No. 8770

Supreme Court of Illinois

Calvin Gold

vs.

Ryan, Assignee,

71641 7

State of Illinois Gallatin County
In the Gallatin circuit court

Original Bill.

Albert G. Caldwell & Ebenezer Z Ryan assignees of the President Directors and Company of the Bank of Illinois at Shawnee town

vs

Calvin Gold & Hanah Gold

November the 8th 1850. The complainants filed in the office of the clerk of said court their bill in chancery in words and figures following to wit.

"State of Illinois } In the circuit court of Gallatin
Gallatin County } ss. county in chancery sitting
November Term AD 1850.

To the Hon William A Denning Presiding in chancery in Gallatin ~~county~~ County Illinois Humbly complaining sheweth unto your Honor your Orators Albert G. Caldwell of Gallatin county and Ebenezer Z Ryan of Lawrence county Ills assignees of all the rights credits and debts due to the President Directors and company of the Bank of Illinois at Shawnee-town that heretofore to wit on the 27th day of April AD 1836. Calvin Gold and Hanah Gold his wife by their certain deed of Indenture commonly called a mortgage deed granted bargained and sold aliened and conveyed unto the President Directors & Company of the Bank of Illinois all their

Mortgage of 27th Apl. 1836.

[2770-1]

2

Original Bill.

certain tracts of land discribed as follows
situate in said Gallatin county Illinois
That is to say the E½ of the SW. quarter of section
Twelve Town 10 S. R nine East. NW qr of the
SW qr of section Twelve in Town 10 S R nine
east. The N.E. qr of the S.E. qr sec Eleven Town
Ten south Range nine east. The south east
qr quarter of section thirty one T 10 south Range
Ten East. West half SW qr sec Thirty one T 10 S R
10 East. The S E. qr of the SW. qr of sec 31 T 10 S. R 10
east also One hundred and twenty ~~thirty~~ four acres
more or less part of N½ and the S.E. qr of
section no one in Town Ten south Range nine
east. Patented to one Benjamin White by him
conveyed to the Heirs of John Brown decd
and sold under decree against them
to McClean and by him to said C Gold
also the following lots upon part of in lot
in Shawnetown No 1145 containing eighty three
feet front on the river. also seventeen feet
front on the river being parts of in lots
No 1159 & 1160 in Shawnetown where Mr Scoles
then lived also the half of in lot 1146 fronting
104 feet on main street and fifty two feet on
main cross street in said Town where one
Mr McDaniel then lived also in lot in said
Town no 1151 excepting so much of the same
as was then occupied by the house of John
~~Wilson~~ Milne decd and extending back with the width
of said house to the back line of said lot
which last lot was then mortgaged to one
Henry Eddy - Your Orators state that the

3

Original Bill

said Mortgage deed was subject to a condition thereunder written by which it was witnessed that whereas the said Gold did on the said 27th April A.D. 1836 execute and deliver his certain promissory note to the President Directors &c of the Bank of Illinois for Two Thousand Dollars payable in one hundred and eighty days after the date thereof with interest thereon at the rate of Eight per cent per annum from due until paid then if the said Calvin Gold should ~~not~~ well and truly pay the said promissory note according to the tenor and effect thereof with all interest which might grow due thereon and in case the said note was renewed for the same or any smaller sum part thereof should well and truly pay the amount of said renewed note with all interest to grow due thereon and so on for any other renewal the said mortgage Deed was to be null and void otherwise to be in full force. which said deed duly executed and acknowledged was recorded in Gallatin County on the 10th May 1836. Your Orators further shew unto your Honor that in conformity with the terms of said condition the said Calvin Gold on the day of A.D. renewed the said note by giving his note to the President Directors &c of the Bank of Illinois for the sum of $ payable in months from said date with eight per cent interest upon which said renewed note there is due to the Bank of Illinois the sum of $

Note of 27th Apl. 1836

Note in renewal of same.

[8770-2]

4

Original Bill

which sum your orators as their assigns are well entitled to have out of said mortgaged premises. Your orators aver that the said Hanah Gold by the execution of said deed alienated and released her dower in the premises therein discribed. Your orators further shew unto your Honor that on the 10th day of May AD 1837. that the said Calvin Gold and Hanah his wife by their certain other Morgage deed executed by the said Hanah so as to release her right of Dower did grant bargain sell alien & convey unto the President directors and company of the Bank of Illinois all their lands in gallatin county discribed as follows The South half of South West qr of sec thirty five Town nine south Range nine east also the West half of the North West quarter of section Thirteen in Township ten south of Range nine east. also the east half of the South West quarter of section twenty four in Town nine south Range nine East also the south west quarter of the north east quarter of section eleven in the same Township and Range also the south west quarter of the South west quarter of section twelve in the same Town-ship & Range. also the north west quarter of the north east quarter of section eleven in same township & Range. Also all the lands and tenements contained in the afore discribed Mortgage dated 27th april 1836. The intention of said Calvin Gold being that this Mortgage should cover all and

2nd Mortgage of 10th May 1837.

every interest in the said first described lands which might revert to the said parties of the first part after paying the debt thereby secured - which last recited mortgage was subject to a condition therein written. which recited that the Bank had that day lent to the said Gold the sum of Two Thousand Dollars for which the said Calvin Gold had that day executed his promissory note to them by which he promised to pay them One hundred and ninety days after the date thereof the said sum of Two Thousand Dollars with eight per cent interest thereon it was further witnessed thereby that if the said Calvin Gold should well and truly pay and discharge the said note according to the tenor and effect thereof with all the interest ~~and cost~~ which might grow due thereon. and in case of the renewal of said note for the same or any smaller sum should well and truly pay the amount of said renewed note with all the interest that might grow due thereon and so on for any subsequent or further renewal then the said conveyance to be void otherwise to be in full force & effect. which said deed after being duly acknowledged was recorded in Gallatin County 8th June 1837 all of which will more fully appear by reference to said Mortgage a copy of which is herewith filed as exhibit (B) and refered to as part of this Bill Your Orators aver that afterwards to wit on the day of A.D. the said Calvin Gold renewed his said note secured as above according to the above condition and executed

Original Bill -

Note of 10th May 1837

Note in Renewal of Same.

Original Bill.

his renewed note by which he promised to pay
after the date thereof the sum of
$ to the said President Directors and
Co with interest at the rate of eight per cent
per annum until due your Orators alledge
that there is now due and in arrear upon said
renewed note the sum of Dollars
for which sum they have right to have said
two Mortgages foreclosed and payment out
of the property therein discribed awarded to them.

3rd Mortgage of 26th June 1839

Your Orators further shew unto your Honor
that on the 26th day of June AD 1839. the said
Calvin Gold and Hanah his wife the said
Hanah thereby releasing her dower did by
their certain deed of Mortgage of that date
grant Bargain alien sell and convey unto
the said President Directors & Company of
the Bank of Illinois at Shawneetown
all the following lands, to wit. the west half
of the South west quarter of section Thirteen
Town Ten south Range nine east also the
east half of the South east quarter of section
fourteen in same Township & Range also
the south west quarter of the north east quarter
of section Twenty one Township nine south of
Range ten east also the North east quarter of the
North east quarter of section eighteen in Town-
ship eleven South Range Ten east also all
the lands and tenements in the two last
Mortgages in this bill set out as dated April
27, 1836 and 10th May 1837, between the same
parties the intention being that the last
recited mortgage should cover any and

all interest which might revert to the said parties after satisfying the intents and purposes of said two recited mortgages of 1836 & 1837. which said mortgage deed was and is subject to a condition therein written by which it was witnessed that as the said President Directors and company of the Bank of Illinois had on that day lent to the said Calvin Gold Two Thousand Dollars for which he the said Calvin had executed to them his promissory note bearing even date therewith by which he promised to pay the said sum with interest thereon at the rate of eight per cent per annum from date until paid seven months after the date thereof. then if the said Gold should well and truly pay to the said Bank the amount of said promissory note according to the terms and effect thereof and in the event of his renewing the same. for the same or any smaller sum. should well and truly pay such renewed note and so on till the entire debt should be extinguished the said deed was to be void otherwise to remain in full force & virtue & effect. which said deed was duly recorded on the 16th July 1839. all of which will more fully appear by a copy thereof herewith filed marked exhibit (C) and refered to as part of this ~~record~~ bill

Original Bill-

Note of 26th June. 1839.

Note in renewal of same.

Your Orators alledge and declare that afterwards to wit on the day of A D the said Calvin Gold according to the condition of said Mortgage deed renewed the said note and executed his other note of that date payable to the said President

Original Bill -

Directors &c for the sum of
Dollars with eight per cent interest thereon
from due until paid. payable in seven
months after the date thereof which said
note with the interest thereon accrued is still
due and ~~unpaid~~ owing amounting to
Dollars for which amount your orators have
a right to have said Mortgage foreclosed

4th Mortgage of 20th Aug. 1840.

Your orators further shew unto your
honor that afterwards, to wit on the 20th day of
August 1840 the said Calvin Gold and
Hanah Gold his wife by their certain deed
of Mortgage of that date in consideration
of One thousand nine hundred Dollars
Granted bargained and sold unto the Pres-
-ident Directors and company of the Bank
of Illinois all and singular the lands
tenements and real estate of what kind
and nature soever named discribed or refered
to in the three above recited Mortgage Deeds
executed - Calvin Gold & Hanah Gold his wife
to the said Bank and bearing date the
first on the 10th day of April 1836. the second on the
10th day of May 1837. and the third on the 26th
day of June 1839. as fully and completely
as though the said premises were therein
separately discribed and set down and
for this purpose it was by the said Mort-
-gage recited that the three said several Mortgages
are made part and parcel of the last
recited mortgage. which said Mortgage
was rendered upon the express condition
that as the said parties of the second part

9

Original Bill-

Note of 20th Aug. 1840-

thereto had that day lent to Calvin Gold the sum of Nineteen Hundred Dollars for which the said Calvin had that day executed his promissory note payable to the said President Directors & Co of said Bank in seven months after the date thereof with interest thereon at the rate of eight per cent per annum from date until paid then if the said Gatewood should well and truly pay the said note when the same became due and on renewal pay the renewed note according to its terms and effect then the said Mortgage was to be void otherwise to remain in full force and virtue. Your Orators allege that the said note thus last discribed with all interest that is still due and in arrear amounting now to the sum of Three Thousand four hundred and forty three Dollars which said sum your orators have a right to claim and demand out of the lots and real estate in said three recited deeds of Mortgage contained and described as will more fully appear by reference to said deed of Mortgage a copy of which is herewith filed marked Exhibit (D) prayed to be taken as part of this bill. Your orators further shew unto your honor that heretofore

5th Mortgage of 9th Sept. 1840-

on the 9th day of September 1840 the said Calvin Gold by his deed of Mortgage of that date acknowledged and recorded did Grant Bargain alien sell and convey unto the said President Directors & Co of the Bank of Illinois all those certain lots and parcels of Land discribed as follows to wit In Shawneetown In lots no 1085, 1086, 1087, 1088, 613, 614, 615, 616, 793, 794, 795, 796, 797, 798.

[8770-5]

Original Bill-

799. 800. 609. 610. 611. & 612 all of which are numbered as above upon the town plot of Shawnetown Gallatin County which said mortgage deed is subject to a condition thereunder written by which it is witnessed that whereas the said President Directors &c of the Bank of Illinois had on that day lent to the said Calvin Gold Twelve Hundred Dollars for which sum he had executed to them his promissory note payable in seven months after the date thereof with interest thereon at the rate of eight percent per annum from due until paid then if the said Gold should well and truly pay to the said President Directors &c the said note and all the interest thereon accruing according to its terms or in the event of renewal should pay such renewed note according to its terms the said deed to be void otherwise to be in full force & effect- Your Orators allege that the money for which said last note was given is all in arrear and unpaid and amounts to the sum of Two Thousand one hund- and four dollars for which sum your orators have right to sell the lots in the last deed of Mortgage enumerated your orators refer to a copy of said Mortgage Deed herewith filed marked exhibit (E.) and prayed to be accepted as a part of this bill. the original Mortgage having been filed for record & Recorded in Gallatin County Oct. 2 1840.

Note of 9th Sept. 1840

Your Orators allege that all the said several sums of money in the said notes & Mortgages specified amounting in the aggregate to the sum of Eleven Thousand two hundred Dollars

Dollars are still due and in arrear.

Original Bill.

Wherefore your Orator prays the People's most gracious writ of summons in Chancery directed to the said Calvin Gold and Hanah Gold commanding them &c and upon a hearing of this cause to take an account of the monies so due your Orator under said Mortgage and decree a sale of the lands and lots therein specified to satisfy the debts thereby chargeable and to grant such other and further relief as to your honor may seem meet and proper as in duty bound &c

A. G. Caldwell
for Complainants "

First mortgage recited in bill

Copy of 1st Mortgage of 27 Apr. 1836.

" This Indenture made this 27th day of April 1836 between Calvin Gold and Hanah his wife of Shawneetown Gallatin county Illinois of the first part and the President Directors and company of the Bank of Illinois of the second part witnesseth That the said parties of the first part for and in consideration of the sum of Two Thousand Dollars lawfull money of the United States to them in hand paid by the said parties of the second part the receipt of which is hereby acknowledged have granted bargained aliened ~~and~~ sold and conveyed and by these presents do grant bargain alien sell and convey unto the said parties of the second part their successors and assigns forever all those the following described tract parcels & lots of land situate in said county that is to say.

(37104)

Copy of 1st Mortgage of 27 Apl. 1836.

The East half of the South west quarter of section Twelve in Township ten south in Range nine east containing eighty acres. The north west quarter of the south west quarter of section Twelve in Township Ten south in Range nine east, containing forty acres The north east quarter of the South east quarter of section eleven in Township ten south in Range nine east containing forty acres. The South East fractional quarter of section Thirty one in Township ten south in Range ten east containing fifteen acres and ten hundredths. The west half of the south west quarter of section thirty one in Township ten south in Range ten east containing eighty acres ~~and~~
The south East quarter of the south West quarter of section thirty one in Township ten south in Range ten east containing forty acres. One hundred and twenty four acres more or less ~~being part~~ being part of the north half and south east quarter of section No one in Town ten south in Range nine east patented to one Benjamin White and conveyed by him to the heirs of John Brown dec^d and sold under a decree in chancery against them to Ephraim A McLean and by him sold to said C Gold & one third paid for. The upper part of in lot in Shawnee town No Eleven hundred and forty five containing eighty three feet front on the river & where the Banking house stands and the said Goldstone is now kept. The lot and messuage where Mrs Scoles now lives being seventeen feet front on the river, and embracing part of in lots in Shawnee town No Eleven hundred and fifty nine and Eleven hundred and sixty. The half of in lot in Shawnee town No Eleven hundred and forty six

13

Copy of 1st Mortgage of 27 Apl. 1836.

fronting 104 feet on main street and fifty two feet on main cross street & now in the occupation of Wm McDaniels. Also in lot in Shawmutown Eleven hundred and fifty one excepting so much of the same as is occupied in front on cross street by the house of John Milne decd. and extending back of the same width of said house to the back line of said lot which said lot is subject to a prior mortgage to Henry Eddy, To have and to hold the said above described premises, and each and every parcel thereof unto them the said parties of the second part. and their successors and assigns forever as a good and indefeasible estate in fee simple and the said Calvin for himself and his heirs covenant to and with the said parties of the second part and their successors and assigns that he is well seized of the aforesaid premises except as aforesaid. and that he will forever warrant and defend the same. against all persons claiming or to claim the same by, from or under any person or persons whatever. Nevertheless. and this conveyance is made upon this express condition that whereas the said parties of the second part have this day lent to the said Calvin the sum of Two Thousand dollars for which he executed to them his promissory note. bearing even date herewith by which he promises to pay the same. One hundred and ninety days after the date thereof with interest thereon at the rate of eight per cent per annum from due till paid Now if the said Calvin shall well and truly pay the said parties of the second part the

[8770-2]

Copy of 1st Mortgage of 27 Apl. 1836.

amount of said promissory note according to the tenor and effect thereof with all interest which may grow due thereon. And in case of the said note being renewed for the same or any smaller sum by the consent of the said parties of the second part shall well and truly pay the amount of such renewed note with all interest to grow due thereon and so on for any subsequent or further renewals then this conveyance to be null & void but otherwise to be and remain in full force and absolute as law.

And it is understood that the said Calvin is not to be ejected from the possession of the said above described premises or any parcel thereof until default shall be made in the performance of the condition of this conveyance.

In witness whereof the said parties of the first part have hereto set their hands & seals the day & year above written

C. Gold (Seal)
Hanah Gold (Seal)

State of Illinois }
Gallatin County } ss

Certif. of acknowledgement.

Before me the undersigned Notary Public in and for said county duly commissioned and sworn this day appeared Calvin Gold and Hanah Gold his wife both personally known to me to be the real persons who have subscribed the foregoing deed and severally acknowledged the same to be their free and voluntary act for the purposes therein mentioned, and the said Hanah wife of the said Calvin being made fully acquainted with the contents of said deed and examined separate and

15

apart from her said husband according to law declared on such her privy examination that she had executed the said deed and relinquished her ~~rights of her~~ Dower in the said premises freely voluntary without compulsion of her said husband all which I accordingly hereby certify

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal at Shawnetown in said County this 28th day of April 1836

Notary Public

Sam. D. Marshall
Notary Public

State of Illinois
Gallatin County } ss

Certif. of record

I Leonard White recorder in and for said county do certify that I have duly recorded the within deed in my office in Book 4 page 141

Given under my hand and seal of office at Equality this 10th day of May 1836

Leod White "

Note referred to in the above mortgage

" $2000 00/100 Bank of Illinois Shawnetown
1 Sept 1840

Copy of note

Seven months after date we or either of us promise to pay to the President Directors &c of the Bank of Illinois Two Thousand Dollars with interest at the rate of eight per cent per annum from date until paid without defalcation for value received

C Golds

(1)

"

Copy of Second Mortgage of 10 May 1837

Second Mortgage refered to in bill as exhibit (B) "This Indenture made this 10th day of May 1837 between Calvin Gold and Hanah his wife of the first part and the President Directors & Company of the Bank of Illinois at Shawnetown of the second part Witnesseth, that the said parties of the first part for and in consideration of the sum of Two Thousand Dollars to the said Calvin in hand paid the receipt of which is hereby acknowledged have granted bargained aliened sold and conveyed and by these present, do grant bargain alien sell and convey unto the said parties of the second part their successors ~~in~~ and assigns forever all and singular the following described lands and tenements, situate in the county of Gallatin Illinois to wit the south half of the south west quarter of Section thirty five in township nine South in Range nine east containing 80 acres purchased by the said Calvin at the land office in Shawnetown on the 12th day of Sept 1836. Also the west half of the north west quarter of Section thirteen in Township ten South in Range nine east containing 80 acres purchased as aforesaid on the 18th day of March 1837. Also the East half of the South west quarter of section Twenty four in the same Township and Range containing 80 acres, and purchased as aforesaid on the 26th day of May 1836, Also the south west quarter of the north east quarter section eleven in the same township and Range containing 40 acres, and

17

Copy of 2nd Mortgage of 10th May 1837.

purchased as afoursaid on the 18th day of March 1837. Also the south west quarter of the south west quarter of section twelve in the same township and Range containing 40 acres and purchased by one John M Leech at the same land office on the 2d day of May 1836. and transfered by him to the said Calvin on the same day by endorsement of the receipt. Also the north west quarter of the north east quarter of section eleven in the same township and Range containing 40 acres and purchased by one George Barker at the same land office on the 21st day of October 1836 and conveyed by him to the said Calvin by deed bearing date the 6th day of March 1836. Also all and singular the lands & tenements contained and discribed in a certain deed of Mortgage executed by the said parties of the first part to the said parties of the second part and bearing date the 27th day of april 1836 the intention being that this conveyance shall cover any and all interest which may revert to the said parties of the first part or either of them after satisfying the intents and purposes of that Mortgage To have and to hold the said above discribed premises and each and every parcel thereof with the rights and appurtainces reversions and remainders thereof unto them the said parties of the second part their assigns and successors forever as a good and indefeasible estate in fee simple. And the said Calvin for himself and his heirs covenants to and with the said parties of the second

[5110-2]

Copy of 2nd Mortgage of 10th May 1837

part their assigns and successors. that he is well seized of the said premises with qualifications aforesaid and in said former mortgage specified. and that he will forever warrant and defend against all persons claiming or to claim the same by from or under any person whatever. Nevertheless, and this conveyance is made upon this express condition that whereas the said parties of the second part have this day lent to the said Calvin the sum of Two Thousand Dollars, for which the said Calvin has executed to them his promissory note bearing even date herewith by which he promisses to pay the said sum with interest thereon from date till paid at the rate of eight per cent per annum. one hundred and ninety days from the date thereof Now if the said Calvin shall well and truly pay the said parties of the second part the amount of said promissory note according to the tenor and effect thereof with all interest which may grow due thereon. and in case of the said note being renewed for the same or any smaller sum with the consent of said parties of the second part shall well and truly pay the amount of such renewed note with all interests which may grow due thereon. and so on for any subsequent or further renewals. then this conveyance to be void but otherwise to remain in full force and absolute at law. And it is understood that the said Calvin is not to be ejected

19

from the possession of the said premises or any parcel thereof until default shall be made in the performance of this condition of this conveyance & the said Calvin is to pay all taxes in the mean time.

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

C Gold (Seal)
Hanah Gold (Seal)

Certif. of acknowledgment.

State of Illinois }
Gallatin county } set before the undersigned ~~me~~ a Justice of the peace in & for said county this day ~~personally~~ appeared Calvin Gold and Hanah his wife both personally known to me as the real persons who have subscribed the foregoing deed and severally acknowledged the same to be their voluntary act for the purposes therein mentioned. and the said Hanah being examined by me separate & apart from her said husband according to law & having the said deed read & fully explained to her she declared that she had executed the same and relinquished her dower in the premises thereby conveyed freely and voluntarily & without compulsion of her said husband all of which facts I do hereby certify under my hand this 12 day of May 1837.

Thos F Vaughn (Seal)

State of Illinois }
Gallatin county } I Leonard White recorder in and for said county do hereby certify that I have duly Recorded the within deed in my

Office in Book G Page 251.

Given under my hand and seal of office at Equality this 8th day of June 1839.

Leod White "

Note refered to in second mortgage

"$2500 00/100 Bank of Illinois Shawnetown

21 July 1840

Copy of note of 21 July 1840 –

Seven months after date I promise to pay to the President Directors & Co of the Bank of Illinois Two Thousand five hundred Dollars with interest at the rate of eight per cent per annum from due until paid without defalcation for value received

No 2 C Gold "

Copy of 3rd mortgage of 26 June 1839

Third mortgage refered to in bill as exhibit (C)

" This Indenture made this 26th day of June 1839 between Calvin Gold and Hanah his wife of the first part, and the President Directors and company of the Bank of Illinois at Shawnetown of the second part Witnesseth, that the said parties of the first part for and in consideration of the sum of Two Thousand Dollars to the said Calvin in hand paid the receipt of which is hereby acknowledged Have granted bargained and sold and by these presents do grant bargain clear sell and convey unto the said parties of the second part their successors and assigns forever all and singular the following described lands and tenements situate in the county of Gallatin Illinois to wit The west half of the south west quarter of section

Thirteen in township ten south in range nine east containing 80 acres, also the east half of the southeast quarter of section fourteen in same township and range containing 80 acres, also the south west quarter of the North east quarter of section twenty one in township nine south in range ten east containing 40 acres, also the North east quarter of the north east quarter of section eighteen in township eleven south in range ten east containing 40 acres.
Also all and singular the land tenements and real estate contained and described in two certain deeds of Mortgage executed by the said parties of the first part to the said Bank and bearing date, the first, on the 27th day of April 1836, and the second on the 10th day of May 1837, the intention of the parties hereto being that this conveyance shall cover any and all interest which may revert to said parties of the first part or either of them after satisfying the intents and purposes of said former Mortgages respectively
To have and to hold the said above described premises and each and every parcel thereof with the rights and appurtenances reversions and remainders thereof unto them the said parties of the second part their successors and assigns forever as a good and indefeasable estate in fee simple. And the said Calvin for himself and his heirs covenants to and with the said parties of the second part their successors and assigns that he is well seized of the said premises with the qualifications in said former Mortgages mentioned and that he will forever warrant and defend the same against all persons

Copy of 3rd Mortgage of 26 June 1839

claiming or to claim the same by from or under any and all persons whatever.
Nevertheless. and this conveyance is made on this express condition that whereas the said parties of the second part have this day lent to the Calvin the sum of Two Thousand Dollars for which the said Calvin has executed to them his promissory note bearing even date herewith. by which he promises to pay the said sum with interest thereon at the rate of eight per cent per annum from date till paid seven months after the date thereof Now if the said Calvin shall well and truly pay to the said Bank the amount of the said promissory note according to the terms tenor and effect thereof and in the event of his being allowed to renew the same for the same or any other less amount shall well and truly pay such renewed note according to the terms tenor and effect thereof and so on until the said debt shall be fully paid and extinguished. then this conveyance to be void but otherwise to be and remain in full force and absolute as law and it is understood & agreed by and between the parties hereto that the said Calvin shall and may retain possession of the said premises until default shall happen in the performance of foregoing condition and in the meantime the said Calvin agrees that he will pay all taxes and other assessments upon the said premises whether levied for ~~for~~ State county or other purposes whatever

In witness whereof the said parties of the

23

first Part have hereunto set their hand and seals the day and date first above written

C Gold (Seal)

Hanah Gold (Seal)

State of Illinois
Gallatin County } ss

Certif. of acknowledgment.

Before me the undersigned a Justice of the peace in and for said county this day appeared Calvin Gold and Hanah his wife both personally known to me to be the real persons who have subscribed the foregoing Deed and severally acknowledged the foregoing Deed to be their free and voluntary act for the purposes therein mentioned. And the said Hanah being made acquainted with the contents of said Deed and examined I me separate and apart from her said husband according to law she declared on such her separate examination that she had executed the said deed and relinquished her right of Dower in the premises therein conveyed freely and voluntarily and without the compulsion of her said husband all of which I accordingly hereby certify under my hand this 29th day of June A D 1839

Thos F Vaughn (Seal)

State of Illinois
Gallatin County } I Leonard White recorder in and for said county do certify that I have recorded the within Mortgage deed in my office in Book I Page 529.

Given under my hand and seal of office at Equality this 16th day of July A D 1839

Leo White

18770-13

Copy of Note of 20th Aug. 1840-

" Note referred to in the last recited Mortgage
$1900 00/100) Bank of Illinois Shawnetown 20 Augt 1840
Seven months after date we or either of us promise to pay to the President Directors & Co of the Bank of Illinois One thousand nine hundred 00/100 Dollars with interest at the rate of eight per cent per annum from date until paid without defalcation for value received

C Gold "

Copy of 4th Mortgage of 20 Aug. 1840-

3
Fourth Mortgage referred to in Bill as Exhibit (D)
" This Indenture made this 20th day of August 1840 between Calvin Gold and Hanah his wife of Gallatin county Illinois of the first part, and the President Directors & Company of the Bank of Illinois, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of One thousand nine hundred Dollars lawful money of the United States to the said Calvin in hand paid by the said parties of the second part the receipt of which is hereby acknowledged, have granted bargained & sold, and by these presents do grant bargain and sell alien and convey unto the said parties of the second part their successors and assigns all and singular the lands tenements and real estate of what kind or nature soever named and described or referred to in three several Deeds of Mortgage executed by the said parties of the first part, to the said Parties of the second part and bearing date, the first on the 27th day of April 1836 the second on the 10th day of May 1837 & the third on the 26th day of June 1839 at fully and completely as if the said premises were herein fully and

separately described and set down and for this purpose said three several deeds of mortgage are made part and parcel of this deed. To have and to hold the said premises each and every part and parcel thereof as in said three several deeds or in any of them described with all the rights privileges appurtainances remainder and reversion thereof unto them the said parties of the second part their successors and assigns forever as a good and indefeasible estate in fee simple and the said Calvin for himself and his heirs covenants that the same are unincumbered except by those former mortgages and that he will forever warrant and defend the same against himself and his heirs, and against all other persons whatsoever. Nevertheless and this conveyance is made upon this express condition. That whereas the said parties of the second part have this day lent to the said Calvin the sum of Nineteen hundred Dollars for which the said Calvin has this day executed his promissory note bearing even date herewith for the payment thereof seven months after date with interest thereon at the rate of eight per cent per annum from due till paid Now if the said Calvin shall well and truly pay the said note when the same shall become due and in the event of his being allowed to renew the same for the same or any other amount shall well and truly pay and satisfy said renewed note and so on as often as he shall be allowed to renew until the whole debt shall be ~~fully~~ finally and fully paid and extinguished then this conveyance to be void but otherwise to remain in full force and absolute as law

And the said Calvin reserves the right to continue in possession of the said premises as against this Mortgage until default shall happen in the performance of the foregoing conditions during which time he agrees that he will pay all taxes and other legal assessments thereon.

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

C Gold (Seal)

Hanah Gold (Seal)

State of Illinois }
Gallatin County } ss

Certif. of acknowl'mt.

Before me the undersigned a Notary Public in and for said county this day appeared Calvin Gold and Hanah his wife both personally known to me to be the real persons who have subscribed the foregoing Deed and severally acknowledged the same to be their free and voluntary act and ~~deed~~ for the purposes therein mentioned, and the said Hanah wife of the said Calvin being made acquainted with the contents of the said deed and examined by me separate and apart from her said husband according to law, she declared on such her separate examination that she had executed the said deed and relinquished her Dower in the premises therein conveyed freely ~~&~~ voluntarily and without the compulsion of her said husband which I hereby certify. In testimony whereof I have hereunto set my hand & affixed my notorial seal of office in Shawneetown this 22 day of January ~~year~~ 1840

James Darah
Notary Public

State of Illinois
Gallatin County ss

27

Recorder's certif.

I Leonard White Recorder in & for the county aforesaid do certify that I have on this day duly recorded the within deed of Mortgage in my office Liber R folio 527.

In testimony whereof I have hereunto set my hand & affixed seal this 5th day of September 1840

Leonard White Rec.
By P. R. Finley Dep Rec.

Note of 17 Sept. 1840.

Note referred to in the last above Mortgage
"$1,800 00/100 Bank of Illinois Shawnetown 17th Sept. 1840
Seven months after date we or either of us promise to pay to the President Directors & Co of the Bank of Illinois Eighteen Hundred Dollars with interest at the rate of eight per cent per annum from date until paid without defalcation for value received C. Gold"

4.

Copy of 5th Mort. of 9 Sept. 1840.

Fifth Mortgage referred to in bill as exhibit (IV 4)
"This Indenture made this 9th day of September 1840 between Calvin Gold of Shawnetown Illinois of the first part and the President Directors and company of the Bank of Illinois at Shawnetown of the second part, Witnesseth, That the said party of the first part for and in consideration of the sum of Twelve hundred dollars lawful money of the United States to the said Calvin in hand paid the receipt of which is hereby acknowledged have granted bargained aliened sold and conveyed and by these presents do grant bargain alien sell and convey unto the said Parties of the second part their

[8770-1]

Copy of 5th Mort. of 9th Sept. 1840.

successors and assigns forever all and singular the following described lands and tenements and real estate that is to say One lots in Shannontown No. One thousand and eighty five (1085) One thousand and eighty six (1086) One thousand and eighty seven (1087) One thousand and eighty eight (1088) Six hundred and thirteen (613) Six hundred and fourteen (614) Six hundred and fifteen (615) Six hundred and sixteen (616) Seven hundred and ninety three (793) Seven hundred and ninety four (794) Seven hundred and ninety five (795) Seven hundred and ninety six (796) Seven hundred and ninety seven (797) Seven hundred ninety eight (798) Seven hundred and ninty nine (799) eight hundred (800) Six hundred and nine (609) Six hundred and ten (610) Six hundred and eleven (611) and Six hundred and twelve (612) to have and to hold the said above described premises and each and every part and parcel thereof with the rights and appurtainances reversions and remainders thereof unto the said parties of the second part their successors and assigns forever, and the said Calvin for himself and his heirs covenant to and with the said parties of the second part their successors and assigns that he is well seized of the said premises with the exceptions contained in this, and that he will forever warrant and defend the same against all persons claiming or to claim the same by from or under any person or persons whatsoever, Nevertheless, and this conveyance is made upon this express condition that whereas the said parties of the second part

have this day lent to the said Calvin the sum of Twelve hundred Dollars for which the said Calvin has executed to them his promissory note bearing even date herewith by which he promises to pay the said sum with interest thereon at the rate of eight per cent per annum from date till paid and payable seven months after the date. Now if the said Calvin shall well and truly pay the said parties of the second part the amount of said promissory note according to the tenor and effect thereof with interest thereon as aforesaid and in case of the said note being renewed for the same or any smaller sum with the consent of said parties of the second part he shall well and truly pay the amount of such renewed note according to the terms thereof with all interest which shall grow due thereon and so on for any subsequent or further renewal then this conveyance to be null and void ~~to~~ but otherwise to remain in full force and absolute at law, and it is understood and agreed between the parties that the said Calvin is not to be ejected from the possession of the said premises or any part or parcel thereof until default shall be made in the performance of the condition of this conveyance And the said Calvin is to pay all taxes and other assessments in the mean time

In witness whereof the said party of the first part have hereunto set his hand and seal the day and date first above written

C Gold

State of Illinois
Gallatin County

Certif. of acknowl'mt.

Before me the undersigned a Notary Public in and for said county this day personally appeared Calvin Gold who is to me personally known as the real person who has subscribed the foregoing deed and acknowledged the same to be his free and voluntary act and deed for the purposes therein mentioned

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 9th day of September A D 1840

A Redman N.P.

State of Illinois
Gallatin County Ss

Certif. of recorder.

I Leonard White recorder in and for the county aforesaid certify that I have on this day duly recorded the within deed in my office Liber K folio 563

Witness my hand and official seal this 14th day of October 1840

Leonard White
By J Randolph Finley "

Note of 9 Sept. 1840.

Note referred to in last mortgage referred to as exhibit.

"$1,200 00/100 Bank of Illinois Shawnitown 9th Sept 1840

Seven months after date we or either of us promise to pay to the president Directors & Co of the Bank of Illinois Twelve hundred Dollars with interest at the rate of eight per cent per annum from date until paid without defalcation for Value received

G. Gold

31

State of Illinois
Gallatin county } ss

The people of the State of Illinois
To the Sheriff of said county -- Greeting

Copy of Subpoena in Chy-

We command you to summon Calvin Gold and Hanah Gold if to be found in your county to appear befor the circuit court of said county on the first day of the next term thereof to be holden at the court House in Shawnetown on the third monday in the month of Nov Inst to answer to a bill of complaint filed in our said circuit court on the chancery side thereof against them by Albert G Caldwell and Ebenezer Ryan assignees of the President Director, and company of the Bank of Illinois and hereof make due return to our said court as the law directs

Witness T E Hall clerk of our said court and the Judicial seal thereof at Shawnetown this 8th day of Nov A D 1850

T E Hall clerk

return

Executed by reading and leaving a true copy of the within with Calvin Gold this 8th day of november 1850

J. T. Walters shff Gal Co
By R. C. Marshall D shff

return

Executed by leaving a true copy of the within summons with Hanah Gold Nov 8 1850

John T Walters shff
W L Boyer

Saturday 30th Nov 1850

Order of Continuance.

Ordered that the foregoing cause be continued till the next Term of the court

[8770-16]

Demurrer to Bill.

The demurrer of Calvin Gold and Hanah Gold to the bill of complaint of Albert G. Caldwell and Ebenezer Z Ryan as assignees of the President Directors and Company of the Bank of Illinois. These defendants by protestation not confessing &c for cause of Demurrer to said bill sheweth that complainants have not shewn such case as entitles them to any relief or discovery from either or both these defendants and that said bill is otherwise informal insufficient &c and wherefore they pray judgement of this Honorable Court whether they shall make other and further answers to said bill and pray to be hence dismissed with their reasonable costs in this behalf sustained &c

Freeman & Olney
for Defts

Joinder in demurrer.

And said complainant Ebenezer Z Ryan survivor &c says that the matters and things contained in this bill aforesaid ~~and~~ are sufficient to authorize the maintaining the suit aforesaid wherefore &c

W Thomas for complt

Order 6th October 1851

On this day came the complainants by Thomas their ~~attorney~~ solicitor & suggest the death of A. G. Caldwell one of the complainants & assignee &c whereupon it is ordered that this cause stand and be prosecuted in the name of the said Ebenezer Z Ryan as surviving assignee and complainant and thereupon came the as well the said complainant Ryan by Thomas as the said defendants by Olney & Freeman their solicitors who file a

Death of Caldwell suggested

Demurrer overruled

Demurrer to the bill which was joined by the complainant and the said demurrer is by the court overruled and on motion of complainant the defendants are ruled to answer the bill by 9 oclock on Thursday next

Monday October 13th 1851

order giving further time to answer.

On this day again came the Defendants by Alney his Solicitor and on motion the time for answering is extended to 9 oclock on Saturday next.

Saturday Oct 18th 1851

Decree

On this 18th day of October 1851 came the parties aforesaid and said defendants having failed to answer the bill herein. It is ordered by the court that the bill be and is hereby taken as confessed whereupon the cause being heard upon the bill and exhibits and the court sufficiently advised therein finds orders and decrees as follows.

First. that there is due to the complainant upon the Mortgage executed by the defendants on the 27th day of april 1836 recorded by the recorder of Gallatin County on the 10th day of May 1836 and exhibit in the bill Three Thousand six hundred & eighty four dollars & forty four cents and that the following lands and tenements were conveyed by said Mortgage to secure the payment of said sum of money (viz) The East half of the South west quarter of section twelve Township ten south Range nine east containing eighty acres North West quarter of South west quarter of section twelve Township Ten south Range nine east containing Forty acres

Decree

The North east quarter of South east quarter of section eleven Township ten south Range nine east containing forty acres. The South East fractional section thirty one Township ten South Range ten east containing Sixteen acres & ten hundredths of an acre. The ~~North~~ west half of the South west quarter of section Thirty one Township ten south Range ten east. containing eighty acres. The South east quarter of South west quarter of section Thirty one Township ten south Range ten east containing forty acres. also One hundred & twenty four acres (more or less) part of the North half and South East quarter of Section one in Township ten south Range nine east patented by Benjamin White. conveyed by him to the Heirs of John Brown sold under a decree in chancery against them to Ephraim & McClain and by him sold to Calvin Gold. The upper part of in lot number Eleven hundred & forty five in Shawnetown containing eighty three feet front on the river and when the Banking House ~~now stand~~ stood on the 27th day of april 1836 and said Goldsaton was kept. also the lot & mesuage where Mr Cole lived on the 27th day of april 1836. being seventeen feet front on the river and embracing parts of in lots in Shawnetown Eleven hundred & fifty nine & Eleven hundred & fifty the half of in lot in Shawnetown number Eleven hundred & forty six fronting One hundred and four feet on main street & fifty two feet on main cross street. occupied by William McDaniel

35

Decree

in 1836. On lot in Shawnee town Eleven hundred & fifty one excepting so much of the same as was occupied in front on Cross street by the house of John Milne deceased and extending back of the same width of said house to the back line of said lot

Secondly. There is due to said complainant on the Mortgage executed on the 10th day of May 1837, recorded by the recorder of Gallatin County on the 8th day of June 1837, the sum of Four Thousand Six hundred & twenty seven dollars and seventy eight cents and that the following lands and tenements were conveyed by said Mortgager to secure the payment of said sum of money (viz) The south half of the south west quarter of section thirty five Township nine south Range nine east containing eighty acres. the west half of North west quarter of section thirteen Township ten south nine east containing eighty acres. the east half of South west quarter of section twenty four Township ten south Range nine east containing eighty acres. The south west quarter of North east quarter of section Eleven township ten south Range nine east containing Forty acres. The south west quarter of south west quarter of section twelve Township ten south Range nine east containing forty acres. The North west quarter of the north east quarter of section eleven township ten south Range nine east containing Forty acres, also the lands and tenements described and conveyed by the aforesaid Mortgage of the 27th April 1836.

Decree

Third That there is due to the said complainant upon the Mortgage executed on the 26th

[2770-12]

Decree

day of June 1839, recorded by the recorder of Gallatin County on the 16th day of July 1839 the sum of Three Thousand five hundred & four dollars eighty six cents and that the following lands and tenements were conveyed by said Mortgage to secure the payment of said sum of money (viz) The West half of the south west quarter section thirteen Township ten south Range nine east containing eighty acres. The east half of South east quarter of section fourteen Township ten south Range nine east containing eighty acres. The South west quarter of North East quarter of section twenty one Township nine south Range ten east containing forty acres. The North east quarter of North east quarter of section eighteen Township eleven south Range ten east containing forty acres. also all and singular the lands and tenements and real estate described in and conveyed by the aforesaid two Mortgages executed the 27th april 1836 & tenth of May 1837.

FOURTH – That there is due to the said complainant on the Mortgage executed on the 20th day of august 1840 filed for record on the 27th day of august 1840 and recorded on the 5th day of September 1840 the sum of Three Thousand three hundred & nine dollars & sixty cents and that the following lands and tenements were conveyed by said Mortgage to secure the payment of said sum of money to wit the same lands and tenements described and conveyed by three several Mortgages hereinbefore mentioned

37

Decree

Fifth. That there is due to the complainant on the mortgage executed on the ninth day of September 1840 filed for record on the 2d day of October 1840 and recorded on the 14th ~~day of~~ October 1840. The sum of Two Thousand two hundred & Eighty dollars & fifty three cents and that the following lands and tenements were conveyed by the said Mortgage to secure the payment of said sum of money viz One lots in Shawnee town numbered One Thousand & Eighty five, One Thousand & Eighty six, One thousand & Eighty seven, One thousand & Eighty eight, Six hundred & thirteen, Six hundred & fourteen, Six hundred & fifteen. Six hundred & sixteen, Seven hundred & ninety three, Seven hundred & ninety four. Seven hundred & ninety five, Seven hundred & ninety six, Seven hundred & ninety seven, Seven hundred & ninety eight, Seven hundred & ninety nine, Eight hundred, Six hundred & nine. Six hundred & ten Six hundred & eleven & Six hundred & twelve, which said several sums the court finds due upon notes filed with said Mortgages and made part of the record herein.

Whereupon the Court further Orders and Decrees that the said Defendant Calvin Gold pay to John E. Hall the Master in Chancery of Gallatin County for the use of complainant the aforesaid sums of money amounting in the whole to seventeen thousand three hundred and thirty five dollars & twenty one cents within thirty days in notes or certificates of the Bank of Illinois or current money at

Decree

this option and the costs of this suit in current money otherwise that the Defendants, Calvin and Hanah be foreclosed of and for all equity of redemption in and to the lands and tenements aforesaid. and that the said lands, tenements and hereditaments be sold at public auction for cash or notes of certificates of the Bank of Illinois at their par value to satisfy the several amounts due said complainant and for cash to pay the costs herein.
It is further ordered that the property described in the first Mortgage herein mentioned be first sold and the proceeds of the sale applied in satisfaction of the amount due on the same. and if there be any excess that such excess be applied toward the satisfying the amount due on the second Third and fourth Mortgages herein recited according to their order in date. and that the property described in the second Third & fourth Mortgages and not included in the first Mortgage be sold in the order as time of said Mortgages. and the proceeds applied to pay any balance which may be due after the applying the proceeds of the sale of the property described in said first Mortgage and if there should be any excess after paying the amounts due on said Mortgages and the costs. It is further ordered that the property described in the fifth Mortgage or so much thereof as will be sufficient be sold as aforesaid and the proceeds applied to the payment of the

amount due on said mortgage and costs of this suit. Should the costs not have been made out of the other property it is further ordered that upon making the sales aforesaid deeds be executed to purchasers conveying all of the right title and interest of the parties to this suit in and to the said premises and that said property be sold at the Gatewood House in Shawnstown on a day to be fixed by the master that notice of the time ~~and~~ place and terms of said sale be given by advertisement in the two news papers published in Shawnstown or in one if either be not published four weeks before the day of sale and that upon the completion of the sales or any part thereof the defendants or persons in possession under them surrender such possession to the purchaser or purchasers. It is further ordered that the said John E. Hall Master in Chancery execute this decree and report his action thereon to the next term of this court and that this cause be continued.

Decree

~~Thursday~~ Tuesday 17th February 1852.

Motion to set aside decree — & overruled.

On this day came the defendants by Abney & Freeman their solicitors and moved the court to set aside the decree in this cause which motion was based on petition presented by said defendants and filed and the questions of law arising thereon being argued it is ordered that the motion be overruled.

Petition of defts.

To the Honorable S. S. Marshall, Judge of the Gallatin Circuit court in Chancery sitting, your petitioner Calvin Gold would beg leave to represent that on the 8th day of November 1850, Albert G. Caldwell and Ebenezer Z. Ryan assignees of the

Petition of deft.

President Directors & Company of the Bank of Illinois filed their bill in Chancery in this Honorable court against your petitioner and Hannah Gold his wife praying therein for a foreclosure of certain Mortgages given by your petitioner to said President Directors & Company to secure the payment of certain monies therein mentioned which Mortgages are made exhibits in said bill and which said bill and exhibits are prayed to be taken as a part of this petition

Your petitioner further states that the said bill represents that all of the notes to secure the payment of which said Mortgages were given were canceled except two the one executed on the 20 day of august 1840, for $1,900 00/100 due at seven months & the other executed September 9th 1840 for $1200 00/100 at seven months by the executions of other notes in renewal of those which were cancelled as aforesaid. but your petitioner states that the said bill does not exhibit any of the notes so alleged to have been executed in renewal of said canceled notes but are represented therein to have been executed on a blank date and for a blank amount and due in a blank number of months from their date. Your petitioner states that the only notes exhibited in said bill and the two set forth above recites He states that the said Caldwell departed this life after the filing of said Bill and that at the sept term 1851. of this Hon court the death of said Caldwell was suggested on the record of said cause & the same revived in the name of the said Ryan as the survivor of said

Petition of deft:

assignees and at the same sept term as aforesaid a Demurrer to said Bill was overruled by your Honor. & your petitioner by the motion of said Ryan by Mr Thomas his solicitor was ruled to answer the said bill by a day fixed by the court to wit the 8th day of Oct 1851 and your petitioner states that he did not answer the said bill on said last mentioned day, but that the Judges minutes of the proceedings in said cause shew that further time thereinafter to wit the saturday following was given to your petitioner to answer sd Bill but your petitioner states explicitly that he at no time during the progress of said cause asked the court to grant any time in which he might answer said bill nor did his solicitors for him but on the contrary your petitioner & his solicitors were silent as to the same and were willing to abide by the said demurrer your petitioner further states that your Honor allowed the said bill to be taken pro confesso against the defendants thereto. as the said last mentioned term and at the same time rendered a decree against your petitioner and his said wife requiring them to pay to Chas. E. Hall Master in Chancery the sum of $17,335,,21 cts by a certain day therein fixed & on failure thereof requiring the sd Master to sell the lands so mortgaged as aforesaid according to the directions of said decree for the satisfaction of the said sum of $17,335,,21 cts and requiring the purchasers under said sale to pay the amount bid at said sale in money or paper or certificates of the Bank of Illinois at their par value & the said

defts petition

decree further orders that the said defendants to said bill on failure to pay the said sum of $17,335,21 cts to said master according to the time therein limited shall be forever foreclosed & bared of all equity of redemption in the lands therein ordered to sold
Your petitioner prays your Honor to make said decree a part of this petition
Now your petitioner charges that neither he nor his solicitors asked for any time in which to answer said bill, that he was willing to rely on his 2d demurrer that the decree being for more than the principal and interest of said two notes before recited is erroneous & unlawful that it is also erroneous ~~& unlawful~~ requiring the purchasers at said sale to pay in paper or certificates of the 2d Bank at their par value instead of being allowed to pay the same at their nominal value and for foreclosing barring your petitioner of his equity of redemption in said lands should they be so sold as aforesaid that said decree is erroneous for divers other things therein contained.
Your petitioner states that he did not pay the said sum of money so decreed against which amount is greatly larger than appears from said bill to have been due him & that said master has advertised to sell said lands on this day, & ~~thereupon~~ further charges that the notes except the two recited as aforesaid in said bill were not exhibited on the hearing of said cause that your petitioner had no opportunity of objecting to them as not corresponding with the allegations of said bill & he charges that no evidence was offered at said hearing to shew that the notes upon which 2d decree purports

to have been rendered (with the two exceptions afsd) were those given in renewal of so canceled notes. Wherefore your petitioner prays your Honor to vacate & set aside said decree - and grant such other general and special relief as the premises may require & as in duty bound &c

Calvin Gold

This day personally appeared before me Calvin Gold who states on oath that the matters & things in the foregoing petition so far as stated from his own knowledge are true & so far as stated from the information of others he believes to be true

C Gold

Sworn to before me
this 23d Feb 1852
S. E. Hall clk

Filed 23d Feb 1852 S. E. Hall clk

Tuesday 24 February 1852.

Amendment of record - by consent.

On this day came the parties & their solicitors and agree that the record be amended so that the record of the last term shall show, that instead of time being extended for defendants to answer on their motion, that they were allowed time to make their, electing ~~notice~~ to stand upon the demurrer to the bill or to answer, and that the decree of 20 October 1851 shall state that said defendants having elected to stand by their demurrer herein and having failed to answer &c

March 3d Wednesday 1852

On this day came the commissioner appointed at a former term of this court to make sale of certain lands & lots, and made his report, and also came the defendants

and filed exceptions thereto and the matters of law being argued thereon and the court not being sufficiently advised in the premises takes the same under advisement until the next term of this court.

Exceptions to Master's report.

The said defendant Calvin Gold excepts to the report of John C. Hall master in Chancery appointed in this cause under a decree of said court herein at the Sept Term 1851 thereof, upon the following grounds.

1st That said report is improperly made to this term of said court. the same being a special and not a regular term

2d Because the notice given by said commissioner herein is insufficient in this that it does not designate the hours of the day between which the said sale of the lands in the said decree mentioned should be made that it does not express the terms of said sale as required and expressed in said decree. That it does not express that the said property should be sold for cash or notes or certificates of the bank of Illinois at their par value. That said notice does not set forth that the 1/2 of lot No 1146 mentioned in said decree was to have been sold at said sale for cash. That said notice does not contain a sufficient discription of said lands which were to be sold. That it does not shew that the sale which was so advertised was in the same cause as that mentioned in said decree. That it does not shew that the property mentioned in said 5th Mortgage was to have been

see 46 post

45

Exceptions to Masters report-

sold & the proceeds applied to the payment of the amount due on said mortgage and the costs of this suit should the costs not have been made out of the other property. That the part of lot No 1145 is not properly described in said notice according to said decree. That lot No 1151 nor parts of lots No 1159 & 1160 are not correctly described according to said decree in said notice That it does not give the style of the suit in said cause nor shew in what year the decree under which said sale was ordered was rendered the said Hall gives said notice as commissioner

3d Because said report shows that the 1/2 of lot No 1146 was improperly sold for cash alone instead of being sold for cash or notes or certificates of the Bank of Illinois at their par value

4th Because said Hall had no right or power to execute deeds to purchasers under said sale

5th Because said notice does not state that the said sale should be made in Gallatin County

6th Because the said decree under which the said sale was pretended, to have been made was erroneous & unlawful in this. That said decree was rendered for an amount greatly larger than than said complainants in their said bill show themselves entitled to against the said defendants as will appear by reference to said bill & decree That said decree requires the purchasers at said sale to pay for the property so sold under said decree in money or notes or certificates of the Bank of Illinois at their par value

58770-23

Exceptions to Master's report

That said decree forever bars and forecloses all equity of redemption of said Calvin Gold in and to said lands so ordered therein to be sold

That said decree improperly and erroneously directs said master to execute deeds to the purchasers under said sale therein ordered to be made of the lands purchased under said sale

6th Because said report does not show that the lands therein reported to have been sold were sold in the order prescribed in said decree.

7 The said report does not show that said Hall attended said sale at the Gatewood house

Therefore the said Calvin Gold prays this Hon court that the said report shall not be confirmed

Calvin Gold

Posey Alvey & Freeman
for Deft

Tuesday 3d Aug 1852.

Order overruling Exceptions.

The court being now sufficiently advised of and concerning the exceptions taken and filed to the report of sale herein and the motion to set aside the sale on the ground of said exceptions does hereby order and decree that the exceptions and motion aforesaid be and the same are hereby overruled and the court further orders that the report aforesaid be approved and the sales made by said master ratified and confirmed it is further ordered that the bill of cost reported by said Master be allowed and taxed as part of the bill of cost herein and which report is in words & figures following to wit.

In obedience to the decree entered in this cause the said defendants having failed to

Master's Report-

pay the amount required by the decree. I published a notice in the "Shawnee town argus" a public newspaper published weekly in Shawnee town Illinois on the 20th day of January 1852. the publication of which was continued four weeks in succession thereafter stating that I would attend at the Gatewood House in Shawnee town Illinois on monday the 23d day of February 1852. and offer for sale sale at public vendue to the highest bidder for cash in hand or notes or certificates of the Bank of Illinois and specie enough to pay all cost. ~~which~~ all and singular the real estate described in the decree describing the same as described in the decree and at the time and place stated in said notice and between the hours of 12 o clock M and 4 o clock P.M. I attended and offered the said property for sale in the manner and ~~upon~~ upon the terms stated in said notice and the same was sold to the highest bidder as follows.

The east half south west quarter of section twelve township ten south Range nine east eighty acres to Joseph Logston at and for the sum of Two hundred and one dollars, North west qr of South west quarter section twelve township ten south Range nine east forty acres, at and for the sum of fifty five Dollars, North east quarter south east qr section eleven township ten south Range nine east forty acres at and for the sum of Eighty Dollars, South east fraction section thirty one township ten south Range ten east 16 acres and ten hundredths at and for the sum of forty dollars, West half south west quarter section thirty one township ten south Range ten east eighty acres at and for the sum of

Master's Report

Two hundred dollars. south east quarter of south west quarter of section thirty one township ten south Range ten east forty acres as and for the sum of One hundred Dollars. part of the north half and south east quarter of section one township ~~township~~ ten south Range nine east One hundred and twenty four acres as and for the sum of Five hundred Dollars. upper part of in lot No Eleven hundred and forty five eighty three feet front on the river as and for the sum of Nine hundred Dollars. part of Eleven hundred and fifty nine and eleven hundred and sixty. seventeen feet front where Mrs Beales lives in 1836. as and for the sum of One hundred Dollars. Half of in lot Eleven hundred and ~~forty~~ six. one hundred and four feet on main street and fifty two feet on main cross street for cash One hundred and eight dollars. In lot Eleven hundred and fifty one excepting what is occupied by the House of John Milne extending back the width of said House as and for the sum of five Hundred Dollars. To William Thomas trustee of the Bank of Illinois the same being sold on Mortgage executed on the 27th ~~day~~ of april 1836, and south half south west quarter section thirty five Township nine south Range nine east as and for the sum of Two hundred dollars. west half ~~south~~ North west quarter section thirteen. township ten south Range nine east eighty acres as and for the sum of One hundred dollars. East half of south west quarter section twenty four same township and Range Eighty acres as and

49

Master's report

for the sum of Four hundred dollars, south west quarter North east quarter section eleven same township and Range forty acres as and for the sum of eighty dollars, North west quarter North east quarter same section Township and Range forty acres as and for the sum of Eighty dollars South west quarter south west quarter section twelve same township and range forty acres as and for the sum of Eighty dollars to William Thomas trustee of the Bank of Illinois, the same being sold on Mortgage executed 10th May 1837, and west half south west quarter section thirteen Township ten south Range nine east eighty acres as and for the sum of One hundred dollars East half south east quarter section fourteen same township and Range eighty acres as and for the sum of One hundred and fifty dollars South west quarter North east quarter section twenty one township nine south Range ten east as and for the sum of eighty dollars North east quarter North east quarter section eighteen township eleven south Range ten east forty acres as for the sum of Two hundred and forty dollars, to William Thomas trustee of the Bank of Illinois the same being sold on Mortgage executed 26th June 1839, And Inlots in Shawnetown Illinois numbered One thousand and eighty five as and for the sum of ten dollars One thousand and eighty six as and for the sum of ten dollars, One thousand eighty seven as and for the sum of ten dollars, One thousand and eighty eight

[8770-25]

Master's Report.

at and for the sum of ten dollars, to Zackariah N. Garbutt & Henry S. Mudd. and number six hundred and thirteen at and for the sum of ten dollars, Six hundred and fourteen at and for the sum of ten Dollars, Six hundred and fifteen at and for the sum of ten dollars, Six hundred and sixteen at and for the sum of ten dollars, Seven hundred and ninety three at and for the sum of ten dollars, Seven hundred and ninety four at and for the sum of ten dollars, Seven hundred and ninety five at for the sum of ten dollars, seven hundred and ninety six at and for the sum of ten dollars, Seven hundred and ninety seven at and for the sum of ten dollars, Seven hundred and ninety eight at and for the sum of ten dollars, Seven hundred and ninety nine at and for the sum of ten dollars Eight hundred at and for the sum of ten dollars Six hundred and nine at and for the sum of ten dollars Six hundred and ten at and for the sum of ten dollars, six hundred and eleven at and for the sum of ten dollars Six hundred and twelve at and for the sum of ten dollars, To William Thomas trustee of the Bank of Illinois on the Mortgage executed 9th September 1840 all of which was sold for notes or certificates of the Bank of Illinois at par except half of lot number Eleven hundred and forty six which was sold for cash as before stated. The whole sale amounting in the aggregate to Four thousand three hundred sixty six dollars ($4.366.) The same being the highest and best

57

Master's Report.

bids offered therefor, that in pursuance of said decree the undersigned as such Master executed deeds to the purchasers for the lots and lands purchased respectively as directed in said decree at the time of advertising the sale aforesaid and to the present time only one newspaper has been published in this county of Gallatin and a copy of the notice of sale published in that paper is hereunto attached the property conveyed by the mortgage dated the 27th day of April 1836. sold for the sum of Twenty nine hundred and fifty six dollars. That conveyed by the mortgage dated the 10th day of May 1837 sold for nine hundred and forty dollars That conveyed by the mortgage dated the 26th day of June 1839 sold for six hundred and twenty dollars. that conveyed by the mortgage dated 9th September 1840, sold for Two hundred dollars making in the aggregate the sum of four Thousand seven hundred and sixteen dollars for which several sums the defendants is entitled to a credit on the debt secured by the said Mortgages after deducting from each a prorate amount of the cost, the said Garbutt and Mudd paid to William Thomas treasr of the Bank of Illinois forty dollars certificates the amount of their purchase and the said Logsdon paid to me of the certificates of said Bank two hundred and one dollars the amount of his purchase, which has been delivered to said Thomas a statement of the cost and expenses of

52

the sale is hereto appended for the order of the court thereon,

Cost taxed by the clerk in the suit	$ 13.95
printers fee for advertising sale	8.75
Masters fees for making sale advertising and reporting	45.00
executing 3 deeds	5 —
acknowledging 3 deeds	75

J. E. Hall Master in Chancery

Commissioners Sale

Ebenezer L. Ryan surviving assignee of the President Directors and Company of the Bank of Illinois.

vs

Calvin Gold and Hanah Gold

By virtue of a decree made at the september term of the Gallatin circuit court in the above entitled cause I will offer for sale at the "Galenwood House" in Shawneetown Illinois on monday the 23 day of February next the following described real estate situated in Gallatin county Illinois to wit

E ½ SW qr	sec	12	Town	10 S.	Range	9 E.	acres	80	
N.W. SW	"	"	12	"	10 "	"	9 "	40	
NE. SE	"	"	11	"	10 "	"	9 "	40	—
SE. Frac	"	"	31	"	10 "	"	10 "	16	10
W ½ SW.	"	"	31	"	10 "	"	10 "	80	
SE. SW	"	"	31	"	10 "	"	10 "	40	
S ½ SW	"	"	35	"	9 "	"	9 "	80	
N ½ NW	"	"	13	"	10 "	"	9 "	80	
E ½ SW	"	"	24	"	10 "	"	9 "	80	
SW. NE	"	"	11	"	10 "	"	9 "	40	
SW. SW	"	"	12	"	10 "	"	9 "	40	

	NW.NE	"	"	11	"	10	"	"	9	"	40
53	W½ SW	"	"	13	"	10	"	"	9	"	80
	E½ SE	"	"	14	"	10	"	"	9	"	80
	SW.NE	"	"	21	"	9	"	"	10	"	40
	NE.NE	"	"	18	"	11	"	"	10	"	40
	Pt W½ of SE.	"	"	1	"	10	"	"	9	"	124 -

The last named tract being same land conveyed by Benjamin White to the heirs of John Brown sold under a decree in chancery against them to Ephraim & McClain and by him sold to Calvin Gold. Also a lot in Shawnee town numbered part of ~~in lot~~ 1145, 83 feet front where the Banking house stood 27th april 1836. part of 1159 and 1160 where Wm Peoples lived in 1836. 17 feet front on the river half of 1146. 1047 feet on main street and 52 feet on main cross street occupied by Wm McDaniel in 1836 1151 excepting so much of the same as was occupied by the house of John Milne extending back whole length of lot also 1085, 1086, 1087, 1088, 613, 614, 615, 616, 793, 794, 795, 796, 797, 798, 799, 800, 609, 610, 611, and 612 for cash in hand or notes or certificates on the Bank of Illinois and specie enough to pay all costs

Shawnee town 14th January A D 1852

J. C. Wall commissioner

Jan. 20. 20 4t

State of Illinois Gallatin county I. J. G. Hutchinson Editor and publisher of the Shawnee town Argus a public newspaper published weekly in Shawnee town Illinois do certify that the notice of sale hereto attached has been published in said paper four weeks in succession the the first publication was made on the twentieth day of January 1852, and the last on the Eighteenth

54

day of February 1852 given under my hand this 23d day of February 1852

S. G. Hutchinson

Printers fee for publication $8.75
Recd payment of W Thomas Trustee of Bank of Illinois 23d Feb 1852

S. G. Hutchinson

State of Illinois
Gallatin County } S.S.

I N Hall Clerk of the circuit court for said county do certify that the foregoing 54 pages contain a true and perfect transcript of proceedings of a cause in the said Gallatin circuit court wherein Ebenezer H Ryan surviving assignee of the Bank of Illinois is complainant & Calvin Gold & Hannah Gold are defendants as appears from the records & files of my office.

Given under my hand and the Judicial Seal of said circuit court at Shawneetown this 22d day of September 1852.

N N Hall clerk

The defendants assign the following as errors appearing upon the foregoing record –

1st The Court erred in overruling the defendants' demurrer to the Complts' Bill herein, for the following reasons –

1st Because the Compts do not allege that the assignment to them from the President, Directors &c. of the Bank of Illinois, was under the seal of said corporation.

2nd Because there is no allegation in said Bill that the notes given in renewal of the notes to secure which the mortgages are alleged to have been given – were not paid to said President Directors &c. before the alleged assignment.

3rd Because Mortgages are not strictly assignable, and there is no allegation in said Bill that the sd renewal notes mentioned therein were due to the sd. President, Directors &c. at the time of said alleged assignment – and by the terms of said Bill only those debts which were due passed to the assignees.

4th Because the Bill contains no allegation respecting the residence of the defendants –

5th Because the several notes charged to have been given in renewal of the notes described in the 1st, 2nd 3rd & 4th Mortgages are described in blank as regards the date, amount, & maturity-

6th Because the Bill does not charge that the Mortgage dated 26 June 1839, was either delivered or acknowledged - delivery is essential to its validity - and a delivery may be evidenced by a proper acknowledgment - neither is alleged -

7th Because the 1st Mortgage on page 13, states that in-lot in Shawnetown No. 1151 was subject to a prior mortgage to H. Eddy, which is also stated in the Bill, and there is no allegation that the mortgage to Eddy has ever been satisfied, and the bill is therefore defective in not making Eddy a party -

8th

Because the right of Dower of defendant Hannah is ordered to be sold - that is the decree should have ordered the property in that mortgage to be sold subject to her right of Dower.

9 Because the Bill and exhibits would not authorize the Court to render such decree as was rendered.

2nd The decree rendered herein is erroneous for the following reasons

1st Because the Bill of Complt. shows that all of the original notes which the mortgages were given to secure, except the 5th Mortgage, were merged and extinguished by the execution of other notes in renewal of the same, and those other notes are not described, nor exhibited, nor, so far as the record shows, given in evidence.

2nd Because the 1st Mortgage set forth in the Bill, describes the note for the security of which it was given, as being due 180 days after date - while the copy of the mortgage (p. 17) filed as an exhibit describes the note as being due 190 days after date, it is not the mortgage described.

3rd Because it orders a sale of the lands in the 2nd & 5th mortgages, regardless of the deft. Hannah's right of dower therein - the certificate of relinquishment of the 2nd mortgage does not state that she relinquished her right of dower upon privy examination.

4th Because it orders a sale of in-lot in Shawnetown No. 1157 - when both the Bill & Mortgage exhibited show that it was previously mortgaged to Eddy - and no allegation of its satisfaction - therefore Eddy should have been a party.

[8370-3]

5th Because it orders the deft. to pay the money to the Master for the use of Complainant - when it should have been for the use of the Trustee of the Bank.

6th Because it forecloses all Equity of redemption, and does not allow deft. 12 months, nor judgment creditors 15 months to redeem -

7th Because it only allows purchasers to pay in notes or certificates of the Bank at their par value - which is their specie value -

8th Because it requires the Master to make deeds to purchasers immediately after the sale - when they are not entitled to deeds until 15 months after sale -

9th Because there was no Evidence to support any part of the Bill Except the 5th Mortgage -

10th There was no Evidence of any assignment to Complt.

~~3rd The Court erred in amending the second after decree of sale.~~

~~4th The Court erred in confirming the report of Master at the July Term 1852 because that was not a legal term.~~

3rd The Court erred in overruling deft's motion to set aside the decree (p. 39) for the reasons set forth in the deft's petition

4th The Court erred in overruling deft's Exceptions to the Masters report (p. 46).

The Defendant in Error says that there are no such Errors as are Thereon

for Deft.

Calvin Gold

vs } Error to Gallatin

Ryan, Assignee

Prepared

8770

State of Illinois Gallatin County Set

The President Directors & Company of the Bank of Illinois for the use of A G Caldwell and Ebenezer Z Ryan

vs

John Melvin & James Melvin

Pleas Held before the circuit court of Gallatin County Illinois, sitting as a court of Chancery, at the courthouse in Shawneetown at a special Term held in February 1852

To the Honorable Walter B Scates associate Justice of the supreme court of the State of Illinois and assigned to preside in the third Judicial Circuit. Humbly complaining Sheweth unto your honor your Orators the President Directors and company of the Bank of Illinois for the use A G Caldwell and Ebenezer Z Ryan assignees of the said Bank of Illinois under an act of the General assembly of the state of Illinois approved the February 1845 entitled an act supplemental to an act to reduce the public debt and put the Bank of Illinois into liquidation and who by an assignment thereof are the beneficial holders of the indebtedness hereinafter mentioned. That one John Melvin was indebted to the said president Directors and Company of the Bank of Illinois, your Orators aforesaid by certain promissory notes of tenor and effect following that is to say A Note executed by the said John Melvin together with Gabriel Hardison as principal and Peter Slater, David R Wood coresurties dated day of and due the 15th February 1841 and payable to your Orators for the sum of $105 87/100 with interest at the rate of Eight per cent per annum from date until paid, Also a further Note

[8770-88]

executed by the said John Melvin as security together with Gabriel Hardison as principal and David R Wood and Bennet Hill as cosecurity which note was dated the day of 18 due the 3rd day of December 1842 payable to your orators and for the sum of $57.10/100 with interest at the rate of eight per cent per annum from due until paid — Your orators would further represent that they instituted suit on the above named notes against the said parties thereto, at the October Term of the Gallatin circuit Court 1844 to wit on the 14th day of November 1844 ~~and at the said term to wit 14th day of November 1844~~ obtained judgments upon said notes respectively — that is to say upon the first note above described judgement was rendered for $13.94.60/100 and upon the second note above described judgement was rendered for $5.96.00/100 And your Orators further represent that on the 17th day of March 1845 Executions were issued upon the judgments and returned no property found — All of which proceedings remain of record in said ~~court~~ court and are prayed to be taken herewith as part of this Bill. And your orators would further represent to your Honor that on the 20th day of Oct 1844 before the rendition the two aforesaid Judgments against the said John Melvin he the said John Melvin was possessed and seized in fee of the following described real Estate to wit Lot No 54 and 1/2 of Lot No 55 in the town of New Haven and the ~~south~~ SW NE Sec 18 T 7 S R 10 E containing 40 Acres as well as other real estate to your orators now unknown also certain goods and chattels, and should now in justice and right still be possessed and seized of the legal estate in said premises and the same as his absolute estate should be liable and subject to the said judgments against him and to execution thereon —

But now so it is pleas your Honor that the said John Melvin combining with one James Melvin and divers other confederates to your orators unknown but when discovered prayed to be made parties hereto, pretend that said premises above described are now and were at the the time of the rendition of said judgments the full absolute property of the said James Melvin under and by virtue of the deed of conveyance made and executed on the 22 day of Octr 184 by the said John Melvin to the said James Melvin as well as other instruments of conveyance whereby the said premises are alleged to be conveyed to the said James Melvin for and in consideration of $7,00, &c. whearas your orators for the use afor said charge the contrary thereof to be true and that the aforsaid conveyance ~~in law~~ was made without any good sufficient or valuable consideration in law and with the intent and purpose on the part of the said John Melvin to deceive and defraud your orators another creditors and remove the said premises of the said John Melvin beyond the reach of any executions in favor of your orators under their judgments aforsaid — And your orators further charge that the said James Melvin was aware of the purpose and intent of the said John Melvin in so makeing such conveyance and received the same knowing it to be fraudulent, and executed without any good sufficient or valuable consideration in law, Wheafore your orators submit and insist that the said deed of conveyance ought not to be held valid, but should be set aside in a court of Equity. All of which actings and ~~doings~~ pretences are contrary to Equity and good conscience and tend to the injury of your orators

In consideration whereof and for as much as your Orators are remediless without the assistance of a court of Equity. To the end therefore that the said John Melvin and James Melvin together with their confederates when discovered may severally upon their oaths according to the best of their knowledge information and belief, full true and perfect answers make to all and every the matters aforesaid and that as fully as if the same were here repeated, and they particularly interrogated thereto and more especially that they may severally answer and set forth in manner aforesaid: Whether the said John Melvin did not make and execute the aforesaid conveyance, to defeat the collection of the aforesaid debts out of his property thereby conveyed. Whether at the time and before the date of said conveyance the said John Melvin did not avow and declare his intention to make conveyance of said premises to defeat the collection of the debts aforesaid. Whether there was any consideration passed from the said ___ to the said John Melvin at and upon the execution of said conveyance and if so what was specifically and particular that consideration. Whether the consideration if any such were given was paid by the said out of his own individual funds and if so from whome did he obtain such funds. Whether the consideration if any such were given was not provided & furnished by the said John Melvin or some third person to the said James Melvin for that purpose.

Whether there was not a secret understanding & agreement between the said John Melvin and the said James Melvin, that the premises conveyed as aforesaid was to be held for the use of the said John Melvin

or the said James Melvin and other children of the said John Melvin Whether the said James Melvin was not aware from knowledge information or belief that the said John Melvin by the execution of said conveyance did design to deceive and defraud his creditors and remove the premises aforesaid beyond the liability of under the said judgments. Whether the arrangement in relation to consideration of said conveyance was not preconcerted fictitious and intended to deceive. Whether it was not privately understood and agreed that the said James Melvin should never come under any actual liability for and in respect to such pretended consideration. Whether there is not a private understanding between the said John Melvin and the said James Melvin that the said James Melvin in further conveyance of said premises shall be guided and directed by the said John Melvin. Whether the said John Melvin since the conveyance aforesaid has derived or is to derive the rents and profits of the premises aforesaid directly from the tenants or from the said James Melvin or through any other person. Whether there was any person or persons present during the transaction as above set forth if any who were they? and what was dates of such transactions. And that the said James Melvin shall fully disclose the amount and kind & description of property so conveyed to him. And that the said Deed of conveyance so made as aforesaid may be delivered up to be cancelled and the said premises as aforesaid or so much of them as is sufficient be subjected to the payment of your

[3770-34]

orators debts as aforsaid; and under the circumstances aforsaid that the said James Melvin be in the mean time restrained by the order and injunction of this Honorable Court from conveying the said premises until the matter is heard in this behalf, and that your orators may have such other and further relief as to your honor may seem meet and the circumstances of this case requ=ire — And may it pleas your Honor to grant unto your Orators the peoples most gracious writs of of subpoena and summons in chancery to the said John Melvin and James Melvin as parties defendant to this your orators Bill as in duty bound &c

Caldwell
for plaintiff

Endorsed Filed 18th Decr 1843 —
Leon. White clerk

Summons

State of Illinois } ss The people of the State
Gallatin County } of Illinois to the Sheriff of White County, Greeting
We command you that you summon John Melvin and James Melvin if to be found in your county to personally be and appear before our circuit court on the 1st day of the next term thereof to be commenced and holden at the court house in Equality in said county on the 4 Monday of May next then and there to answer the President Directors and Company of the Bank of Illinois for the use of A G Caldwell & E L Ryan assignees in a Bill in Chancery dolean as is alleged and hereof make return to our said court as the law directs

Seal

Witness &c. Leonard White Clerk of our said Court and the judicial seal thereof at office in Equality this 15th day of December AD 1845

Leonard White Clerk

Executed on the within named John Melvin and James Melvin by reading and delivering a copy of this writ to each Decemr. 30th 1845

John Phipps Sheff M C

Tuesday May 26th 1846 Order of the court

On motion a rule is awarded against the defendant to answer by 2d of June next

June 4th 1846 Demurrer

The President Directors &c vs John & James Melvin

These defendants by protestation not confessing or acknowledging all or any of the matters & things in the said bill of complaint contained to be true in such manner & form as the same are therein and thereby set forth and alleged doth demur in law to the said bill and for cause of Demmurer shew that the said bill charges fraud and prays for discovery without being sworn to as will appear by reference to the same and for divers other good causes of demurrer appearing in the said bill of complaint these defendants doth demur to the said bill and to all the matters and things therein contained and pray the judgment of this Honorable court whether they shall be compelled to make any furth. or other answer to the said bill and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained

Filed 2 June 1846

D P Williams Clk

Marshall

for defendant

Caldwell & Ebenezer Z Ryan
vs
John & James Melvin } Bill in Chancery June 4th 1846

Tuesday Order On this day comes the parties by their attorneys and the defendants demurred to the Bill which demurrer by the court is overruled.

Wednesday 2 order On this day comes again the parties by their attorneys and on motion time of answering is extended until thursday morning—

Answer of John Melvin to the Bill of complaint
Filed 4th June 1846
The President Director & Company of the Bank of Illinois for the use of A G Caldwell & E Z Ryan vs
John & James Melvin ——

The separate answer answer of John Melvin to the bill of complaint of the said complaints sheweth to the court that this defendant saving and reserving to him self all & all manner of exception to the said bill of complaints and leaving the said complainant to make such proof thereof as they may be able to, so much of the said bill as he is advised by counsel it is material to answer unto answering saith that true it is he sold the premises & property as set forth in said bill to the said James Melvin for seven hundred dollars ($700) or thereabout that the same was a bonafide sale for the said consideration without fraud connivance or collusion of any sort with the said James but agreed declared & intended to be a true and perfect & absolute sale of the said premises without any conditions whatsoever and that there were no reservations in the said sale whereby this respondant was ever under any circumstances

possible to have a reconveyance of said property or was to have any control over it or whereby it was to be divided or to decend to the children or decendants of the respondent all of which will appear more fully by the said deed of conveyance which is hereby prayed to be made a part of this answer & marked (A) but that it was a true perfect and absolute sale out & out — This respondent utterly denies any confederacy with other persons or with the said James for the purpose of injuring or ~~de~~ deceiving or defrauding the said complainants or any other person whatever & further this respon=dent denies ever or at any time whatever having avowed or declared his intention to defeat the collection of the debts charged in said bill by making a conveyance of said property — that the said James paid this respondent the said sum of $1700, for the said premises & property that the said James paid respondent the said $1700 but respondent does not know out of whose funds he paid it — Respondent denies that the ~~consideration~~ consideration of said sale was furnished by him to the said James and does not know ~~know~~ whear he got the money or of whome — also he denies that there was any secret understan=ding or agreement between the parties that the said premises were to be held by the said James or considered to be for the use of respondent or any other of the children of the said John in any shape or form, that it was never ~~it was never~~ privately understood that the said James should not come under any actual liability for and in respect to said ~~consideration~~ consideration — that there was no preconceived ~~intention~~ ~~or intentions~~ ~~pretentions~~ pretentions or intended ~~understanding~~ deceptive arrangement as to said consideration — that there is no private understanding between

the said James & this respondent that the said James is to be governed & directed by respondent in the further conveyance of said premises. That the said John has not received since the said conveyance nor is he to receive the rents and profits from any person whatever that there were no person present at the execution of said contract to the best of his recollection that the date of the deed was 184 and this respondent further answers & says that he has and had at the rendition of the said judgment in favor of the Bank one lot in New Haven in Gallatin County Illinois worth $100 & two forty acre tracts within half a mile of New Haven situate in White County Illinois worth $100 each all of which ~~lands~~ besides other property and have been subject to the said Executions and said defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged. without this that there is any other matter cause or thing in the said complainants bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered. Confessed traversed and avoided or denied is true to the knowledge or belief of this defendant all which matters and things this deft is ready and willing to aver maintain and prove as this Honorable Court shall direct and humbly prays to be hence dismissed with with his reasonable costs and charges in this behalf most wrongfully sustained

Subscribed & Sworn to June 2d 1846 Leo. White

John Melvin

Answer of James Melvin to the Bill of complaint
Filed 4th June 1846

The President directors & Company of the Bank of Illinois for the use of A G Caldwell & E Z Ryan vs John & James Melvin

The separate answer of James Melvin to the Bill of complaint of said complainants sherith to the court that this defendant saveing and reserving to himself all & all manner of exceptions to the said Bill of complaintnts & leaving the said complainants to make such proof thereof as they may be able to so much of the said bill as he is advised by counsel it is material to answer unto, answering saith that true it is he purchased of the said John Melvin the premises & property as set forth in said Bill for seven Hundred dollars ($700.) or thereaboats. That the same was a bona-fide sale without fraud comivance or collusion of any sort on the part of this respondent with the said John and he alleges the same to be a true perfect and absolute purchas of the said premises without any conditions whatsoever ~~of the said premises~~ and that there were no reservations in the said sale whereby this respondant was ever under any circumstancies possible to make a reconveyance of said property to the said John Melvin or whereby he was to have any control over it or to decend to the children or creditors of said John Melvin all of which will more fully appear by the said Deed of conveyance which is hereby prayed to be made a part of this answer and marked (A) but that it was a true perfect & absolute sale out & out. This respondent utterly denies any confederacy with other persons or with the said John for the purpose of injuring or deceiving or defrauding the said complainants or any other person whatsoever. also denies that there was any secret understanding or agreement

between the parties that the said premises were to be held by the respondent or considered to be for the use of said John or any of the children of the said John in any shape or form. And this respondent denies that he is to be governed or directed by the said John in ~~any shape or form~~ in the further conveyance of said premises. That said John has not received the rents since the said conveyance nor is he to receive rents and profits from any person whatsoever. that there were no persons present at the execution of said contract to the best of his recollection. that the date of the said deed was 1844 And this defendant denies all and all manner of unlawful combinations and confederacies wherewith he is by the said bill charged and this respondent denies that there was not privately understood & agreed that this respondent should never come under any actual liability for and in respect to the aforesaid consideration. Without this that there is any other matter cause or thing in the said complainants bill contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered confessed traversed & avoided or denied is true to the knowledged or belief of this defendant.

All which matters and things the defendant is ready and willing to aver maintain and prove as this honorable court shall direct. and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained

Subscribed & sworn to June 4th 1846
Lorenzo White Clk

James Melvin

Bank of Illinois
Ryan &

vs

In Chancery

John & James Melvin &

In this cause the defendant by Marshall their solicitor submitted a motion on a former day of the term to dismiss the Bill because no replication had been filed to the answer and complt by W Thomas submitted a motion for leave to file replications which motions ~~being heard~~ being heard that of the complainants is sustained and that of the defendants is overruled and the same replication now filed nunc pro tunc

Order made in the Gallatin Circuit Court at the
October Term 1847
The President Directors &c
of the Bank of Illinois
v In Chancery
John & James Melvin
Ordered that this be continued
until the next term of this court

Order made in the Gallatin Circuit Court at the
~~[illegible]~~ October Term 1848
The President Directors &c
of the Bank of Illinois
v In Chancery
John & James Melvin
Ordered that this cause be continued
until the next term of this court

Order made in the Gallatin circuit ~~Circuit~~ court
at the June Term 1850
The ~~President~~ Directors &c
of the Bank of Illinois
v In Chancery
John & James Melvin
Ordered that this cause be continued
until the next term of this court

Order made in ~~of~~ the Gallatin Circuit Court at the
January Term 1850
The President Directors &c
of the Bank of Illinois
v
John & James Melvin
Ordered that this cause be continued

until the next term of this Court

13

Order made in the Gallatin Circuit court at the October Term 1851

A G Caldwell & E. J. Ryan
assignees of Bank of Illinois
vs
In Chancery
John Melvin & James Melvin

On this day came the complainants by Thomas their ~~attorney~~ solicitor and suggest the death of A. G. Caldwell and it is ordered that this cause stand & be prosecuted in the name of E J Ryan surviving complainant and that this cause be continued with leave to take depositions &c

Replication filed nunc pro tunc as of June Term 1846

In the Gallatin County Circuit Court
The President Directors & Co
of the Bank of Illinois
vs
In Chancery
John Melvin & James Melvin

And the said complainant by W Thomas their Trustee and solicitor for Replication to the answer of said defendant John Melvin say that the matters and contained and setforth in their bill are true certain and sufficient to entitle them to a decree in the premises and that the matters stated in the answer aforesaid are untrue so far as they contradict or traverse the allegations in the Bill all which &c wherefore &c

Wm Thomas solicitor

And the said complaints for replication to the answer ~~to the ans~~ of the Defendant James Melvin Say that the matters and things contained in and set forth in the bill aforesaid are true certain and ~~true~~ sufficient and that the matters and things stated in the answer are ~~[illegible]~~ evasive and so far as they contradict or traverse the matters alledged in the bill are untrue all which &c
Wherefor &c
W. Thomas Solicitor
Filed June 7th 1846

Exhibit (A)

This Indenture made and entered into this twenty second day of october in the year of our lord one thousand eight hundred and forty four between John Melvin and Martha his wife of the first part of the county of White and state of Illinois and James Melvin of the same County and State of the second part,

Witnesseth that the said party of the first part for and in consideration of the sum of seven hundred dollars to them in hand paid the receipt of which is hereby acknowledged have granted bargined and sold and by these presents do grant bargin sell and convey unto the said party of the second part his heirs and assigns all those certain lots or parcels of land situate in the town of New Haven and known as on the recorded plat of said Town as lot fifty four and half of lot fifty five to have and to hold the above described bargined and ~~described~~ granted premises unto him the said party of the second part

his heirs and assigns forever as a good and indefea-
sible estate ~~forever~~ in fee simple and the said
parties and the said parties of the first part
for themselves and their heirs covenant and
agree to and with the said part of the second
part his heirs and assigns that they will forever
warrant and defend the said granted and
bargained premises against all persons claiming
or to claim the same otherwise than under
this Indenture In witness whereof the said
parties of the first part have hereunto set their
hands and seals the day and year first above
written

John Melvin (Seal)
Martha her × mark Melvin (Seal)

State of Illinois
~~Gallatin~~ County } ss Before me the undersigned
Justice of the peace in and for said county this
day appeared John Melvin and Martha his
wife both personally known to me to be the real
persons who have subscribed the forgoing deed and
and severally acknowledged the same to be their
free and voluntary act and Martha wife of said
John being made acquainted with the contents of said
deed and examined by me separate and apart from
her said husband according to law declared on
her private examination that she had executed
the said deed and relinquished her right of
dower in the premises thereby conveyed freely
and voluntarily and without the compulsion
of her husband all of which I according
hereby certify under my hand this 23 day
of October 1844

George Heyser J.P.

Evidence

In Gallatin County Circuit Court
Special term Feb 1852

The President Directors &c
of the Bank of Illinois for the
use of Ebenezer Z Ryan surviving
Assignee of the said Bank of Illinois
against Chancery
John Melvin & James Melvin

The testimony of witnesses produced and sworn in open court in this cause on the part of complainant First H A Line sworn states that he was acquainted with Gabriel Hardison John Melvin and James Melvin at and before 1844 said James is the son of said John Melvin that in 1841 the said Hardison transferred to the said John Melvin and one Marrett Taylor notes and accounts on various Individuals amounting to between 4500 & 4700 dollars to be collected by said Melvin and Taylor and applied to the payment of debts due to the Bank of Illinois for the whole or a part of which said Melvin and Taylor were securities

Witness does not know how many of said debts were collected but thinks the larger part of them were collected. Hardison had been a merchant at New Haven and witness was his clerk and was present at the time of the transfer of the notes and accounts to ~~the~~ said Melvin & Taylor that the fact of this transfer was notorious in and about New Haven — that in fall of 1844 the said John Melvin sold to James Melvin an Interest in a Grocery Store owned by ~~by~~ said John & Witness for $342 or about that sum — and shortly thereafter conveyed the lots in New Haven that the said John subsequent to the aforesaid sales ~~in~~

married a widow Lady in White County and has since lived
her on the farm in her possesion a few miles from
New Haven - Witness does not know that said John
has owned any real estate since since the sales aforesaid
that in November 1844 the said James Melvin was in
moderate circumstancies he was a carpenter & was engage
working at his trade - owned a house and lot in
New Haven - he was also engaged running a Steam
Mill Witness never saw said James in posesion
of as much as $700 in money though he might have
had that much and been able to have paid the
$700 to his father the interest in the Grocery store
purchased by said James of his father he the
said James sold to another brother named Charles
Witness stated that said John & James Melvin have
both been considered good for their contracts does not
know the Lots in New Haven could have been sold
in 1844 for $700 that at that time money was very
scarce and property in New Haven could hardly be
sold at any price for cash - At the time of the said
conveyance by John to James ~~Melvin~~ the said
John Melvin had other real estate in and about
New Haven which ~~which~~ he about the same time
conveyed away apart of it to another son as witness
believes. John Melvin has had no real estate about
New Haven since that witness knows of. John Melvin at the
time of said conveyance was considered solvent and
has always since been responsible and paid his
debts - He lives in White County and has personal
property but wheather any real estate witness
does not know. James Melvin was an honest
and punctual man in his dealings. and his
Credit was always good witness at the time of

said conveyance would have given him credit for a thousand Dollars readily if he had required it,

Jesse Kirkham being sworn states that he was acquainted with Gabriel Hardison John Melvin and James Melvin he lived in New Haven in 1844 and previous to that time:- that he knew the facts by reputation that Hardison had placed notes due accounts in the hands of John Melvin & Merritt Factor to pay Bank Debts- but had no other knowledge on that subject- was acquainted with John & James Melvin in 1844 the latter is the son of the former- they were both solvent up to November 1844 Witness heard of the sales or conveyances by John to James in the fall of 1844 that said John has not owned any real estate since said conveyance to the knowledge of Witness. Subsequent to that time he married a widow lady in White County and has resided with her on the farm owned by her former husband- In 1844 the said James Melvin was in moderate circumstances, owned a house and lot in New haven was a carpenter and worked at his trade never knew of his having as much as $700 in cash- the lot and half lot in New Haven conveyed to him by his father dont know that lots could have been sold for more than $500, cash and Witness does not know that they could have been sold for that amount if they had belonged to Witness he would not have taken less at that time money was verry scarce and property in New Haven not in demand, or ready sale at any price. Witness does not know the lot of land said to have been conveyed by John to James Melvin

(8770-14)

James Melvin has never lived in or occupied the property conveyed to him in New Haven it has been occupied by Tenants but to whome the rents were paid witness does not know the said John and James Melvin were considered solvent and good for their debts previous to the fall of 1844 and both have paid their contracts since that time as far as witness knows and both are reputed to be honest men — James Melvin was an industrious hard working man and was considered good for any contract that he would make. Witness knows nothing about the conveyance from John to James or of any fraud connected therewith James as Carpenter helped to build the house that was on the lots conveyed by John to him but witness knows nothing about wheather John owed him for his said labor or not. —

The Record and papers of the two suits at common Law referred to in the Bill prove the Execution of one note to the President Directors &c of the Bank of Illinois by Gabriel Hardison & Slator David R Wood and John Melvin dated 10th February 1840 for $1169.37 credited so as to to reduce the amount to $1058,17 cts that suit was brought on that note against the makers process served on John Melvin 16th October 1844 on David R Wood 25th September 1844 and the appearance of parties being entered Judgment was obtained 14th November 1844 for $1394.60 cents on which execution was issued to the Sheriff of Gallatin County and returned no property found. Also the execution of another note to the said President Directors and company by Gabriel Hardison David R. Wood and Bennett

Hill and John Melvin on the 30th of April 1842 for $347.10 cents Suit was commenced on this note and process served on John Melvin on the sixteenth October 1844 and on David R. Wood and Bennett Hill on the 23th September 1844 and judgment entered 14th November 1844 for $96.70 cents on which execution was issued and returned no property.—

The testimony of witness produced & sworn on the part of defendants—

Robert Kirkham states that he has resided at New Haven since 1837 during which time he has been acquainted with defendants John Melvin & James Melvin the said James ~~was~~ was a House Carpenter and worked at his trade for a living previous to 1844 In 1838 or 9 he the said James and his partner Mr Gallaher built a frame House for John Melvin on one of the lots in controversy in this suit the cost of which witness supposes would have been seven or eight Hundred Dollars the House was subsequently occupied by said John as a residence until 1843 or 1844 when the wife of said John died and he ceased to keep House In 1844 the said James and Mr Gallaher & witness took a Lease on a mill above New Haven for five years and runn the Mill for about four months when witness sold his interest in the establishment to said Melvin & Gallaher for five Hundred Dollars and after that time said James Melvin and said Gallaher runn and used the Mill together for some years It requires but little capital to keep the mill in operation whilst witness had an interest in it, the income more than paid Expenses— In 1844 the said James owned a half Lot

in New Haven on which he resided previous to that time in a small frame Building — when he said James became interested in the mill he left New Haven and resided at the Mill — the said James was an industrious and economical man of moderate means but his credit was good and though sometimes embarassed he could always obtain credit because of confidence in his Honesty — Witness knows nothing about the sale of property in controversy at the time it was made — He was absent at that time — does not know but that said James might have raised as much as seven Hundred Dollars at that time out of his individual means. it could have been raised out of the partnership means dont think that property in dispute would have sold for much in cash in 1844 at the time of the sale money was scarce and property in New Haven not in demand nor easily sold for cash at any price dont know that the property would have sold for five Hundred dollars in cash but it was worth more and cost a great deal more property was not in demand and New Haven was going down at the time, the house rented for sixty dollars a year. Witness states that in 1841 Mr Hardison a Merchant of New Haven sold out his stock of Goods on credit and turned over the proceeds of sale to said John Melvin and Merrett Taylor to be collected and paid over to the Bank of Illinois on Hardison debts for which said Melvin & Taylor were securaties. Witness thinks the sale notes were made payable to Melvin & Taylor assignees — It was was generally known in and about New Haven that Hardison had placed means in the hands of said John Melvin & Merrett Taylor to pay the Bank debts and Witness thinks that James Melvin must have known

the facts or had some knowledge of them - Witness does not know any reason why said Jame Melvin should have paid $700 the property conveyed to him by his father the said James never occupied the property - he was a widower at the time of the conveyance as witness thinks and did not keep house - in the opinion of witness nothing could have been made by investing $700 in the property conveyed to said James for the purpose of renting witness thinks that John Melvin still owns a small tract of land in the neighborhood of New Haven not improved cannot state the value - some time after the conveyance of the property by said John to said James the said John married a widow in white county and has since resided with her on the farm in her possession before the marriage - Witness does not remember of any sale of property in New Haven for cash to the amount of $700 during the latter part of the year 1844 - dont know of any person buying property in New Haven in 1844 for speculation except Sheriden who purchased one or two lots dont know wheather James had means enough in 1844 to pay one thousand Dollars in cash for grocery and lots or not. at the time of said conveyance he had a legacy comeing to him from Kentucky

1877-42

Alexander Kirkpatrick states that previous to 1844 he sold some Groceries to defendant John Melvin for which said John failed to make payment that he obtained judgment against said John for about $170 on which execution was issued and returned no property found Witness believes that said John has had no property in his own name since he made the convey-ance to his son James- The lots in controversy in this suit were sold on execution against said James Melvin and when the Redemption was about to expire Witness agreed to furnish and did furnish the means to said James to Redeem from said sale said James agreed to become responsible for the debt of his father as well as to refund the redemption money and then executed a deed of trust to witness on the property to secure the said sums- subsequently the said James informed Witness that he had conveyed the property to his Brother Andrew before the date of the deed of trust but the deed to his Brother had not been Recorded = and subsequent to that again paid witness about the amount advanced to redeem the property from the sale on Execution and at his instance witness took the note of said Andrew for the debt originally due from the father with a deed of Trust from him to secure the amount which deed of Trust witness still holds in full force & unsatisfied- All of these transactions occurred since 1844 Witness states that he dont know what the house was worth in 1844 the building of it must have cost at least $700 dont think the seven hundred dollars for the house and lot & half lot would have been an exhorbitant price property has diminished some in value in New Haven in 1844 dont know what the property was then worth but would not have supposed it dear

at $700, think it might be worth that now but cant say so with any certainty – That in 1844 money was scarce and property in New Haven was not in demand and could not be sold readily for cash at any price James Melvin was a House Carpenter in moderate circumstances witness thinks that no one would have been likely to have purchased property in New Haven for cash in 1844 for any other purpose than to secure a place of residence the Village was not then growing or being improved but on the contrary was declining,

The forgoing pages contain a statement of all the Testimony in the case therein Entitled

S. S. Marshall (Seal)
Cir Judge

Order made in the Gallatin Circuit Court
At the February Special Term 1852

Ebenezer Z Ryan surviving
assignee of the Bank of Illinois
vs
John Melvin & James Melvin
In Chancery

On this day came the parties by their solicitors and this cause being heard upon bill answer Replication Exhibits and testimony taken in open court reduced to writing & filed as apart of Record herein and the court being sufficiently advised of and concerning the premises, does hereby order and decree that the bill herein be dismissed and that the complainant pay the cost and on the prayer of the said complainant Ebenezer Z Ryan an appeal is allowed herein from the forgoing decree to the supreme court upon his executing an appeal bond and filing

[270-404]

the same with the Clerk of this Court within sixty days in the penalty of one hundred dollars with James Dunlap or John T Jones as Security conditioned according to law,

Know all men by these presents that we Ebenezer Z Ryan and James Dunlap are held and firmly bound unto John Melvin and James Melvin in the penal sum of One Hundred Dollars for the true payment whereof we bind ourselves our heirs &c jointly and severally firmly by these sealed with our seals and dated this fifth day of April 1852 - the condition of the above obligation is such - that whereas at the special Term of the circuit court of Gallatin County Illinois held for the hearing of Chancery causes in February 1852 in a suit in chancery pending before said court in favor of said Ryan as survivor of Albert G Caldwell and Ebenezer Z Ryan assignees of the President Directors and company of the Bank of Illinois against the said John and James Melvin - It was ordered and decreed that the bill in said suit be dismissed and that said complainant should pay the cost from which decree an appeal was allowed to said complainant to the supreme court upon his executing an appeal bond with the said James Dunlap as security now in case the said Ryan shall prosecute the said appeal with effect or in case the decree aforesaid shall be affirmed shall pay all costs that may be awarded in the premises then this bond to be void otherwise to remain in full force and effect

E Z Ryan (seal)
by his attorney in fact
Wm Thomas

James Dunlap (seal)

Filed 28 day of
April 1852
J E Hall clk

[8770-40]

State of Illinois
Gallatin County } S.S.

I T. Wall Clerk of the Circuit Court for said County do certify that the foregoing twenty seven pages contain a full true and complete copy of the record & files of my office in the before entitled suit to wit the President Directors & company of the Bank of Illinois for the use of A. G. Caldwell and E. G. Rigan vs John Melvin & James Melvin, all of which appears from the records & files of my office

Given under my hand and the Judicial Seal of said Cir Court at Shawneetown this 28th day of April A.D. 1852.

T. Wall Clerk

Cost in Gallatin Cir Court $15.63
Copy of Record 8.50
$24.13

[8770 46]

State of Illinois S.S.

In the Supreme Court of said State
First Grand Division

Elanzer Z Ryan Surviving
Assignee of the Bank of Illinois

against } Appeal from
John Melvin & } Circuit Court of Gallatin
James Melvin } Circuit Court,

And the said Appellant by W Thomas his attorney comes and says, That in the proceedings of the said Circuit Court, and Record thereof, Manifest Errors have intervened to his prejudice, and he then sets down the following Errors apparent on the Record aforesaid.—

First; The Court Erred in not rendering a decree in favor of the complainant instead of defendants.

Second; The Court in not decreeing that the conveyance from John Melvin to James Melvin referred to in the pleadings was void in respect to the rights of complainant, and in not decreeing a sale of the real estate conveyed by said deed to be sold on the judgments at Law,— Wherefore he prays that the decree aforesaid be Reversed set aside &c

W W Thomas
for Appellant.

Order in Error

S W D Marshall
for McCord's

[8770-47]

E. J. Ryan
Assignee of
Bk of Illinois
vs } Copy
} Record

John Melvin et
James Melvin

Appeal from
Galleatin.

Filed the 17th Aug.
A. D. 1852
T. D. Preston
Clerk

Prepared

State of Illinois } ss.
Supreme Court } The People of the State of Illinois to the Sheriff
of Gallatin County Greeting:

Because in the record and proceedings & also in the rendition of the judgment, of a plea which was in the Circuit Court of Gallatin County before the Judge thereof between Albert G. Caldwell and Ebenezer G. Ryan Assignees of the President and Directors of the Bank of Illinois Plaintiffs and Henry Eddy and others defendants it is said that manifest error hath intervened to the injury of said ~~defendant~~ Plaintiffs as we are informed by their 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 Mt. 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 Mary E. Morris, Lorn Posey Thomas Morris Sarah Lawler Thomas A Lawler George Beck and President & Trustees of town of Shawneetown, Illinois that they 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 (the first day of the next term thereof) 2d Monday in November next to hear the records and proceedings aforesaid and the errors assigned if they 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 ~~plaintiff~~ defendants notice together with this writ

as we have heretofore commanded you

Witness the Hon. Samuel H. Treat, Chief Justice of Our said Court and the Seal thereof, at Mount Vernon this the 17th day of November, A. D. 1851

Finney D. Preston, Clerk
Supreme Court

Supreme Court

Wm Brown and
Ebenezer F Ryan
Assignees of &c
vs.
Henry Eddy, et al

Serving 7 " $3.50
9 Miles " .45
Retaining " 10
$4.05

Served by reading the within summons to Lorey Beck
12 December 1851 & by reading to Sarah & Louisa & Thomas R
Lawlor 13 December 1851 & by reading to Abner & Nathan &
Joseph Loyd dec. 23rd January 1852 & to Peter Baker 23 August 1852
& to Laura M. Mary Lawrence Dawson Lorey 22nd October 1852 in the
presence of Sophia Dec and Richard Rice sworn and
acquainted men of my County

J. N. B. Rogers Sheff. E.C. Ala

In Supreme Court of Illinois
First Grand Division

Abbott & Caldwell & Ebenezer Z Ryan
Assignees of the President Directors
Directors &c of the Bank of Illinois
against
John D Richeson, Orrel Poor,
Peter McMurchy, Joseph Logsdon,
and Peter Baker, the President and
Trustees of Shawneetown, -
William Limerick, Washington
Limerick, Mary A Limerick,
Orrel Poor, William A Walker,
John I Hardin & Margaret his wife,
Harrison Wilson, Edward I Nicholson,
John T Morris, Thomas Morris,
Mary E H Morris, Sarah Ann &
Thomas R Lawler, John Marshall
Senr, John Marshall Jr, John D Richeson,
Amos Scabott & John McKee Peoples.
The clerk will issue an alias Sum's
upon above petition, - and endorse to
be served on John D Richeson, Orrel
Poor, Peter McMurchy, Joseph Logsdon
and Peter Baker, as President and
Trustees of Shawneetown,
William Limerick, Washington Limerick,
Thomas Morris, Mary E. H. Morris,
Sarah Ann Lawler & Thomas R Lawler,
the other defendants having been served.

B. S. Edwards &c
for plff.

[8770-52]

Caldwell & Ryan
Assignees of Bank
of Illinois
vs } order for
} Alias Summons.
Trustees of Shawneetown

Filed the 18th
Augt. 1842

A. D. Preston
Clk

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Gallatin **County,**

Because in the record and proceedings, and also in the rendition of the plaintiff in a suit in chancery ~~judgment, or decree~~ which was in the Circuit Court of Gallatin County, before the judge thereof, between Albert G Caldwell and Ebenezer Z Ryan Assignees of the President Directors & Company of the Bank of Illinois as complainants, and the President and Trustees of Shawneetown and others

defendants it is said that manifest error hath intervened to the injury of said Caldwell & Ryan Assignees as aforesaid.

as we are informed by their complaint, the record and proceedings of which said ~~judgment~~ plaintiff, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. 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 W Richeson, Orval Pool, Peter McMurchy, Joseph Lossdon and Peter Baker as President and Trustees of Shawneetown, and William Limerick, Washington Limerick, Mary A Limerick, Orval Pool, William A Walker, John S Hardin and Margaret his wife, Harrison Wilson, Edward S Nicholson, John G Morris, Thomas Morris, Mary E H Morris, Sarah Ann Lawler, Thomas R Lawler, John Marshall Jr John Marshall Senr, John W Richeson, Amos Seabott, and John McKee Peaples

that they be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if they 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 defendants notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this 18th day August in the year of our Lord, one thousand eight hundred and fifty-two.

F. D. Preston *Clerk of Supreme Court.*

[8770-51]

This summons to be served on defendants John D Richeson, Orval Pool, Peter McMurphey Joseph Logsdon and Peter Baker, as President and Trustees of Shawneetown — William Limmicke, Washington Limmicke, Thomas Morris, Mary E Hallowis, Sarah Ann Lanslin and Thomas R Lanslin, the other defendants having been served with writs herein.

F. D. Preston Clk
Cup. Ct.

served by reading the within summons to Orval Pool and Peter McMurchy in the presence of John Doe and Richard Roe good and lawful men of my county, the others John D Richeson, Joseph Logsdon and Peter Baker served upon with another summons 20th day of October AD 1852

Jos B Barger Shff. G. C. Ills

Coleman & Lyon
Attorneys for
Plff in the
vs
Trustees of Shawneetown

Filed 20 day of October 1852

Serving 2 pers 1.00
Returning 1.10
Jos B Barger Shff. G. C. Ills

Shawneetown Sept 10, 1852 T.H.

STATE OF ILLINOIS, SS.
IN SUPREME COURT, FIRST GRAND DIVISION,

Ebenezer Z. Ryan surviving Assignee of the President, Directors & Co, of the Bank of Illinois,
Against
Writ of Error from Gallatin, the President and Trustees of Shawneetown and others.

William Limerick, Thomas Morris, Mary E. H. Morris, defendants in this cause, are notified, that a Writ of Error has been sued out in this cause, and Summons issued against them directed to the Sheriff of Gallatin County, returnable on the second Monday in November next at a term of the Court then to be holden at Mount Vernon, at which time they are requested to appear before said court, and unless they do so appear, Judgment will be entered against them by default.

F. D. PRESTON, Clerk of said Court.
Mt. Vernon, August 18, 1852.—n5-4t.

State of Illinois Gallatin County } ss.
The undersigned publishers of the "Shawneetown Argus" a public Newspaper published Weekly in Shawneetown Gallatin County Illinois, do certify that the annexed notice, in the case of Ebenezer Z Ryan surviving Assignee of the President Directors &c of the Bank of Illinois, against The President and Trustees of Shawneetown Bottoms, of the pendency of a Writ of Error in Supreme court, was published in said paper on the 27th day of August 1852 and the publication thereof continued Weekly until the 5th day of November 1852.

Hutchinson & Nelson

Publication fee $3 50
paid G W Thomas.
J G Hutchinson

[8770-52]

Ryan Sawyers
Assignee of
B&R of Illinois
4 } See Mem. Court.
} Mar. 1852.
Trustees of Shawneetown

Notice to Vendees

State of Illinois,

In Supreme Court.

Fourth Division

Eleanor J. Ryan surviving
Assignee of the Bank of Illinois
against. Writ of Error from Gallatin
The President and Trustees of
Shawneetown Bottoms

William Thomas being sworn states
that he has been informed and
believes that William Limerick
Washington Limerick, Thomas Morris,
Mary E. M. Morris, ~~Sarah Limerick~~
~~& Thomas R. Limerick~~ her husband.
defendants in the foregoing cause
do not reside in the State of
Illinois and that their place of residence
is unknown to him. W. M. Thomas

He further states, that he
is the Trustee of the Bank
of Illinois, and as such,
it is his right and duty
to prosecute the foregoing
suit, in the name of
said Ryan surviving
Assignee &c

Sworn to and subscribed before
me this the 18th day of August
A. D. 1853

F. D. Preston, Clk

[8776-53]

Supreme Court

Ebenezer J. Ryan
Surviving assignee
of the Bank
of Illinois
vs
Mary Eddy, et al

Affidavit for
Publication

Filed 18th Augt
1832
S. D. Preston, clk

State of Illinois. S.S.

In the Supreme Court of said State
First Grand Division

Abbott G. Caldwell & Ebenezer J. Ryan
Assignees of the President, Directors &c
of the Bank of Illinois
against
upon Writ of Error from
Circuit Court of Gallatin Circuit Court.

The President & Trustees of Shawneetown,
William Limerick, Washington
Limerick, Mary A. Limerick,
Brook Pool, William A. Walker,
John S. Harvin and Margaret his wife
Harrison Wilson, Edward S. Nicholson,
John J. Morris, Thomas Morris,
Mary E. A. Morris, Sarah Ann, and
Thomas R. Lawler, John Marshall
Senior, John Marshall Jr, John
A. Richards, Amos Scabott,
and John McKee Peaples,
And the said Caldwell & Ryan
Assignees as aforesaid, by their
Attorneys, come and say, that in
the Record and proceedings of the said
circuit court of Gallatin County.
Manifest Errors have intervened
and occurred to their prejudice,
for which the decree ~~of~~
dismissing the bill in this cause
should be Reversed, and they have
set down, and assign the following ~~.~~ Errors.
First, – The Court Erred in sustaining
the demurrer to the bill aforesaid,
and in dismissing the Same.
Second; The Court Erred in not

[5770-51]

overruling the demurrer to the bill aforesaid, and requiring the defendant to answer to the same,
Third The court erred in dismissing the Bill without prejudice.
Wherefore they pray that the decree aforesaid be reversed and for nothing held.

Ben S Edwards for
Plffs.

And the said William Limniek, Washington Limniek, Mary A. Limniek and Orville Pool, and Joshua D. Rickerson by W. B. Peates his counsel comes & says that in the record & proceedings & in the rendition of judgment aforesaid there are no such errors as set forth and alledged – Wherefore &c.
J. Olney & W. B. Peates for Limniek & Pool & Rickerson

And the said William A. Dockes, Edmund J. Nicholson, John T. Morris, Thomas Morris, ~~Mary E.~~ ~~M.~~ Sarah Ann & Thomas R. Lawler, John Marshall Senr. & John Marshall, Jr. and John McKee Peeples by Jno Olney their counsel comes & says that in the record & proceedings & in the rendition of judgment aforesaid there are no such errors as set forth and alleged – Wherefore &c

Olney Solr.
& S S Marshall, for part

And the said Defts Mary J. Eddy, Elizabeth R. Eddy Alice B. Eddy, John M. Eddy, Frances M Eddy John Duncan Marshall, Sarah Marshall (now Sarah Wilson) Annie Marshall, (now Annie Redman)

Sarah Marshall sr. Mary E. H. Morris & Harriet Son Wilson by S. S. Marshall their counsel come and ~~defend~~ say that in the Record & proceedings and the rendition of the Judgt aforesaid there are no such errors as set forth and alledged. Wherefore &c.

S. S. Marshall Col.

Caldwell & Ryan
Assignees of Bth & Ogle
Illinois

vs Assignment of Errors

H. Eccles & others

No