


No. 177

Supreme Court of Illinois

Thomas and Adam Allison

vs.

Thomas P. Clark

(379)  7

State of Illinois Morgan County. page 1
Plas held before the Honorable Samuel D. Lockwood one of
the Judges of the Supreme Court of the State of Illinois
and presiding Judge of the circuit court of Morgan
County, at a Special Chancery term of said court
began and held at the courthouse in the Town
of Jacksonvill on Monday the Eighth day of
November in the year Eighteen Hundred & Thirty,
Thomas P. Clark Complainant
against
Thomas Allinson, Adam Allinson,
Amos Hoage, Wm. Ellage &
Robert Kennedy Defendants
In Chancery.

Be it remembered that on the fifth day of
January Eighteen Hundred and twenty nine
the said complainant by his counsel, filed in
the clerk's office of said court his bill of
complaint in the words following
"State of Illinois Morgan County, Circuit Court
April Term 1829.

To the Honorable Samuel D. Lockwood Judge of the
first Judicial circuit in and for said State and
County in Chancery sitting - Humbly complaining
to your Honor your orator Thomas P. Clark sheweth
that on the sixteenth day of February in the year of
our lord 1826 your orator purchased of Adams
Allinson and Thomas Allinson a certain tract of
land situated lying and being in the State and
County aforesaid, and being the North East fractional
quarter of Section two in Township fourteen
North in Range twelve West in the District of
Springfield, and at the time of the purchase of said
land by your orator said Adams & Thomas gave
and executed to your orator a bond for a deed,

which bond is herewith filed marked A and prayed
to be made a part and parcel of this bill, by which
bond among other things it is provided and stipulated
that the said Thomas and Adams Allimon should
make to your orator a good and lawful deed
of conveyance for said land on or before the last
day of February 1827 provided your orator should
on that day pay to said Thomas and Adams
Allimon the full sum of Two Hundred and
seven dollars lawful money of the United States
of America, your orator says that on the day of
the purchase aforesaid, your orator executed
to the said Thomas and Adams Allimon his
promissory note signed with his proper name
for said sum of Two Hundred and seven
dollars which note was made due & payable
to the said Allimon on or before the said last
day of February 1827 which note the said Thomas
and Adams accepted and took from your
orator, your orator further says that on the
said day of purchasing said land he
executed to said Allimon a certain other
note of hand signed with his proper name
for the sum of thirty one dollars & forty cents, as
interest upon said two hundred and seven
dollars from said 16th day of February A.D. 1826
until the last day of February 1827. Your orator
further says that he was ready to pay to the said
Thomas and Adams Allimon said note of hand for
two hundred and seven dollars, according to the
tenor and effect thereof, and offered so to do on the
said last day of February 1827, and your orator
says that on the 26th day of May A.D. 1827 your
orator did pay to Adams Allimon for himself

and Thomas Allinson said sums of Two Hundred ³
and seven dollars which will now fully and at
large appear by a reference to said note of hand
for said Two Hundred and seven dollars with
Adam Allinson receipt thereon for the money
mentioned in said note which note and receipt
is herewith filed marked B and prayed to be
taken as a part and parcel of this bill, and
your orator further says, that on the 26th day
of June A.D. 1827. your orator paid to Adam
Allinson said sum of thirty one dollars and
forty cents which will now fully and at large
appear by reference to the note, herein before
mentioned given by your orator to said
Allinson for said money together with Adam
Allinson receipt thereon for all of said
money in said note mentioned, which note
and receipt is herewith filed marked C and
prayed to be taken as a part and parcel of
this bill, your orator further says that he did
in the year 1826 and 1827 pay to James Buckley
who claimed to have made the improvement
on said land) the sum of Two Hundred and
forty nine dollars at the special instance
and request, of said Allinson and for said Allinson
the sum heretofore paid to said Allinson amount
to Four Hundred and Eighty Eight dollars, your
orator further says, that at the time of making
the purchase of said land, your orator took
peaceable possession of the same, according to the
express agreement of said Allinson which
land is still in the possession of your orator.

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your orator further says that according to the
bond aforesaid, given by said Thos & Adams Allinson
to your orator said Thos & Adams was bound to make
to your orator a deed to said land whenver the
said sum of Two Hundred and Seven dollars
should be paid, whether the same was paid
on the last day of February 1827 or any other
time, therefore the said Allinson was bound to
make to your orator a deed for the same on
the 26th day of May 1827 which was the time said
Allinson received said money as appears by
the receipt of Thos Allinson upon the note for
said money, but so it is, said Thomas and
Adams Allinson did not make to your
orator a deed for said land on the said
26th day of May 1827 nor did they do the same
at any other time, but neglected and refused
so to do, but they the said Thomas & Adams
continuing to receive and defraud your
orator out of said land together with all the
money by your orator to them paid for the same, did
fraudulently and unjustly as your orator is informed
and believes convey said land to Amos Dodge and
Uriah Ellidge who also fraudulently continuing to
cheat and defraud your orator accepted a deed
for the same from said Allinson, with a full
and perfect knowledge of your orators former
purchase and claim and of the giving of the
bond aforesaid by said Allinson to your orator,
your orator further charges that said Dodge
& Ellidge obtained said deed for said land
by fraud receipt and circumstances, conspiring
and conspiring with the said Thomas & Adams
and others to your orator unknown, to cheat
and defraud your orator out of said land,

your orator further charges that the said Hodge & Ellidge continuing as aforesaid has conveyed said land to Robert Hunday as your orator is informed and believes, which Robert Hunday purchased the same and accepted a deed from the said Hodge & Ellidge for the purpose of defrauding and deceiving your orator and with a full knowledge of your orators former purchase and claim, your orator further charges, that said sale and deed if any there was was made to said Hunday for fraudulent purposes and for the express purpose of defrauding your orator in the premises and for no other purposes: Now your orator prays that the said Thomas Allinson, Adams Allinson, Amos Hodge, Eusebio Ellidge, and Robert Hunday may be made defendants to this bill, that a writ of Subpoena issue and that each of said defendants be compelled to make true and perfect answers upon their corporal oaths, as to all and singular the matters and things set forth in this bill, the same as tho' they were again herein after repeated by interrogatories: and more particular that the said Hodge & Ellidge be compelled to answer and say, whether they or either of them did not know that your orator had purchased said lands before they purchased the same from said Allinsons whether Thomas or Adams Allinson or some other person did not tell them or either of them, that your orator had purchased said lands, if not what said Allinsons did tell them relative to said purchase, whether said Hodge did not heretofore reside on said land as a tenant to your orator and whether he did not then understand and

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believe your orator to be the owner of said lands by
purchase from Adams & Thomas Allinon or some
other person, whether they did not know that your
orator was in possession of said land at the time
they purchased the same of said Thomas and Adams
Allinon, and if they did not know, that your orator
was in possession of said lands and that the said
Robert Kennedy, may answer and say, what object
and for what purposes he accepted a title to said
land, whether it was a good and bonafide sale
from said Hoage and Ellage to him, and whether
he did not know at the time he purchased the
same land, that your orator had before that
time purchased the same from the said Thomas
and Adams Allinon, if he was not told, by the
said Hoage and Ellage or either of them or
by any other person, that your orator had a
claim to said lands, if he was not notified
by Misses Clarke wife to your orator before he
accepted a deed for said lands, not to
purchase the same because your orator had a
claim to said lands, if not in those words
what did Misses Clarke tell said Kennedy
relative to said matter, if he did not know that
your orator was in possession of said lands, at the
time he purchased the same - your orator further
prays that the said Thomas Allinon, Adams
Allinon, Amos Hoage, Uriah Ellage and Robert
Kennedy may each of them be compelled to set out in
their answers and exhibit to your honor all and
singular their title papers relative to said land
how and by what right each of them claim to
own and to have owned the same, and if it
should appear upon the final hearing of this
cause, that the legal title to said lands

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should be in the said Robert Kennedy, Amos Hoag
or Enriah Ellidge, or either of them, and that they
or either of them purchased said lands, with a
knowledge of your orators former purchase and
claim, that then in that case, they in whom
the legal title shall be found, shall be deemed
to surrender to your orator and convey to him
said lands, but if it shall appear that the
legal title to said lands still remains in
Thomas and Adams Allinon, or either of them
then that they or the one in whom the legal
title shall be found, shall be deemed to
surrender and convey to your orator the title
to said lands, but if it shall appear that the
legal title to said land shall be in any other
person or persons except the said Thomas and
Adams Allinon and that said persons took
and purchased said lands without a knowledge
of your orators former claims and purchase
there and in that event, your orator prays that
there may be a decree entered against said
Thomas and Adams Allinon in favor of your
orator for the money paid for said lands,
to said Allinon amounting to Four Hundred
and Eighty Eight dollars together with the interest
thereon from the day the same was paid
until the entering of said decree, and that
your Honor will also decree that said
Thomas and Adams Allinon shall pay to
your orator the sum of One Hundred dollars
for money laid out and expences upon
said lands, and your orator prays such
other and further relief as upon a final hearing

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of said cause it may appear he shall be
entitled to, and as in duty bound will pray
do Jan 5th 1829.

Thos P Clarke by
M. M. Cornell Solicitor

Exhibit. A.

State of Illinois Morgan County
Know all men by these presents that we Thomas
Allinson and Adams Allinson are and
firmly bound unto Thomas P Clarke in the
penal sum of Four Hundred dollars lawful
money of the United States of America, which
payment well and truly to be made we
bind ourselves and lawful Representatives
jointly and fully, signed and sealed with our
Seals this 16th day of Feb. AD 1826.

The condition of the above bond is such that if
the above named Thomas P Clarke does pay
or cause to be paid to the above named
Allinsons Two Hundred and Seven dollars
lawful money ~~of~~ of these United States of
America on or before the last day of February
1827, then if the above S^d Allinson shall
make or cause to be made a good and
lawful deed to the North East fractional
quarter of section two in Township fourteen
North of Range Twelve West in the District
of Springfield and State of Illinois, such
deed to be made at the time, that the
above said Clarke pays to the said Allinsons
the above named sum of money, then the
above bond is to be void and of no effect
otherwise to be and remain in full force
and virtue in law. In Witness hereof we do
set our hands and seals the date above written
Thomas Allinson (Seal)
Adams Allinson (Seal)

State of Illinois Morgan County

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Personally came Elic Williams before me the undersigned an acting Justice of the peace in and for said County, and after being duly sworn deposed and says, that he drew this bond and was present when it was executed, and that he knows that Adam and Thomas Allimon did execute the same at the same time said bond bears date and that they took a note from Thomas P. Clark for the money mentioned herein which note bore date with this bond and was due on the last day of February 1827. as this deponent believes

Elic Williams sworn to and subscribed before me at the County aforesaid this 26th day of December 1828. John Bristol Justice of the Peace.

Recorder Office Jacksonvill Morgan County Illinois 26th December 1828.

I hereby certify that the foregoing bond and affidavit of Elic Williams have this day been duly recorded in this office in Book B page 77.

Dennis Rockwell Recr

B.

\$207.00. On or before the last day of February 1827 I promise to pay to Thomas and Adams Allimon or Order Jno. Rumsdane and seven dollars & cents for value received Morgan County Illinois 16th Feb 1826.

Thos P. Clark.

This note of hand is settled in full this 26th May 1827.

Adams Allimon

\$31.40. On or before the thirtieth day of April next I promise to pay to Thomas and Adams Allimon or order thirty one dollars and forty cents

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for value received Morgan County Illinois 16th Feb
1826

Thos P Clark

Received payment in full for this note of hand
Jan 26 1827. Adam Allmon

upon the filing of the bill and exhibits aforesaid
the following summons was issued.

State of Illinois Morgan County. S.S.

The People of the State of Illinois to the Sheriff of
Morgan County Greeting, we command you
that you summon Thomas Allmon, Adam
Allmon, Amos Hoage, Uriah Ellage, & Robert
Hamaday, if they be found in your county,
to be and appear before our Judge of our circuit
court for the County of Morgan, at the next term
thereof, to be holden at Jacksonville in the
County aforesaid, on the third Monday in the
month of April next, to answer a bill in
Chancery exhibited in our said court by
Thomas P Clark against them the said Thomas
Allmon, Adam Allmon, Amos Hoage, Uriah
Ellage, and Robert Hamaday, And have you
thus done this writ. Witness the Hon Samuel
P Lockwood Judge of our said court at
Jacksonville, this 23rd day of January in the
year of our Lord 1829 and of the Independence
of the United States the fifty third year
Dennis Rockwell Clerk

Sherriff's return,

Thos Allmon, Amos Hoage, Uriah Ellage, &
Robert Hamaday Sum'd on the 25th March 1829
by leaving a copy of the summons by me
Saml. Mathews Sheriff

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And Afterwards at the April Term 1827 of the
said circuit court, the defendant Thomas
Allimore filed the following answer,

The separate answer of Thomas Allimore to the bill in
Chancery filed against himself & others in the
Circuit Court of Morgan County by Thomas & Clark
his defendants saving and reserving to himself all manner
of benefit of exception to the said bill and the errors
and inconsistencies therein contained for answer
there to or so much thereof as he is advised is material
for him to answer unto, answers and says, that true
it is this defendant and his brother Adams Allimore
executed and delivered to the complainant the
bond exhibited by him in his bill, this defendant
denies that the complainant paid the sum of
money stipulated to be paid, in, and by, said bond
this defendant states that the land was intended by
Adams Allimore also; whilst the same was
claimed and occupied by one James Buckley
the complainant may have purchased the claim
of said Buckley after the land was entered by
said Adams; but this defendant states that the
said Adams was entitled to the land and
improvement thereon, at the time the complainant
made the purchase of Buckley, if he
purchased at all, this defendant further states that
so far from its being true, that the complainant
paid for the land at the time stipulated;
that after the expiration of the time, he executed
another note to this defendant and his brother
on the 26th May 1827 for the payment of the money
and at that time the note given for the land
which the complainant alleges he paid, was

given up, but not paid, except by the substitution
 of another note, and at the same time it was
 understood that the bond exhibited by the com-
 -plainant was cancelled, and that it was no
 longer obligatory; and another bond was given for
 the conveyance of the lands, the precise conditions
 of which this deft. cannot state, but it was well
 understood, that if the money then due for the
 lands, was not paid on or before the first of
 January 1828, that the lands belonged to the said
 Adams. And this defendant believes that the
 bond given for the conveyance of the lands
 was written pursuant to the understanding
 this deft and his brother Adams had paid their money
 for the lands, this defendant states that he believes
 the complainant has in his possession the
 bond last mentioned to him for the conveyance
 of the lands, and he has designedly withheld that
 bond, the complainant did not pay the money
stipulated to be paid, and the lands became
 absolutely the estate of the said Adams, and
 the complainant being indulged for some
 time for the payment of the money and failing
 to make the payment, the lands was sold
 and conveyed to Amos Dodge & Uriah Elledge,
 but this defendant denies that there was any fraud
 in this sale, or that any was designed to be practiced.
 The complainant had failed to pay the purchase
 money for the lands, and the land in consequence
 thereof became forfeited to the defendant Adams
 by the terms of the contract; and the land was
 sold and conveyed absolutely and bona fide
 this defendant denies that said clerk ever
 paid any part of the purchase money for

Said land at any time or place, he denies that the complainant paid the note which he has exhibited, but that note was given up, because it was well understood by the parties, that when that note was due, the land became forfeited in the event of a failure to pay it, and further indulgence was given him to pay for the land, a new note was given and a new bond was given for the conveyance of the land, upon condition that the money was paid by the 1st of January 1828 but if the money was not paid the land belonged to the said Adams - This defendant denies that the complainant is entitled to any share for money paid for the land, or for money laid out and expended upon said land, the complainant having received the profits arising from the land, has, as this defendant supposes, been amply compensated for any improvements he may have made upon the land, at all events, the bargain was a visiting one, and the complainant has no right to complain, since the commencement of this suit the defendant Robert Burdway has conveyed his title to the land to this defendant and his brother Adams Allmon, by a deed bearing date the Eleventh of April 1829. This defendant denies that the complainant ever offered to pay the purchase money for said land, either on the last day of February 1827 or at any other time, This defendant denies that the complainant ever paid James Buckley any thing for the land at the request of this defendant or he ever paid Buckley any thing for said land

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or his brother, and this defendant avies that he is
bound for the same, this defendant avies that he was
bound to convey the land to the complainant
unless the purchase money was paid at the time
stipulated, but it was expressly understood
(whether that understanding was expressed in the
last bond or not) that if the money was not
paid, that the land belonged to this defendant
brother. This defendant having fully answered
the said bill, avies all fraud combinations,
and he prays, upon a hearing of this cause
that the complainant may be compelled to
surrender the possession of the land to this
defendant his brother Adams, and be com-
pelled to deliver up the bond exhibited, and
the bond which he now holds in his possession
and withholds from the court, This defendant
avies all the allegations in the bill not
hence expressly admitted, and requires full
proof of all the allegations in his bill not
hence admitted.

The said Thomas Allimore further answering the said
bill of complaint states, that on the 15th day of
April 1824 a patent issued to the said Adams
Allimore from the United States, for the said tract
of land in the bill claimed, which patent is
now in the possession of this defendant and here
to the court shown. The said James Buckley had
possession of the lands when the patent was
obtained. According to the contract made with
him the land became forfeited to the said
Adams, before the complainant ever had any
thing to do with the lands, afterwards the
complainant obtained possession of the land
under the said Buckley. It was agreed at

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the time the bond was executed which the complainant
has exhibited, that he should have the land upon
paying the sum of money stipulated in the
bond. The complainant failed to make the
payment agreed on as is herein before stated
and after the failure to pay, the understanding of
the parties was, that the land belonged to the
said Adams. It was then agreed that said
Adams should have further time to pay the money
and it was then expressly understood and agreed
that if the complainant paid for the land by
the 1st of January 1828, that he should have the
land, but if he failed to make the payment
by the time limited the land was to belong to the
said Adams, and a note was executed to the
said Adams and this defendant for the sum of
One thousand and seventy nine dollars and
seventy six cents, payable by the said first
day of January 1828, which note is now in the
possession of this defendant, and remains
wholly unpaid, a copy of which is herewith filed
as part of this answer, and at the same time
a bond as herein before stated was executed
and delivered to the said complainant
by which he was to be entitled to a conveyance
if he paid the money by the time limited.
The complainant failing to make the payment
according to the agreement aforesaid; this
defendant and said Adams sold & conveyed the
land, to the defendants Hoag & Ellsage, and
they afterwards sold the land to the defendant
Robert Kenan, and this defendant is informed
and believes, that the said Ellsage & Hoag or
one of them delivered the possession of the land

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to said Kinniday peacefully and quietly, without any
force or fraud, the said Kinniday remained in
possession of the land for about six weeks. When
the said Blake commenced a proceeding against him
for a forcible Entry or forcible detainer of the premises
before two Justices of the peace, and obtained a
Judgment against the said Kinniday, and
was about to turn him out of possession, The
said Kinniday as this defendant doth verily
believe, was advised by the Justices of the peace
who tried, and by one Murray McCormick who
was then acting as the agent or attorney of the
said Blake, that he must pay the costs of
the proceeding and deliver up the possession or
he would be turned out immediately, and that he
had no way of getting rid of the Judgment
which had been rendered, and the said Kinniday
as this defendant believes, being ignorant of
the law, and ignorant of his rights in the case
being a stranger in the country, and acting
under a belief, that the said Justices of the
peace and the said McCormick had represented
the law as it was, and agreed to deliver the
possession of the premises and to pay the costs
and he afterwards did pay the sum of twenty
three dollars six cents costs, and there for the
purpose of preventing the complainant from
turning him and his family out of the house
at an ineluctable season of the year, he
the said Kinniday received a lease from the
said Blake or his agent for the horses and
perhaps the enclosed ground lands and thereby
acknowledged himself the tenant of said Blake
and agreed to deliver peacefully possession of the
premises by the first day of April 1829.

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This defendant states that after the said Kunday had
then been seized, defrauded, and compromised out of
his rights, he was advised of the imposition but too late
to remedy the consequences resulting therefrom.
This defendant further states that the said Robert
Kunday on the 11th of April 1829 sold and conveyed
the said lands to this defendant and his brother
as herein before stated, and as will more fully
appear by reference to the deed of conveyance
now had to the court shown (a copy of which will
be filed) the said Kunday has continued in the
possession of the land ever since he first obtained
the possession except for a short time, after the
time he had agreed to deliver the possession to said
Clark, he left the premises and notified the
wife of the complainant that he had done so,
but shortly after, perhaps about twenty four
hours, he resumed the possession and now
holds the land as the tenant of this defendant
and his brother Adams, but this defendant
does apprehend and verily believe, that the
said Clark or his attorney will very shortly,
commence another suit against the said
Kunday for the possession of the land, as
threats were made to put him out of the
possession as soon as his lease from the
complainant had expired, This defendant
now holds the legal title to said land and
as he conceives a legal right to the possession
and he is bound to defend the possession in
behalf of the said Kunday, and for the purpose
of preventing litigation and a multitude of
law suits in relation to the land in controversy

This defendant prays that this Honorable Court will award and grant an injunction enjoining and restraining the said Thomas Blake from entering upon said land, or taking possession of the same, either by force, or by any proceeding against the said Kunday, and enjoining him from all proceeding upon the instrument of writing given to him by the said Kunday, binding himself to deliver possession until the final hearing of this cause, and also enjoining him from further proceeding upon the Enforcement of the Justice of the Peace before referred to, And upon a final hearing of the cause, the defendant prays for a decree against the complainant for the said sum of \$23.06 1/4 cents costs, this defendant having paid that money most wrongfully, and grant all such other further relief as to equity may belong

Thomas Allinor

The said Thomas Allinor made oath before me that the statements made in the foregoing answer are made of his own knowledge and true, and those made from the information of others he believes to be true, Given under my hand this 24th day of April 1829. Lemuel D. Lockwood

Endorsed.

Filed 24th April 1829. D. Rockwell Clerk
 The answer of Robert Kunday was filed on the 24th April 1829. the answer of Uriah Ellings was filed on the 25th of April 1829. and the answer of Amos Hodge was filed on the 28th of May 1829. ~~with~~ which answers are now

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are filed, but ~~are~~ omitted in this copy by the direction
of the appellants attorney.

At the April term 1829 of the circuit court an order
of publication was made against the defendant
Adams Allmon & the cause continued,

At the September Term of the said circuit court
in the year 1829. the cause was again continued,
but during the term and on the 18th of September 1829
the defendant Adams Allmon entered his
appearances and moved the court to grant an
injunction forbidding and enjoining the
complainant from all further proceeding in
an action of forcible detainer commenced by
him against Robert Herday to obtain possession
of the same land in controversy in this suit,
and on the ~~Eleventh~~ ^{seventh} of ~~April~~ ^{September} 1829 the said
Adams Allmon filed the following answer,
"The separate answer of Adams Allmon to the bill in
Chancery filed against himself & others in the
circuit court of Morgans County by Thomas P. Clark
This defendant having and moving to himself
all benefit of exception to the said bill and the
imperfections thereof, for answer to so much
thereof as he is advised is material for him
to answer unto answers and says, that him
and his co-defendant Thomas, and about the
time stated in the complainants bill
agreed to convey to the complainant the tract
of land described in said bill, provided he
paid to them the price agreed on for the land
at a time agreed on - and he supposes that

the bond or paper filed by the complainant is the
 bond which was given for a conveyance of the
 land, after the expiration of the time limited
 for the payment of the purchase money the
 complainant paid the interest on the
 purchase money, and took up the note
 which he had given for Two Hundred and
 Seven dollars and gave another note for
 the amount then due, which was for
 nearly the same sum as the former note
 of Two Hundred and Seven dollars; and it
 was thus agreed that said Clark should
 have further time to pay the money due
 and it was the express understanding, that if
 Clark paid the money by the time limited for
 payment (and this defendant does not now
 recollect the time) that he should have a
 deed for the land, but if he failed to make
 the payment within the time aforesaid, the
 land was to belong to this defendant and
 said Thomas, and they were not bound
 to convey the land, the express understanding
 being, that if the money was paid, the land
 was to be conveyed, if the money was not
 paid in the time limited Clark was to
 have no claim upon the land, nor
 right to a deed of conveyance, this being the
 agreement this defendant and said
 Thomas executed and delivered to the
 said Clark another instrument of writing
 which was intended to express and state
 the agreement between the parties as
 herein stated.

This defendant has not seen that bond for a considerable time, but he believes that it does contain the stipulations of the contract as herein set out - This defendant says that if the complainant was ready to pay the note of Two Hundred & Seven dollars at the time it became due, this defendant had no knowledge of the fact, and he denies that the complainant ever offered to pay him said sum, this defendant denies that said Clark did on the 26th day of May 1827 or on any other day pay him the said note of Two Hundred and Seven dollars, that note was delivered up as before stated, and further time given the complainant to pay the amount due, and another note given at the time of the last agreement, which note is now in the possession of the defendant Thomas and unpaid, and has been due for a long time, This defendant does not know of his own knowledge, that the complainant ever paid James Buckley any thing for the improvement upon said land, and he denies, that he ever requested the said Clark to pay Buckley for the improvement or for any thing else, he denies that the complainant ever paid said Buckley any thing for, or on account of this defendant, and he denies that the complainant has any just claims upon him for money paid Buckley the complainant having failed to make the payment required and agreed on, the bond became forfeited to the defendant and said Thomas, and the bond which they had given for a conveyance became inoperative, the land was sold by this defendant and

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and said Thomas and conveyed to the defendants
Hodge & Ellidge, in making this sale no fraud was
practiced upon the complainant and now
instanced, the said Hodge & Ellidge afterwards
sold and conveyed the land to the defendant
Robert Kennedy and since the commencement of
this suit the said Kennedy sold and conveyed the
land to the said Thomas and the defendants.
This sale and conveyance was made in the absence
of this defendant. This defendant claims that he has
been guilty of any fraud in respect to the said
lands, this defendant believes that said Clark
has had possession of the land, since the first
contract herein referred to, until about the month
of — 1829. When the said Thomas Allmon
took peaceable possession of the land as he had a
right to do and delivered the possession of the said
land to Robert Kennedy as the tenant of this defendant
and said Thomas Allmon - said Kennedy has
had possession of the land ever since, this defendant
further says that since the commencement of this suit
the said Clark instituted a proceeding before the
Justices of the peace of Forcible detainer against the
said Robert Kennedy for the same tract of land
claimed in the bill, and obtained a judgment
against the said Kennedy, from which judgment
an appeal was taken to the circuit court of
Morgan County by the said Kennedy and the cause
is now depending in the said court, the said
Kennedy being the tenant of this defendant and
said Thomas, this defendant is advised that he has
a right to defend the right of possession of the land
~~defendant~~, this defendant charges & states that
the complainant has no right to said land,

that the proceeding before the Justices aforesaid was
 founded upon the own right of possession,
 This defendant insists and states that for as
 much as the complainant had one suit
 depending for the land to which he had no right
 he ought not to be permitted to institute and
 maintain other suits for the same multiplying
 costs and trouble unnecessarily, this defendant
 further states that if said Blake should obtain
 possession of said land, he believes the possession
 thereof could not be regained except by suit, in
 the mean time, if the said Blake should
 commit waste or trespass upon said lands
 this defendant believes that said Blake is
 unable to make compensation for the same
 and he believes further that he would be unable
 to collect by execution, the costs which would
 be necessarily incurred in the prosecution of
 a suit against said Blake for said lands,
 because he believes that said Blake is now
 insolvent, He therefore prays this Honorable
 Court to adjourn the said Blake from all
 further proceeding in the case of forcible
 detainer, until the trial of this cause, and upon
 a trial hereof he prays that the injunction be
 made perpetual, and a decree rendered against
 said Blake for the costs, and grant such other
 relief as this defendant may be entitled to in
 the premises, this defendant denies all the fraud
 alleged and charges against him in the bill
 and he denies all the statements thereof except
 those herein admitted Adam Allinor

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State of Illinois Morgan County SS.

Adam Allimore whose signature appears to
the foregoing answer, this day swears that
the statements therein contained, as made
of his own knowledge are true and those made
from the information of others he believes to
be true, Given under my hand this 9th day of
September 1829

Dennis Rockwell clerk
of the circuit court of
Morgan County

Endorsed

Filed 11th Sept 1829. Dennis Rockwell clk.

And afterwards at the April Term of the
circuit court in the year 1830.

This cause was continued
Chambers Term July 1830.

This cause was continued on the motion
of the complainant upon affidavit filed,
At the September Term 1830.

This cause was continued

On the second of April 1830 the complainant
by his counsel filed the following replications
the replications of Thomas P. Clark complainant
to the answers of Thomas Allimore and Adam
Allimore two of the defendants in a suit in
Chambers in the Morgan County circuit court
in favor of the said Thomas P. Clark against
them the said Thomas and Adam Allimore
& others, this replicent having and reserving to
himself all and all manner of advantage

of exception which may be had and taken to the
 manifold errors uncertainties and imperfections
 of the answers of said defendants for replication
 therunto, Sayeth, that he doth and will avow and
 maintain his bill to be true certain and sufficient
 to be answered unto by the said defendants in a
 full perfect and complete manner = and that
 said answers is very uncertain evasive and
 insufficient and so far as they deny the
 several allegations of the complainants bill
 are untrue, And for further replication to said
 answers this Repliant avers that the statements
 and charges in the answers aforesaid, that there
 was ever any other or different bonds or other
 Writing, given or made by and between the
 said last mentioned defendants, and this
 Repliant having and excepting the bonds
 exhibited to this court and made part of
 this Respondants bill is totally false and untrue
 or that there was any Writing or agreement
 in Writing made in Relation to said land
 between these parties, that is not here exhibited
 to this Honorable court is untrue = all other
 matters and things in the said answers
 contained material in Law to be replied
 unto, that is not herein before sufficiently
 replied unto confessed or avoided traversed
 or denied is untrue. All which matters
 and things this Repliant is ready to aver
 maintain and prove as this Honorable court

Shall order and direct, and he humbly prays
as in and by his said bill hath already prayed
for
Thos P Black

State of Illinois Morgan County
Replication of Thomas P Black complainant to
the answers of Hodge, Elays, and Sunday to a bill
in Chancery exhibited by him against them in
said County Circuit Court, His Replicant says that
his bill as by him exhibited is true, and that the
answers of the said last mentioned defendants
so far as they contradict or traveise the same are
false, and so far as they introduce new matter
are unperfomed for Thos P Black

And afterwards on the day and year first
herin mentioned and stated, at a
Special Chancery term of the circuit court
of Morgan County on Wednesday the tenth
day of November 1830. the following decree
was made in this cause,

"This day came the parties aforesaid by their
attornies and the defendant Thomas Alliman
produced in court, the original note referred
to by him in his answer, a copy whereof is filed
and made part of his answer, which original
note was read as evidence, the complainant
admitting the execution thereof.

And the court after hearing the bill and answers
and the evidence produced by both parties
in this cause, and duly considering the same
and being sufficiently advised upon the
premises, It is ordered and decreed that the

will be an assize as to the defendants Amos
 Hoage, Unah Ellage, and Robert Kennedy, and
 it is further ordered and decreed that the
 defendants Thomas Allinson and Adam
 Allinson on or before the fifteenth day of
 January in the year 1838 convey to the said
 Thomas P. Clark the land in the complainant's
 bill mentioned, it being the North East
 fractional quarter of section Number two
 in Township fourteen North Range twelve
 West of the third principle meridian
 And it is further ordered that Dennis
 Rockwell be appointed commissioner
 with full power and authority to convey to the
 said Thomas P. Clark the land aforesaid, upon
 the failure of the said defendants Allinsons
 to convey the land to said Clark, on or before
 the said fifteenth day of January, which day
 when so made, whether the same be made
 by the said defendants Allinsons or by the said
 Rockwell as commissioner, shall convey to the
 said complainant Clark, all the right title
 and claim of the said Allinsons or either of
 them in, and to the land aforesaid, and all
 the appurtenances thereto belonging, and
 it is further ordered that the said defendants
 Thomas Allinson and Adam Allinson
 pay the costs of this suit, and that the compl-
 -aint have execution therefor.

Whereupon the said defendants Allinsons
 pray an appeal to the Supreme Court

of this State, which is granted by the said defendants entering into bond to the said complainant in the penalty of One Thousand Dollars, conditioned according to Law within fifteen days, with Aaron Wilson or Joseph M Fairfild as security,

Evidence on the part of complainant.

The deposition of Elias Williams taken on the 8th of November 1830.
Question by plaintiffs attorney

did you or did you not purchase from Thomas Allimon and Adams Allimon as agent for Thomas P Black the tract of land in controversy in the above suit,

Answer, I purchased the tract of land that

James Buckley was then living upon, and have since understood from Thomas Allimon and Thomas P Black, this is the same tract now in controversy, and that purchase was made some time in February 1826, that said Black executed two notes of hand for the purchase money of said lands, the Allimon then executed a bond to the said Black for a and for said lands, the exact time I cannot recollect when the said and was to be made but think something like two years thereafter, the title to said land was to be made when the purchase money was paid,

Question by same,

did not James Buckley own an improvement on said lands

Answer,

Buckley had owned an improvement on said lands, but sold it to Thomas P Black he believes on the same day that Allimon & Black

makes their contract,

Question by same.

Did not Allinson refuse to sell said land to Clark unless he purchased the improvement from Buckley Assessor.

I know not. I went at Clarks request and purchased the improvement from Buckley, I then went to Allinson and told him that I had purchased the improvement -

Question by same.

What did he give Buckley for said improvement and did he Clark get possession of the land by Buckley and Allinsons consent?

Assessor.

He was to give him seventy five or eighty Bushells of salt, that salt was worth one dollar twelve and a half cents, or one dollar twenty five cents per Bushell delivered at Naples, and Buckley was to have the use of said improvement until the first day of January 1827, that Buckley was to make ten acres of prairie and enclose it with the other broke land which was done by Buckley, about the first of February 1827 Buckley moved away and Clark had the possession by the consent of Buckley and Allinsons, and said Clark paid in addition to the above salt to Buckley twenty five dollars and some cents or twenty six dollars and some cents for the said improvement.

Question by same.

Was it not your understanding at the time you makes the purchase from Allinsons for Clark that it was by request of the Allinson that Clark purchased the improvement from Buckley.

Assessor, that was my understanding but I got very information from Clark, when I went to the Allinson to purchase the land for Clark, I informed them that I

had purchased the improvement from Buckley for
Clarks, they then agreed to let Clarks have the lands
and they did so as I have before stated.

Questions by Defendants Attorney

Did Thomas or Adams Allimore ever tell you
that they had requested Clarks to purchase the
improvement of Buckley.
Answer, not to my ~~remembrance~~ recollection.

Question by Darnid,

did either of the Allimons ever tell you that
they would not sell to Clarks, unless he
purchased the improvement of Buckley
Answer, not to my recollection.

And further the deposition saith not.
Elihu Williams

The deposition of John Brisson

Question by complainant by Wm Conrod his attorney
Was it, or was it not the agreement between
Adams Allimore and Dodge and Elledge when
they purchased the land in question that
Clarks was to have said land from them
in a certain time thereafter

Answer.
When Adams Allimore was about to make
a deed of conveyance to the afore mentioned
tract of land to Amos Hoages & Uriah Elledge
which took place at my house, Adams
Allimore requested, that although he was
conveying the land to them, that if Thomas
& Clarks should pay them Hoages & Elledge
the purchase money of said Land within
the space of twenty days from that date, that
they would let said Clarks have the lands

Which they promised to do, but if said Clarke should fail to pay the money within the time specified, then, they Hooper & Ellidge should pay said Clarke for the improvement that was then on said tract of Land and keep the Land which they promised to do.

Question by same,

Said Hooper Ellidge and Kennday purchase said Land with a full knowledge of Clarke former purchase of the same Land from the Allimons

Answer, I was called on to write a deed of conveyance from Amos Hooper & Uniah Ellidge to Robert Kennday which was at the house of John Scott, Mrs Clarke came to the house of said Scott and told Robert Kennday that if he purchased the Land of Hooper & Ellidge, under the then present circumstances that he Kennday would buy a law suit, and Mrs Clarke stated to them all the circumstances respecting the above tract of Land, and further this deponent said the not.

John Brisbane

Affidavit of Elias Williams

Personally examined Elias Williams and made oath, that the two notes exhibited by the complainant in this case marked B & C are the identical two notes given by the said complainant to the two Allimons, at the time said Clarke purchased the Land in controversy in this suit, which notes was given for said Land, at the same time the bond

filed in this case by the complainant and marked
 A. And he further says that the signature affixed
 to the receipts on the face of each of said notes is
 the signature of the said Adams Allinson as
 he believes, that he has seen said Allinson
 write and from the knowledge he has of the
 Hand writing of said Allinson, he believes he
 signed said receipts. He further says, that
 said Bond marked, A, was executed to the
 said Clarke by them said Allinson at the
 date mentioned in said bond and
 further this deponent says the not,
 sworn to and subscribed, Elias Williams
 before me this 8th day of November 1830.
 Dennis Rockwell

Defendants Evidence

\$176. $\frac{76}{100}$. On or before the first day of January
 One thousand eight hundred and twenty eight
 (1828) I promise to pay to Messrs Thomas and
 Adams Allinson One hundred and seventy
 nine dollars, Seventy six cents for value
 received this 26 May 1827. Tho P Clarke.

Thursday 11th November 1830.
 The defendants by their attorney presented to the
 court a petition for a rehearing of this cause
 which is ordered to be filed, and the matter
 thereof being considered, It is ordered that
 the petition be overruled, It is agreed between
 the parties, that this cause shall stand for
 trial at the next term of the Supreme court
 in the same manner, as if the appeal had been
 taken, thirty days before the sitting of said Supreme court,

The counsel of the defendants in this cause,
Respectfully ask the court for a rehearing upon
the following grounds.

The complainant to entitle himself to a decree
in the cause, must prove that he complied
with the contract.

He asserts and states in his bill that he had paid
the purchase money to the Allison's
This statement is positively denied by the
answers. This denial is concise separate
and distinct from the matter alleged
in the answers by way of avoidance, and it
is a direct reply to a material allegation
in the bill. The defendants could not be
expected to prove this negative.

The Statute of this State 186 Revised Laws
page 91. provides that Replications shall be
filed four days after answers "but in
default of filing such Replications, the
cause may be set for hearing upon bill
and answers, in which case the answer
shall be taken as true, and no evidence
shall be received, unless it be matter of
recross to which the answer refers"

The rule, that when an answer to a direct
allegation in the bill, sets up matter in
avoidance, such matter must be proven,
is admitted; when the answer is traversed
but the denial of the payment of the money
in this case, is a direct answer to an
allegation in the bill to which the defendants
were required to answer, the replication not

having been filed according to Law, the answers must be taken as true.

The answers in this case were filed in April and May 1829, except Adams Allimore whose answer was filed in Sept 1829, the replication was not filed until the 2nd of April 1830, before which time the cause had been docketed or set for trial upon bills and answers, the court gave no leave to file the replications at that time, and the defendants were not bound to notice the replications.

The statements of the answers have not been put in issue as contemplated by the statute, the defendants were not bound to prove that the purchase money was not paid.

The circumstances relied on as proving payment, (of the proof of the existence of those circumstances to receive) are not sufficient to disprove the positive denial of the answers.

Thomas & Jeremy for Defts,

Appeal bonds.

Know all men by these presents that we Thomas Allimore, Adams Allimore & Joseph M. Fairfield are held and firmly bound unto Thomas P. Clark 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 presents sealed with our seals and dated this 12th day of November 1830.

The condition of the above obligation is such that whereas at a Special Chancery Term of the circuit court of Morgan County Illinois began and held on the second Monday in the month of November 1830. the said court rendered a decree in a suit in Chancery in which Thomas P. Clark was complainant and the said Adams & Thomas Allinson & others were defendants, requiring them to convey to said Clark a certain tract of land described in said decree and to pay the costs of the suit in Chancery from which decrees the said Adams and Thomas Allinson have appealed to the Supreme court of the State of Illinois Now if the said Adams & Thomas shall perform the decrees of the said circuit court in case the same shall be affirmed by the Supreme court, or the appeal dismissed, then this obligation to be void otherwise to remain in full force & effect,

signed and acknowledged in the presence of
 Perrin Procterwell

Adams Allinson (Seal)
 Thomas Allinson (Seal)
 Joseph M. Fairfax (Seal)

Endorse

Filed 12th November 1830
 P. Procterwell

Bill of costs.

Costs recovered by the complainant.

1829.	Clerk's fees.	
Janry.	Filing bill & filing three exhibits 18 $\frac{3}{4}$.	25
	issuing summons 50 entering suit on docket 12 $\frac{1}{2}$ filing summons 6 $\frac{1}{4}$.	50
		18 $\frac{3}{4}$
April.	Entering appearance 12 $\frac{1}{2}$ order of publication agst. A. Allmon 25.	12 $\frac{1}{2}$
	copy of the order 18 $\frac{3}{4}$.	25
		18 $\frac{3}{4}$
Sept.	docketing suit for trial 12 $\frac{1}{2}$ filing the certificate of publications 6 $\frac{1}{4}$ order of continuance 25. issuing 1 subpoena 50.	12 $\frac{1}{2}$
		6 $\frac{1}{4}$
		75
1830.	April, docketing suit 12 $\frac{1}{2}$ issuing 1 subpoena 50 order of continuance 25. filing replication 6 $\frac{1}{4}$ issuing 1 subpoena 50. swearing witness to affidavit 12 $\frac{1}{2}$.	12 $\frac{1}{2}$
		75
		56 $\frac{1}{4}$
		12 $\frac{1}{2}$
Sept.	Entering suit on docket 12 $\frac{1}{2}$ order of continuance 25. Issuing 1 subpoena 50. swearing witness to affidavit 12 $\frac{1}{2}$.	12 $\frac{1}{2}$
		75
		12 $\frac{1}{2}$
Nov.	docketing suit 12 $\frac{1}{2}$ issuing one subpoena 50 filing & signing deposition 12 $\frac{1}{2}$ procuring E. Williams to affidavit 12 $\frac{1}{2}$ swearing same person to affidavit of attendance 12 $\frac{1}{2}$ Entering final decree 25. making bill of costs & entering the same on cost Book 3 $\frac{1}{2}$.	12 $\frac{1}{2}$
		50
		12 $\frac{1}{2}$
		12 $\frac{1}{2}$
		12 $\frac{1}{2}$
		25
		3 $\frac{1}{2}$
	Can afford.	\$ 6.62 $\frac{1}{2}$

Amount not forwarded

Sheriffs fees.

April 1829. Serving summons on one deft 50 — 50
 Trailing 8 miles 50 returning — 50
 Summons 12½ — 12½
 April 1830. Serving subpoena 25 Trailing 9 miles 56¼ returning subpoena 12½ 95¾
 Sept - Serving subpoena 25 Trailing 8 miles 50 returning subpoena 12½ 87½

\$ 2.93¾
 5.00

Docket fee

Justices fees. (George Pearick)

Nov. 1830. Taking depositions 904 words. 1.87½
 Serving subpoena 18¾ & swearing in
 Witnesses 12½ — 18¾
 ————— 12½

\$ 2.12½

Witnesses fees.

April 1830 Elias Williams 1 day attendance. — 50
 Sept 1830 Elias Williams 3 days attendance — 1.50
 Nov. 1830 Elias Williams 1 day attendance — 50
 Nov — John Britton 1 day to give deposition — 50
 Elias Williams 1 day to give deposition — 50
 ————— \$ 3.50

Costs made by complainant & not recovered

July 1830. ^{clerk's fees} Doctering writ 12½ Swearing in M — 12½
 McConril to affidavit 12½ order of — 12½
 continuance 25. — 25
 ————— 50

Sheriffs fees.

April 1829. Serving summons on three defendants 1.50 1.50
 Trailing 8 miles 50 — 50
 ————— 2.00

~~STANLEY~~

~~1830~~

Costs made by Defendants. Allimons,
Clarks fees.

April 1829. Filing answer of deft A. Allimon	06 1/4	6 1/4
Filing exhibit	06 1/4	6 1/4
Filing three	—	—
copies of deeds 183 1/4. Entering appearance	12 1/2	3 1/4
Sept. Filing answer of deft A. Allimon	06 1/4	06 1/4
Swearing deft to affidavit	12 1/2	12 1/2
entering	—	—
appeared 12 1/2	12 1/2	12 1/2
entering motion for	—	—
injunction & order thrown	25	25
Nov. 1830 order granting appeal	25	25
Filing petition for rehearing	06 1/4	06 1/4
order overruling motion	25	25
taking	—	—
Appeal bond	50	50
copying record for Supreme Court	—	—
4340 words 14 75	14 75	14 75
certifying and	—	50
Sealing the same	50	50
	(17 3/4)	17 3/4

Recapitulation -

Costs recovered by complainant	20. 18 3/4
Costs made by complainant and not recovered	2. 50
Costs made by defendants, Allimon	11. 37 1/2
	<hr/> 34. 06 1/4

State of Illinois Morgan County S.S.

I Dennis Rockwell clerk of the circuit court of Morgan County do certify that the foregoing thirty eight pages contain a full & correct copy of the records & proceedings in the case therein stated, as between the complainant and the defendants Thomas & Adams Allison. The said copy was made pursuant to the instructions of the attorney for the said defendants, given under my hand & the seal of said court at Jacksonville this 2nd day of December 1830.

Dennis Rockwell clerk.



William Allen
vs
John Allen
By
James B. [unclear]

1830

Filed Dec 9. 1830

Judge [unclear] Clerk
Term 1830

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In the Supreme Court,

Thomas Allinson &

Adam Allinson Appellants
against
Morgans Circuit Court,

Thomas P. Clarke Appellee

Thomas P. Clarke the appellee exhibited his bill in Chancery in the circuit court of Morgans County against the appellants and others to compel the specific execution of a contract to convey a tract of land in the County of Morgans a summons was issued returnable to the April Term 1829 of the court.

The Bill charges that the Allinsons on the 16th day of February 1826 executed their bond to the complainant, whereby they bound themselves to convey to the complainant a certain tract of land lying in the County of Morgans upon the condition that the complainant paid them \$207 on or before the last day of February 1827 the conveyance to be made on the day the money was stipulated to be paid. The complainant states that on the last day of February 1827 he was ready and willing to pay the purchase money, that on the 27th day of May 1827 he did pay the money to Adam Allinson for the defendants.

That the defendants refused to make the conveyance and sold and conveyed the lands to another person who had notice of the claim - the bill prays for a decree against the defendants requiring them to convey.

At the April Term 1829 of the ^{circuit} court Thomas Allinson filed his answer to the bill, - in which he denies the payment of the purchase money, and sets out a new and different contract by way of avoidance -

At the September Term 1829 Adam Allinson filed his answer in which he denies the payment of the purchase money and sets out a new contract by way of avoidance.

The replication to the answers was filed in the clerk's office on the 2nd April 1830 but without leave of court being obtained.

The proof on the part of the complainant consists of the depositions of Elias Williams & John Britton and the affidavit of Elias Williams taken by consent to prove the exhibit.

The proof on the part of the defendants consists of one exhibit the execution of which was admitted upon a hearing of the cause the court rendered a decree against the defendants requiring them to convey the land according to the prayer of the bill. The defendants presented a petition for a rehearing which being overruled by the court ~~and~~ they have now brought the case before this court by appeal.

It is now insisted that the complainant is not entitled to a conveyance of the land, without proof of the actual payment of the purchase money by two witnesses or by one witness with strong corroborating circumstances.

That the answers deny a material allegation in the bill and without proof of the truth of that allegation the complainant cannot recover.

The answers not having been replied to within the time limited by the Statute must be taken as true, and the party had no right to introduce testimony to disprove them.

That the denial in the answers of the payment of the purchase money is direct, and not connected with, or dependant upon, the matter set up by way of avoidance.

The answers do not admit the payment, and set up matter in avoidance, but they deny the payment, and set up new matter also.

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That if the testimony was properly before the Court, the testimony on the part of the appellants is sufficient to rebut the testimony of the complainant and to prove that the complainant has no right to a conveyance.

In support of the positions here assumed, see the case of Brights heir against Haggins, Hardins Reports page 536, 1 Vol Marshall's Reports page 43.

2 Vol Johnson's Chancery Reports page 85. 86 &c
1 Vol Revised Laws of Illinois page 181.
page 1. The Bill

See page 11 of the record for the answer of Wm. Allison
page 19 ————— Answer of Adam Allison
————— 24. 25 ————— The Replication
(28. to 32 inclusive) The Testimony
26. 27 ————— The Decree
33 ————— petition for Rehearing.

Albion
in Brief
M. P. Black

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In the Supreme Court,

Thomas Allinson

Adam Allinson

Appellants

against

Appeal from a decree of the
Horsaw cir court.

Thomas P. Clarke

Appellee

And the said appellants by their attorney William
Thomas come & say that in the decree and
proceedings in this cause manifest error
hath intervened in this.

First The court erred in decreeing that the
complaint was entitled to a
conveyance of the land described in
the bill.

Second. The court erred in not rendering a decree
in favor of the appellants by dismissing
the bill -

Third. The court erred in permitting testimony
to be read to disprove the statements of
the answers, the duplications not having
been filed in the time required by
Law -

Wherefore the said Appellants pray that
the decree aforesaid may be reversed,
and set aside because of the errors
aforesaid and others apparent upon
the face of the proceeding

W^m Thomas Attorney
for Appellants,

The defendants in this case comes and joins in error and
says there is no error in the records and proceeding in the
above case or their plaintiffs in this assignment of errors
hath alleged - he therefore prays that the decree of the Circuit
Court be affirmed with cost.

M^r M^r Connel att for clerk

The defendant in this case comes and gains in error and says that no error hath occurred on his part that if any error hath intervened in records and proceedings in this case that it is an error of the said Complainants or hath been occasioned by them and not by this defendant. He further says that the errors by the said ~~Complainants~~ ^{Plaintiffs} first and second above assigned there is no error and as to the error thirdly above assigned this defendant says that the answers of the said defendants in the court below to the bill filed in this case were not made and filed within the time authorized by law for filing answers and he further says that the replication aforesaid in the said assignment ^{and was not then complete} mentioned was filed before the expiration of the time for the filing of all the answers of the said defendants in the court below and before the said cause was set for hearing on bill and answer and that no objections were made thereto in the court below or exceptions taken to the opinion of the court. This defendant therefore says that there is no error in the record and proceedings in this case on the said plaintiff both in manner and form in his assignment of errors alleged wherefore he prays that the decree of the circuit ^{Court} aforesaid may be affirmed &c

M. M. Council, attorney for Clark

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File 2780.51830

Clark

Abbinsons
vs
J. J. Johnson
vs
J. J. Johnson

Allinsons

14
Clerks

Speeal from Morgan

The affidavit of Elias Williams ~~was~~ which appears as ~~part~~ of the testimony of the defendant, was taken in the court below by consent to prove the exhibit to which it refers, and is to be considered in this court as ~~a deposition~~ though it was a deposition taken upon notice - 21st Decr 1830.

~~W. J. Thomas~~

the statement below ^{was} made without my knowledge, or consent. ~~W. J. Thomas~~ attorney for ptf.

There was a written agreement made in the Court below in relation this matter in writing, the exact terms of which is not by me recollectal which agreement did not but should appear in this record there was a failure in error before it was known that said agreement was absent.

Mell Connel att for Clerk

Almira A. J. C.
^{W.}
Thos P Clark
attorneys agreement

Made Dec 21 1830