

8548


No. _____

Supreme Court of Illinois

Reynolds

vs.

Francis

71641  7

State of Illinois
Marion County *vs* *vs* Proceedings had in the
Circuit Court in and for the County
of Marion and State of Illinois in
a certain suit heretofore pending in
said Court between Abner Francis
Assignee of John C. Vaughn Complain-
ant and John P. Reynolds Jr. Defen-
dant

Be it Remembered that on the 1st day of August A.D. 1857 said
Complainant filed in the office of the Clerk of the Circuit
Court of said Marion County his Bill against said
Defendant to foreclose Mortgage which is in words and
following Tenor

State of Illinois

In the Marion Circuit Court August Term 1857

To The Honorable Harry D. O'Kelley
Judge of the second Judicial Circuit Court of said
State in Chancery sitting

Humbly complaining sheweth
unto Your Honor your Orator Abner Francis, that
heretofore Court on the 5th day of February 1857 John
P. Reynolds Jr of said County of Marion being indebted
to one John C. Vaughn for loaned money in the
sum of Four Thousand Dollars executed and delivered
to said Vaughn his two certain promissory Notes both
bearing ^{date} Feb'y 5th 1857. one payable on the first day
of March 1858 and the other payable on the first

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day of March 1857, each for the sum of two thousand dollars and both bearing interest at the rate of two per centum per annum from the first day of March 1857 and payable to said John G. Vaughn or order for value received and in order to further secure the payment of said sum of four thousand dollars the said John P. Reynolds Jr on the said 5th day of February 1857 at the said County of Marion by his certain Deed of Conveyance of that date duly executed and acknowledged conveyed to the said John G. Vaughn his heirs and assigns the following described parcel of Land & real estate situate lying & being in said County of Marion Court the North East Quarter of Section thirty six (36) in Township Three (3) North of Range One (1) East except a piece off the North end of the same two Rods wide from North to South and eighty Rods long from East to West beginning at the North West corner of said Quarter Section. Also the North West Quarter of the South East Quarter of said Section thirty six (36) Also a piece off the South end of the South East Quarter of Section twenty five (25) in said Township Eighty Rods long from East to West and two Rods wide from North to South beginning at the South East corner of said Section twenty five (25) containing in all two hundred Acres more or less.

which said Deed was duly recorded in the Recorders office of Marion County Illinois on the 19th day of February 1857 in Record Book N pages 464 & 465 which said Deed of Conveyance was and is subject to a certain condition of defeasance to the ^{effect} following that is to say. That if the said John P. Reynolds Jr should well and truly pay or

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Amount to be paid to the said John G. Vaughn or his assigns the sum of Four thousand Dollars according to the tenor & effect of his two several promissory Notes bearing even date (with said Deed of Conveyance for the sum of two thousand Dollars each payable to said John G. Vaughn or order payable on the first day of March 1838 and the first day of March 1839 respectively & Interest at the Rate of ten per Cent from the first of March 1837 that said Deed was to be void otherwise to remain in full force & effect. As will more fully & at large appear by reference to said Deed and Conditions herewith filed marked "A" and asked to be taken as part of this Bill (your Orator would further shew that the said John G. Vaughn to whom or to whose order the said promissory Notes were made payable and for the securing of which said Deed of Conveyance was executed & delivered after the making & executing of said Notes & said Deed of Conveyance and before the same was paid to wit on the 5th Feby 1837 at the County of Marion aforesaid endorsed, assigned & delivered said promissory Notes & each of them to your said Orator, and ordered the same to be paid to your Orator according to the tenor & effect of said Notes & Mortgage Deed and then & there delivered the same together with said Deed of Conveyance & condition to your said Orator all of which the said John P. Reynolds then & there had notice By means whereof the said John P. Reynolds became liable & promised your said Orator to pay him the said sum of money described

in said Promissory Notes & Condition of said Deed
of Conveyance when the same should become due &
payable according to the terms thereof

Your Orator would
further shew that although the said sums of money
specified in said promissory Notes have long since
been due & payable to your Orator (according to the terms
of said Notes & endorsements thereon and said condition
of said Deed) and the said John P Reynolds hath
often been requested to pay the same. Yet the said
Reynolds has not as yet paid the said several sums
of money specified in said Notes & Condition altho-
ugh often requested so to do; but to pay the same
or any part thereof to the said Vaughan or said Com-
plainant but the said Reynolds hath hitherto wholly
neglected & refused & still doth neglect & refuse, whereby
the Condition in said Deed and the property therein con-
veyed by said Deed hath been & is forfeited to your
said Orator redeemable notwithstanding in a Court of
Equity &c

In Consideration whereof Your Orator prays
that said John P Reynolds Jr may be made Defendant
to this Bill that summons may issue against & left
and that he be compelled to answer all & regular the
matters & things in this Bill contained. And upon
a final hearing Your Orator prays, that an account
be taken of what is due your Orator upon said prom-
issory Notes and that said Lands & Real Estate
set forth and described in said Deed of conveyance

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to sold and the proceeds thereof be applied to the payment
of the amount found to be due owing Your Orator upon
said Notes, and that Your Honor will grant such
other further relief in the premises as to Your Honor
may seem just & equitable and as in duty bound Your
Orator will ever pray &c

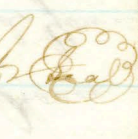
J. P. Reynolds
Self for Compt

I

Know all men by these presents that I John P. Reynolds
Jr of Marion County and State of Illinois in consideration of
four thousand Dollars paid by John G. Vaughan of Butler
County and State of Ohio the receipt whereof I do hereby
acknowledge have granted and sold and do hereby grant sell
and convey unto the said John G. Vaughan his heirs and
assigns forever the following described parcel of Land to wit
The North East Quarter of Section thirty six (36) Township
Three (3) North Range One (1) East except a piece off
the North End of the same two Rods wide from North to
South and Eighty Rods long from East to West beginning
at the North West corner of said Quarter Section. Also the
North West Quarter of the South East Quarter of said Section
thirty six (36) also a piece off the South end of the South
East Quarter of Section twenty five (25) in said Township
Eighty Rods long from East to West and two Rods wide
from North to South beginning at the South East
Corner of said Section twenty five (25) containing in
all two hundred acres more or less all in Marion
County and State of Illinois.

I do have and do hold ^{to} the aforegranted premises with all the privileges and appurtenances thereof to the said John G. Vaughan his heirs and assigns to their use and behoof forever. And I do covenant with the said John G. Vaughan his heirs and assigns that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said John G. Vaughan and that I will warrant and defend the same to the said John G. Vaughan his heirs and assigns forever against the lawful claims and demands of all persons whatsoever. Provided Nevertheless, that if I the said John P. Reynolds I shall well and truly pay or cause to be paid, unto the said John G. Vaughan, or his assigns the sum of four thousand Dollars, according to the tenor of my two several promissory Notes bearing even date with these presents for the sum of two thousand Dollars each payable to the said John G. Vaughan or order payable on the first day of March 1858 and the first day of March, 1859 respectively, and but interest at the rate of two per cent from the first of March 1857 then this Deed is to be void otherwise in full force and effect.

In Witness whereof I the said John P. Reynolds do have hereunto set my hand and seal, this fifth day of February in the Year of Lord One thousand eight hundred and fifty seven.

Witness
John P. Reynolds Jr. 

Jas S. Martin

State of Illinois
Marion County

I Jas S Martin, Clerk in and
for said County do hereby certify
that the above named John P Reynolds Jr. who is person-
ally known to me to be the person whose name is subscribed
to the foregoing Mortgage or deed of conveyance as having
executed the same this day in person came before
me and acknowledged that he signed, sealed and deliv-
ered the said deed for the uses and purposes therein
mentioned.



Given under my hand and seal at Salem
this 18th day of February 1839

Jas S Martin

Upon the back of the foregoing Mortgage deed is the
following endorsement to wit

"State of Illinois
Marion County I do hereby certify that this Mortgage
was filed for Record on the 19th day of
February A.D. 1839 & duly recorded in Book 11 pages
464-5 of the Records of Marion County Illinois
A W Egan Clerk & Officer
Recorder."

Bond for costs here attached as follows to wit

"Abner Francis Assignee
of John G. Vaughn
John P Reynolds Jr
Marion Co Court
Augst Term 1839
Discharge of Mortgage
I do hereby enter myself

Security for costs in this Cause I acknowledge myself bound to pay or cause to be paid all costs that may accrue on the same either to the opposite party or to any of the officers of this Court in pursuance of the Laws of the State of Illinois

Dated this August 1st 1839

P. P. Hamilton Esq.

Appearance of Defendant entered hereto attached in words and figures following to wit

"I John P Reynolds for Defendant in the above Cause do hereby waive the issuing & service of summons, and do hereby enter my appearance in said Cause & acknowledge myself bound as fully & to all intents & purposes as if summons had been issued & served upon me according to Law

Witness my hand this 1st day of August 1839

John P Reynolds

Also hereto attached is the following to wit

"By direction & leave of the Court Cyrus W Webster is hereby made Defendant to this Bill

Hamilton sol for Compl't."

Also on same date to wit August 1st 1839 said Complainant filed his two several promissory Notes which are in the words & figures following to wit

\$2000.00 On the first day of March A D eighteen hundred & fifty eight for value received I promise to pay to John C Vaughan or order two thousand

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Dollars with ten per cent Interest from March 1st
A.D. 1837. This February 5. 1837

John Reynolds —

Salut All $\frac{3}{4}$

\$2000.00 On the first day of March A.D. eighteen
hundred & fifty nine for value received I promise to
pay to John G. Vaughan or order two thousand Dollars
with ten per cent Interest from March 1st A.D. 1837.
This February 5. 1837

John Reynolds —

Salut All $\frac{3}{4}$

Upon the back of which notes were endorse-
ments in the words & figures following to wit

Received Dec 5th 1837

Six Hundred Dollars on within note

John G. Vaughan

Apr 24th 1838 Rec^d on the within Two hundred & sixty
four Dollars

June 3rd 1838 Rec^d on the within 200 \$

Sep 28 " Rec^d on the within 50 \$

Oct 28 " Rec^d on the within 50 \$

Nov 7 " Rec^d on the within 100 \$

Feb 26th 1839 Rec^d on the within 600 \$

Apr 6th " Rec^d on the within 50 \$

John G. Vaughan

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And afterwards at the August Term of said Court
Dowit on the 16th day of August 1839 the following
order was made by the Court Dowit

Abner Francis Assignee

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John P Reynolds and
Cyrus W Webster

Enclosure

The appearance of Defendant
Reynolds being entered on
motion of Complainant by Ham-
ilton his solicitor said Defendant is ruled to answer
on Thursday morning."

And afterwards Dowit
on the 17th day of August A.D. 1839 said J^r P Reynolds
filed his answer in the words & figures following Dowit

"Warren County Circuit Court
August Term A.D. 1839 -

In Chancery

John P Reynolds per
ads

Abner Francis Assignee of
John G Vaughan

The Defendant now
comes and reserving to him-
self all right of exception to said Complainant's Bill
for answer to so much of said Bill as he is advised
it is material for him to answer unto answer & say
that prior to the execution of the Mortgage described
in said Bill, the said John G Vaughan Dowit
on the first day of March eighteen hundred and fifty

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and made executed and delivered to Cyrus W Webster
his certain Mortgage Deed for the payment of the sum
of four thousand Dollars which said Mortgage Deed
is recorded in Book L page 108 of the Records of
Marion County and embraces the Lands described
in Complainants Bill and is now and has been since
its Execution a lien in full force and virtue in
Law upon the same.

Defendant therefore in order
that he may be protected from a multiplicity of
suits and that justice may be done in the premises, res-
pectfully prays that the said Cyrus W Webster may
be made a party to this proceeding that on the final
hearing an account may be taken of the amount due
to said Webster on his said Mortgage and that
such other and further order may be taken in the prem-
ises as the Court may direct and that this suit
be stayed until said Webster be made a party thereto

John P Reynolds

State of Illinois Marion County

The above named Defendant
makes oath and says that the matters and things set forth
in the foregoing answer are true in substance and
fact to the best of his knowledge and belief.

John P Reynolds

Subscribed and sworn to
before me this Aug 17. 1859

W M Eagan Clk
By J O Chance Depy

And afterwards at said August Term of said Court
Doinit on the 28th day of August 1839 an order was made
by the Court in the words & figures following Doinit

"Abner Francis assignee
 vs
 John P. Reynolds and
 Cyrus W. Webster

Declosure Cause filed &
 exceptions taken and sustained with leave
 to amend.

Came the Defendant and
 withdraws his motion to amend
 answer and the Court doth now set aside the order to sus-
 tain exceptions to the answer and the Complainant
 moves for leave to withdraw exceptions which motion
 the Court allows, whereupon the Complainant files
 his Replication and the cause is at down for hearing
 &c

And afterwards Doinit on the 26th day of August
AD 1839 at said Aug term of said Court Cyrus W
Webster entered his appearance & files his answer in the
words & figures following Doinit

"Abner Francis assignee of John C. Vaughan
 vs
 John P. Reynolds

In the Union Circuit
 Court August Term 1839
 On Rancery & Declosure
 & Mortgage

Cyrus W. Webster whom the
 Defendant in this cause asks to be made a party to
 the proceedings in said cause comes into court and
 waives the issuing & service of process and asks
 to be made party to said proceedings and

Also on same day an additional order was made by
the Court Docket

Abner Francis

John P Reynolds ^{vs}
 Cyrus W Webster

Docket

Came the parties by their solicitor
I-Toss and leave is given Com-
-plainant to withdraw Replication
to the answer of Defendant Reynolds, and Cyrus
W Webster in open Court enters his appearance and
files his answer and is made party Defendant to this
Bill.

Which appearance & answer in words & figures
following Docket

Abner Francis assignee of John C Vaughn
vs
John P Reynolds

Docket

In The Marion Circuit
Court August term 1839
vs
De Quincy to foreclose
Mortgage

Cyrus W Webster whom the
Defendant in this Cause asks to be made a party
to the proceedings in said Cause comes into Court and
waives the issuing & service of process and asks to
be made party to said proceedings and enters his
appearance in said Cause and for answer to said
Bill and said answer of said debt pays.

That thus it is said John C Vaughn did
make execute & deliver to him a Mortgage

deed to secure the payment of \$4000- dated March
 1st 1856 and that said Mortgage was recorded in Book
 D page 108 of the Records of said Marion County
 and that the same embraced together with a large
 quantity of other lands, ^{at the time of giving the same to said land} described in said Complainants
 Bill, But he states and avers the truth to be, that
 said Lands described in said Complainants Bill
 are and have been entirely and fully released and
 discharged from the lien created by said Mortgage
 and are not now held or subject to said Mortgage
 nor is said Mortgage any lien upon said Lands
 or any part thereof as set forth & described in said
 Complainants Bill. That said Release of said Lands
 was and is duly executed, signed and sealed by him
 the said Webster upon said Mortgage and that the
 same was also duly made signed & sealed by him
 said Webster upon the margin of said page 108
 in Book D as aforesaid, as will more fully appear
 by reference to said Records & also to a certified copy
 of said Release herewith filed & made part of this
 answer

(Which copy of Release is in words & figures as follows)

State of Illinois
 Marion County In Consideration of having received
 part payment on the Note described
 in the within Mortgage I do hereby Release & discharge
 the following tracts of Land from the Lien secured
 by said Mortgage To wit The North East Quarter
 of section thirty six T 3 N R 1 E Also NW 1/4 S 34

Sec 36 all in Township Three North Range One East
 Also a piece off the S end of S E 1/4 of Sec 25 in
 said Township 80 Rods long from E to W and
 2 Rods wide from N to S Beginning at S E corner
 of said Sect 25

Attest

B D Marshall

Cyrus W Webster

State of Illinois

Macon County I, H. W. Cagan Clerk of the
 Circuit Court & ex officio Recorder
 of said County do hereby certify that the above
 is a true and correct copy of a Release entered
 on the Margin of page 1087 in Book I of the Records
 of said County



Given under my hand & official
 seal this 26th August AD 1858

H W Cagan (C)

And said Webster would further state & shew,
 that said Vaughn has paid & satisfied him the
 larger portion of said sum mentioned in said mortgage
 to him as aforesaid and for the remainder of said
 sum which is less than one fourth of the Original
 sum, He the said Webster has a judgment in this
 Hon Court against the said Vaughn, and that said
 judgt is a lien upon the Lands & property of said
 Vaughn, which is more than sufficient to pay four
 times the amount due him on the said judgt,
 that he does not hold the Note described in s^d mor-
 tgage from said Vaughn to him, but that the same

was filed in ¹⁶ This Hon Court, where he obtained said
judgt upon the same. And the said Webster
further states that he has no Interest in title to or
lien upon said Lands described in said Complainants
Bill, that the same have & are entirely fully released
& discharged from any lien created by said most
yago from said Vaughn to him - And he having
no Interest in the same he asks to be hence discharged
discharged from any further participation in the
proceedings in said cause &c."

C. W. Webster

The Court doth now order that it be referred to James
J Martin Master in Chancery to take testimony and
state an account herein of the amount due & Report."

Whereupon James J Martin Master
in Chancery on the day of the date last aforesaid filed
presented his Report which is in the words & figures following
To wit

State of Illinois

Marion County J. H. W. Egan Clerk of the Circuit
Court & ex officio Recorder of said
County do hereby certify that the above is a true and
correct copy of a Release entered on the margin of Page 108
in Book 2 of the Records of said County.

J. H. W. Egan

Given under my hand & official seal
this 26th August A.D. 1859

J. H. W. Egan

X Whereupon the Court on said 26th day of August 1859 made
an order in the words & figures following to wit

"In re Francis assignee

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John C. Reynolds ^{vs} and Cyrus W. Webster
Foreclosure
Came the parties by their joint
Deors and leave is given Complainant
to withdraw Replication to the answer
of Defendant Reynolds and Cyrus W. Webster in open
Court enters his appearance and files his answer and
is made party Defendant to this Bill. The court
doth now order that it be referred to James S. Martin
Master in Chancery to take testimony and state an
account herein of the amount due &c &c &c."

Whereupon James S. Martin
Master in Chancery on the day of the date last aforesaid
filed his report which in the words and figures follow-
ing to wit

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John L. Vaughn } Aug Term 1859

John P. Reynolds } Bill to foreclose Mortgage

I James S. Martin Master in Chancery
to whom the within Cause was referred to take testimony
By leave to report Amdt due Complainant as
follows To wit

Note dated Feby 5th 1857. due March 1st
1858 with 10 per cent from March 1st 1857.
Bal due on same after deducting credits

413.87

Note dated Feby 5 1857 due March
1st 1859. with 10 percent but from March
1st 1857 -

2000.00

Dnt on same for 2 years 5 mos 26 days

297.63

Bal due \$2911.50

All of which is respectfully submitted

James S. Martin Master
in Chancery

I would further report that I find on file with
papers in said Cause answer of defendant to Comp. Bill
putting up that Cyrus W. Webster prior to execution of
Mortgage described in Complainant's Bill held an
incumbrance on the same for four thousand Dollars
and asking that said Webster be made party to this
suit. and the answer of said Webster putting forth
that he had released the same. and further that
complaints introduced A. W. Egan who after being

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duly sworn deponent that C. N. Webster held a mortgage
embracing the Lands described in Complain't Bill
but that the same had been released in full as
to said Lands, and further that the mortgage of Webster
together with the Record of same in Book L of Marion
County Records was introduced which shows that same
has been released. and further that said Cagan introducing
the original Mortgage and note from said Vaughn to Webster
and the Record of said Court showing that Judgment had
been entered on said Note in favor of said Webster and
against said Vaughn.

I would refer Your Honor to the
papers on file in said Cause together with the
papers on file in the Cause of C. N. Webster vs
John S. Vaughn and records of Mortgage
given by Complainant to C. N. Webster in Book
L records of Marion County

All of which is respectfully
submitted

Jas. S. Martin
Master in Ch'f.

And afterwards at said Term of said Court docket
on the 27th day of August A. D. 1859 an order was
made by said Court in the words & figures following
to wit

Abner Francis Assignee

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John P. Reynolds
vs
Cyrus W. Webster

Pro closure

Com James S. Martin

Master in Chancery and presents

his Report which being examined by the Court was approved and ordered to be filed & the Complainant by Hamilton his solicitor moved the Court that this Cause be set down for hearing on Bill answer and testimony, and the Defendant Reynolds interposes cross motion to rule Complainant to file Replication and set this Cause down for hearing at next Term.

And the Court overrules said cross motion to which ruling Defendant excepts. And the Cause is now set down for hearing. And the Court ^{having} heard Bill answer and testimony ^{and} counsel thereon doth now on due consideration had order a Judge and decree that said Defendant John P. Reynolds do within 30 days pay to said Complainant the sum of \$2911.54 so certified, reported due, and in default of such payment that said James S. Martin Master in Chancery do proceed to sell the mortgaged premises Court

the N^W 1/4 of Section 36 in Township 3 N R¹ E except a piece off the North end of the same Two Rods wide from North to South and eighty Rods long from East to West beginning at the NW corner of said Section.

Also the NW 1/4 of the SE 1/4 of said Section thirty six 36
also a piece off the South end of the SE 1/4 of

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Section 25 in said Township 80 Rods long from East to West and two Rods wide from North to South Beginning at the SE corner of said Section 25 containing in all 200 acres more or less in Union County Illinois. That said sale be made at the Court House doors in the Town of Salem, to the highest and best bidder for cash That said sale be made after due notice by publication in some Newspaper published in said County in the usual manner giving the time terms and place of sale, that said Notice be published for 20 days That the Master execute certificate & Report for which Report this Cause is continued.

And the said Defendant Reynolds takes exception to said Decree which the Court notes and Defendant prays an appeal which is granted on entering into Bond in \$4000 in 30 days with security to be approved by the Clerk of this Court, &c.

Whereupon said Defendant Reynolds filed his appeal Bond on the 24th day of September A.D. 1839 which is in words and figures following to-wit:

I know all men by these presents that we John P Reynolds and William L Knight are held and firmly bound unto Abner Treanus assignee of John G Laughan in the penal sum of four thousand Dollars lawful money of the United States for the payment of which well and

Truly to be made we bind ourselves our heirs
and administrators jointly severally and
family by these presents.

The condition of the above
obligation is such that whereas the said Abner
Sturges assignee of John Vaughan did on
the 26th day of August at the August term of the
Marion County Circuit Court A.D. 1859 recover
a decree in his Bill for foreclosure of Mortgage
against the above bounden John Reynolds
and Cyrus W. Webster for the sum of two thousand
nine hundred and eleven dollars and fifty cents
from which decree the said John Reynolds
one of the Defendants aforesaid has taken an
appeal to the Supreme Court of the State
of Illinois

Now if the said John Reynolds
shall prosecute his appeal with effect
and shall pay whatever judgment may
be rendered by the Court upon dismissal
or trial of said appeal then the above obligation
to be void otherwise to remain in full force
and effect

Witness our hands & seals

Taken and approved by
me this 24th Sept 1859

John P Reynolds
Wm D Wright

At W. Logan etc
By J. D. Chance Sept

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State of Illinois
Marion County

I, H. W. Eagan Clerk
of the Circuit Court of said
County do hereby certify the foregoing to be a
true, full and complete Record of all the
proceeding had in our said Court in the
above named cause, as will appear by reference
to the Original papers &c. now on file in my
office.



Given under my hand and
official Seal at Salem this
26th day of October A.D. 1839

H. W. Eagan

J. O. Chance
Clerk

Errors Assigned

- 1st The Court erred in denying the motion for Continuance and proceeding to pronounce ^{the} decree ^{that} in the apparent complication of the Case would under the general practice in Equity Suits and the statute entitled to Continuance
- 2^d The Court erred in not granting Continuance in as much as the assignor of the Complainant was not made a party defendant which should have been done for the defendants protection against outstanding Claims and the more so as the answer of defendant Webster is ambiguous as to the extent of service assignors to wit John G Vaughan liability or interest
- 3^d The Court erred in not granting the Continuance and setting down the cause for hearing at the next term inasmuch as defendant Webster was a new party made at the time when decree was rendered and which the general practice in Equity recognizes as entitled to a Continuance as proved for the plaintiffs in error cases and says there is manifest error as above assigned appearing in the foregoing Record and to show the same he has set

John P. Reynolds

vs

John Francis Cignea

vs

John P. Reynolds

Record
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Filed Nov. 15. 1859-

St. Josephine Ct

Paid by Hamilton \$5.00

Dec. 6. 75

ABSTRACT.

JOHN P. REYNOLDS,
vs.
ABNER FRANCES.

} Appeal from the Marion County Circuit Court.

This was a suit instituted on the Chancery side of the Marion Circuit Court by Bill to foreclose Mortgage by said ABNER FRANCES against JOHN P. REYNOLDS, which Mortgage was given to secure the payment of two Promissory Notes, payable to JOHN G. VAUGHN, for Two Thousand Dollars each bearing date February 5th, 1857, one payable on the first day of March, 1858, the other payable on the 1st day of March, 1859.

Upon the back of which notes were the following endorsements in the words and figures following, to-wit: "Received Dec. 5th, 1857, Six hundred dollars on within Note, JOHN G. VAUGHN; April 24th, 1858, Received on the within note Two hundred and sixty-four dollars; June 3rd, 1858, Received on the within note, Two hundred dollars; Sept. 25th, Received on the within note, Fifty dollars; Oct. 25th, Received on the within note, Fifty dollars; Nov. 7th, Received on within note, One hundred dollars; Feb. 26th, 1859, Received on the within note, Six hundred dollars; April 6th, Received on the with note, Fifty dollars.

JOHN G. VAUGHN."

JOHN P. REYNOLDS Defendant, waived service of process and entered his appearance.

Afterwards defendant was ruled to answer Complainants Bill, and on 17th of Aug., 1859, defendant filed his answer.

Showing to the Court by said answer that one C. W. WEBSTER held a Mortgage on the same land against the said JOHN G. VAUGHN assignor of ABNER FRANCES, for the sum of Four thousand dollars, which was still unsatisfied and in full force which Mortgage was a prior incumbrance on said Land and that said Mortgage deed is recorded in Book L., Page, 108, of the Records of Marion County.

And the said answer prays that the said C. W. WEBSTER be made party to this bill, and that an account be taken of the amount due the said WEBSTER on his said Mortgage and that such other and further order be made as the Court may direct, and that proceeding be stayed in this suit until said WEBSTER be made a party thereto. Said answer was made under oath Complainant excepted to said answer, Court sustained said exceptions.

Defendant took leave to amend; Defendant withdrew motion to amend and the Court set aside order to amend answer and also set aside order sustaining exceptions to answer.

Complainant moved Court to withdraw exceptions, which was allowed. Complainant files Replication, and on the 26th day of Aug. 1859, said WEBSTER entered his appearance and filed his answer and asks to be made a party to said bill and waives issuing and service of process, and same day Complainant asks leave to withdraw Replication which Court allowed.

Said WEBSTER admits in his said answer, that said JOHN G. VAUGHN, did make, execute and deliver to him said Mortgage Deed to secure the payment of Four thousand dollars.

But says in said answer that the said Mortgage Deed has been cancelled and the said Lands have been entirely released and discharged from the Lien created by said Mortgage Deed.

Said release was duly made, signed and sealed, reference made to the Record, &c.

And the said WEBSTER, sets up in his answer that said VAUGHN has paid and satisfied him the larger portion of said Four thousand dollars.

And that there is less than one fourth now due on said notes and Mortgage, and that said WEBSTER has a Judgment in this Court against said VAUGHN and that said Judgment is a Lien upon the lands and property of said VAUGHN both personal and real.

And that he does not hold the note described in said Mortgage from said VAUGHN, but the same is on file in this Court and judgement on same.

The Court made an order that the case be referred to JAS. S. MARTIN, Master in Chancery to take testimony and state an account of the amount due and report. And Master made his report as follows, to-wit:

| | |
|---|-------------|
| On note dated Feb. 5th, 1857, due March 1st, 1857, Balance due after deducting Credits, | \$413.87. |
| Note dated Feb. 5th, 1857, due March 1st, 1859, with ten per cent Interest from Mar. 1st, 1857, due | \$2000.00. |
| Interest on same for two years, five months, and twenty-six days, | \$497.63. |
| Balance Due, | \$2,911.50. |

JAS. S. MARTIN, Master in Chancery.

And the Master further reports that said WEBSTER filed his answer setting up that prior to the filing of Complainants Bill he held an incumbrance on said land for the sum of Four thousand dollars, and the said WEBSTER setting forth that he had released the same, and Complainant introduced H. W. EAGAN, who after being duly sworn deposed that WEBSTER held a Mortgage embracing the Lands described in Complainants bill; but that same had been released in full as to said Lands, and that Mortgage of WEBSTER together with the Record of same is in Book L. of Marion County Records which was introduced and shows that same has been released and the said EAGAN introduced the Original note and Mortgage from said VAUGHN to WEBSTER and the record of the Court showing that Judgment had been entered on said note.

And afterward the Master made this report, and cause was set down for hearing on Bill, answer and testimony.

Defendant REYNOLDS interposed cross motion to rule Complainant to file Replication and set cause down for hearing at next term.

Court overruled said cross motion to which ruling Defendant excepted, and the Cause is now set down for hearing at this Term.

And the Court heard bill answer and testimony, and ordered and adjudged decree that said defendant JOHN P. REYNOLDS do within thirty days pay said complainant the sum of two thousand nine hundred eleven dollars and fifty cents, reported due and in default of payment JAMES S. MARTIN as Master &c., proceed to sell said lands.

To which ruling defendant excepts and prays an appeal to this Court and defendant assigns for error.

1st. That the Court erred in denying the motion for continuance, and proceeding to pronounce its decree in that the apparent complication of the case would under the general practice in equity suits and the statute entitle to a continuance.

2nd. The Court erred in not granting the continuance in-as-much as the assignor of the complainant was not made a party defendant which should have been done for the defendants protection against outstanding claims, and the more so as the answer of defendant WEBSTER is ambiguous as to the extent of said assignor's to-wit:—(JOHN G. VAUGHN's) assignment, liability or interest.

3rd. The Court erred in not granting the continuance and setting down the cause for hearing at the then next Term, in-as-much as defendant WEBSTER was a new party made at the Term when decree was rendered and which the general practice in equity recognizes as entitling to a continuance as moved for.

John P Reynolds Jr. app't.
vs
Abner Francis ap'p'us app't. Martin

} Appeal from

The Clerk Supreme Court
please docket the above case file second
W A Willard for app't.

Reynolds

27

Francis

Principi

Filed Nov. 15. 1859.

St. John's Clk

No 45 John P Reynolds vs Abner Francis } In Supreme Court } First Grand Division } Nov Term 1839.

Not having heard the argument of the Counsel for the Appellant I of course do not know fully, what points he may have made, & what arguments he may have used for the purpose of obtaining a reversal of the part of the Court below in this cause. I therefore will only suggest a few reasons in vindication of the decree rendered in this case. — And in the first place I would respectfully ask the Court to look into the Record and see the true position of the parties. — The bill was filed by the Appellee as assignee of John S. Vaughan in the usual form, for foreclosure of Mortgage. — The Appellant answers said bill, neither admitting or denying any of the allegations of said bill, but sets up that another person (viz Webster) held a Mtgo against Dr. Vaughan (the assignor) containing the same lands, sought to be foreclosed in this proceeding, and asked that said Webster be made a party to this proceedings. The Appellee does not file a Replication to that answer, or at any rate the Replication

having been withdrawn, the case stands as
the no replication had been filed. — Webster comes
into Court, is made a party to said Cause,
enters his appearance, and files his answer
The Court thereupon sets the Cause down
for hearing under the "bill answer & evidence"
for which, viz the setting the Cause down for
hearing at that term. The appellant seeks
to have the judgment reversed.

I suppose they base
their right for having said Cause continued at
that term, upon the § of Chapt. Scates & al.
Statute — Let us look at the provisions of that
§ carefully, and see if it was the duty of the
Court, to have continued this Cause. — It can
not be contended that the first clause of that
Section would apply to cases of this kind, for
that provides that "after replication is filed the
Cause shall be deemed at issue, and stand
for hearing at the next term." In the case
before the Court, no replication was filed; It
is therefore evident that this Case comes
under the class of cases, provided for in
the subsequent part of said Section, in
which cases I contend, the rule, "that the
Case must stand for hearing at the
next term of the Court," has no force whatever.
In order that such a rule should be established,

There must be some good reason therefor.
What good reason, can there be for such
a rule in a case like the one before the Court?
If it is said, that the reason is, that "the
Deft must have notice of the taking of
testimony," I answer that in such cases
as the one before the Court, "no evidence can
be received, unless it be matter of record to
which the answer refers."

Now there is good
reason for the adoption of the rule, in the
class of cases, where replication has been
filed, - then the cause is at issue, and it
must be determined by the weight of testimony
just as at law, - the case is set down for
hearing at the next term for the reason
that the Legislature has provided that
evidence introduced in Courts of Equity
shall be in writing, and it is further
provided that the parties shall have reason-
able notice (10 days) of the taking of such
evidence, that they may have the privilege
of Cross Examining the witnesses &c. In
such cases the rule works well, there
is a necessity for such a continuation;
but, in cases like the one before the Court
there is no such necessity, - You can
not take such testimony; the cause is not

at such an issue as to require the taking of
testimony; - The answer shall be taken as true
and no evidence shall be received, unless it be
matter of record to which the answer refers.
Do Content for such a doctrine as to require
a Cause to be continued in such a case as this
is in my opinion preposterous - Why should
the Cause be continued? The Statute does
not require it; And for the very good reason
that neither party could gain any thing
by it - Each party is bound by the answer &
such record as it refers to. - I do not doubt
but that the Court might continue a Cause for
the purpose of proceeding "such record", but
even then it is left to the sound discretion of
the Chancellor, for the proper exercise of which
this Court will not interfere.

I therefore Content that this class of cases
(where no replication is filed) may be set
down for hearing at any time, the Court
may see proper, there being no reason or
occasion for delay - And that they are not
governed by the general rule, that regulates
causes in Chancery, where an "issue is made
up", as is contemplated in the first part
of the Section above referred to - There can
be no equity in such a rule as Contended
for by appellants, in cases like this, for after

it should be continued, until the next term
the parties could do nothing more, introduce
no more evidence than they could at the
first term - The only object therefore for
contending & establishing such a rule, would
time, and that is the real cause of this con-
tention, it is to get time, to delay the collection of
a just debt. A principle that neither Courts
of law or equity will countenance or encourage,
And in order that the Court may know
that I am correct in this assertion I again
invite them to the record - The record shows
clearly that there is no defence, nor can
there be any to this proceeding - The answer
of appellant is shown clearly & conclusively
to be untrue, at the time the case was set
down for hearing - He contended that Webster
had a lien upon the same land, and
Webster says that he has not such a lien
The record referred to by the appellant in
his answer, and which the Court, had
a right to look into at any time in order
that it might dispense true justice be-
tween the parties - I do not think it
necessary to notice the other points, which
I suppose the Counsel for appellant made
for I conceive, the above, to be the main
& important question in the case.

All the parties, who had any interest in
the premises, were before the Court - Vaughan
who assigned the Note, which carried the
Mortgage with it, was there - and was bound
by whatever judgment was entered in the premises
So were all the other parties - I conceive
it would be the greatest injustice to adopt
a rule that in any & all Discharges of
Mortgages, if the Debt. Came in & filed answer
admitting the justice of the demand, but
setting up some erroneous & false plea, that
the P^lty was satisfied that the very record
which he defend to, would show to be un-
founded, yet in such cases the Cause must
stand for hearing at the next Term
Although there is no replication filed,
Such is not in accordance with Equity &
good Conscience and is not the law in
my humble judgment

D. P. Hamilton
for Appellee.

Alexander

45-23

Reynolds
(4)

Francis

For depth

ABSTRACT.

JOHN P. REYNOLDS,
vs.
ABNER FRANCES.

} Appeal from the Marion County Circuit Court.

This was a suit instituted on the Chancery side of the Marion Circuit Court by Bill to foreclose Mortgage by said ABNER FRANCES against JOHN P. REYNOLDS, which Mortgage was given to secure the payment of two Promissory Notes, payable to JOHN G. VAUGHN, for Two Thousand Dollars each bearing date February 5th, 1857, one payable on the first day of March, 1858, the other payable on the 1st day of March, 1859.

Upon the back of which notes were the following endorsements in the words and figures following, to-wit: "Received Dec. 5th, 1857, Six hundred dollars on within Note, JOHN G. VAUGHN; April 24th, 1858, Received on the within note Two hundred and sixty-four dollars; June 3rd, 1858, Received on the within note, Two hundred dollars; Sept. 25th, Received on the within note, Fifty dollars; Oct. 25th, Received on the within note, Fifty dollars; Nov. 7th, Received on within note, One hundred dollars; Feb. 26th, 1859, Received on the within note, Six hundred dollars; April 6th, Received on the with note, Fifty dollars.

JOHN G. VAUGHN."

JOHN P. REYNOLDS Defendant, waived service of process and entered his appearance.

Afterwards defendant was ruled to answer Complainants Bill, and on 17th of Aug., 1859, defendant filed his answer.

Showing to the Court by said answer that one C. W. WEBSTER held a Mortgage on the same land against the said JOHN G. VAUGHN assignor of ABNER FRANCES, for the sum of Four thousand dollars, which was still unsatisfied and in full force which Mortgage was a prior incumbrance on said Land and that said Mortgage deed is recorded in Book L., Page, 108, of the Records of Marion County.

And the said answer prays that the said C. W. WEBSTER be made party to this bill, and that an account be taken of the amount due the said WEBSTER on his said Mortgage and that such other and further order be made as the Court may direct, and that proceeding be stayed in this suit until said WEBSTER be made a party thereto. Said answer was made under oath Complainant excepted to said answer, Court sustained said exceptions.

Defendant took leave to amend; Defendant withdrew motion to amend and the Court set aside order to amend answer and also set aside order sustaining exceptions to answer.

Complainant moved Court to withdraw exceptions, which was allowed. Complainant files Replication, and on the 26th day of Aug. 1859, said WEBSTER entered his appearance and filed his answer and asks to be made a party to said bill and waives issuing and service of process, and same day Complainant asks leave to withdraw Replication which Court allowed.

Said WEBSTER admits in his said answer, that said JOHN G. VAUGHN, did make, execute and deliver to him said Mortgage Deed to secure the payment of Four thousand dollars.

But says in said answer that the said Mortgage Deed has been cancelled and the said Lands have been entirely released and discharged from the Lien created by said Mortgage Deed.

Said release was duly made, signed and sealed, reference made to the Record, &c.

And the said WEBSTER, sets up in his answer that said VAUGHN has paid and satisfied him the larger portion of said Four thousand dollars.

And that there is less than one fourth now due on said notes and Mortgage, and that said WEBSTER has a Judgment in this Court against said VAUGHN and that said Judgment is a Lien upon the lands and property of said VAUGHN both personal and real.

And that he does not hold the note described in said Mortgage from said VAUGHN, but the same is on file in this Court and judgement on same.

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And the Master further reports that said WEBSTER filed his answer setting up that prior to the filing of Complainants Bill he held an incumbrance on said land for the sum of Four thousand dollars, and the said WEBSTER setting forth that he had released the same, and Complainant introduced H. W. EAGAN, who after being duly sworn deposed that WEBSTER held a Mortgage embracing the Lands described in Complainants bill; but that same had been released in full as to said Lands, and that Mortgage of WEBSTER together with the Record of same is in Book L. of Marion County Records which was introduced and shows that same has been released and the said EAGAN introduced the Original note and Mortgage from said VAUGHN to WEBSTER and the record of the Court showing that Judgment had been entered on said note.

And afterward the Master made this report, and cause was set down for hearing on Bill, answer and testimony.

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Court overruled said cross motion to which ruling Defendant excepted, and the Cause is now set down for hearing at this Term.

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3rd. The Court erred in not granting the continuance and setting down the cause for hearing at the then next Term, in-as-much as defendant WEBSTER was a new party made at the Term when decree was rendered and which the general practice in equity recognizes as entitling to a continuance as moved for.

Haynes & Millard

Abstract

Nov Term Sup Court 1859
John P Reynolds
vs
Abner Francis

8548

Filed Nov. 21-1859
A. Johnston Clerk

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JOHN P. REYNOLDS
vs
ABNER FRANCIS

ABSTRACT

No 45 - 23 -

Nov. Term 1859

Reynolds

vs

Francis

App. for Marins

Affirmed

8548