

No. 8587

# Supreme Court of Illinois

John Emerson

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vs.

John Barth

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71641  7

Be it remembered, that at the May term of the Circuit Court for Calhoun County, State of Illinois, began and held at the Court House in Hardin, on Monday the 19th day of May A.D. 1856, before his honor D. M. Woodson, Judge of the first Judicial Circuit of said State, the following proceedings were had on the Chancery side of said Court, to-wit:

Now on this day comes the Complainant by his solicitor, and files the following Bill herein, which is in substance as follows-to-wit:

John Barth

vs <sup>vs</sup> In Chancery

John Emerson

In the Calhoun Circuit Court  
of the May term A.D. 1856.

To the Honorable David M. Woodson, presiding Judge of the first Judicial Circuit of the State of Illinois, sitting in and for said County as Chancellor,

Humbly complaining sheweth unto your Honor, your orator John Barth, of the County of St. Louis and State of Missouri, that on the second day of January A.D. 1854, one William D. Larkey and John Emerson, of the County of Calhoun and State of Illinois, became and was justly indebted to your orator, in the sum of Three Hundred dollars, to secure the payment of which, the said William D. Larkey and John Emerson, made and executed their promissory note, payable to your orator, bearing date on the said second day of January A.D. 1854, for the sum of three hundred dollars, <sup>due</sup> and payable on or before the first day of May A.D. 1854, which said note or writing obligatory will be produced on the hearing hereof, signed with the names of the said William D. Larkey and John Emerson.

And your orator would further shew unto your Honor, that the said William D. Larkey & John Emerson, for the purpose of further securing the payment of the said sum of money, and owing

Copy of Bill  
in Chancery

and interest, and pretending to be seized in fee of the following tract of land, lying and being in the said County of Calhoun, to-wit: The South West Quarter of Section (8) eight, in Township (12) Twelve South in Range Two, West of the 4th Principal Meridian, containing one hundred and sixty acres more or less, - and delivered to your Orator a certain deed, thereby granted, bargained and sold to your Orator, the said tract of land, together with all and singular the privileges and appurtenances to the same belonging, or in any ways appertaining, to the only proper use and benefit of your Orator, his heirs and assigns forever; which said deed was and is subject to the following Condition to-wit: Provided always, and it is expressly understood, by the Parties, that the above property is to be left with the said Larky & Emersons, until the said note becomes due and payable, and whenever default be made in the payment of said note, in manner above expressed, then the said John Barth or his legal representatives, shall have the privilege, and we do authorize him or them to enter upon and take and sell the said property according to law, and pay whatever money may be due on said note, and all expenses of this trust, rendering the over if any to us; which instrument of writing was signed by the hands and seal, with the seals of the said William D. Larky & John Emersons, and duly acknowledged, before Thomas Russell, an acting Justice of the Peace, in and for the County of Calhoun, on the 2nd day of January A.D. 1854, and filed & Recorded in the Records Office on the 8th eighth day of February A.D. 1854, in Book 6 page 39 - with said deed, of Mortgage is herewith submitted, marked (A)

and your Orator further alleges that the said note with interest from maturity, is still due and unpaid to your Orator, and that the said William D. Larkey and John Emerson, has hitherto wholly neglected and refused to pay the same or any part thereof, where- by the said Conditions of the said deed of Mortgage has been forfeited and broken, subject to redemption only in this Honorable Court

Your Orator further alleges that the said William D. Larkey depart this life sometime subse- quently to his signing the said Mortgage & left the said John Emerson his surviving partner, whom your Orator asks may be made defendant to this his Bill of Complaint.

Your Orator alleges that he has called frequent- ly in a friendly way on the said defendant Em- erson, since the death of Larkey, and requested the pay- ment of the said note and interest, but the said de- fendant has hitherto wholly neglected and refused to pay the money or any part thereof, or to give your Orator any satisfaction whatever;

In Consideration of the premises, and for as much as your Orator can only be adequately re- lieved in this Honorable Court, he prays that the Peoples writ of Subpoena, directed, &c Commanding, &c, and prays that said defendant John Emerson, within a certain day to be fixed by this Honorable Court, be required to answer upon his oath, all the allega- tions of this Bill, and on the hearing hereof, may it please your Honor, to order and decree, that said defendant within a short day pay to your Orator his principal and interest money due as aforesaid; or in default thereof, that he stand

absolutely barred and foreclosed of all equity of redemption in the said Mortgaged premises, and that the same be sold under the Order of this Court, for the payment thereof, and such other and further relief as the Case may require, and to equity belong, &c &c.

Knapp & Miller

Sol for Compliment

Filed March 8th 1856.

B. F. Child, Clerk

Copy of summons

Produce the within writ because, and the defendant not found in my County, May 10th 1856

N. J. Allen, Sheriff

State of Illinois ss

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

We Command you, That you summon John Emerson, if to be found within your bailiwick, to be and appear before the Judge of the Calhoun Circuit Court, sitting as Chancellor, in and for the County of Calhoun on the first day of the term of said Court, to be holden at the Court House, in the town of Hardin, on the third Monday in the month of May, in the year of our Lord one thousand eight hundred and fifty six, to answer a Bill in Chancery exhibited in our said Court against him by John Barth, and this you will in no wise omit, under the penalty of what the law directs, and have you then this writ.

Witness - Benjamin F. Child, Clerk of said Circuit Court, and the seal thereof at Hardin, this 12th day of April in the year of our Lord one thousand eight hundred and fifty-six.

Ben<sup>o</sup> F. Child, Clerk



Copy of summons

Copy of Adversement

State of Illinois ss

Calhoun County ss In the Circuit Court of said County, May Term. A. D. 1856.

John Barth, vs John Emerson surviving partner of Williams

D. Larkey— In Chancery — Bill for foreclosing of Mortgage.  
The defendant John Emerson, is hereby notified, of the pendency of the above suit, that summons has been issued against him out of the office of the Clerk of the Calhoun County Circuit Court, State of Illinois, returnable on the third Monday of May A.D. 1856, to a term of the Court there to be holden, at which time and place, if he does not appear and plead answer or demurr to said Complainants bill, the same will be taken as confessed, and a decree made in conformity with the prayer thereof.

Benj. F. Child, Clerk,

Attest— N. M. Miller, Sol. for Complainant

March 14, 1856.

State of Illinois

County of Jersey, Town of Jerseyville

I, Augustus Smith, Publisher of the "Prairie State," a public newspaper, printed weekly, in the town County and State aforesaid, do hereby certify that a notice of which the annexed is a true copy, has been regularly published in said paper, 4 weeks in succession, commencing on the 14th day of March A.D. 1856, and ending on the 4th day of April, A.D. 1856. Given under my hand, at the town of Jerseyville, aforesaid, this 4th day of April, A.D. 1856

Aug. Smith

\$300

On or before the first day of May, we or either of us do promise to pay John Betch the sum of Three hundred Dollars, for value received of him, as witness our hands and seals this 2 day of January 1854.

Calhoun Co Illinois

William D. Larkey

John Emerson



Know all men by these presents, that we William D. Larkey + John Emerson, of the County of Calhoun and State

Certificate of  
Publication

Copy of Note

Copy of Mortgage  
Deed

of Illinois, In consideration of the sum of one dollar  
in hand paid, by John Barch, of the City of St. Louis,  
State of Missouri, the receipt whereof is hereby acknowledged  
at & before the sealing & delivery of these presents, and  
for the further purpose of securing the following described  
note, (viz) \$300 - on or before the first day of May next, we  
do promise to pay John Barch, the sum of three hundred  
dollars, for value rec<sup>d</sup>. of him, as witness our hands &  
seals, this second day of January A. D. 1854.

Wm. D. Larkey   
John Emerson 

Have bargained, sold, & delivered, and by these presents  
do bargain sell and deliver unto the said, John Barch,  
the following described personal property and real estate  
(to-wit:) The South West Quarter of Section Eight, in  
Township (12) Twelve South, in Range Two West fourth (4th)  
Principal Meridian, containing one hundred and sixty  
acres more or less, (subject to a claim on said land by  
A. C. Wilson,) and also one hundred & fifty cords of  
Cord wood, now on the above premises, - and all now  
in our possession, in the County of Calhoun & State of Ill.  
(except the claim of Wilson) to have & to hold the said  
premises & goods, unto the said John Barch, his exec-  
utors, administrators, and assigns, to his & their own  
proper use and <sup>Benefit</sup> ~~use~~ forever. And we the said  
William D. Larkey & John Emerson, for ourselves, & our  
heirs, executors, and administrators, will warrant,  
(except the Wilson claim) and defend said bargain-  
ed, premises, unto the said John Barch, his executors,  
administrators & assigns, forever, and against all per-  
sons whomsoever. Provided, always, and it is expressly  
understood by parties that the above property is to be  
left with the said Larkey & Emerson, until the

said note becomes due and payable, and whenever default be made in payment of the said note in manner above expressed, then the said John Burch, or his legal representatives shall have the privilege, and we do authorize him or them, to enter upon and take and sell the said property according to law, and pay whatever may be due on said note, and all expenses of this trust, rendering the surplus, if any to us. In witness whereof we have hereunto set our hands & seals this second day of July, A.D. 1854.

William D. Larkey *(Seal)*

John Emerson *(Seal)*

Attest

Thos. Russell

State of Illinois ss

Calhoun County Personally appeared, John Emerson, and William D. Larkey, before the undersigned, a Justice of the Peace, in & for said county and did acknowledge that they had signed the above Mortgage, for the uses & purposes therein mentioned, and I knew them to be the persons therein named, Given under my hand and seal, this 2nd day of January A.D. 1854.

Thos. Russell, J.P. *(Seal)*

Decree of foreclosure

John Barthe

vs Bill to fore close Mortgage

John Emerson

This day came the Complainant by his solicitor, and it appears that the defendant John Emerson, had been served with process by publications, in the Prairie State, a public newspaper, printed and published in Danversville, Jersey County, for the space of four weeks, successively, the first insertions, being sixty days before the sitting of this present term of the Court, commencing on the 14th day



of March, and ending on the 4th day of April, one thousand eight hundred and fifty-six, and the said defendant having failed to enter his appearance, or to answer Complainant's bill, and being three times called came not but made default. It is therefore ordered that Complainant's bill, be taken as confessed, against him, and thereupon, this cause come on to be heard, upon the Bill and exhibits filed, and the Court being now sufficiently advised of and concerning the premises, it is ordered and decreed that defendant pay the Complainant the sum of three hundred and thirty seven dollars, it being the amount due on the Mortgage, herein, within twenty days from this date, and that unless he does so, that said defendant be, and he is hereby forever precluded from all equity of redemption in and to the said tract of land in the said mortgage mentioned, to-wit: the South West quarter of Section Eight, in Township twelve (12) South, in Range Two West, fourth (4) Principal Meridian, It is further ordered and decreed, that unless the said defendant, pay to Complainant the said sum of money above stated, by the time above specified, that the said tract of land above described, be sold to pay the aforesaid sum of money due on the Mortgage as aforesaid, and also the Costs of this suit, and that the Master in Chancery, of this County be, and he is hereby appointed Commissioner to sell the said tract of land to the highest bidder for Cash in hand, or so much thereof as will be sufficient to pay the amount due on the Mortgage, and Costs of suit; he first giving twenty days notice of the time, place, and terms of sale, by pasting up notices in four of the most public places in the County of Calhoun, and it is

further ordered, that said Commissioner, execute to the purchaser a certificate of purchase for said land, and if said land be not redeemed, according to law, within fifteen months from the said day of sale, that said Commissioner make to the purchaser a deed of conveyance to the same; and it is further ordered, that said Commissioner make report of his proceedings herein to the next term of this Court.

November Term 1856.

Report Master of  
Sale

John Barth

vs  
William D. Larkey &  
John Emerson

Bill to foreclose Mortgage.

The Master in Chancery presented his report in this case, which was approved by the Court, and the sale of property mentioned and described ratified; it is in words and figures following:  
John Barth vs Wm D. Larkey & John Emerson;— The undersigned, Master, in Chancery of said Calhoun County having been appointed to sell, the tract of land mentioned in the decree, made in the, above entitled cause at the May term of this Court, would respectfully report that in accordance with said decree, he posted four written advertisements in public places in said County, viz: one on the Court House door in Hardin, one at Woodin's store in Hamburg— one at Buell's store in Gilead, — and one on the door of the Post office in Hardin, — stating that on the first day of September, 1856, he would offer at public sale, to the highest bidder, the South West quarter of Section 8 in Town 12 S Range two west, containing 160 acres, and that upon such offering, Edwin Hastings became the purchaser, at the sum of three hundred and sixty dollars and forty cents, and certificate of purchase

was given to purchaser; which amount satisfied  
the Judgement and interest named in said decree,  
amounting to \$342,60ct - also the costs amounting  
\$18,80ct which amounts have been paid to the Plaintiffs  
Attorney, and to the officers of this Court,

Respectfully Submitted  
Benj<sup>d</sup> F Child, Master in Chancery  
of Calhoun County.

State of Illinois  
Calhoun County

I, John L. A. Bailey Clerk of the Circuit  
Court for Calhoun County, State aforesaid, do hereby certify  
that the foregoing is a full and correct copy of all  
the files, exhibits, and orders of the above entitled  
Cause now on file in my Office.

In testimony whereof, I have hereunto set  
my hand and affix the Seal of said Court  
at Harbin this 7th day of November A D  
1857  
John L. A. Bailey, Clerk  
Calhoun Circuit Court

52587-2

21

John Emerson  
at &  
John Barth

Error to  
Calhoun

Filed May 5, 1859 -  
N. Johnston Clk

Prepared by J. J. J.  
Keown — \$10.00

In the Supreme Court of the  
State of Illinois First Grand  
Division

John Emerson Error to  
vs } Callhoun County  
John Barth } Illinois

The plaintiff in Error  
sets down and alleges the fol-  
lowing Errors on the Record in  
this Cause

First. The Decree in Chancery  
rendered herein was without  
legal notice to the defendant,  
in the said Callhoun County,  
Second. Publication was made  
as notice to the said defendant  
in the Court below without Affi-  
davit being filed as to non residence  
of said Defendant Emerson.

Third. The Decree rendered,  
is erroneous as the proper parties  
in interest were not all  
brought into the said Callhoun  
County

Fourth. The Decree is in other respects  
informal, illegal & insufficient,  
and the Exhibits do not sustain the  
said Decree

21

John Emerson

vs

John Barto

Errors assigned

Filed May 5. 1859.

N. Johnston Clerk

STATE OF ILLINOIS  
SUPREME COURT,

} SS.

WRIT OF ERROR.

THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of *Calhoun* GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Calhoun* county, before the Judge thereof, between

*John Barth* \_\_\_\_\_

plaintiff, and *John Emerson* \_\_\_\_\_

defendant it is said manifest error hath intervened, to the injury of the aforesaid

*John*

*Emerson*

as we are informed by *his*

complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and proceedings of the plea, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of Jefferson, on the

*10<sup>th</sup> Sunday after the 2<sup>d</sup> Monday of*

*November* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

*John D. Cochrane*

Witness, the Hon. ~~WALTER B. SCATES~~ Chief Justice of our said court, and the seal thereof, at Mount Vernon this

*twentieth* day of *May*

in the year of Our Lord One Thousand Eight Hundred and Fifty-

*Nine*  
*Robert J. Munster*

Clerk Supreme Court.

21

John Emerson

My

John Barth

W<sup>th</sup> of em

Issued and filed  
May 20. 1859.

A. Johnston Clerk



IN THE SUPREME COURT OF ILLINOIS

First Grand Division.

John Emerson, plaintiff in Error.

vs.

John Barth, defendant in Error.

ERROR TO CALHOUN.

NOTICE is hereby given to the said defendant in error, that the record of the above entitled cause—with an affidavit, showing that he is not a resident of this State, has been filed in the office of the clerk of said Supreme Court—upon which a writ of error and of Scirefacias have issued, and are made returnable to the next term of said court, to be commenced and holden at Mt Vernon, on Tuesday, the 15th day of November next; at which time and place he, the said defendant in error, is required to appear and join in the errors assigned, and on failure to do so, his default will be entered.

Witness, Noah Johnston, clerk of the said Supreme Court, at Mount Vernon, this 23d day of May, A. D. 1859.

NOAH JOHNSTON, Clk.

I hereby certify that the attached notice has been published for five consecutive weeks in the Mt Vernon Star—a weekly newspaper published in Mt Vernon Ill.—commencing

on the 27th day of <sup>May</sup> 1859 and ending on the 24th day of June 1859—

printed for \$3.00

Levitt & Lane—pubs

No 21

Emerson

by

Baith-

Notes and

certificates

Filed July 28. 1859.

St. Johnston. Ct.

Printers fee \$3.00.

Payday Ct.

John Emerson } In the Supreme Court  
vs } of the State of Illinois  
John Barth } Southern Jurisdiction

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite or to any of the officers of this court, in pursuance of the laws of this state Dated this January 13<sup>th</sup> day of A. D. 1859  
Stephen G. Lewis.

22)

Bond for Costs.

John Emerson

vs

John Burtch

Filed May 5. 1859.

N. Johnston Clerk

In the Supreme Court of the  
State of Illinois in the First  
Grand Division

John Emerson A

vs

John Barth

William A. Grunshaw  
being duly sworn deposes &  
says that John Barth the  
defendant in error is a non  
resident of the state of Illinois  
as affiant is informed and  
believes

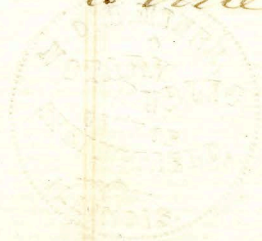
Wm A Grunshaw

State of Illinois  
City of Springfield

Sangamon County, Ill

Wm A Grunshaw personally  
appeared before the subscriber a  
Notary Public in for the said City  
of Springfield and being first duly  
sworn did depose and say that the  
foregoing affidavit by him subscribed  
is true Given under my hand & using  
Seal Notarial this 17th  
of June A.D. 1858 at my office  
in said City

O. M. Miller  
Notary Public



21

John Emerson

vs E

John Battle

Affidavit

non residence

Filed May 5. 1859.

A. Johnston Clk



Bellville Aug. 12. / 49

Dear Sir.

I believe you did send me a printed copy of the  
notice in the case of Emerson & Dr Bartle  
Ems to Calhoun. But I cannot find it now.  
Please send me another one, so that it can be  
mailed as required by the rule of the S. C.

Yours truly

J. K. Moore

W. Johnson Esq.

Clerk of S. C. 1st division.

11

Judge Korman's letter

- newspaper sent

18<sup>th</sup> Aug. 59 -



Belleville May 3. 1857

Dear Sir.

Enclosed you will find record, bond for costs, affidavit of non residence in a case of Emerson vs. Bartle, which you will file for record, & have publication made. I enclose \$10.00 to cover the fees for the present. —

I would like to get the paper containing the notice. —

There was a case before the Supreme Court from Randolph county Novemb. Term 1857; Dos. B. Holmes vs. Sinclair for use of slave. The Judgment below was affirmed. Please send copy of the judgment of Supreme Court to Clerk of Circuit Court of Randolph Co., so that we may have execution, & you can also send your fee bill there.

At the ~~same term~~ <sup>of 1856</sup> or term before there was a case of McCux vs. Engelhardt. Now in that case an order was made in the Supreme Court, to substitute the names of the heirs of Engelhardt, who had been suggested, & the heirs were so substituted. The Report of the case does not show it, nor is any notice of it taken here in the Circuit Court, when the case was remanded.

Will you send me a certified copy of the order in question, also of the order to remand the case.

Yours very truly

G. Hoerner

Book Johnson Esq.  
Attorney

Emerson

my

Book

State of Illinois,  
SUPREME COURT,  
First Grand Division. } SS

The People of the State of Illinois,  
To the Sheriff of Calhoun County.

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Calhoun county, before the Judge thereof between

John Barth plaintiff and

John Emerson defendant it is said that manifest error hath intervened to the injury of said

John Emerson as we are informed by his complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mount Vernon, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said John Barth

that he be and appear before the justices of our said Supreme Court; at the next term of said Court, to be holden at **Mount Vernon**, in said State, on the first Tuesday after the second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John Barth notice together with this writ.

WITNESS, the Hon. John D. Catron Chief Justice of the Supreme Court and the seal thereof, at MOUNT VERNON, this twentieth day of May in the year of our Lord one thousand eight hundred and fifty nine.

Noah Johnston

Clerk of the Supreme Court.

I return this Scirefacias the within named  
John Barth not found in any county, this  
3<sup>rd</sup> day of June 1859.  
Frederick Schaefer  
Sheriff.

*[Faint handwritten notes in the left margin, including the word "SCIRE FACIAS" and other illegible text.]*

**SUPREME COURT.**  
**First Grand Division.**

*John Emerson*

Plaintiff in Error,

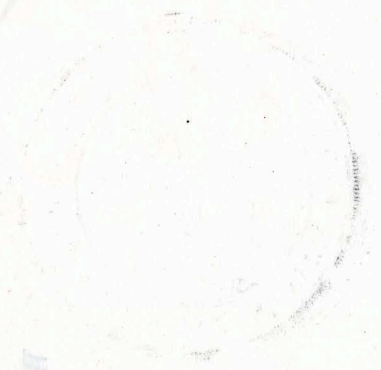
vs.

*John Barth*

Defendant in Error.

SCIRE FACIAS.

FILED.



*[Faint handwritten notes in the right margin, including the word "SCIRE FACIAS" and other illegible text.]*

No 21

1859.

John Emerson  
by

John Barth

Error to Calhoun

8587

Review for Nonjoiner

See Review Book "B" - Page  
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Continued on Page 369 -