

No. **11943**

Supreme Court of Illinois

Woodbury

vs.

Aikin

71641  7

House
G. ell. Woodbury vs. Aikin

58

11943

1852

Prepared

Be it remembered that heretofore, to wit, on the fourteenth day of February A.D. 1851, there was filed in the office of the clerk of the circuit court in and for the county of Peoria and State of Illinois a Bill, precept and exhibit in the words and figures following, to wit,

Bill =

To the Hon William Kellogg Judge of the Tenth Judicial circuit, at the next term of the Circuit Court to be holden at & within & for the County of Peoria, In Chancery sitting,

Humblly complaining sheweth unto your Honor, your Orator Mark Mc Wiken, that on or about the 24th day of December in the year of our Lord Eighteen hundred and forty, Your Orator bargained & sold to one Greenleaf Mc Woodbury, whom your orator prays may be made a party defendant herein, the following described Real Estate, to wit: The North West quarter & the North East quarter of section number Thirty Six in Township number Eleven North of Range number Six East of the fourth principal meridian for the agreed price or consideration of five hundred dollars and the said Wiken did then make, execute, acknowledge & deliver to the said Woodbury his deed conveying to the said Woodbury the said two quarter sections of land.

And your Orator further shews, that at the time your orator made the conveyance aforesaid to the said Woodbury, he the said Woodbury made, executed, acknowledged & delivered to your Orator his deed of Mortgage to your Orator, conveying to your Orator in fee and mortgage the same two quarter sections of land to secure the purchase money aforesaid, to wit: the sum of five hundred dollars, the conditions of which mortgage was, that if the said Woodbury his heirs, executors or administrators should pay to your Orator his executors, administrators or assigns the sum of five hundred dollars on or before the first day of October A.D. 1851

together with with seven per cent interest thereon from the date of said Mortgage, it being the purchase money for said premises = then the said Mortgage to be null & void, otherwise to remain in full force & virtue —

And your Orator further shews, that the said sum of money remains wholly due & unpaid, together with the interest thereon at the rate of seven per cent per annum: —

Your Orator further shews, that one James Carroll, whom your Orator prays may be made a defendant herein, has or professes to have some claim or interest in & to the said Tracts of land; but what that interest is, your Orator is wholly unadvised. —

The deed of conveyance from your Orator to the said Woodbury aforementioned, is not in your orators possession, power or controul, but he believes the same to be in possession of the said Woodbury who is hereby notified to produce & file the same in this cause; — A copy of which from the record is also filed herewith & made part hereof & your Orator asks that said copy may be used as evidence in case the said Woodbury shall fail to produce the original; said copy is made an exhibit & marked "A" — A copy of the mortgage above referred to is herewith filed & made an exhibit marked (B), & the original will be shewn to the court at the hearing herein: —

Inasmuch therefore as your Orator is remediless in a court of law, he prays that a summons in chancery be granted to him, directed to the said Woodbury & Carroll commanding them severally to be and appear before your Honor at some time & place to be therein named & then & there full, true & perfect answer to make (but not under oath, their answers under oath hereto being hereby expressly waived) to all & singular the several statements & allegations in this bill of complaint contained; — that an account may be taken of the amount due upon the said mortgage and that the said debts or one of

them may be adjudged & decreed to pay the same or they & each of them be forever barred & foreclosed of all equity of redemption in the premises aforesaid; & that such such other order & decree may be made, & such other & further relief may be granted as to Justice & Equity may appertain to

Orslow Peters

Solicitor of Complainant.

precipe -

Mark M. Wiken,

as

Greenleaf M. Woodbury &
James Carroll.

In Chancery, Peoria County,

Feb'y 12/51.

Clerk of Circuit Court will please issue summons in Chancery in above entitled cause returnable to next term of said Court; one to Woodbury to Shf of Kane Co. & to Carroll, Shf of Peoria Co. — O. Peters, Sol^r of Complt

Exhibit (B.)

exhibit B.

This Indenture made this twenty fourth day of December in the year of our Lord one thousand eight hundred & forty, between Greenleaf M. Woodbury of Peoria County & State of Illinois of the first part & Mark M. Wiken of Peoria in the County of Peoria in the State of Illinois of the second part, witnesseth, that the said party of the first part for and in consideration of the sum of five hundred dollars to one in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, doth by these presents grant, bargain & sell unto the said party of the second part, his heirs and assigns, two certain tracts or parcels of land, situate in the County of Peoria & State of Illinois, known and described as follows to wit: The North West quarter & the North East quarter of Section Thirty Six (36) in Township Eleven (11) North of the base line of Range Six (6) East of the fourth principal meridian; together with all & singular the hereditaments and

appurtenances therunto belonging or in anywise appertaining; to have and to hold the said premises as above described with the appurtenances, unto the said party of the second part, his heirs and assigns forever, And the said party of the first part for himself and his heirs doth hereby covenant and agree to and with the said party of the second part, his heirs and assigns that I am well seized of the premises above conveyed as of a good and of a good and indefeasible estate in fee simple and had good right to sell and convey the same in manner and form as aforesaid and that the above bargained premises in the quiet and peaceable possession of the party of the second part his heirs or assigns, against the claim of all persons whomsoever, will forever Warrant and Defend, Provided always, that if the said Greenleaf M. Woodbury, his heirs, executors or administrators, shall pay the said Mark M. Hilton, his heirs, executors, administrators or assigns the sum of five hundred (\$500) dollars on or before the first day of October, Anno Domini Eighteen hundred and forty one together with seven per cent, interest from this date, it being the purchase money for said premises, then and thenceforth these presents shall be null and void, otherwise they shall remain in full force and virtue = In Testimony whereof, the said Greenleaf M. Woodbury party of the first part has hereunto set my hand and seal the day and year first above written G. M. Woodbury seal
Signed, Sealed and delivered in presence of
Edward Dickinton.

State of Illinois }
 } to
Tioria County } Edward Dickinton Probate Justice
of the Peace in and for said County, do certify, that on this day appeared before me, G. M. Woodbury whose name appears signed to the foregoing deed of conveyance and who is personally known to me to be the identical person who signed the

same and acknowledged that he had executed the same as his voluntary act and deed, for the uses and purposes therein expressed - Given under my hand and seal at Teoria this 24th day of December 1840.

Edward Dickinson.

Probate Justice ^{To} Teoria. [Seal]

Whereupon the clerk of said court issued a summons directed to the sheriff of Kane County, under the seal of said court, in the words & figures following, to wit,

Summons to Kane-

The People of the State of Illinois, To the Sheriff of Kane County, Greeting: We command you to summon Greenleaf W. Woodbury, James Carroll if they may be found in your county, to appear before our circuit court on the first day of the term thereof, to be held at Teoria, within and for the said County of Teoria, on the first Monday of March next then and there in our said court, to answer the matters and things contained in a certain Bill of complaint exhibited against them in our said court on the chancery side thereof by Mark McAllen to foreclose Mortgage &c. - and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid. Witness Jacob Gale, clerk of our said court, and the seal thereof, at Teoria, this 14th day of February in the year of our Lord one thousand eight hundred and fifty one.

[LS]

Jacob Gale, clerk.

Return - Which summons was returned by said sheriff endorsed as follows, to wit, Personally served on the within named Greenleaf W. Woodbury by Copy March 7 1851 James Carroll not found.

Luther Dearborn Sheriff
Kane County.

And at the same time the said clerk issued a summons to the Sheriff of Peoria County to execute, under the seal of said court, which is in the words and figures following, to wit,

Summons to Peoria: The People of the State of Illinois, To the Sheriff of Peoria County, Greeting: We command You to summon Greenleaf W. Woodbury & James Carroll if they may be found in your county, to appear before our circuit court on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria, on the first Monday of March next then and there in our said court, to answer the matters and things contained in a certain Bill of complaint exhibited against them in our said court on the chancery side thereof by Mark W. Hilton, to foreclose mortgage &c. and make return of this writ, with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid.

SS

Witness, Jacob Gale, clerk of our said court and the seal thereof, at Peoria, this 14th day of February in the year of our Lord, one thousand eight hundred and fifty one. Jacob Gale, clerk.

Return - Which summons was returned by said sheriff endorsed, as follows, to wit: State of Illinois, Peoria County, ss: By virtue of this writ to me directed I have summoned the within named James Carroll by reading and leaving a copy to appear at the time and place within mentioned to answer as by the said writ he is required and as I am commanded. James S. Riggs
Sheriff, P. C. Illi.

Proceedings in Chancery before the Circuit Court begun and held in the City of Peoria in and for the County of Peoria on Monday the twelfth day of May in the year of our Lord one thousand eight hundred and fifty one in the Honorable

William Kellogg, Judge of the Tenth Judicial Circuit in
the State of Illinois presiding, to wit:

Friday May 23rd A. D. 1851.

Mark M. Vinton

vs

To Foreclose Mortgage.

Greenleaf M. Woodbury,
James Carroll.

Rule to answer:

This day came the complainant by Andrew
Peters his Solicitor and on his motion, it is ordered that
said defendants Greenleaf M. Woodbury James Carroll
answer the complainant's Bill in 20 days from this date.

And afterwards, the said defendants filed their separate answers in
said cause, which with the exhibits thereto are in the words & figures following,
to wit,

Answer of Woodbury: Mark M. Vinton

vs

Peoria Circuit Court—

Greenleaf M. Woodbury,
James Carroll.

In Chancery.

The separate answer of the said defendant Green-
leaf M. Woodbury to said Bill of complaint of said Mark M.
Vinton, complainant.

This Respondent saving and reserving to him-
self all & all manner of exception that can or may be had
or taken to the many errors, uncertainties and imperfections in
said Bill contained for answer thereto or unto so much or such
parts thereof as he is advised is or are material or necessary
to make answer unto, answering says .

That he admits that on the 24th day
of December A. D. 1840 he purchased from said complainant the
premises in said Bill described for the sum of five hundred
dollars and on the same day said complainant executed & deliv-
ered to respondent a deed for said premises containing cove-

enants of warranty of title and against incumbrances, a copy of which said deed is hereto attached and the original made part hereof and referred to for greater certainty, said copy marked "A"

Respondent further admits that to secure said purchase money, he did execute and deliver to said complainant and deliver to said complainant a mortgage deed which he supposed is correctly copied in said Bill.

Respondent further admits that the said sum is unpaid to said Miller except as hereinafter stated but denied that he is indebted to complainant on said mortgage or that said complainant had any lien on said premises by virtue of said mortgage for the further following reasons and which respondent alleged to be true, That he acquired no title to said premises by virtue of said deed to respondent, except as hereinafter stated and respondent avers that that prior to the date of said deed James Mc Clelland & Thomas Miller recovered a judgment against said complainant in the Circuit Court of Teoria County for the sum of five hundred & sixty dollars & ³⁷/₁₀₀ dollars damages or thereabouts, beside costs of suit which said Judgment bears date the ~~in~~ day of ~~in~~ A.D. 1840 and was at the time said deed and mortgage were executed a valid and subsisting lien on said land and that on the eleventh day of February A.D. 1845, said plaintiffs in said Judgment caused a writ of Execution or ~~Writ~~ ~~Facias~~ to be issued by the Clerk of the said Court, and under the seal of said Court directed to the Sheriff of said county to execute, commanding said Sheriff amongst other things of the goods and chattels, Lands and tenements of said complainant he make the said sum, interest and costs of suit and said Sheriff by virtue of said writ did on the fourth day of March A.D. 1845, Levy upon and seize the said tracts of land above referred to, and afterwards and on or about the twentieth day of July A.D. 1846.

the said Sheriff having duly advertised said land for sale under said Execution & Levy sold said Tracts of land to Unslow Peters for the sum of Two Hundred dollars & cents and executed to said Peters a certificate of such purchase, a duplicate thereof was duly filed in the office of the Recorder of said County, all which proceedings were according to law. Which said Judgment writ of Execution and the return of the Sheriff thereon still remain in said Court and are hereby referred to and made part of this answer & copies thereof will be filed if required and the said duplicate certificate of purchase remains on file in said Recorder's Office and is hereby referred to & made part hereof.

Respondent further stated that on or about the Tenth day of March A.D. 1848 respondent contracted with said Peters for the purchase from him of said land above described for the sum of ~~Two Hundred Dollars~~ ^{Five Dollars} & thereabouts.

Respondent further answering states that he fully paid said Peters all moneys that became due on said contract and received a deed thereupon from said Peters as herein-after stated.

This Respondent further answering states that as he believed about the first day of February A.D. 1850 said land being and remaining wholly unredeemed from said sale, the then Sheriff of said County in pursuance of the sale aforesaid executed & delivered to said Peters a deed for said land which is in the hands of said Peters and not in possession of Respondent and said Peters is notified to produce the same he being solicitor for complainant in this cause and said deed not being recorded a copy thereof cannot be produced to the Court herewith.

Respondent further answering says that on the said first day of February A.D. ~~1848~~ ¹⁸⁵⁰, said Peters and wife in pursuance of said contract conveyed for the consideration actually

Two Thirty five [F]intest from date of contract
paid of six hundred dollars, said premises to respondent. A
at from present copy of which deed is also attached marked C & the original
made past herelf, for greater certainty and respondent has sub-
sequently sold said premises to James Carroll one of said defendants.

Wherefore Respondent insists that said complain-
ant has no lien, claim or title to said land by reason of
said mortgage and that by reason of the matters aforesaid,
all title to said premises acquired by said deed from com-
plainant has divested.

And Respondent further answering, says, that at
the time said Peters and wife conveyed to respondent, he
said Peters was the owner of said mortgage, the same having
previous to that time in some way transferred to him by
said Wilken and the same is now prosecuted for the use and
benefit of said Peters.

And now having fully answered, this Respon-
dent prays to be hence dismissed with his costs & charges.

Greenleaf M. Woodbury
by H. C. & A. S. Merriman his attys.

Schedule (A)

Exhibit A =

Know all Men by these presents that I, Mark M.
Wilken of Peoria in the County of Peoria and State of Illinois,
for and in consideration of the sum of five hundred dollars,
to us in hand paid by Greenleaf M. Woodbury of the
same County and State the receipt whereof is hereby ac-
knowledged, have granted, bargained, sold and conveyed
and by these presents do grant, bargain, sell and convey
unto said Greenleaf M. Woodbury, his heirs and assigns,
the following tracts of land, lying in the County of Peoria
and State of Illinois, to wit: The North West quarter and the
North East quarter of Section Thirty Six (36) in Township Eleven (11)
North of the base line of range Six (6) East of the fourth principal

meridian, containing Three Hundred and Twenty Acre (more or less, with all the privileges and appurtenances therunto belonging. To Have and To Hold the same with the privileges and appurtenances thereto belonging to the said Greenleaf W. Woodbury his heirs and assigns, to him and their sole use and behoof forever.

And I the said Mark W. Wiken for myself, my heirs, executors and administrators do hereby covenant & agree to and with the said Greenleaf W. Woodbury, his heirs and assigns that I am seized in fee of the above granted premises, that they are free and clear of all incumbrances and that I have full power to sell and convey the same and I will and my heirs, executors and administrators shall warrant and defend the same to said Greenleaf W. Woodbury, his heirs and assigns forever against the lawful claims and demands of all persons whatever.

In witness whereof, I the said Mark W. Wiken, have hereunto set my hand and seal this twenty fourth day of December in the year of our Lord one thousand Eight hundred and forty. Mark W. Wiken S.S.
Executed and delivered in presence of Edward Dickinson,
State of Illinois,
Ticonia County, Ill: On this Twenty Fourth day of December in the year of our Lord one thousand eight hundred and forty, personally appeared before the subscriber a Justice of the Peace, in and for the County of Ticonia, Mark W. Wiken and acknowledged the above instrument to be his free act and deed, executed for the uses and purposes therein mentioned and I hereby certify that the individual who made the said acknowledgment is known to me to be the identical person who executed the above conveyance. Edward Dickinson S.S.
Justice Peace.

Exhibit 6.

Schedule D

This Indenture made this first day of February in the year of our Lord one thousand eight hundred and fifty between Onslow Peters and Hannah his wife parties of the first part of the County of Teona and State of Illinois party of the second part, ^{and by Samuel M. B. [unclear]} witness, that the said parties of the first part for and in consideration of the sum of one dollar, lawful money of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have remised, released, conveyed and quit claimed and by these presents do remise, release, convey and quit claim unto the said party of the second part and to his heirs and assigns, forever all those certain pieces or parcels of land, situate, lying and being in the County of Teona in the State of Illinois, known and described as follows, viz: The North half of section No. Thirty Six (36) in Township No. Eleven (11) North in Range No. Six (6) East of the fourth principal meridian, also five acres more or less being the same premises on which stands a brick dwelling house on the bluff west of the City of Teona and being the same premises bid off by said O. Peters under an execution in favor of McCallan and others vs Mark McAllen and George C. Bestor in the Circuit Court of Teona County and being part of the West half of the South West quarter of section No. Four (4) in Township No. Eight (8) North of Range No. Eight East of the 4th principal meridian.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in and to the above described premises and every part and parcel thereof, with the

appurtenances; To Have and To Hold all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part and to his heirs and assigns forever.

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

Onslow Peters {seal}

Mannah Peters {seal}

Signed, sealed and delivered in presence of

State of Illinois, 3rd dist.

Teonia County, 3rd dist.

J. Jacob Hale, clerk of the Circuit Court in and for said County, do certify, that on this day personally appeared before me Onslow Peters and Mannah P. his wife whose names appeared subscribed to the foregoing deed of conveyance as having executed the same and who are personally known to me to be the real persons who and in whose names the acknowledgment is proposed to be made and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed. And Mannah P. Peters wife of the said Onslow Peters having been by me made acquainted with the contents of the said deed and by me examined separate and apart from her husband, whether she had executed the same and relinquished the dower to the lands and tenements therein mentioned, acknowledged that she had done so voluntarily and freely and without compulsion of her husband and does not wish to retract; Given under my hand

{SS}

and seal at Teonia this first day of February Eighteen hundred and fifty.

Jacob Hale, Clerk.

Answer of Carroll =

Mark M. Wiken

vs
Erigenef M. Woodbury,
James Carroll.

Teoria Circuit Court,
Nov. 5. 1851.

The separate answer of James Carroll to
said Bill of Complaint of said Mark M. Wiken, complain-
ant —

This Respondent saving and reserving all exceptions
to said Bill &c for answer says

That he knows nothing of the truth of the allegations in
said Bill and cannot admit or deny the same and calls
for proof thereof —

Respondent further answering adopts the answer
of J. M. Woodbury herein and marks the same part of
this answer.

Respondent further states that on the — day of
— A. D. 185— respondent purchased from J. M. Woodbury the said
lands in said Bill described and received from said Wood-
bury and wife a deed therefor, dated the day & year last fore-
said and the same or a copy will be filed or exhibited on
the hearing of this Bill and made part hereof and under
which Respondent is in possession of said lands.

And now having fully answered, Respondent
prays to be hence dismissed with his costs and charges.

James Carroll.

By H. D. & W. L. Meniman
his Solicitors.

The Judgment, Execution, return & certificate of purchase referred to in Woodbury's answer are as follows.
Proceedings at a term of the Circuit Court begun and held in the
town of Teoria, in and for the County of Teoria and State of Illinois on Mon-
day the thirtieth day of April in the year of our Lord one thousand eight
hundred and forty — the Honorable Thomas Ford Judge of
the ninth Judicial circuit in the State of Illinois presiding, to wit:

Judgment -

Monday April 20th 1840

James McCalland,
Thomas Miller,

vs

Assumpsit.

Mark W. Aiken,
George C. Bestor.

This day came the plaintiffs by their attorneys, but the defendants altho three times solemnly called, came not but made default, whereupon it is considered that the said Plaintiffs ^{ought} to recover their damages, but because it is unknown to the court what damages the said plaintiffs have sustained, the clerk is directed to make an assessment thereof and report the same to the court, which is accordingly done and reported to the court at the sum of five hundred and sixty four dollars and thirty seven cents; which report is approved by the court and ordered to be filed. Therefore it is considered by the court that the said plaintiffs have and recover of the said defendants, the sum of Five hundred and sixty four dollars and sixty seven cents damages aforesaid in form aforesaid assessed together with their costs and charges by them about their suit in this behalf expended and that execution issue therefor.

Execution -

The People of the State of Illinois, To the Sheriff of Teoria county, Greeting; whereas by the considerations of our Circuit Court, held at Teoria, in and for the county of Teoria, on the 20th day of April in the year of our Lord one thousand eight hundred and forty James McCalland and Thomas Miller recovered judgment against Mark W. Aiken and George C. Bestor for the sum of five hundred and sixty four dollars & thirty seven cents

damages, which the said Mr. Clelland & Miller had sustained by reason of the non-performance of certain promises made to them by the said Witten & Bestor and also for the further sum of twelve dollars and forty three & three fourth cents, costs of suit, as appears of record: We therefore command you as we have heretofore commanded you, that of the goods and chattels, lands and tenements, of the said Messrs. Witten & George C. Bestor you cause to be made the aforesaid sum of money, together with interest on said judgment at the rate of six per centum per annum from the time of recovering the same as aforesaid until paid and that you have the same ready, as soon as may be, to render unto the said Mr. Clelland & Miller according to law. Hereof fail not and make return of this writ, with your doings, ninety days after the date hereof. Witness Jacob Hale, clerk of our said Court, and the seal thereof at Teoria, this eleventh day of February in the year of our Lord one thousand eight hundred and forty five.

Jacob Hale, clerk.

LS

[Endorsed]

Return -

State of Illinois, By virtue of the within execution to me directed Teoria County, Ill. ad, I have this fourth day of March A.D. 1845, levied upon the following described Real Estate, to wit: The South East quarter of section No. Eleven in Township No. Ten North range No. Six East, also the North West quarter of section No. Thirty six and the North East quarter of section No. Thirty six, also the North East quarter of section No. Twenty four in Township No. Eleven North range No. Six East, Also the South East quarter of section No. Eight in Township No. Nine North range seven East of the fourth principal meridian as the property of Messrs. Witten, also five acres of land being part of the South West corner of the South West quarter of section number four (4) in Township number Eight (8) North of range Eight (8) East, commencing at the South West

corner of said said quarter, running thence North forty rods, thence East twenty rods, thence South forty rods, thence West twenty rods to the place of beginning - and on the twenty ninth day of June A.D. 1846 by virtue of the levy aforesaid, I advertised the said lands for sale, by posting written notifications thereof in three of the most public places in said county of Teoria, notifying that I should on the 20th day of July 1846, between the hours of nine o'clock in the forenoon & four o'clock in the afternoon of said day, expose to public sale, at the Court House in the City of Teoria to the highest & best bidder for ready money, the several tracts of land above described and on the said twentieth day of July, at the hour of one o'clock in the afternoon, at the door of said court house, pursuant & by virtue of said notice & levy, I did offer the said several tracts of land, for sale at public vendue offering each of said tracts separately and the same were struck off to Anslow Peters, as follows, to wit: for the South East quarter of section Eleven in Township Ten North Six East fourth principal meridian, the sum of one dollar.

The North West quarter of section Thirty Six in Township Eleven North Range Six East of the fourth principal meridian for the sum of one hundred dollars. -

The North East quarter of section Thirty Six in Township Eleven North, Range Six East of the fourth principal meridian, for the sum of one hundred dollars. -

The North East quarter of section Twenty four in Township Eleven North Range Six East of the fourth principal meridian for the sum of one hundred and fifty dollars. -

The South East quarter of section Eight in Township Nine North Range Seven East of the fourth principal meridian for one hundred dollars: and

Five acres, being part of the South West corner of the South West quarter of section number Four (4) in Township Eight

North of Range Eight East, commencing at the South West corner of said quarter running thence North forty rods, thence East twenty rods, thence South forty rods, thence West twenty rods to the place of beginning for the sum of one dollar: the said several sums being the highest & best bids for the said several tracts of land respectively and the said Peters being the highest & best bidder therefor: And I have delivered to the said Peters a certificate of purchase and filed another certificate of purchase in the Recorder's Office of said county as required by law.

The whole of said sales amount to the sum of four hundred & fifty two dollars (\$452) from which I take the sum of seventeen dollars and seventy three & three fourth cents for my fees & charges and apply the residue being four hundred & thirty four dollars and twenty six & three fourth cents (\$434.26³/₄) to this execution & return the same satisfied for that amount & unsatisfied for the remainder.

Smith Frye, Shff.

Certificate of Purchase: I, Smith Frye, Sheriff of the County of Teoria & State of Illinois do hereby certify, that by virtue of an execution dated the 11th day of February A.D. 1845, to me directed from the Clerk of the Circuit Court of the County of Teoria & State of Illinois, issued upon a certain Judgment rendered by said said Court at the April 1840 in favor of James McClelland & Thomas Miller against Mark W. Hiken & George C. Westor for the sum of five hundred and sixty dollars & thirty seven cents damages, I did on

the 20th day of July A.D. 1846 expose to public sale in the City of Peoria, at the Court House door certain tracts or lots of land lying, being & situated in the County & State aforesaid and sold the same to Anslow Peters for the several sums hereinafter mentioned, to wit:

The S. E. of sect N^o 11, T. N^o 10 W. R. 6 for \$1
N. W. gr. " " " 36 " " 11 N. R. 6. E for \$100
S. E. gr " " " 36 " " 11 N. R. 6. E for \$100
S. E. gr " " " 24 " " 11 N. R. 6. E for \$50
S. E. gr " " " 8 " " 9 N. R. 7. 6 for \$100

all of the fourth promeridian as the property of the said
Wheat & Mc. Claren.

Also five acres being part of the South West corner of the
South West quarter of section number 4, N. 8. E. 8. E, com-
mencing at the S. W. corner of said quarter running
thence North 40 Rods - thence East 20 Rods -
thence South 40 Rods - thence West 20 Rods to
the place of beginning as the property of George C.
Bester for the sum of

\$ 1
452,00

Which being the highest & best bids therefore, the said tracts
or lots of land were struck off to him the said Anslow
Peters and the said Anslow Peters will be entitled to a deed
for the premises so sold to him on the 21st day of October
A. D. 1847 unless the same be redeemed according to law.

Given under my hand & seal this 20th day of July A. D. 1846.
Smith Frye, Sheriff of Peoria County, Ill. {L.S.}

[Endorsed]

Filed July 20th 1846

C. Kettell

Proceedings in Chancery before the Circuit Court begun and held
in the City of Teoria, in and for the County of Teoria and
State of Illinois on Monday the first day of March in the
year of our Lord one thousand eight hundred and fifty
two - the Honorable William Kellogg Judge of the tenth
Judicial circuit in the State of Illinois, presiding,
to wit:

Friday March 12th A.D. 1852.

Mark M. Aiken

vs

To Foreclose Mortgage.

Deceit of foreclosure

Greenleaf M. Woodbury,
James Carroll.

This day this cause came on to be heard up-
on the bill & answer & exhibits herein and the parties appear-
ing by their respective solicitors, the said complainant by Enslow
Peters his solicitor & the said debts by H. L. & A. L. Mcnaman
their solicitors and the arguments of counsel being heard and it
now appearing to the Court that the said defendant Woodbury, did,
on the twenty fourth day of May in the year of our Lord Eighteen
hundred & forty by his deed of that date grant, sell & convey, to the
said complainant in fee & mortgage, the following described Real
Estate, to wit: The North West quarter and the North East quar-
ter of section Thirty six in Township Eleven North of Range
Six East of the fourth principal meridian, which mortgage was
conditioned as follows, to wit: that if the said Woodbury the
defendant should pay to the said Aiken the complainant the
sum of five hundred dollars on or before the first day of October
Eighteen hundred and forty one with seven per cent interest
from the date of said mortgage & it appearing also to the Court
that the said sum of five hundred dollars so secured to be
paid by the said mortgage was the agreed price or consid-
eration for the sale & conveyance of the same land from the said
Aiken to the said Woodbury; and it further appearing to the
Court that the said land at the time of the said conveyance from
said Aiken to said Woodbury was not free from incumbrance
but that the said Woodbury paid & expended the sum of two
hundred & twenty five dollars to discharge the incumbrance &
perfect the said title in himself and that the said sum with
interest thereon at the rate of seven per cent per annum a-
mounts to the sum two hundred & ninety four dollars & thirteen

cents which last mentioned sum is deducted from Eight hundred & ninety two dollars & twenty three cents, the amount found due on said mortgage as aforesaid thus leaving the sum of five hundred & ninety eight dollars & ten cents upon the said mortgage unsatisfied and the court being fully advised in the premises, it is ordered, adjudged and decreed by the court that the said Woodbury & Carroll pay to the said Miller or to his solicitor, the above last mentioned sum of money, to wit: Five Hundred & ninety eight dollars & ten cents within thirty days from the day of entering up this decree, with interest thereon at the rate of six per cent per annum and that in default thereof the said premises be sold by the Master in Chancery of this court, that in making such sale, the said Master sell the same by public auction at the door of the courthouse in the city of Teonia to the highest bidder for cash, that he give at least twenty days notice of the time & place of sale by publication thereof in some public newspaper printed & published in the city of Teonia for three weeks successively before the time of sale, that upon such sale being made the said Master in Chancery make, execute and deliver to the purchaser or purchasers a deed or deeds of said land & that he make report of his doings to this court at the next term thereof that the said defendants upon such sale sale & conveyance of said land be forever barred & foreclosed of all equity of redemption in said land, it is further ordered & decreed that if any thing remains in the hands of said commissioner of the proceeds of said sale after paying the said sum of five hundred & ninety eight dollars & ten cents & interest and the costs of said sale & of this suit that he pay over the same to said Woodbury; that said complainant have & recover his costs in this suit expended & in default of the payment thereof, that he have execution therefor against said Woodbury; the defendant Woodbury prayed an appeal herein to the Supreme Court of this State, which is allowed upon his

filing with the Clerk of this court in fifty days an appeal bond in the penal sum of five hundred dollars with James Woodbury as his surety and conditioned according to law.

And afterwards the said defendant Woodbury on the 27th day of April A.D. 1852 filed an appeal bond in said cause in the words & figures following, to wit:

appeal bond - I know all Men by these Presents that me, Greenleaf M. Woodbury as principal and James Woodbury as security are held and firmly bound unto Mark M. Hiken in the penal sum of five hundred dollars for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, firmly, jointly and severally by these presents witness our hands and seals this 27th day of April A.D. 1852: The condition of the foregoing obligation is such that whereas the said Mark M. Hiken, did at the March Term of the Peoria Circuit Court in a certain suit in Chancery for the foreclosure of a mortgage recover against said Greenleaf M. Woodbury and James Carroll a decree for the payment of the sum of five hundred ninety eight dollars and ten cents besides costs of suit, from which decree said Woodbury prayed an appeal.

Now if the said Woodbury shall duly prosecute said appeal and pay the said Judgement, Costs, interest and damages: in case the judgment be affirmed then this Bond to be void else to be and remain in full force and virtue.

G. M. Woodbury {Seal}

James Woodbury {Seal}

State of Illinois,
Peoria County. I Jacob Gale clerk of the circuit court
within and for the county of Peoria in the State of
Illinois do hereby certify, that the foregoing is a full, correct
and complete transcript from the records of all the
proceedings in said court in chancery in a certain cause
therein of Mark M. Aikin complainant against Greenleaf
M. Woodbury and James Carroll defendants, as the same
remain of Record and on file in my office.

In witness whereof, I hereto set my hand
and affix the seal of said court at
my office in Peoria this fourteenth day
of June in the year of our Lord one
thousand eight hundred and fifty two -
Jacob Gale, clerk.

Clerk's fees for certified copy of Record \$5.50 paid by James Woodbury
for defendant Woodbury - Jacob Gale, clerk.

Frank M. Woodbury

vs

M. R. M. O'Brien

}
}
}

Appeal given
Twice

And said ~~Complainant~~ ^{Appellant} comes
and says that the the decree and
proceedings in the Court below are erroneous
1st That said Decree is for a larger
amount than was then before the
basis assumed by said Court

2nd The decree should have been
in favor of Appellant, and not in
favor of Appellee

3. The Decree is otherwise defective
and erroneous -

For these and other errors
against on the face of the Record
said Appellant prays this Honorable
Court to set aside reverse annul
said Decree, and dismiss the Bill -

A. C. Morrison
for Appellant

Peria
G. ell. Woodbury inpl. se.

Mark ell. Aikin
Transcript.

W. Woodbury & Co. Secy

Filed July 25 1852.
Meland Ck.

H. B. Woodbury

Peoria August 1/52

S. Seland Esq.

Dear Sir,

I telegraphed to you on Monday
last week, for copy of opinion in case of Woodbury vs. Dickson =
Musk desiring it, so as to enable me to commence another
suit, & to proceed in accordance with the opinion pro-
nounced. = If you have not already sent it, will you do
so? = note your fees, ^{for the copy} with the other costs of the suit, & I will
have them all collected & forwarded to you soon = at
least, I will be answerable for the charge for the copy. =
I am yet unadvised of any of the decisions since this case of
Wood. & Dickson. =

Yours truly

Onslow Peters

12000

S. Leonard Esq

Ottawa