Levi A. Rogers

State of Illinois In the Circuit Court
Montgomery County of said County of the
Gue term 1850

Aquilla C. Wiley

vs

Levi A. Rogers

David Rogers

In Chancery to

foreclose Mortgage

Aquilla C. Wiley Complainant in the
above entitled suit being duly sworn
says on oath that Levi A. Rogers one
of the above named defendants in the
above entitled suit upon due enquiry
cannot be found and further saith
not Aquilla C. Wiley

Witness E. G. Rice
Subscribed and Sworn to before me
Jan 31st 1850

Robert W. Davie Clerk

Filed July 31st 1850

R. W. Davis Clerk

State of Illinois } Circuit Court June
Montgomery County } Term 1850

Bill in Chancery To foreclose mortgage
Aquila C. Wiley vs. Levi A. Rogers and
Daniel Rogers Satisfactory affidavit having
been filed in the Clerk's office of the Circuit
Court of said County that Levi A. Rogers
one of the above named defendants is not
a resident of the State of Illinois therefore
Notice is hereby given to the said Levi A.

Rogers that unless you do and appear
before our said Circuit Court on the first
day of the next term thereof to be holden
at the Court house in Hillsboro on the
first Monday in the month of June next
and there plead answer or demurrer to the bill
of complaint now on file against you
the same will be taken for confessed and
a decree entered accordingly

Robert W. Davis Clerk

W. Rice Solicitor

Feb. 9. 1850

State of Illinois Bond County
Wm. Wait & Alexander Publishers of the Greenville
Journal a public Newspaper, printed in
the town of Greenville County and State
aforesaid do hereby certify that a notice
A. C. Wiley & of which the annexed is a true
copy has been regularly published in said
paper 4 weeks in succession commencing on

Aquilla C. Wiley
vs. Bill in Chancery to foreclose Mortgage
Levi A. Rogers and Daniel Rogers
Now at this time came the said parties by
their attorneys and said the Court having
heard the ~~evidence~~ testimony on yesterday
and upon considering the same appointed
Robert W. Lewis Special Master to take
the evidence in the above entitled Cause
and repeat the same to the Court
at some subsequent term hereof and
that the cause be continued for that
purpose.

State of Illinois } Montgomery Circuit Court
Montgomery County } K. June Term A.D. 1850
Aquilla C. Wiley }

vs. } Bill to foreclose Mortgage
Levi A. Rogers and Daniel Rogers
The separate answer

of Daniel Rogers one of defendants to the
bill of Complaint of Aquilla C. Wiley
Complainant

~~all~~ This respondent now and at
all times hereafter saving and reserving
~~date~~ ^{unto} himself all benefits and advantages
of exceptions which can or may be had
or taken to the many errors, uncertainties
and other imperfections in the said
Complaint bill of Complaint contained,
for answer therunto or unto so much
and such parts thereof or this respondent
is advised is or are material or ~~not~~ necessary

This 8 day of Feby 1850 and ending on the
1 day of March 1850 Given under our
hands at Greenville aforesaid this 11 day
of March 1850. Printing Fee \$2.50
Walt & Alexander; -

Sum Term
1849

Aquilla C. Wiley
vs. J. For Foreclosure of Mortgage
Levi A. Rogers and Daniel Rogers
This day came the said plaintiff by his
attorney and ~~E. A. Rice~~ having been
on his motion the above entitled suit
is ordered to be continued with an alias as
to Levi A. Rogers untill next term -
A. C. Wiley

Nov Term
1849

vs. J. Bill in Chancery to foreclose mortgage
Levi A. Rogers and Daniel Rogers
Now on this day came the said Complainant
by his attorney and on his motion it is
ordered by the court that the above entitled
Cause be continued and that Pluris
Summons be issued as to the defendant
Levi A. Rogers -

Sum Term
1850

Aquilla C. Wiley
vs. J. Chancery to foreclose mortgage
Levi A. Rogers and Daniel Rogers
Now at this time
comes the said parties by their attorneys
and in proper person (except the defendant
Levi A. Rogers) and the said parties agree
to try the above entitled Cause by the
Court and the Court after hearing the
evidence of the several parties defer the
matter untill tomorrow morning -

for him to make answer unto
This respondent answering saith that
of his own knowledge he does not know
as alleged in said Complain^{ant's} bill
of Complaint that said A. Rogers his
Co-defendant was on the 23^d day of March
A.D. 1848 indebted to Aquilla C. Wiley
the complainant herein in the sum of
eighty Dollars, as specified in said
bill of Complaint and this respondent
neither admits nor denies the above
indebtedness but requests that full
proof of the same be required

This respondent further answering
saith that he admits that his Co-defendant
did on the 23^d day of March A.D. 1848
make execute and deliver a Deed of
Mortgage upon the following described Real
Estate to wit the North West quarter of
the South West quarter of Section Twenty
Three in Township Nine North Range Three
West containing forty acres, to the said
Aquilla C. Wiley, the complainant in said
bill and that the said Mortgage was
duly acknowledged before the proper
officer and was on the 23^d day of March
A.D. 1848 duly recorded in the office
of the recorder of the said County of
Montgomery as alleged in said bill of
Complainant, but this Respondent denies
most positively and distinctly that the
said Levi A. Rogers had any interest
right or title in and to the land and
tenements described in said Deed of Mortgage

This respondent further answering saith that he is ignorant of Levi A. Rogers paying to the said Aquilla C. Wiley Complainant herein the sum of ~~Eighty~~ ^{Eighty} Thirty Dollars on the 23^d day of September 1848 and respondent is also ignorant whether there is still due and remaining unpaid from Levi A. Rogers to Aquilla C. Wiley the sum of ~~Eighty~~ ^{Eighty} Fifty Dollars as alleged in said bill of Complaint.

This respondent further answering saith that he denies most ^{positively} and distinctly that he combined with Levi A. Rogers his co-defendant to defraud the said Complainant and to deprive him of his debt, and the benefit of his said pretended mortgage security - by pretending that he is seized in fee of the said land and tenements so pretended to be mortgaged - but this respondent avers and so distinctly charges the fact to be that at the time of the making of the said pretended mortgage and for a long time previous to the making of the said mortgage he was and still is the owner in fee of the said premises so pretended to be mortgaged to wit - The North West quarter of the South West quarter of Section Twenty Three in Township nine North of Range three West - containing forty acres - that purchased the said land and tenements from the said Levi A. Rogers on the 25th day of January A.D. 1849 for the ^{valuable} ~~reasonable~~ consideration of one hundred

and Eighty five Dollars as is shown by
his deed of Conveyance of that date made
by the said Levi A. Rogers and Martha
his wife to this respondent which said
deed of conveyance was acknowledged
before B. Hooper an acting and duly
qualified Justice of the Peace in and for
the County of Jersey and State of Illinois

on the 30th day of June A.D. 1847 to which
-as is shown by the certificate of the County of the County of Jersey, Clerk of said County,
of Jersey annexed to said deed and which said deed was recorded in the office of the Recorder
of the County of Jersey on the 10 day of July 1848

this respondent for greater Cer-
tainty begs leave to refer-

this respondent further answering saith
that as against the said Aquilla C. Wiley
the complainant herein this respondent
has a good and valid title to the Land
and tenementz described in said Mortgage
and this respondent avers most pos-
itively, and so distinctly charged the
fact to be that Aquilla C. Wiley the Comp-
laintant named herein, had due notice
of the making, executing and delivering
of the said deed to this respondent and
that having such notice and with a full
knowledge that this respondent had a good
and sufficient deed for the Land and
tenementz above described, the said
Complainant caused the said Levi
A. Rogers to make to him a Mortgage upon
the said premises -

This respondent further answering saith
that when he purchased the Land described
in said Mortgage from Levi A. Rogers
his Co-defendant - the said Levi A. Rogers,
as this respondent is informed

And believes was not indebted to Aquilla C. Wiley
The complainant herein

This respondent having fully answered all
the allegations contained in said bill of
complaint, material or necessary for this
respondant to answer, and shown that
the said complainant is not entitled to
the relief prayed for in said bill of comp-
laint all of which things this respondent
is ready and willing to aver maintain
and prove as this honorable court shall
direct, and humbly pray that as against
this respondent the said mortgage may
be held for naught and that this resp-
ondant may be hence dismissed with
his reasonable costs and charges in
this behalf most wrongfully sustained &
Davis & Galligher Daniel Rogers
Lefts

State of Illinois }
Montgomery County } Daniel Rogers defen-
dant in the above cause being first-
duly sworn deposes and says that
the matter and thing contained in
above answer as stated of his own
knowledge are true and those derived
from the knowledge of others he believes
to be true Signed and sworn to
before me this 4th day
of June 1850 Robert M. Davis Clk.
Filed June 4th 1850
Robert M. Davis Clk.

This indenture made and entered into this
the Twenty fifth day of January one thou-
sand Eight hundred and forty seven
between Levi Asa Rogers and Martha
his wife of the County of Jersey and State
Illinois of the first part and Samuel
Rogers of the County of Montgomery and State
of Illinois of the second part Witnesses
that the said party of the first part for
and in consideration of the sum of One
hundred and Eighty five Dollars Lawful money
of the United States to them in hand paid
by the said party of the ~~first~~^{second} part the
receipt whereof is hereby acknowledged have
given granted bargained sold and conveyed
unto the said party of the second part and
by these presents do hereby give grant
bargain sell and convey unto the said party
of the second part his heirs and assigns
all the right title and Interest or Claim of
said party of the first part of in and to
a certain tract or parcel of Land Situated
being in the County of Montgomery and State
of Illinois aforesaid known and described as
follows To wit the North West quarter of the
South West quarter of Section No twenty
three in township No Nine North and Range
No three west containing forty acres, also
the South half half of the North East
quarter of the North West quarter of Section
Twenty Eight Township No Nine North and
Range No three west together with all
and singular the appertinances thereunto
belonging or in anywise appertaining

Containing in all Twenty acres more less
to have and to hold the above described
premises unto the said Daniel Rogers
his heirs and assigns for ever and the
said S. A. Rogers and Martha his Wife the
aforesaid premises unto the said S. Rogers
his heirs and assigns against the Claims
or Claims of all and Every person whom-
soever do and will warrant and forever
defend by these presents In Testimony
Whereof the said S. A. Rogers and Martha his
Wife of the first part have hereunto set
their hands and seals the day and year
above written Signed Sealed and delivered
In the presence of
Caleb T. Gardner Witness

Levi Asa Rogers ^{seal}
Martha Rogers ^{seal}

State of Missouri
Jersey County

J. B. Draper an acting Justice
of the peace in and for said County do
certify that Levi Asa Rogers and Martha
Rogers his Wife whose names appears to
the foregoing deed of Conveyance is personally
known to me to be identical persons who
signed and delivered the same personally ackno-
wledged that they signed the same freely and
voluntarily for the uses and purposes therein
mentioned and Martha Rogers being made
acquainted by me separate ^{and apart} from her said
husband of the nature of said deed —

Acknowledged that she signed the same
freely and voluntarily without constraint of
her said husband for the use and purposes
therein mentioned and relinquished all
her right of dower given under my
hand and Seal this 30th day of January
1847
B. Grapery Seal J. P.

State of Illinois
~~Montgomery~~ ^{Jersey} County }
I George W. Towden Clerk
of the County Commissioners Court of said
County certify that Benjamin Graper was
on the 30th day of January 1847 an acting
Justice of the peace within in and for
the said County of Jersey duly commissio-
-ned qualified and that full faith and credit
was then due to his official acts as
such Justice

In witness whereof I have
subscribed my name and affixed the seal
of said court at Jerseyville this 9th day
of June A. D. 1848

George W. Towden Clerk

State of Illinois Montgomery County }
I E. Y. Rice Recorder of said County do
certify that the foregoing deed and certifi-
-cate of proof are duly recorded in my
office in Book G pages 161 & 162
June 10th 1848
E. Y. Rice Recd.

Filed Nov 5th 1850 R. W. Davis Clk.

A. C. Wiley }
vs. }

vs.

In the Circuit Court
of Montgomery County
June Term 1850

The Complainant A. C. Wiley for Replication
to the Separate answer of Daniel Rogers one
of said defendants says that the said answer
and the matters and things therein
charged and set forth are wholly untrue
and that the allegations and charges in his
said bill are true in all respects as he has
alleged and that he is ready to maintain
and prove as he may be required by
this Court Rountree & Rice

For Complainant

Filed June 5th 1850

R. W. Davis Clk

State of Illinois ^{of the} Nov Term
Montgomery County ^{at the} 3d. A. D. 1850

Montgomery Cir. Court

A. C. Wiley

vs. $\frac{2}{3}$ in Chancery

Levi A & Daniel Rogers the undersigned Special
Master appointed by the Court to assess the
Plffs damages in the above entitled Cause for
report says that having computed the interest
on said Plffs note & allowed all just
credit there is still due on said note
of principal and interest to said Plff from
the debt Levi A. Rogers the sum of fifty
six dollars and forty two cent.

Nov 7th 1850 Robert W. Davis Special Master

Filed Nov 7th 1850 Robert W. Davis Clk

State of Illinois } of the November
Montgomery County } term of the Montgomery
} Circuit Court A.D. 1850

Aquila O. Willy }
vs. } Bill in Chancery to foreclose
Lewi A. Rogers and }
Daniel Rogers — }

Depositions to be read in the above entitled
Cause taken at the office of the Clerk
of the Circuit Court in Hillsboro on Tuesday
November the 5th A.D. 1850 John A. Hancock
being first duly sworn according to law
makes the following to the interrogations as
propounded to wit Question 1st By
Says, atty. Do you know the parties plain-
tiff & defendant in this suit and if
so how long — Answer 1st I do. have
known Mr. Willy some fifteen years and
Lewi A. and Daniel Rogers some six or
seven years —

Question 2^d Do you know if Lewi A.
Rogers made a deed to Daniel Rogers
of a certain tract of land sometime in
~~November~~ ^{the year} 1847 and if so when was
that deed made and also describe the
tract of land —

Answer 2^d Some time in November 1847
I think Lewi A. Rogers owned the North
West quarter of the South West quarter of
Section Twenty three Township Nine North
Range Three west of the principal meridian
and sold the same to Samuel Knigton
before selling the land said Lewi A.
Rogers had made and executed a mortgage
to said Township of said land said

Kingston then gave a Mortgage to said Township on said Land and then sold the Land to Daniel Rogers but found that he said Kingston had received no deed from Levi A. Rogers. Said Daniel Rogers then directed said Kingston to take said deed to Jersey County and have said Levi A. Rogers and Wife to execute the same to said Daniel Rogers for said tract of land. Question 3^d Had you any conversation with the plaintiff Aquilla C. Wiley about said Levi A. Rogers mortgaging the above described tract of land to him the said Aquilla C. Wiley or about deed which the said Levi A. Rogers had made to the said Daniel Rogers for said tract of land. If so state ^{where} what and where that conversation took place and the purport of that conversation. Ans. 3^d

Mr. Elijah Davis had a house raising and as we were going back from dinner Elijah Davis the said Aquilla C. Wiley and myself were together when the conversation was on the subject above recited. I ~~related~~ related over the whole ^{history} ~~summary~~ of the matter from ^{the} beginning how that Levi A. Rogers had sold the land to Samuel Kingston and how that he the said Kingston had made a Mortgage of the said land to the township and that he had sold the Land to Daniel Rogers and that to Levi A. Rogers had bought the the Land back from Daniel and how the deed from Levi A. Rogers to Daniel Rogers.

was to be burnt or destroyed when Levi A. Rogers made a mortgage ^{to} said Township of said Land - This conversation some three weeks before said Levi A. Rogers made and executed a mortgage to ^{said} Aquilla C. Wiley which land so mortgaged was the same tract herein before described - I do not recollect that either said Davis or said Wiley made any reply -

Ques 4th - Was the mortgage given by Levi A. Rogers to said Township been satisfied and if so by whom and when

Ans 4th It was satisfied by said Kingston when he mortgaged it to the Township
Or as Executed

Ques by Plff atty

Ques 1st Was not Davis and yourself on foot and said Wiley on horse back when this conversation took above mentioned took place at the house raising -

Ans 1st They were

Question 2^d Was not the road muddy and were you not frequently some distanced apart -

Ans 2^d The road was muddy and bad but we could not get very far apart for the road was narrow and busy on both sides -

Ques 3^d Mr. Wiley and Davis at the time of this conversation or at any other time afterwards give you to understand that they understood the facts detailed in the conversation by you -

Ans 3^d They did not at that time but Mr. Wiley since says that he understood

The land had been mortgaged to the town of

M. S. Rutledge being first duly sworn according to law for answering to the following interrogatories says —

By depts atty Jones 1st Are you acquainted with the parties to this suit — and if so how long —

Ans 1st I am and have for some years Jones 2^d Had you a conversation with Aquilla C. Wiley about the mortgage he said Wiley received from Levi A. Rogers and if so what was the purport of that conversation and where did it take place —

Ans 2^d Some time in the fall of the same year that Wiley took the mortgage from Levi A. Rogers I think in Spring Mr. Wiley came by my house and stopped The Aquilla C. Wiley asked me if I knew if Daniel Rogers home place was clear I told him I did not know he Aquilla C. Wiley said that he and Daniel Rogers were about compromising the difficulty about the mortgage that Levi A. Rogers had made to him Aquilla C. Wiley = something I think he said about taking a mortgage on Daniel Rogers ~~own~~ ^{home} place for some borrowed money I asked him the said Aquilla C. Wiley if he did not know that Daniel Rogers had a deed to the piece of land Levi A. Rogers had mortgaged to him Wiley said he knew it but that Daniel's deed was of no account and went on to tell how

That Levi A. Rogers had made the deed in
Jersey County and that it was deficient in
not having the County Clerk's Certificate that
the Justice whom the acknowledgment was
taken was an acting Justice of the peace—
He gave me to understand that in the
absence of the deed to have this certificate
fixed he Wiley had got his Mortgage
recorded—

Cross Examined

Direct by Plff Atty

Ques 1st Did understand you correctly when
I understood you to say on your examination
in Chief that Wiley told you that in the
absence of the deed to have
it fixed for record he Wiley had his Mort-
gage recorded— Answer Qd You did

Ques 2^d You say that this conversation
was in the fall after the Mortgage from
said Levi A. Rogers to said Wiley probably
made in the Spring do you know if the
Wiley meant that he knew that the deed
to David Rogers was then made or whether
he learned it subsequently—

Ans 2^d I do not know—

William R. Christian being duly sworn
according to law answers as follows

Direct 1st By Def Atty—

Are you acquainted with the parties
to this suit—

Answer 1st I am—

Ques 2^d Had you any conversation with
Aquila C. Wiley in relation to a Mortgage
Levi A. Rogers had made to him said
Wiley— and if so state the purport of

Cross Examination

By ~~Plff~~ Dues: Did not Mr. Wiley say at the time that he had his information on the subject from Mr. Rice —

Ans: I can not recollect Mr. Wiley said something about what Mr. Rice had told him —

Elijah Davis being first duly sworn according to law answers as follows
By ~~Plff~~ atty Dues 1st: Will you state the conversation which took place between yourself Mr. Hancock and Mr. Wiley — and when it took place —

Ans: 1st The conversation was as we three were going back from dinner at at the time my house was raised Mr. Hancock and I will differ a little some for I think the conversation was in the lane after we ^{had} got out of the timber or bushes, Mr Hancock and my self were walking and Mr. Wiley riding Mr. Hancock observed that he was afraid there would be some trouble about that place and related over the way it was cancelled about that Levi A. Rogers had sold it to Kingston and Kingston had sold it Daniel Rogers and Levi A. Rogers had bought it back and was then living on the place and that Mr Hancock wished he could get it was out of their hands which is all recollect of the conversation

Dues 2^d: What conversation after did

That conversation and when it took place

Ans. 2^d Mr Wiley came to my house and was talking about a trade he had made with Levi A. Rogers and said that he was afraid he had done bad business that he had took a mortgage on that place up in the prairie that Mr Rice had told him there was a link left out some where about the recording of a deed I think he Wiley said it was a deed from Levi A. Rogers to Samuel Rogers this was but a few days after he Wiley had made the trade I ^{suppose} because I had heard nothing of it before —

Cross Examined —

Plff. atty Dwyer 1st Did I understand you to say that he Wiley had got his information from mister Rice respecting the deed —

Ans. 1st That was my understanding — George S. Cockbreed being first duly sworn says —

~~att~~ atty Dwyer 1st Had you any conversation with Aquilla C. Wiley respecting a mortgage he Wiley had taken of Levi A. Rogers and if so when and where —

Ans. 1st I saw him Wiley here in town and he Wiley said he thought he was safe in that Asa Rogers matter that he should get his pay that he had got his mortgage recorded before some deed was recorded which he said he thought would make him safe which conversation was about the time he Wiley had got his mortgage recorded

You have with Wiley about the matter
Ans. 2^d Some time after a month or
so about the time that Levi A. Rogers
and Wiley traded the Wiley said the
time was when Hancock could have
saved him self but it had slipped
for the Wiley had got his mortgage recor-
ded and Hancock was out-- This was
after the trade for Asa had got his
tools and gone to work about the
last of March or some time in April.
That Rice McGrew & Asa Rogers had told
him the record was clear that there was
no incumbrance on it that they had
looked over the records and could find
none-- I heard nothing from any one
about Daniel Rogers deed. If there was
any thing said about such a deed
I do not recollect it

Cross Examined

Direct By Off. atty.

Ques. 4th Had you as good or better opportunity
of hearing what Mr. Hancock said ^{to} Wiley at
the time of this first conversation you
speak of

Ans. 1st I consider I had a better oppor-
tunity for Wiley was riding behind and
we were walking before Hancock and
I together sometimes and sometimes
apart sometimes one side of the road
and sometimes the other-- Hancock
pitched his conversation at Wiley it
was them ^{two} that was talking I dont
recollect that I spoke a word during the
whole time

Edward Yong Rice being first duly
sworn according to law ~~for answer~~^{for answer}
to the following questions says
Ques 1st By plff. atty.

Was you County Recorder at the time this
mortgage from Levi A. Rogers to Aquilla
C. Wiley was recorded —

Ans I suppose I was I see the certifi-
cate of record is in my hand writing
and signed by me and I recollect
that I recorded it —

Ques 2^d At the time this mortgage
was presented for record did not Mr. Wiley
enquire of you if the land was encum-
bered and did you not examine the
Records for him and give him infor-
-mation on the subject and state
that information —

Ans 2^d at the time this mortgage
was presented for Record Mr. Wiley and
Levi A. Rogers came to the Recorder's
office together and enquiry was made
of me by Wiley I think, perhaps ~~of~~ by
both if there was any encumbrance
on this land as appeared from the
Records of the office and wished me
to make an examination with a view
of ascertaining which I did and found
no encumbrance and so stated to them —

Ques 3^d Will you state whether at the
time this mortgage was presented for
Record you knew of the existence of a
deed from Levi A. Rogers to David Rogers

Ans^d 3^d I think I had no knowledge of its existence at that time—

Ques^t 4th Sometime after when you became acquainted of the existence of this deed did you not inform Wiley of it and tell him that he was safe for his mortgage was recorded first—

Ans^d 4th After I learned of the existence of this deed I had several conversations with Wiley about the deed and mortgage and how stated to him on several occasions that if he had received the mortgage and got it recorded with out notice of the existence of the deed that he was safe for I so understood the Law—

James Markham being duly sworn according to Law Says—

By P^lff. Ques^t 1st did you not come in the day this mortgage was made with Mr. Wiley and Levi A. Rogers and did you not go to Daniel Rogers and converse with him on the subject of the mortgage and inform him that the mortgage was made—

Ans^d 1st I had no conversation with Daniel Rogers about mortgages that I can recollect of I came in with Wiley and Asa Rogers, but heard nothing from Daniel Rogers of any claim or deed—

Ques^t 2^d Do you know if Levi A. Rogers was at the house of Daniel Rogers on the day that he came in to make the mortgage to Wiley—

Ans. He was at or there about three-
twice what his Business was I do
not know—

I Robert W. Davis Special Master—
appointed by the Court to take depositions
in the foregoing entitled Suit Certify
that the foregoing depositions were taken
and sworn to before me at the office
of the Clerk of the Circuit Court in
Hillsboro on Tuesday the 5th day of
November A.D. 1850 Given under my
hand
Robert W. Davis
Special Master

Filed November 5th 1850

Robert W. Davis Clk
Special Master

~~Vol # 500~~

State of Missouri
Montgomery County

Aquilla C. Wiley

vs. ³/₃ Bill to foreclose Mortgage
Lewis Rogers and
David Rogers

Additional deposition of John N. Hancock
taken in the above entitled Cause at
the Office of the Clerk of the Circuit Court of
Montgomery County in Hillsboro in said
County on Thursday Nov 7th 1850—
Said Hancock being first duly sworn

Mr. Wiley did not ask any question I took it for granted that he understood me - Mr. Wiley did not ask me to tell it over again

Ques 3^d Did Wiley evince any more interest in the conversation than Davis

Ans 3^d I cant say that he did any more than the talk was with him

Ques 4th Was not Davis in a better position to hear than Wiley -

Ans 4th I should think Wiley had a better chance for I pitched the conversation at him though I cant recollect that

that Wiley said word the whole time

Ques 5th Were not you and Mr. Davis closer together than Wiley than yourself and Wiley -

Ans 5th Wiley and myself were the closest together for the reason I should judge as the conversation was directed to Wiley we were frequently close together and sometimes separated -

Ques 6th Are you not trustee of this township and have been for many years -

Ans 6th I have been for going on nine years

Ques 7th Has there not been a ~~great~~ great deal of trouble about this land

Ans 7th Now untill two weeks before last Court I thought I had a good mortgage recorded for this this land from Daniel Rogers and could not believe differently untill I looked for myself -

Question 8th If the Township should lose

To law for answer to the interrogatories
following says—

Ques. By aff. atty—

What gave rise to the conversation you
have before recited which took place at
Elijah Davis' house raising—

Ans. 1st I dont recollect—

Ques. 2^d Did or did not Mr. Wiley make
inquiry about the title to the Sound—

Ans. 2^d I dont think did for there was
nothing in contemplation at that time

Ques. 3^d Did or did not Mr. Wiley hear
your statements made at the time
of this conversation at the house raising

Ans. 3^d He mus have heard it for I directed
my conversation to Mr. Wiley and he
could not have helped hearing the
general run of the conversation for
we were at not time very far apart

Ques. 4th Do you know if Wiley was acqu-
ainted with the situation of this land

Ans. I never heard Wiley say so—

Cross examination

Ques. By Plff atty—

Ques. 1st What position did Wiley, Davis
& yourself occupy at the time of this
conversation—

Ans. 1st I do not recollect but we
were in talking distance—

Ques. 2^d Have you any reason to believe
that Wiley heard you at that time or
have you any evidence that he did
understand you—

Ans. 2^d I have for my conversation
was principally with him and as

This land who would be to blame -
Ans^d 8th I don't consider that I am in
any way about the matter. Some
have tried to blame me for the matter but
I ~~was~~ never thought I was any ~~trouble~~ to
blame.

I Robert W. Davis Special Master appointed
by the Court to take evidence in the
foregoing entitled suit do certify that the
foregoing deposition was taken and sworn
to before me this 7th day of November
A.D. 1850

Robert W. Davis

Special Master

Filed Nov 7th 1850 Robert W. Davis Clk

Aquilla C. Wiley Complt

vs.

In Chancery to foreclose
Levi's & Rogus' Mortgage

and Daniel Rogus Defendants

Now and this day came the said plaintiff
by Rice and Rountree his solicitors and
also in propa person and the defendant
Daniel Rogus by Galliger and Wood his
solicitors and the defendant Levi & Rogus
being three times solemnly called came
not but made default and the Court
being fully satisfied that said defendant
Levi & Rogus has had notice of the ~~above~~
suspension of the above entitled suit for
foreclosure by a notice thereof in the Granville
Journal a public newspaper printed in this
state for four successive weeks the first
insertion of which notice was more than
sixty days previous to the present term
of this Court and the said defendant

Levi A. Rogers having failed and neglected to plead answer or demurr here in according to the rules of this Court. Therefore it is ordered by the Court that as to said defendant Levi A. Rogers the said Complainants bill of Complaint and the matters and things therein alleged taken for confessed. and the said defendant Daniel Rogers ~~being~~ having at the last term of this Court filed his answer to the Complainants bill of Complaint, ^{being} filed and the Court having appointed Robert W. Davis Special master to take the evidence in the above entitled cause at the last term ^{here} of - and the said Special Master now here reports the evidence to the Court - and the Court after ~~having~~ ^{hearing} hearing the arguments of Counsel and carefully ~~examining~~ ^{hearing} reading and considering the evidence being fully satisfied that the foregoing entitled suit is prosecuted for the purpose of foreclosing a mortgage made and executed and delivered on the twenty third day of March A.D. 1848 by the said defendant Levi A. Rogers to the said Complainant herein on the North West quarter of the South West quarter of Section twenty three of Township nine North of Range three West containing forty acres. To secure the payment from the defendant Levi A. Rogers to said Complainant of the sum of Eighty dollars with interest - Said mortgage being dated 23^d of March A.D. 1848 - On motion of said Complainant by his said Solicitors ordered that the Clerk do take account and ascertain and report the amount due on said Mortgage

And the Clerk now heretofore reports the same to the Court to be the sum of fifty six dollars and forty two cents, (\$56.42) on this seventh day of November A. D. 1850 after allowing all Just Claims Credits - Which report is excepted by the Court - Therefore it is ordered and judged and decreed by the Court that that the said defendants their heirs and executors an administrators do within within sixty days from this date (this 7th day of November A. D. 1850) pay or cause to be paid unto the said Complainant his heirs or assigns the said sum of Fifty six dollars and forty two cents with the interest which shall accrue there on from this date till paid at the rate of six per centum per annum together with the proper costs of the said Complainant by him in this behalf expended and in default of such payment Robert W. Davis Special Master hereby appointed is hereby authorized and Committed as soon after the expiration of the sixty days as may be to expose the said mortgaged premises to public sale and sell the same to the highest bidder for cash in hand said sale to be at the door of the Court house in Hillsboro said Special Master having first given four weeks public notice of the time and place and terms of said sale pasting up writing or printed notice there of in four of the most public places in this County and out of the proceeds of said sale said Special Master is Committed first to pay and satisfy and pay the costs of said ~~sale~~ sale and of the foregoing entitled suit for foreclosure and apply so much of the residue of the proceeds

of said sale as may be necessary there for to
the payment of said Complainant his heirs or
assigns the said sum of fifty six dollars and
forty two cents
with the interest thereof from this date till
paid if so much there be - and pay over
the remainder if any surplus should remain
to the said defendants their heirs executors admi-
nistrators or assigns. And said ~~Special Master~~
Special Master shall give to the purchaser or
purchasers, ^{of said mortgaged premises a certificate of purchase} Colling for a deed of Conveyance for
the said premises so sold if not redeemed within
fifteen months from the day of the sale thereof
as required by law which deed of Conveyance
for said mortgaged premises so sold said
Special Master is authorized empowered and
Commanded to make if the said premises be
not redeemed as required by law which deed
of Conveyance so to be made as aforesaid
shall pass to and rest in the purchaser
or purchasers of said mortgaged premises
all the right title interest or claim of what-
soever nature which the said defendants
Levi A. Rogers and Daniel Rogers had in
and to the same at the time of the execu-
tion of the said mortgage by the said defend-
ants Levi A. Rogers to the said Complainant
and said Special Master is ordered to report
his proceedings herein to ~~some~~ this Court
at some subsequent term of thereof

State of Illinois }
Montgomery County }
Robert W Davis
Clerk of the Circuit Court within and for
said County do hereby certify that the
unmixed and foregoing are true &
perfect copies of the various papers
orders & decrees of record in my office
in the foregoing entitled Cause —

Witness my hand and
the seal of said Court at
Hillsboro this 17th day of
April AD 1857

Robert W Davis Clerk

Daniel Hoopes &

Levi A. Hoopes

advs } Leav

8792

Aquila C. Wiley

For Copy of Papers

Cher's plus 12000 rods

certificates \$12.00

Prepared
at

In the Supreme Court Nov.
Term 1851.

Levi A. Rogers &
Daniel Rogers - p[er]p. in Error
vs

Aquila C. Wiley - J[ur]t. in Error
Error to West Jersey.

And the said p[er]p. come and say
that in the record a[ss]er[er]ed and
in the record in of the decree as
therein set forth there is, herein
just error in this Court -

That the weight of evidence of in the
Cause was manifestly in favor
of the said Rogers and against
the said Wiley -

That the evidence in the Cause
shows that Wiley had notice of
Rogers deed before he took the
said p[er]p. Levi A. Rogers.

That the decree of the Court should
have been in favor of Danl. Rogers
and against said Wiley and because
the said decree was in favor of Wiley
and against said Rogers, he said Ro-

you say that the same way
remains & he wanted to all be
has lost thereby

The Act of Sep
will please open a
coin faccos on the
written to be an error
with to Mr. Town
1857 - J. Pease for
pgs. in error

J. Pease for
pgs. in error

Invoice in error
4 Sept.

89 Rice
for Sept in error