No. 8524

Supreme Court of Illinois

F.H.Edwards

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vs.

H. T. Pace

71641 7

In the Jefferson Circuit Court May Term A D 1857

Pleas held before the Honorable Samuel Scott Marshall Judge of the Judicial Circuit, present and presiding.

Be it remembered that on the 15th day of May A D 1857, the following Bill, to wit.

"May Term of the Jefferson Circuit Court A D 1857.

Bill & Pet. State of Illinois }
Jefferson County }

To the Hon. the Judge of the ~~twelfth~~ Judicial Circuit in Chancery sitting.

Your petitioner Francis H Edwards would respectfully represent that on or about the 16th day of April 1838 one Downing Baugh sold to one William Allen a certain lot of ground situate lying and being in the County & State aforesaid & town of Mt Vernon and shown and designated as follows, to wit, beginning at the South East Corner of lot No. twenty six on Main Street running thence West twenty two feet or to a lot of ground now owned by William B Thom thence North to the Alley thence East to the North East Corner of said lot No 26 thence South to the begining for the sum of five hundred dollars, that the said Allen executed his notes to the said Baugh payable in one & two years, and that said Baugh executed and delivered to said Allen his bond conditioned to make to said Allen a deed to said premises when the said Allen should pay or cause to be paid the amount of said notes, which said bond is here attached & prayed to be considered, which said bond said Allen failed to have recorded, that afterwards, to wit, on the 16th day of August 1847, one Harvey T Pace recovered in the said Jefferson Circuit Court a Judgment against said Downing Baugh for $289 90/100, on which said Judgment

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said Pace has sued out an execution and delivered the same to the Sheriff of said County and he directed & procured said Sheriff to levy said execution of the premises aforesaid.

That afterwards to wit on the 20th day of September 1849 said Allen sold said bond to Complainant and assigned the same to Complainant by endorsement, that afterwards to wit on the 24th day of September 1849 said Baugh made to Complainant a deed in conformity to said Bond for said premises which deed is here attached and prayed to be considered. That afterwards to wit on the 13th day of January 1857, said Pace sued out an said Judgment on execution and caused the same to be delivered to John R Satterfield the Sheriff of said County, and ordered and caused said execution to be levied on said premises and has it now advertised for sale, and said Complainant distinctly avers that said Pace had knew of said sale by said Baugh to said Allen, that he saw said Allen take possession & occupy & improve said premises and saw said Allen execute said notes to said Baugh, he knowing at the time for what said notes were executed, at the time of said sale, to wit on the 16th day of April 1858 and also said Pace saw this Complainant at the time of his purchase take possession & make large improvements on said premises, said Complainant would therefore pray that said Harvey S Pace be made defendant to this bill, that a writ of injunction issue & restraining said Pace, and said John R Satterfield, Sheriff as aforesaid, from proceeding on said execution, and that said ~~defendant~~ Deft, be summoned to appear at the next term of said Court and answer this bill and particu-

Filed in the Terms Court

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-lady that he answer under oath to whether he was not well informed of said sale by said Bough to said Allen and the conditions thereof, and that upon a final hearing said defendant be perpetually enjoined from proceeding further against said premises of said complainant, and that all such other & further relief be granted complainant as equity & good conscience may dictate. And said complainant would further shew unto your Honor that at the time of his purchase from said Allen the houses on said premises were in a ruinous and decayed condition wholly untenable and worth little if any thing, that he proceeded immediately to repair and improve said buildings and to add to the same other and entirely new dwell-ings & out houses, thereby laying out and expending large sums of money amounting in all to at least $250 - said Pace standing by & seeing said improvements going up & waiting until they were completed before he would disturb Comp-lainant, that said premises in consequence of said expenditure are now valuable, when without said improvements said premises were of very trifling value, and your petitioner humbly prays that should a perpetual injunction be denied him that your Hon. Court will order adjudge & decree that out of the sale of said premises he your petitioner may be remun-erated for the improvements he has caused to be put upon said premises, & your petitioner as in duty bound will ever pray &c.

D Vaugh Sol
for Complainant.

Order of Master

State of Illinois } ss.
Jefferson County } The Clerk of the Circuit

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Court within and for said County and State will issue writ of injunction, restraining the said named defendant H. T. Pace, and John R Satterfield Sheriff of said County and State, from selling the premises herein described and that he the said Clerk also issue summons to the said defendant summoning him to be and appear before the Circuit Court of said County and State on the first day of the next term thereof to be commenced and holden at the Court house in the town of Mt Vernon on the second Monday in the month of May next to answer the allegations contained in said bill — Conditions — that the said complainant enter into bond to & with said defendant with sufficient security in double the sum of the amount injoined.

July 27th 1857.

Harvey D Rector, Master in Chancery,
Jefferson County, Ills

(Summons)

State of Illinois }
Jefferson County } ss.

The people of the State of Illinois to the Sheriff of Jefferson County Greeting.

We command you to summon Harvey T. Pace to be and appear before the Circuit Court within and for said County and State aforesaid on the first day of the next term thereof to be commenced and holden at the Court house in the town of Mt Vernon in said County on the second Monday in the month of May next to answer the complaint of Francis A Edwards in a bill of Chancery for an injunction and to have (have) you then and there make due return according to law.

5 5

Bond.

Bond.

Know all men by these presents that we Francis A Edwards, Charles W Stearns, Harry Sicks, D C Warren all of the County of Jefferson & State of Illinois are held & firmly bound unto Harvey T Pace of the same County & State in the sum of Six hundred dollars lawful money of the United States, to be paid to the said Harvey T Pace his heirs Executors & Assigns for which payment well and truly to be made we bind ourselves jointly & severally & our respective heirs, Executors & Administrators firmly by these presents. Sealed with our seals & dated this first day of March A D 1857.

Whereas the above bounden named Francis A Edwards has filed his bill of Complaint in the Jefferson County Circuit Court as the Chancery side thereof, against the said Harvey T Pace praying among other things an injunction to restrain the further proceedings by the said Harvey T Pace, on an execution in the hands of John R Gallagher Sheriff of Jefferson County and State of Illinois in which said execution the said Harvey T Pace is plaintiff, and Downing Baugh is defendant, and which said execution the said Harvey T Pace has caused to be levied on a part of Lot No 26, on Main Street in the town of Mt Vernon & County of Jefferson & State aforesaid, which said property above described is claimed by the said Francis A Edwards.

Now therefore the condition of this obligation is such that if the above bounden Francis A Edwards, their heirs executors administrators & assigns, or any of them shall & do well & truly pay or cause to be paid to the said Harvey T Pace, his heirs executors & assigns, all such damages & costs as shall be awarded against the said Francis A Edwards by the said Circuit Court of Jefferson County in Chancery sitting as aforesaid to the said Harvey T Pace on the bill filed by the

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said Francis & Edwards, then the above obligation to be void, otherwise to remain in full force & virtue.

Francis & Edwards (Seal)
Charles W Stearns (Seal)
Harry Hicks (Seal)
D. C. Warner (Seal).

Taken & Approved by me this 7th day of March A.D. 1851. Finney D Preston, Master in Chancery Jefferson County Illinois

(Endorsement)

"Francis & Edwards Vs Harvey J Pace, Injunction Bond. Filed March 8th 1852. John Milburn, Clerk."

(Writ of Injunction)

Writ of injunction

State of Illinois } ss.
Jefferson County }

The people of the State of Illinois to Harvey J Pace & to John R Satterfield Sheriff of said County and State and their Counsellors, Attorneys, Solicitors and Agents and each and every of them Greeting.

Whereas it has been represented to us in our Court of Chancery on the part of Francis & Edwards, Complainants, that he has lately exhibited his bill of Complaint in our Circuit Court in and for said County and State on the Chancery side thereof against you the said Harvey J Pace and also John R Satterfield Sheriff as aforesaid, to be relieved touching the matters therein complained of: in which bill it is stated among other things: that you are combining & confederating with others to injure the said Complainant touching the matters set forth in the said bill and that your actings and doings in the premises are contrary to Equity & Conscience.

We therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you the said Harvey J Pace and the said John R Satterfield Sheriff of Jefferson County and State

of Illinois and the persons before mentioned, and each and every of you, that you do absolutely desist and refrain from selling the following described premises to wit, a part of Lot Numbered twenty Six on Main Street in the Town of McLeansboro Jefferson County and State of Illinois bounded as follows, beginning at the South East Corner of lot twenty Six on Main Street aforesaid and running thence West twenty two feet on a lot of ground now owned by William B Thorn, thence North to the Alley thence East to North East Corner of lot Numbered twenty Six thence South to the place of beginning until the hearing of the Cause by our said Court of Chancery and our said Court shall hereon make further order thereof.

Witness, John Wilbanks, Clerk of our said Circuit Court and the Judicial Seal thereof done at McLeansboro the 7th day of March A D 1857. John Wilbanks, Clerk.

(Endorsement)

"Francis A Edwards Vs Harvey S Pace – Injunction Mt."
"Executed by delivering a Copy to H S Pace, 8th day of March 1857. Serving 50 cents
Returning 10
60 J R Sellers Sh & by J. C."
"Filed March 8th 1857. John Wilbanks Clerk
By J B Sanner D.C.

(Summons)

State of Illinois
Jeffersn County } ss.

The People of the State of Illinois to the Sheriff of Jeffersn County Greeting.

Sum.

We Command you to summon Harvey S Pace to be and appear

before the Circuit Court within and for said County and State aforesaid on the first day of the next term thereof to be commenced and holden at the Court house in the town of Mt Vernon in said County on the second Monday in the month of May next to answer the complaint of Francis H Edwards in a bill of Chancery for an injunction and to hereof, (hereof) make due return according to law.

Witness John Wilbourn Clerk of said Court and the Judicial Seal thereof at Office in Mt Vernon 7th day of March 1857.

John Wilbourn Clerk

(Indorsement)

"Summons — Francis H Edwards Vs Harvey T Pace."
"Executed March 8th A D 1857, by handing copy to H T Pace — Serving 50 cents
Returning 10
60. J N Satterfield Shff,
Jefferson Co. Ill.

And afterwards, to wit at May Term A D 1857, and on the 15th day of said Month, it being the day of said term, the following further proceedings were had and entered of record, viz.

Francis H Edwards
Vs } Injunction
Harvey T Pace

Order of Court

This day came the parties by their Solicitors, and the defendant filed his answer to complainants bill and moves to dissolve said injunction, whereupon the Court not being fully advised in the premises. took time to consider.

(Defendants Answer)

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Answer

Harvey S Parr
vs
Francis A Edwards

In Chancery.
May term of the Supreme
Circuit Court A.D. 1857.

The answer of H S Parr defendant to the bill of complaint of Francis A Edwards — this respondent saving & reserving to himself all & all manner of exceptions, to the manifold errors, misstatements, uncertainties, untruths & inadvertances in the said bill contained for answer to the said bill, or so much thereof as he is advised is material for him to answer unto answering saith — that true it is — that some time in the year 1838, the time not particularly recollected, respondent did have some conversation between the said Dorning Baugh & William Mc Allen relative to selling the said premises and said said Allen signed what respondent understood to be a note which he understood from what was said by said Baugh & Allen was for said premises. That it is said Allen did enter into the possession of the said premises & continued to occupy the same for the period of about six or eight months, during which time he made some very slight improvements on the premises. Not worth more than about $10.

But it is not true & respondent wholly denies, that he that he knew any thing about the terms & conditions of the contract of sale if any was made except that the purchase money was to be five hundred dollars.

But respondent positively denies any & all knowledge of said Baughs having executed to said Allen a bond for a title to said premises — until long after this respondent obtained a judgment against said Baugh as hereinafter stated, but true it is if any such bond even was executed, such bond was not recorded as in complt's bill alleges until long after respondent obtained judgment against said Baugh & had execution issued thereon.

Respondent further answering would state

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that after said Allen quitted the possession of the said premises - & until & after the rendition of the Ld. Judgment in favour of Respondent & against the said Baugh, said premises were frequently and for long intervals vacant & not occupied without the said Allen or any one for him exercising or claiming to exercise any acts of Ownership over it, to the knowledge of this Respondent.

Respondent would further state that said Allen immediately on quitting the possession of the said premises left the County & has remained absent therefrom hitherto, and has not to the knowledge of this Respondent, even at any time by himself or any agent claimed or exercised any acts of Ownership over said premises, nor has the said Allen as this Respondent is informed & believes, ever paid the purchase money therefor. Respondent further answering neither admits or denies that the said Compt. on the 20th day of September 1849 purchased said Bond from said Allen but calls for the proof. Respondent neither admits or denies that the said Baugh on the 24th day of September 1849 made to the said Compt a deed to said premises but calls for the proof. But respondent avers & charges that the said Complainant purchased the said premises of the said Baugh and paid him therefor the sum of seventy dollars as he is informed & believes & is ready to verify & prove. True it is that this respondent did on the 16th day of August 1847 recover a Judgment against the said Baugh for the said sum of $289.90/100 with costs of suit which said Judgment remains in full force & unsatisfied. Said Respondent further answering states, that he caused execution to be issued upon said Judgment within a year after the rendition of the same, & no bond for a title to said premises from said Baugh to Ld. Allen had been filed & recorded until long afterwards. Respondent further answering admits,

11 11 that said Compt did enter into possession & make improvements upon said premises — but he states & avers that before said Compt did enter into possession & make any improvements respondent examined the proper records and no title papers from said Baugh to any person but for said premises had been filed or recorded — Respondent informed said Compt that he had a Judgment against said Baugh and that respondent intended to make the money out of said premises & Notified Compt not to make improvements upon said premises before he the said Compt made any improvements.

Respondent insists that his Judgment is a lien upon said premises & that they are subject to sale for the satisfaction of the same, Notwithstanding all the statements & allegations in Compts bill contained — without that; that there is any other matter or thing material or necessary for this respondent to make answer unto, and not herein or hereby well & sufficiently answered unto, confessed or avoided, traversed or denied is true, All which he is ready to verify & prove as this Honorable Court shall order & direct, and having fully answered he prays that the injunction herein granted may be dissolved & he dismissed hence with his reasonable costs & he will ever pray &c. in duty bound &c.

Scates & Mingets, Solicitors
for Respondents.

State of Illinois }
Jefferson County } Set.

Harvey S Pace being first duly sworn deposes & says that the matters and things stated as facts in the foregoing answer are true, and those stated upon information & belief and advice of Counsel he believes to be true & further saith not.

H S Pace.

(8554-L)

Subscribed & Sworn to before me
12 this day of May 1857.
Subscribed & Sworn to before me
15th day of May 1857.
John Milbanks, Clk.

(Endorsements)

"H T Pace vs H A Edwards - Answer."
"Filed the 15th day of May 1857.
John Milbanks Clk"

And afterwards, to wit at the September Term of the Superior Circuit Court A D 1857, being the 15th day of the month, and the day of Term, the following further proceedings were had and entered of record.

Viz.

Francis A Edwards
vs
Harvey T Pace } Injunction

Ordered that the foregoing Case, be continued until the next term of this Court.

And afterwards, to wit at the Special December Term of the Superior Court A D 1857, being the day of month and the day of Term, the following further proceedings were had and entered of record.

Viz.

Francis A Edwards
vs
Harvey T Pace } Injunction

This day comes the plaintiff by his Attorney and moves the Court to dissolve the injunction in this cause, but the Court being well advised in the matter overrules said motion - Whereupon it is further considered by

(Replication)

Replication

Francis H Edwards
vs
Harvey T Pace

Bill for injunction

And the said Complainant comes and for Replication to defendants Answer says that the Matters and things in defendants Answer are untrue, and that the matters and things in Complainants bill are true, as therein set forth, and this he is ready to prove when and where this Honorable Court shall direct.

D B Baugh Sol
for Complainant

(Affdt of Jno. H Pace)

Affdt of J. H Pace

"State of Ills
Jefferson County } H. T. Pace
vs.
H. H. Edwards

Before the undersigned Clerk of Jefferson Circuit Court in and for the County of Jefferson and State of Illinois personally came John H Pace who after being duly sworn according to law on his oath says that in a conversation had by this affiant and said Pace soon after the said Edwards had executed a note to this affiant as John C Coe of Jefferson County in lieu of a note which this affiant held against D Baugh this affiant remarked to said Pace that if he had known of the arrangement entered into between the said Baugh and Edwards that by means of a garnishee he the said Pace might have secured seventy dollars, upon which the said H. T. Pace said Frank (meaning the said Edwards) was a fool for paying Downing (meaning said Baugh) a cent for his interest in the lot which Frank had bought and Downing set up a claim to, for his interest was no a cent for if it had been I would have pounced it long ago.

John H Pace

Subscribed & sworn
before me this 16th May 1851.
John McBride Clk
By L. D. Preston D.C.

(Endorsements on the above)

"Frances H Edwards
vs
Harvey T. Pace." } Filed 16th May 1851
John McBride Clerk
By T. B. Farrier D.C.

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Apt of W Dodds

(Affdt. of Wm Dodds)

"State of Illinois }
Jefferson County }

Before the Clerk of the Circuit Court personally came William Dodds who after being duly sworn according to law deposeth and saith that in a conversation between Francis T Pace and F. H. Edwards I heard said Pace say in conversation about the title to the lot that said Edwards lives on that he the said Pace said that he did allow sign some Notes or other papers and that it took him some help him to sign the said Notes or other papers and further this deponent saith not.

Sworn to and subscribed before me this 16th day of May 1857.

W. Dodds

John Wilbanks Clk

(Endorsements)

"Francis H Edwards
vs
F. T. Pace"

"Filed May 16th 1857.
John Wilbanks Clk"

the Court – that this Cause be set down for hearing at the next term of this Court – with leave to take depositions.

And afterwards, to wit, at the May Term 1852, of the Jefferson Circuit Court, and with day of said month, being the day of said term, the following further proceedings were had and entered of record.

Viz

Francis A Edwards
vs
Harvey J Page
} Injunction

Ordered by the Court that the foregoing Cause stand continued until the next term of this Court.

Commission to Take Depositions

(Commission to take Deposition of William Allen)

State of Illinois
Jefferson County
} Set

The People of the State of Illinois to Friend A Williams Greeting.

Know ye, that we, in Confidence of your prudence and fidelity, have appointed you and by these presents do give unto you full power and authority, and do hereby authorize and require you that at a certain time and place, to be designated and appointed by you, for that purpose, you do Cause the witness, whose name is mentioned in the Caption of the Enclosed interrogatories, as well on the part of the said Francis A Edwards Plaintiff, as on the part of Harvey J Page Defendant, to come before you, and then and there diligently and faithfully Examine him upon the said interrogatories, on his Corporal Oath first taken, before you, both on the part of said Plaintiff and

defendants, and none other; and that you take
14 such his examination, and cause the interrogatories
as they are propounded, together with the answers
of said witness thereto, to be reduced to writing; in the
order in which they shall be propounded and
answered, and when you shall have so taken them,
you shall cause the said witness, to sign his name
to the same, in its proper place, in your presence, —
and thereupon you will annex at the foot thereof,
a Certificate subscribed by yourself, in which you
must state, that they were taken sworn to, and signed
by the deponents, and the time and place, when and
where the same were taken. After which you are
to seal the said Depositions together with this Commission
and the enclosed interrogatories carefully enclosed
and sealed up, to the Clerk of the Circuit Court, in
and for the County of Jefferson and State of Illinois,
with the names of the parties litigant endorsed
thereon. And this you shall in no wise omit.

Witness, John Wilbanks Clerk of our said
(Seal) Court, and the seal thereof,
this 26th day of March A.D. 1852.

John Wilbanks Clerk
By J. B. Garner D.C.

(Notice)

Downing Baugh Sol for Francis A. Edwards.

Notice

Sir.

You will please take notice that on
the 26th day of March A.D. 1852, between the hours
of 10 O'clock A.M. and 4 O'clock P.M. of said day
I will attend before John Wilbanks, Clerk of the Circuit
Court of Jefferson County at State of Illinois, at his office
in Mt Vernon, for the purpose of taking out a Commission
or Dedimus Potestatem, directed to Franck A. Williams
a resident of Linn County, and State of Iowa, directing

and empowering him as a Commissioner to take the Deposition of William Allen who is also a resident of Linn County Iowa, upon the subjoined interrogatories, to be read in evidence on the part of defendant, in the hearing of a certain cause now pending and undetermined in the 2nd Circuit Court of Jefferson County Illinois aforesaid, on the Chancery side thereof, wherein the said Francis A Edwards is Complainant, and Harvey T Pace is defendant, when and where you can attend & file such interrogatories if you think proper so to do.

H. T. Pace
per N B Scates & Wingate
Sol for Deft.

(Endorsement on the above Notice)

"Francis A Edwards
vs
Harvey T Pace" } In Chancery.

"Notice & interrogatories to take Deposition of William Allen"

"Executed by reading & delivering a copy of the within notice to Downing Baugh Esq. 15 day of March A D 1852. Serving .50 Returning 10 - 60. John R. Satterfield
Sheriff J. C. Ill."

(Interrogatories)

Interrogatories to be put to William Allen a witness for the defendant in a certain bill in Chancery pending and undetermined in the Jefferson Circuit Court in the State of Illinois wherein Francis A Edwards is Complainant & Harvey T Pace is defendant.

Interrogatory 1st. Are you acquainted with the parties Complainant & defendant in this case - and if so, how long have you known them respectively.

Interrogatory 2nd. State whether you purchased of Downing Baugh and took from him a bond for a title to Lot

16 Number 26 on the town plat of the town of Mount Vernon Jefferson County Illinois, or any part of said lot - If you and you do not recollect the number of said lot, please state which side of the public square said lot lay - and what kind of a house you left on said lot - or any other description that may identify said lot or part of the lot you so purchased.

Interrogatory 3d. State whether you ever sold said bond for title from said Baugh - and if so, when, to whome, and for what price

Interrogatory 4th. State whether you ever sold said title Bond to the Complainant Francis A Edwards - if so when did you so sell it - and how much did he pay you for it.

Interrogatory. 5th. Please look upon the annexed Copy of a bond & Assignment thereof. marked as exhibit (A) and state whether it be a true Copy of the title bond from D Baugh to you - if not, whether it be or not a substantial Copy thereof

Interrogatory 6th. State if you please whether you ever executed an Assignment of said title bond, in the words and figures as marked upon the said Copy as exhibit A hereto annexed - to said Complainant Edwards - or any other Assignment thereof - and if so what did he pay you for it.

Interrogatory 7th. If there be any other matter or thing of advantage to the defendants Part - please state all you may know without further interrogatory.

R F Wright & W B Scott for
Defendants.

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Cross Interrogatories to be propounded to said William Allen on behalf of said Complainant F H Edwards.

Q 1st. Did you not endorse said Bond in Blank for the purpose of enabling One Stephen C Hicks to sell said property for you? If so please state as near as you can recollect, the time you did so.

Q 2d. Did you not write your name on the back of said Bond and authorize Stephen C Hicks to fill up the Assignment to any person he might sell said lot for you? If so please state as near as you can recollect the time you did so.

(Endorsement)"

"Francis H Edwards
vs
Harvey J Page" } "Injunction"

"Cross Interrogatories" Filed March 23d 1852,
John Wilbourn Clerk
By J B Turner D.C.

(Copy of Title Bond)

Exh Deft.

Copy of Bond

In consideration of two second Notes executed by William Allen to me bearing even date herewith, One for two hundred dollars, payable the 25th day of December 1838, and the other for three hundred dollars, payable the 25th day of December 1839, I hereby bind myself my heirs &c, to make to the said William Allen, on the said 25th day of December 1839, a good and lawful deed of conveyance to the following lot or parcel of ground, situate, lying and being in the town of Mount Vernon, County of Jefferson and State of Illinois, and bounded as

follows, to wit, beginning at the South West Corner of the house sold to said Allen by me, on the East side of lot No. (26) twenty six, on Main Street, running thence North to the Alley, thence East, to the North East Corner of said lot, No. twenty six, thence South to the S.E. corner of said lot, thence West to the beginning, same Variation as Lots in said Town. Provided however, that said obligation is upon this express condition, that said Allen shall pay or cause to be paid the above Notes as they respectively fall due and payable, and no other.

Witness my hand and seal this 16th day of April 1838.

D Baugh. (Seal)

(Assignment of Bond)

"For Value received I assign the within Bond

Sept. 10th 1849.

Wm Allen"

(Certificate of Clerk)

State of Illinois
Effingham County } Set

I, John Wilbourn, Clerk of the Circuit Court in and for the County and State aforesaid, do hereby Certify that the within Bond, and Assignments thereon, is a true and perfect Copy, as appears of record in my Office in Book D. Pages 330—331.

Witness John Wilbourn Clerk of the aforesaid Court and the Judicial Seal thereof this 13th day of March A.D. 1852.

John Wilbourn Clerk
By T B Tanner D.C.

(Endorsement on Bond)

"A". Filed May 11th 1852. John Wilbourn, Clerk.
By T B Tanner D.C.

Deposition of Mr Allen

(Deposition of William Allen)

In conformity with a Commission directed to me (Frederick A Williams of Linn Co. Iowa) Commissioner

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appointed by the Circuit Court of Jefferson County, Illinois, bearing date March 26th 1852, empowering and requiring me the said F. A. Williams to take the deposition of William Allen, a Citizen of Linn County Iowa, did in conformity with said Commission appoint Monday the 26th day of April A. D. 1852, at 9 O'clock A. M. of said place in the City of Cedar Rapids, State of Iowa, after administering an oath in due form of Law to said Mr. Allen, to answer the several interrogatories accompanying said Commission, proceed to take the deposition of the said Mr. Allen, as follows.

Interrogation 1st. Are you acquainted with the parties complainant & defendant in this case - and if so - how long have you known them respectively.

Answer. I have known Harvey S. Pace the defendant, for some thirteen years. Francis A. Edwards I have no acquaintance with whatever.

Interrogy 2d. State whether you purchased of Downing Baugh and took from him a bond for a title to Lot No 26, in the town plat of Mt Vernon, Jefferson County Illinois, or any part of said lot, if yea - and you do not recollect the numbers of said Lot, please state which side of the public Square said Lot lay - and what kind of a house you left on said Lot - or any other description that may identify said Lot, or part of the Lot you do purchase.

Ans. I purchased of Downing Baugh part of a lot in Mt Vernon Jefferson Co. Ill. lying on the north side of and fronting the public Square. I left on the Lot a log house weather-boarded, having in front an Office and

porch, both of which had a Glass front: it also had a log stable on the back part. There was a Cistern dug on the Western line of said Lot, One half of which was on it.

Interogy 3d State whether you ever sold said bond for title from said Baugh, and if so, When, to whom and for what price.

Ans. I never sold said title Bond to any person whatever.

Interogy 4th State whether you ever sold said title Bond to the Complainant Francis M Edwards, if so, When did you so sell it - and how much did he pay you for it.

Ans. I never did sell it to any one, neither did I ever receive any thing for it from any one.

Interogy 5th Please look upon the annexed copy of a Bond & Assignment thereof, marked as exhibit "A" and State whether it be a true copy of the title Bond from D. Baugh to you - if not whether it be not a substantial copy thereof.

Ans. As near as I can recollect it is a substan-tial copy thereof.

Interogy 6th State if you please whether you ever executed an Assignment of said title bond in the words and figures as marked upon the said Copy as exhibit "A" hereto annexed, to said Complainant Edwards - or any other Assignment thereof, if so, what did he pay you for it.

Ans 21 I never did. I wrote my name on the back of the title bonds - but there was no assignment made to any person.

Interrogy 7th If there be any other matter or thing of advantage to defendants Pace, Please state all you may know without further interrogatory.

Ans. I never assigned said Bond for a title for value received to any persons whatever. But merely gave the Bond to Stephen G Hicks (to do with it the best he could for my own and my heirs benefit) as an Attorney acting for me, and and it was so understood at the time.

Wm Allen.

Sworn to and subscribed before me, this 26th day of April, Cedar Rapids, Linn Co. Iowa, A.D. 1852

Frederick A Williams
Commissioner.

Cross interrogatories propounded to said William Allen on behalf of said Complainant, G. A. Edwards.

Interrogy 1st Did you not endorse said Bond in blank for the purpose of enabling one Stephen G Hicks to sell said property for you. If so, state as near as you can recollect the time you did so.

Ans I did endorse in blank said Bond for said purpose about three years ago this Spring, as near as I can recollect.

Inter. 2d Did you not write your name on the back of said Bond and authorize Stephen G Hicks to fill

up the Assignment to any person he might sell said lot to for m^{o}. If so, please state as near as you can recollect the time you did so.

Ans. I did, this Spring three years ago as near as I can recollect. Wm Allen

Sworn to and subscribed before me this 26th day of April A.D. 1852. Cedar Rapids Linn Co. Iowa.

Frederick A Williams, Commis.

(Endorsement)

" Filed May 11th 1852, John Wilbanks, Clerk

By T B Sanner D.C.

And afterwards, to wit, at the September Term 1852, of the Jefferson Circuit Court, and on the 7th day of said Term, being the day of said month, the following further proceedings were had and entered of record, viz.

Francis A Edwards
vs } Motion to dissolve
Nancy J Page } Injunction

On this day comes the complainant in this cause, and moves the Court for leave to amend his bill. Whereupon it is considered by the Court that said complainant have leave to amend his bill upon condition that he pay all costs that have accrued up to this term.

And afterwards, to wit, at the May Term 1853, of the said Jefferson Circuit Court, on the 10th day thereof, and the 19th day of said month, the following further proceedings were had in said cause, and entered of record, viz.

Francis A Edwards
vs. } Motion to dissolve

Harvey T. Pace } Injunction.

This day came the Complainant by Nelson his Atty, Solicitor, and files his Amended bill herein. And also comes the Defendant by Mingo, his Solicitor, and files his Answer to said Amended bill. Thereupon again come said Complainant by his said Solicitor, and files herein a replication to said Answer.

Court leave given Pltff to amend Bill upon payment of Costs &c

(Amended Bill)

Amended Bill

State of Illinois } ss.
Jefferson County } of the May Term of the Jefferson Circuit Court 1853.

The Amended bill of Francis H. Edwards Complainant in the original by him filed in the Chancery side of the Jefferson Circuit Court, against Harvey T. Pace Defd. therein.

To the Hon. D. S. Marshall, presiding Judge of the Circuit Court of Jefferson County, State of Illinois in Chancery sitting. Your Orator Francis H. Edwards, now a resident of LaSalle County in this State, Respectfully sheweth unto your Honor, that one William Allen formerly a resident of Jefferson County aforesaid, purchased of One Drawing Bough a part of a certain Town lot & appurtenances in the Town of Albion Jefferson County Illinois, on or about the 16th day of April AD 1838, for a certain valuable consideration, that is to say $500 or three boats for which sd. sum of money he the sd. Allen executed his promissory note for the sum of $300 or three boats more or less, being for part of the purchase money

sd. Town lot, which said note he the sd. Bough afterwards assigned & transferred to One Lewis M Holcomb. who afterwards, to wit, at the September Term of the Jefferson Circuit Court 1840, obtained

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a Judgment against him the Sd. Allen for the amount
24 thereof, with Interest & Costs, making in all the Sum
of Three hundred & fifteen dollars, & thirty cents.
That an Execution was afterwards issued against
him the Sd. Allen on Sd. Judgment in favor of Sd. Holcomb's
debt, on the 3d day of October 1840 in favor of Sd. Holcomb
& against Sd. William Allen, which Sd. Execution was delivered
to James Bowman who was then Sheriff of Jefferson County
Illinois State afore Sd. who levied upon the Sd. Town lot within
the lifetime of Sd. Execution, but for some cause unknown
did not sell the same property during the lifetime
of Sd. Execution, and the Sd. Sheriff Bowman having
gone out of Office and the Execution was issued to his
Successor in Office Elijah Piper upon said Judgment
and for the Satisfaction thereof.

Your Orator further shewth unto your Honor,
that the Sd. Baugh when he sold the said Town
lot to the Sd. Allen did not make him the Sd.
Allen a general Warranty deed therefor, but only
made him a bond for a title on payment of the
purchase money of Sd. lot. And that afterwards
the Sd. lot which is described & known as the East
part of lot No. 26, situate in the Town of McLeansboro,
being 27½ feet front & the length of Sd. lot back, was
levied upon under an Execution or Venditioni Exponas
issued from the Jefferson Circuit Court in favor of
the Sd. Holcomb & against him the Sd. Allen, as the
property of him the Sd. Allen, under which Sd. Execution
which came to the hands of Elijah Piper, who was
then Sheriff of Jefferson County aforesaid. All
the right, title & interest of him the Sd. Allen was
on the 10th day of February 1849, after having been
regularly advertised according to law, sold at
public Vendue at the Court house door in
McLeansboro aforesaid, for the Satisfaction of Sd.

judgment, at which Sale Stephen G. Hicks & William Edwards, being the highest & best bidders therefor, become the purchasers of the Pt. part of Lot for the sum of fifty four dollars which was the full value or nearly so of the Pd. premises at the time as it was then situated & they the Sd Hicks & Edwards did receive therefor a Certificate of purchase from Sd. Sheriff as prescribed by law.

Your Orator further sheweth unto your Honor that the Sd Hicks & Edwards did afterwards for a valuable consideration transfer Sd. Certificate of purchase to your Orator on the 16th day of July 1850. & he the Sd. Hicks being also the agent and attorney of him the Sd. Allen and fully authorized so to do transferred & delivered the Sd. title bond to the Sd. part of Town Lot No. to your Orator, and your Orator did afterwards, to wit, on the 20th day of January A D 1851 obtain a deed from the Sheriff of Sd. County of Jefferson to Sd. property & took possession thereof by the authority & permission of the Sd. Stephen G. Hicks, he being the Sd. Allen's agent as afore. and your has remained in possession since & has put up improvements on Sd. lot worth $200 & upwards.

That the Sd. Allen when he purchased the Pt. premises from the Sd Young he resided upon the same & was well known to be the owner thereof up until the time he left Mt Vernon Jefferson Co. Ills which was about some 12 or 14 years ago, & the Sd. property was under the supervision and control of Sd. Hicks as agent of Sd. Allen until your Orator obtained Sd. Certificate of purchase from Sd. Hicks and Edwards as afore.

That the Sd Young after the sale thereof by him to Sd Allen & the transfer of Sd. Note to Sd Hicks had no right & interest or claim

in or to the Sd lot, but your Orator having requested Sd
26 Baugh to make to him a deed therefor according to the
Condition of the Sd Bond, he your Orator having a perfect
right to the said deed under and by virtue of his Sd purchase
at Sheriff Sale as afore, he the Sd Baugh declares he would
not do so unless your Orator would give him $75. & your
Orator not knowing any thing about Law and
relying upon the Sd Baugh's opinion and his integrity
in the premises, & supposing that he the Sd Baugh was
entitled to it - persuaded him the Sd Baugh, by taking up
a promissory note due by the Sd Baugh to the School
Commissioners of Jefferson County for the amount.
and he the Sd Baugh did thereupon make your
Orator a deed of Conveyance to Sd property part
of lot No. 26. both of which said deeds are duly
acknowledged by the Sd Baugh & the Sd Sheriff and are
recorded as required by law.

The Sd Harvey S Pace, Defendant, recovered a Judgment against Sd Baugh. After
Sd Baugh sold the Sd property to the Sd Allen and after
the Sd Baugh had sold the Sd note to Sd Holcomb, in the
Circuit Court of Jefferson County and State afore, which Sd
Judgment is unsatisfied, and the Sd Harvey S Pace has lately
had an Execution issued against Sd Baugh on Sd Judgt and
is now endeavoring to sell and has actually levied upon
the Sd part of Sd lot No. 2 is about to sell the same to satisfy the
Judgt he holds against said Baugh, well knowing that
the Sd Baugh has parted with all his equitable interest therein
long before Sd Pace obtained Sd Judgt against Sd Baugh, and
also well knowing that the Sd Baugh has not now, nor had
at the time of the rendition of Sd Judgt in his favor any interest
whatever in the premises excepting that he had the legal
title in him. & your Orator being without remedy save in
this Honorable Court, prays the aid thereof, and that this
Honorable Court may issue to his aid the Writ of Injunction

to enjoin & restrain the Sd Pace from selling the Sd part of lot No. 96 and thus taking Sd property against Equity and Conscience to satisfy Sd Baughs debts – he further prays, that the Sd Harvey, T. Pace be made defendant to this Bill and answer the same upon oath – and that the peoples writ of issued to his aids &c. requiring Sd. defts to appear and answer this Bill & for such other and further relief in the premises as is just and Equitable & he will ever pray as in duty bound &c.

Nelson for Compl.

State of Illinois
Jefferson County } This day personally appeared before me William Edwards, who is the agent of Francis & Edwards Complainant in the foregoing Bill of Complaint and being by me duly sworn according to Law doth declare upon oath that to the best of his knowledge and belief the material allegations in the said bill are true in substance and in fact.

Wm Edwards.

Subscribed & sworn to before me this 19th day of May 1853.
J S Marshall

(Answer to Amended Bill)

Answer to Amended Bill

Harvey T Pace
vs
Francis & Edwards

In Chancery.
May term of the Jefferson Circuit Court A.D. 1853.

The answer of said Harvey T Pace to the amended bill of Complaint of said Francis & Edwards – this respondent saving and reserving to himself all and all manner of exceptions, to the manifold errors, misstatements, inaccuracies, untruths and inadvertances in the said amended bill contained for answer thereto or to so much thereof as he is advised is material for him to answer unto, answering, saith; that true it is some time in the year 1838, the time not

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particularly recollected, respondent did hear some Conversation between the said Dorring Baugh & Mr. Allen in relation to selling the said premises, and saw said Allen sign to that respondent understood to be a Note which he understood from what was said by the said Baughs & Allen was for said premises, but for what amount said Note was given respondent does not know, and whether the said Baugh assigned said Note to Lewis M Holcomb, or whether the said Holcomb has obtained a Judgment against said Allen for the same amount, and upon said Note, or whether Execution has issued as alleged this respondent of his own knowledge knows not neither admits or denies but calls for the proof —

This respondent admits that said Baugh did not make and execute to the said Allen a deed in said premises, but respondent denies that he knows any thing about the terms and conditions of the contract, or sales any way made, except that he has some recollection that the purchase money was to be $500, and respondent positively denies having any all knowledge of said Baugh having executed to said Allen a bond for title to said premises, and like wise respondent obtained a Judgment against the said Baugh as herein after stated. This respondent further answering states that of his own knowledge he knows nothing about said premises being levied upon and sold as in complts bill alleges. Neither admits or denies but calls for the proof. but this respondent most positively denies that the said sum of fifty four Dollars was the full value or nearly so of said premises, on the 16th day of July 1854 — This respondent states that he knows not whether Wm Edwards and Stephen G Hicks received a certificate of purchase for said premises as in complts bill alleges — Neither admits or denies but calls for the proof.

This respondent further answering states that as to whether the said Edwards & Hicks for value received transferred any certificate of purchase for said

premises to the said Compt, as in said bill alleged, he does not know, neither admits or denies but calls for the proof. Respondent neither admits or denies that the said Stephen G Hicks was the agent of the said Allen and fully authorized to transfer said supposed title Bond, or that the said Hicks did transfer the same as in Compts bill alleged but calls for the proof. Respondent neither admits or denies that the said Compt obtained a deed from the Sheriff to said premises as in Compts bill alleged but calls for the proof. Respondent admits that said Compt did enter into possession & make improvements upon said premises, but he states and avers, that before said Compt did enter into possession and make improvements and after the rendition of your respondents judgment herein after mentioned, respondent examined the the proper records and no title papers from said Baugh to any person for said premises, had been filed or recorded, and this respondent has stated that at the time he obtained his judgment there was nothing appearing from the proper records but that the title to said premises was in the said Baugh, and your respondent charges such to be the fact that the title to said premises was in the said Baugh at the time of the rendition of this respondents judgment against said Baugh, and this respondent states that he informed said Compt that he had a judgment against said Baugh, and that respondent intended to make the money out of said premises, and notified Compt not to make improvements upon said premises before he the said Compt made any improvements thereon, and in this connection your respondent insists that his judgment is a lien upon said premises, and that they are subject to sale for the satisfaction of the same notwithstanding all the statements and allegations in Compts amended bill contained. This respondent

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neither admits or denies that said Hicks was the agent of the said Allen in relation to said premises, or that said Hicks put the Pl. Compt. into possession thereof, but calls for the proof. This respondent further answering admits that the said Allen some time in or about the year 1838, occupied said premises for a short time but by what authority respondent does not know, and that after said Allen quitted the ~~premises~~ possession of the said premises and until and after the rendition of said Judgment in favour of respondent and against the said Baugh, said premises were frequently & for long intervals vacant and unoccupied without the said Allen or any one for him exercising or claiming to exercise any acts of ownership over it, to the knowledge of this respondent. Respondent would further state that said Allen immediately on quitting the possession of the said premises (which was to the best of this respondents recollection some time in the fall of the year 1838) left the said County of Jefferson and has remained absent therefrom from thence hitherto and has not to the knowledge of this respondent even at any time by himself, or any agent claimed or exercised any acts of ownership over said premises, but that the said premises at different times and for long intervals remained vacant and untenanted and at other times was occupied by divers persons but by whose authority respondent does not know but he is informed and verily believes, without any authority from him the said Allen — or any person who was duly by the said Allen. This respondent further answering states, that he neither admits or denies that the said Compt. requested said Baugh to make him a deed to said premises, as in the said amended bill alleged, but calls for the proof. And he sets up, charges and avers, that the said Compt. was fully informed by the said Baugh of the true condition of said premises, that the said Allen had no title thereto.

that the said Allen has not complied with the condition of said bond, that he has no right to a deed from him the said Baugh on account of his pretended purchase of said premises at Sheriffs sale. Respondent neither admits or denies that the said Baugh on the 26th day of September 1849 made to said Complainant a deed to said premises as in Complts amended bill alleges, but calls for the proof. And he avers & charges that the said Compt. purchased the said premises of the said Baugh & paid him therefor the sum of Seventy dollars as he is informed & verily believes & is ready to verify & prove, & which purchase was long after your respondent had recovered his Judgment against said Baugh, and that the said Compt at the time of said purchase from said Baugh well knew or was presumed to know that your respondents Judgment was a lien upon said premises, and this respondent further answering states that as he has been informed and verily believes, & here charges it for a fact that the said Allen was never paid the purchase money for said premises.

Yea it is, that this respondent did on the 16th day of August 1847, recover a Judgment against the said Baugh for the sum of $287.96 cts with costs of suit, which said Judgment remains in full force and unsatisfied, said respondent further states that he caused Executions to be issued upon said Judgment within a year of the rendition thereof, and no bond for a title to said premises from said Baugh to said Allen was filed or recorded until long afterwards, and this respondent denies that he ever had notice of the existence of such pretended bond, until long after the rendition of his said Judgment, nor did this respondent know in whom the title to said premises existed until long after the rendition of his said Judgment, as aforesaid.

This respondent further answering his bill up

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charges and averrs, that if the said Holcomb ever recovered a Judgment against the said Allen as in said Amended bill alledged, which he does not admit, that the same at the time of the pretended issuing of said Execution thereon and pretended the record was in law presumed to be decred and satisfied and was not a lean upon said premises in preference to this respondents mortgage by virtue of this respondents Judgment, for the reason for the reason as this respondents has been informed and verily believes, no Execution was ever issued upon said pretended Judgment in favor of said Holcomb and against said Allen, within one year after the rendition thereof. And this respondent further insists that his said Judgment is a lean upon said premises & that they are subject to sale for the satisfaction thereof, notwithstanding all the statements & allegations in complts amended bill contained - Without that, that there is any other matter or thing material or necessary for this respondent to make answer unto, not herein or hereby well & sufficiently answered unto, confessed or avoided, traversed or denied is true all which he is ready to verify & prove as this Honorable Court shall order and direct, and having fully answered he prays that the injunction herein granted may be dissolved & dismissed and he herein dismissed with his reasonable costs & he will ever pray as in duty bound &c.

R. H. Wright, Sol. for Deft.

State of Illinois }
Jefferson County } ss.

This affiant, the deft. in said bill after being first duly sworn deposeth & saith that the matters & things as set forth in the foregoing answer, so far as stated from his own knowledge are true in substance and fact, and so far as stated from

the information of others he believes to be true

Subscribed & sworn to before me this 19th day of May A D 1853. J B Tanner Clk } H. T. Pace.

(Endorsement on ~~Answer~~ Answer to Amended bill)
"Francis H Edwards
vs
Harvey T Pace"
"Answer to Amended bill."
"Filed September 24. 1853.
J. B. Tanner Clk

Replication

Replication Francis Edwards vs Harvey T Pace } in Chy

And the Pl. Compt. comes & says that matters and things in Compts Bill are true & the matters and things in ~~the~~ Respondents Answer are untrue & this he the Pl. Compt is ready to verify whence &c. Nelson for Compt.

And afterwards, to wit, at the last aforesaid Term of this Jefferson Circuit Court, and on the day and date aforesaid, the following further proceedings were had in said Case, and Entries of record, viz:

Francis H Edwards vs Harvey T Pace } Motion to dissolve Injunction

Ordered by the Court that this Cause be set down for hearing at the next term of this Court.

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And afterwards, to wit, on the 20th of September 1853, the Compt. by Nelson his Sol. filed the following Replication, Viz.

Francis H Edwards
vs
Harvey T Pace } Bill in Chancery.

Replication. And the Pl. Compt. by Nelson his Solicitor comes for replication says that the matters and things in Compts. Bill are true and that the ~~xxxxx~~ defendants answer is untrue & this he is ready to verify — wherefore & whereof he the Pl. Compt. prays hgt. Nelson for Compt.

(Endorsement on replication)
" Edwards
vs
Pace
Replication "
" Filed Sept. 20th 1853. T. B. Farrar Clk "

And afterwards, to wit, at the September Term 1853, of the Jefferson Circuit Court, the following further proceedings were had in said Cause, and entered of record.
Viz.

Francis H Edwards
vs. } Motion to dissolve
Harvey T. Pace } Injunction

On this day came Complainant by Baugh, his Solicitor, and the Defendant by Wingate, his Solicitor, and submit this Cause, to the Court, upon Bill, Answer, Exhibits, Documents, and proofs by Depositions and Witnesses sworn in Open Court.

And afterwards to wit, at the May term A.D. 1854, of the Jefferson Circuit Court aforesaid, the following further proceedings were had and entered of record.

Viz.

Francis A. Edwards
vs
Harvey T. Parr
} Motion to dissolve Injunction

On this day comes the Complainant by Nelson his Solicitor, and as does the Defendant by Wingate his Solicitor and the Cause coming on to be heard upon bill, answers, Exhibits, Documents and proofs, by depositions, and by Witnesses sworn in Open Court as Submitted and Established at the last term of this Court; and the ~~Court~~ Court being duly considered the premises and being sufficiently advised therein, proceeds to decree as follows to wit. It is Ordered adjudged and decreed by the Court, that the Injunction herein be and the same is hereby dissolved and that the Bill be dismissed at the Cost of the Complainants

Same
vs
Same
} Motion

Now on this day again the Complainant by his said Solicitor, and prays an Appeal, Wherefore it is Ordered and Considered by the Court that said prayer be allowed, Providing the said Complainant shall give Bond, with Wm. Edwards

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as his security within thirty days, enrolment as the law directs, in the sum of £200

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And afterwards, to wit, at the May Term AD 1854 of the aforesaid Jefferson Circuit Court, the following further proceedings were had and entered of record.

Viz.

G H Edwards Vs A J Parr	May Term 1854, Jefferson Circuit Court.

Bill of Exceptions

Be it remembered that on the hearing of the above styled cause the Complainant introduced in evidence the papers and files pertaining to a suit thereto for commenced & determined in the Jefferson Circuit Court by Lewis M Holcombe as Assignee of Downing Baugh against William Allen in Debt. Also a promissory note made by William Allen in favor of Downing Baugh dated April 1838 and assigned by Baugh to Holcombe on the 5th day of May 1838 — Also a Judgment in favor of said Holcombe as Assignee of Downing Baugh against William Allen, rendered September term of Jefferson Circuit Court 1840, which said Documentary Evidence was received and considered in evidence by the Court and is marked and referred to as Exhibit No 1 - (Hereinset Exhibit No 1)

(Declaration)

Declaration. Holcombe vs Allen

State of Illinois Jefferson County	Set. April Term of the Circuit Court 1840.

Lewis M Holcombe, Complains of William Allen, Summoned &c, of a plea of debt that he render to the said plff the sum of $300. which to him he owes and from him unjustly detains

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For that whereas the said defs, heretofore, to wit, on the 16th day of April 1838, at Mount Vernon, within the said County of Jefferson, by his certain writing obligatory, sealed with his seal & now here to the Court shewn, the date whereof is the day & year last afsd, promised to pay, on or before the the 25th day of December A.D. 1839, for value received, to one Downing Baugh, or order the said sum of three hundred Dollars, above demanded, And the said Downing Baugh, to whom, or to whose order, the said writing obligatory was made payable, afterwards, to wit, on the 5th day of May, 1838, at Mt Vernon, Ills, to wit, at the County afsd assigned the said writing obligatory, by indorsement, to the said pltff, acknowledging the said note to be just, and guaranteeing the payment thereof, in connection with his said assignment, of all of which premises the said defs then & there had notice. Yet the said defs, did not, on or before the 25th day of Dec. 1839, pay the said sum of money in said writing obligatory specified, to the said Downing Baugh, before said assignment, or to the said pltff since the said assignment, But to pay the same or any part thereof to the said pltff, since the said assignment, the said defs, hath hitherto wholly failed & refused and still doth fail & refuse, to the damage of the said pltff of $300.00 and therefore he sues, &c.

H. Eddy. Atty. for pltff.

(Copy of Note)

Note

$300. On or before the twenty-fifth day of December 1839, for value recd, I promise to pay Downing Baugh or order three hundred Dollars,

3) Witness my hand & Seal this 16th day of April 1838.

(Signed) William Allen (Seal)

H. I. Pace.

(Indorsement)

I acknowledge the within Note Just, and do assign the same to L. M. Holcomb, and guarantee the payment of the same. McLeansboro Illinois 8th May 1838. (Signed) D. Baugh.

(Cost bond)

Lewis M Holcomb
vs
William Allen } I do hereby enter myself security for costs in this Suit and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court, in pursuance of the laws of this State.

Dated this 25th day of Feb. 1840.

(Signed) H. Eddy. (Seal)

(Endorsements on Declaration, Cost bond & Note)

"Lewis M Holcomb
vs
William Allen,
"Declaration, Cost-bond, & Note"
"Note filed"
"Filed 28th Feby 1840. I. Pace Clk"

(Summons)

Summons, State of Illinois, Jefferson County } ss. The People of the State of Illinois
To the Sheriff of Wayne County, Greeting:

We command you that you summon William Allen

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to be and appear before the Circuit Court of said County, on the first day of the next term, to be holden at Mt Vernon on the first Monday in the month of April next, to Answer Lewis M Holcomb in a plea of Debt $300 – Damage $300.00 And have you then there this writ.

Witness: the Clerk of said Court, at Mt Vernon this 28th day of February in the year of Our Lord One thousand eight hundred and forty.

Joel Pace Clerk.

(Endorsements on Summons)

"Lewis M Holcomb
vs } Debt
William Allen

1st day April Term 1840."

"Executed on the 30th March 1840.

Serving	50
Returning	12½
	62½.

Charles Wood
Sheriff W. C. Ills.

(Note)

$300.

Note

On or before the twenty fifth day of December 1839, for Value Rec^d I promise to pay Downing Vaught or order three hundred dollars, Witness my hand and Seal this 16th day of April 1838. (Signed) William Allen (Seal)
H. J. Pace.

(Endorsements on Note)

"I acknowledge the within Note just and do assign the same to L. M. Holcomb and guarantee the payment of the same. Mt Vernon Illinois. 5th May 1838. (Signed) D Vaught

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"W. Allen Note $300"

"Filed 28th Feby 1840.

I Pace Clk"

And afterwards, to wit, at the April Term 1840, of the said Jefferson Circuit Court, the following proceedings were had and entered of record.

Viz.

Lewis M Holcomb
vs
William Allen } Debt.

It appearing to the Court that the Summons herein was not served in time. Ordered that the same be continued until the next term of this Court.

And afterwards, to wit, at the September term, 1840, of the aforesaid Jefferson Circuit Court, the following further proceedings were had and entered of record.

Viz.

Lewis M Holcomb
vs
William Allen } In debt.

Judgment Holcomb vs Allen

And now on this day came the Plaintiff by Eddy his attorney, and the said William Allen altho' three times solemnly called came not, but made default. It is therefore considered by the Court, that the said plaintiff recover against the said defendant his debt, and damages for the detention of the same, but in as much as it is uncertain what those damages are, therefore let the Clerk assess the same — whe

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forth with reports in writing; that he find the debt sued for to be $300. and the damages, being interest due upon the same, to be $13.65. It is therefore considered by the Court, that the said plaintiff do recover against the said defendants his said debt of Three hundred dollars, and the said sum of thirteen dollars and sixty-five cents, his damages for the detention thereof, as above assessed, making in all the sum of Three hundred and thirteen dollars and sixty five cents; as also his costs and charges, by him the said plaintiff, about his suit in this behalf expended, and the said defendants in mercy &c.

The Compt. next introduced in evidence the following Executions in favor of the Pl. Lewis M. Holcomb assignee of Downing Bangs against Pl. William Allen, that is to say: One Execution dated October 3d. 1840 — return thereon endorsed dated as follows — the 25th. January 1841. the levy by virtue of the above execution appears to have been made on the Dec. 19th. 1840, but had not time to sell —

Also a Conditional Express fi. fa. dated 1st March 1841 and levied April 28th. 1841 on Same Lot by Jesse Bowman Sheriff of Jefferson County & return endorsed thereon as follows "Appraised and not sold for want of bidders" — Also an Execution dated May 9th. 1842, and Came to hand Same day — Also an Execution dated 12th. September 1842, levied October 7th. 1842, on said Lot by Stephenson Sheriff of Jefferson County. return November 1st. 1842, levied & not sold for want of bidders &c — Also another writ of Execution dated 23d. August 1845 returned no sale for want of bidders — Also an Execution dated 27th.

November 1848, return February 16th 1849, property sold to Stephen G Hicks & William Edwards for $54, by Elijah Piper Sheriff — said Sheriff having received said Execution 4th December 1848. All of which said Executions were proven to have been issued from the Circuit Court of Jefferson County in favor of Pl. Lewis M Holcomb assignee of Downing Baugh & against William Allen on Judgment in favor of Pl. Holcomb as assignee of Pl. Baugh against Pl. Allen for the sum of $312 & 65 cents debt with interest from 28th September 1840. — And it was further proven by Compt. that all of the above Executions were regularly docketted on the Execution Docket belonging to the Office of the Circuit Clerk of Jefferson County. — Which said Executions & Notices on Execution Docket are marked and defined to as Exhibit No 2. (See insert Exhibit No 2)

(Exhibit No 2)

Exhibit No 2. Execution. Holcomb vs Allen 5th Oct. 1840.

State of Illinois } The People of the State of Illinois
Jefferson County ss } to the Sheriff of said County. Greeting.

We Command you that of the goods and chattels, lands, tenements & real estate of William Allen, of your bailiwick, you cause to be made, by levy & sale agreeably to law, the sum of three hundred and one thirteen dollars & sixty five cents, which Lewis M Holcomb lately in our Circuit Court for said County recovered against him for debt & damages in an action of debt, and also the sum of seven dollars & 37½ cents, for his costs and charges by him the Pl. pltff, about his suit in that behalf expended (with interest on the said debt, from the 28th day of Sept. 1840 till paid) of which

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the said William Allen is convicted, as appears to us of record — and that you have those moneys before us, at the Clerk's Office of our said Court ninety days from the date hereof to render to the said plff. and have you then there this writ.

Witness Joel Pace Clerk of our said Court, and the Judicial Seal thereof, at Mt Vernon, this 3rd day of Oct. 1840.

(Seal)

Joel Pace Clk

"(Entry on Execution Docket)"

Date	Parties	Debt	Costs	Process	County	Officer	By whom Ordered	To whom delivered	Date of Return	Return
1840 Oct. 3rd.	Lewis M Holcomb vs William Allen	Debt $313.65 with interest at the rate of six percent from 28th Sept. 1840 until pd	7.37	fifa	Jefferson	Shff	Eddy	Bowman	1841 Jany 25	Levied on East part Lot No. Say 27½ feet and the length of said Lot No 26 in Mt Vernon Bought Decr 29th 1840. Jas Bowman Shff. Levied C.S.S. Not time to sell Jany 25th 1841

(Endorsements on Execution)

"Came to hand Oct. 3rd. 1840, at 12 O'clock M.

J. Bowman Shff. J.C."

"Levied on the East part of Lot No. 26 - Say 27½ feet front & the length of Sd. Lot No 26. back. Sd. Lot lying in the Town of Mt Vernon. Decr. 29th 1840.

Jas. Bowman Shff. J.C."

"Levied but not time to sell. Jany 25th 1841.

J. Bowman Shff. J.C."

Ven. Fi Fa.

Holcomb vs Allen

State of Illinois } ss. The People of the State of Illinois to the
Jefferson County }

Said County Greeting. Whereas by virtue of our writ of

fieri facias, We lately commanded you that of the goods and chattels lands and tenements of William Allen — in your County you should cause to be made the sum of three hundred and thirteen dollars and sixty five cents, which Sewis McAlcomb lately in the Circuit Court of said County recovered against him for debt and seven dollars and thirty seven and a half cents costs as by the records and proceedings of the said Court in that behalf appears, and you having made return on that writ that you have levied the same on the following described real estate the property of the said William Allen, to wit: "the East part of lot No 96, sixty 2 7/12 feet front and the length of said lot No 96 back, said lot lying in the Town of Mount Vernon, which said real estate remains in your hands unsold for want of time, We therefore command you to sell or cause to be sold the said real estate above described, the property of the said William Allen by you in form aforesaid taken, without delay, and have that money ready in ninety days from the date hereof to render to the said Sewis McAlcomb for his debt and costs aforesaid, and fail not and make return of this writ in the said space of ninety days with an endorsement thereon as to the manner in which you execute the same, and have then there this writ. Make also the costs of this execution.

Witness Joel Pace Clerk of our said Court at Mount Vernon this 1st day of March A.D. 1844

Joel Pace Clk

(Endorsement on the above Execution)

" Came to hand March 3rd 1844, at 2 O'Clock P.M.

J Bowman Shff. I.C.

[8524-25]

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44

"Levied on lot No 26, in the Town of McLeansboro, 24 day 27½ feet front and the length of 2d lot No 26 back. April 28th 1841. I Bowman Shff. J. C."

"The within part of lot No 26. Offered for sale May 21st 1841, at two thirds of its Value of $11.10½ cts. Once would not sell for the want of bidders. I. Bowman, Shff J. C."

"Lewis M Holcomb
vs
William Allen
Venditioni exponas.
Rec'd Sept. 3. 1845

Serving	50
Advertising	25
Returning	12½

May 21st 1841.
I Bowman Shff. J. C."

(Copy of paper attached to Execution)
State of Illinois
Jefferson County } We the undersigned, appointed and qualified by the Sheriff Said County to value the property, to wit, so much of lot No 26 as the Execution appears to be levied on; do appraise the same to be worth the sum of Three hundred and sixteen dollars & 66 cents.
Given under our hands this 21st day

48

45 of May 1844 –

Noah Schuster
A M Grant
E A Kellogg

Ex.
Holcomb
by
Allen

State of Illinois }
Jefferson County } SS. The People of the State of Illinois, to the Sheriff of said County – Greeting:

We command you that of the goods and chattels, lands, tenements and real estate of William Allen in your County, you cause to be made by levy and sale thereof, agreeably to law, the sum of three hundred & thirteen dollars and 65 cents, which Lewis M Holcomb lately, in our Circuit Court for said County, recovered against him for his debt and damages, in an Action of debt together with interest thereon, at the rate of 6 per centum per annum, from the 28th day of Sept 1840 till paid; and also the sum of nine ($9) dollars and 50 cents, which were awarded to the said Lewis M Holcomb in our same Court, for his costs and charges, which he laid out and expended in and about his suit in that behalf, and whereof the said William Allen convicted, as appears to us of record: and have you the said moneys before us, at the Clerk's Office of our said Court, on Monday

[25 24-26]

Comm, ninety days from the date hereof, to render unto the said plaintiff in this execution, his debt, damages and costs aforesaid, and have you then and there this Writ.

Witness Edward H. Ridgeway, Clerk of our said Court, and the Judicial Seal thereof, at Office, in Mount Comm, this 9th day of May A. D. 1841.

E. H. Ridgeway Clerk

(Endorsements on Execution)

"Lewis M Holcomb
vs
William Allen } Fi fa
Debt 313. 65
Cost 9. 50 "

"Debt contracted previous to 1st May 1841" "No 2"

"Came to hand May 9th 1842 at 12 O'clock
Jas Bowman Shff. L. C.

(Entries applicable to the above Execution, as found on the Execution Docket)

"No 2, "Lewis M Holcomb. vs William Allen" — Debt $313.65. — Cost $9.50 — Kind of Court. "Fi fa" — County Directed. "Jefferson" — by who ordered — "Eddy" — to who delivered — "Bowman" "9th May 1842" — Return of Execution & Remarks — "12th Sept 1842. Execution handed into Office".

50

Ex. 4)

Holcomb vs Allen

State of Illinois }
Jefferson County, } Set.

The People of the State of Illinois, to the Sheriff of said County — Greeting.

We command you, that of the goods and chattles, lands, tenements and real estate of William Allen in your County, you cause to be made, by levy and sale thereof, agreeably to law, the sum of three hundred and thirteen dollars and sixty-five cents; which Lewis M Holcomb lately, ~~in an action of debt together~~ in our Circuit Court for said County, recovered against him for his debt and damages, in an action of debt, together with interest thereon, at the rate of 6 per centum per annum, from the 28th day of September 1840 till paid: And also the sum of twelve dollars and 45¾ cents, which were awarded to the said Lewis M Holcomb in our same Court, for his costs and charges, which he laid out and expended in and about his suit in that behalf, and whereof the said William Allen is convicted, as appears to us of record: And have you the said moneys before us, at the Clerks Office of our said Court, in Mount Vernon, ninety days from the date hereof, to render unto the said plaintiff in this execution, his debt, damages and costs aforesaid, and have you then there this Writ.

Witness Edward H Rudyard, Clerk of our said Court, and the Judicial Seal thereof, at Office, in Mount-Vernon, this 12th day of

[8524-27]

57 (Seal) September A.D. 1842.

48

E B Kingsbury Clerk

By N Johnston D.C.

(Endorsements on the above Execution)

"Came to hand at 1 O'Clock P.M. Sept. 15. 1842.

W. J. Stephenson Shff. J. C."

"Levied on a part of lot No 26, Commencing at the South East Corner running west 18 feet, and running back 169. Said lot or part of lot being and lying in the town of McLeansboro Jefferson County Illinois. October 7th 1842.

W J Stephenson Shff. J. C."

"State of Illinois
Jefferson County } ss

We the undersigned, selected & sworn by the Sheriff of Jefferson County to appraise that part of lot No. 26, above described, do value the same at three hundred dollars, Given under our hands on oath this 7th of October 1842.

Noah Johnston
James Simson
A B Watson.

Sworn to before me this 7th day of October 1842. W. J. Stephenson Sheriff of Jefferson County."

"Not sold for the want of bidders November 1st 1842, and no other property found.

Levying 50. Advertising 25. Returning 12½. $ — 87½

W. J. Stephenson Shff. J. C.

5249

" Lewis M Holcomb
vs
William Allen } fifa

Debt — $313.65
Cost 12.45¾
Interest from 28th of Sept. A.D. 1840 "

" the deft — Nor pltff Not None "

(Entries, which apply to the above Execution, as found upon the Execution Docket)

	Parties	Debt	Cost	Kind of Writ	Co.	By whom Collect'd	To whom Amt.	Return &c.
1842 Sept. 12th No. 10.	Lewis M Holcomb vs William Allen	$313.65 Int from 28th Sept. A.D. 1840	$12.45¾	fifa	Jeff.	Brown	Shff Stephenson	1st Nov. 1842 - fifa returned endorsed as follows to wit Levied on part of Lot No. 26. in Stevenson Jeff. Co. Ills. & property not sold for want of bidders - fees 8/ W. J. Stephenson Shff. J. C.

Ex.
Holcomb
vs
Allen

State of Illinois
Jefferson County } ss. The People of the State of Illinois to the Sheriff of said County. Greeting, Whereas by virtue of our writ of fieri facias we lately commanded you that of the goods and chattels lands and tenements of William Allen in your County you should make Cause to be made the sum of three hundred and thirteen dollars and sixty five cents, which Lewis M Holcomb in the Circuit Court of said County recovered against him for his debt, and seven dollars and thirty seven ½ cents costs, as by the records and proceedings of said Court in that behalf appears, and return having been made on said writ, that levy had been made on the following described property, to wit, "the East

[8524-28]

part of Lot No 26, say 27½ feet front, and the length of said lot No 26 back, said lot lying in the town of Mount Vernon". which said real estate remains unsold, and said debt and cost unsatisfied.

We therefore command you as we have heretofore commanded you that you sell or cause to be sold, according to law the said real estate above described the property of the said William Allen by you as in form aforesaid taken, to satisfy the said Lewis M Holcomb of his said debt of Three hundred and thirteen dollars and sixty five cents, recovered as aforesaid together with interest thereon at the rate of six per centum per annum from the 28th day of September A D 1840 until paid: Also the sum of nine dollars and twenty five cents increased costs by the said Holcomb expended as aforesaid. And that you have said moneys ready at the Clerks Office of our said Court, ninety days from the date hereof to render unto the said plaintiff in this execution his debt & cost aforesaid, & how you execute this writ make return, & hereof you then there this writ.

Witness Edward H Ridgway Clerk of our said Court & the seal thereof at Mt Vernon this 28th day of August 1845

(Seal)

E. H. Ridgway Clk
per I B Hindle D.C.

(Endorsements on above Execution)

"Came to hand at 5 O'Clock P.M. September 3d 1845.

W. J. Stephenson Shff. I. C."

" No Sale for want of bidders, December 19th 1845.
Advertising 25
Returning 12½
W. I. Stephenson
Shff. I. C. "

"

4443.

Lewis M. Holcomb
&
William Allen } Alias Vendi

Debt $313.65
Cost 9.75
Int. fr. 28th Sept. 1840 "

(Entries, applicable to the above Execution, as found on the Execution Docket)

No.	Parties	Debt	Cost	Time of Writ	County	Date	Wh. Received	Wh. Returned	Return
4443	Lewis M. Holcomb & William Allen	313.65 Int. fr. 28. Sept. 1840	$9.75	Vendi	Jefferson	August 23. 1845	Sandy	Stephenson	No Sale for want of bidders. Dec. 19. 1845. Adv. & Ret. – 37½ W. I. Stephenson Shff.

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Ex. No 571

Holcomb vs Allen

State of Illinois }
Effingham County } ss. The People of the State of Illinois to the Sheriff of said County, Greeting:

Whereas by virtue of our writ of fieri facias we lately commanded you that of the goods and chattels lands and tenements of William Allen, in your County, you should cause to be made the sum of three hundred & thirteen dollars and sixty five cents which Lewis M. Holcomb lately in the Circuit Court of said County recovered against him for his debt, and seven dollars 37½ cts for his cost as by the record and proceedings of said Court appears; And return having been made on said writ, that levy had been made on the following described property to wit; "The East part of lot No. 26 Day 27 feet front and the length of said lot No. 26 back, said lot lying in the town of Mount Vernon, County and State aforesaid, which said real estate remains unsold and said debt & cost unsatisfied.

We therefore command you as we have heretofore commanded you, that you sell or cause to be sold according to law the said real estate above described the property of the said William Allen by you as in form aforesaid taken to satisfy the said Lewis M. Holcomb of his said debt of three hundred and thirteen and sixty five cents, recovered as aforesaid together with interest thereon at the rate of six per centum per annum from the 28th day of September A.D. 1840, until paid, and also the sum of ten dollars 95¾ cts original and increased cost by the said Lewis M. Holcomb expended in this behalf. And that you have said money ready at our Clerks Office

in ninety days from the date hereof to render unto the said plaintiff in execution his debt and costs aforesaid, & have you execute this writ make return as the law directs.

Witness Edward A Ridgeway Clerk of our said Court, and the seal thereof, at Mt Vernon this 27th day of November A D 1848. E A Ridgeway Clk
per I B Shields D.C.

Levy

(Endorsements on above Execution)
"No. 571."
"Lewis M Holcomb
vs
William Allen } Plevin Vendi

Debt	$313.65
Cost	14.56¼

Int. from 28th Sept. 1840."

"Came to hand the 4th day of December 1848. By virtue of this Plevin Vendi I have levied on the following described real estate, to wit. The East part of Lot Number 26 Day 27½ front and the length of said lot No. 26 back, taken as the property of William Allen and in favor of Lewis M Holcomb, January 29th 1849.
E Piper Shff. J.C. D.C."

"February the 16th 1849, Sold the above described Land at the door of the Court House in Jefferson County to S. G. Hicks & William Edwards for the sum of fifty four dollars, they being the highest and the best bidders at the sale

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under the order of the within Execution, the said Sale having been duly advertised according to Law.

Elijah Piper Shff. I. C."

"Levying and advertising February the 16th 1849 — 75."
"Credit by Sale of Land to S. G. Hicks $524.00."

"Commission on Sale — 2.70
Making Certificate 50
Levying & advertising 10.93
Clerks fees 14.88
1.12
2.50 Docket fee
18.50 Sheriff Fees

E Piper Shff. I. C."

"Received of E Piper Thirty five Dollars & 50 Cents in this Execution, 9th day of December A D 1852. R H Wingate Atty for Pltff."

(Entries, Applicable to this Execution, as found on Execution Docket)

#	Parties	Debt	Cost	Writ	County	Date	By who	To who		
	Lewis M Holcomb	debt	Cost			date				By virtue of this
571	vs	$313.65		Vendi		1848				Vendi, I have levied on the following described
	William Allen	Int. for	$14.56¼		Jeff.	Nov. 27		Eddy	Shff.	real estate, to wit, the East part of
		28. Sept.								lot No. 26, by 27½
		1840								front and the length of said lot
										No 26 back, taken
										as the property of
										William Allen and in favour of Lewis
										M Holcomb
										January 29th 1849.
										E Piper Shff. I. C."

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The Compt. further introduces in evidence the Certificate of Elijah Piper, Sheriff of Jefferson County — also the Deed made by the Sheriff to Hosmer H Edwards, the Compt — which said Certificate and the Assignment thereon endorsed are marked L refer to as Exhibit No 3.

(Certificate of Sheriff Piper, to S. G. Hicks & William Edwards.)

Sheriff's Certificate to Hicks & Edwards

" State of Illinois }
Jefferson County } S.S.

I, Elijah Piper, Sheriff of Jefferson County do hereby Certify that by virtue of a Writ of fieri facias to me directed from the Clerks Office of the Circuit Court of Jefferson County Illinois, I did on the 16th day of February A.D. 1849, expose to public Sale a Certain House and Lot situated Lying and being in the County of Jefferson and State of Illinois, and known and described as follows to wit, the East part of lot No 26 Day 27½ feet and the length of said Lot No 26 Back with all the Improvements thereunto belonging, and that Stephen G Hicks & William Edwards did bid the Sum of fifty four dollars therefor, which being the highest and best bidder the same lot and house was struck off to them the said Stephen G Hicks & William Edwards, and that the said Stephen G Hicks and William Edwards will be entitled to a deed on the 16th day of July A.D 1850 unless the same be redeemed according to law.

Given under my hand and seal the 16th day of February A.D. 1849. Elijah Piper, Sheriff. J. C. "

(Endorsements on the above Certificate)

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"Certificate to S. G. Hicks & William Edwards, made the 16th of February 1849."

"For Value recd. we assign the within to S. A. Edwards this Sept. 1st 1849.

S. G. Hicks

Wm Edwards"

(Deed - Shff. Satisfaction, to Compt)

Deed Shff to Plff

Whereas Lewis McAlcomb at the September term One Thousand eight hundred and forty, of the Jefferson County Circuit Court in the State of Illinois, did recover a Judgment against William Allen in an action of debt, for the sum of Three hundred dollars and sixty five cents debt, and fourteen dollars and fifty six & a fourth cents cost which he claims out in and about his Suit, upon which Judgment. an execution issued from the Clerks office of the said Circuit Court, on the 5th day of October, One Thousand eight hundred and forty, to Henry Bowman Sheriff, which said execution was returned endorsed as follows, to wit. Levied on East part of lot No. Say 27½ feet front and the length of said lot No 16 in Mount Vernon back. Dec. 29th 1840. Also endorsed Levied but not time to sell January 25th 1841.

And whereas another Execution was issued from the Clerks Office of said Circuit Court dated the 27th day of November One Thousand eight hundred and forty-eight directed to Elijah Pepper Sheriff of said Jefferson County and State of Illinois to Execute, and by virtue of the said Execution, the said Elijah Pepper, Sheriff as aforesaid, levied upon the following parcel of ground or town lot

hereinafter described, and the same being advertised according to law, was sold and struck off to Stephen G Hicks and William Edwards, they being the highest and best bidders therefor, and the time and place being duly advertised according to law, and the said Stephen G Hicks and William Edwards having received from Elijah Piper, Sheriff as aforesaid, a Certificate of purchase entitling them to a deed to the premises hereinafter described, on the Sixteenth day of July One thousand eight hundred and fifty, and the said Stephen G Hicks and William Edwards having duly assigned the said Certificate of purchase to Francis A Edwards.

Now therefore I, John R Sattenfield, Sheriff of said County of Jefferson, and Successor of Elijah Piper aforesaid, by Authority of my said Office, and in Consideration of the Sum of fifty-four dollars, to the said Elijah Piper, Sheriff as aforesaid, in hand paid, and in Consideration of the premises, have granted, bargained, sold and Conveyed, & do hereby sell and Convey unto Francis A Edwards of Jefferson County and State of Illinois and to his heirs and assigns forever the following described piece of land known and described as the East part of Lot No. 26. lay 27½ feet front, and the length of said lot No 26 back, with all the improvements thereon belonging or in anywise appertaining thereto.

In testimony whereof I have hereunto set my hand and seal this 20th day of January A D 1857. John R Sattenfield Seal

Sheriff of
Jefferson County
Illinois

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(Endorsement on the forgoing Deed)

"Filed for Record on the 30th day of January A.D. 1851.
Book "E" Page 185. John Milbanks, Clerk".

"State of Illinois }
Jefferson County } Be it remembered, that on this 30th day of January, A.D. one thousand eight hundred and fifty-one personally appeared before me the undersigned Clerk of the Circuit Court within and for said County and State, John R Satterfield Sheriff of said County and State personally known to me to be the identical person, represented in, and who executed the forgoing deed and who acknowledged the same to be his free act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of my said Office this the 30th day of January A.D. 1851.

John Milbanks, Clerk"

Eligah Pepper was then introduced as a witness on the part of the Compt, who states that he was the Sheriff of Jefferson County the 16th day of February 1849 & that he as such Sheriff sold the property described in Compts bill to Stephen G Hicks & William Edwards and made them a Certificate of purchase therefor — that said Certificate was assigned by the S.d Hicks & Edwards to Compt, and that Riley Satterfield afterwards made a deed to the Compt for the same property which is the same Certificate of purchase

— Assignment — & Deed referred to as Exhibit No. 3. —

Downing Baugh was next introduced as a witness on the part of the Compt. who states after examining the bond given by Sd. Baugh to Sd. Allen & Note given by Sd. Allen to Sd. Baugh, that Sd. Note is the same that Allen gave to him, that A. S. Pace is a witness to the Sd. Note — that Allen came here from Fairfield and purchased the Sd. Lot — that he soon after moved onto it — that Sd. Allen made some improvements thereon — that said Allen lived on the Sd. property nearly a year — that he then moved from that place, — That Sd. Allen's occupation of Sd. Lot was public, open and notorious. — That Sd. Allen lived on the Public Square in Mt. Comfort, some few rods from Pace's residence. — That Sd. Allen was a practising Physician — and as such had a good deal of practice — and kept his Shop in the house on said Lot. That said Downing Baugh made a Deed to said Lot to the Compt. on the 24th day of September 1849 — that Sd. deed was filed for record on the next day. — That said Downing Baugh made said Deed to said T. A. Edwards Compt. as assignee of the Bond made by him Sd. Baugh to ~~him~~ Sd. Allen — That Sd. Baugh did not remember whether he took up Sd. Bond or not. That Sd. Edwards the Compt. paid to him the Sd. Baugh $70. when the Sd. Baugh executed the Sd. deed to the Sd. Compt. — That the Sd. Baugh assigned the $200 note to Holcomb at the same time that the Sd. Baugh assigned the $300 note to him the Sd. Holcomb, for value received by him the Sd. Baugh of him the Sd. Holcomb

That the Sd. Allen has never been in possession of Sd. Lot since he moved away therefrom.

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That since said Allen's removal therefrom several persons have been in possession of said Lot — to wit — Hicks — Thomas — Mrs Beach — George Battyo, Clemens, Gray & Beach and Monroe — that none of Sd. last mentioned occupiers of Sd. Lot have possession thereof by any authority given by Sd. Baugh — That Sd Baugh has never set up any claim or right to control Sd. Lot other than he has made no deed to Sd. property to any person — That the legal title to Sd. Lot was vested in Sd. Baugh, as he Baugh supposed & told said Compt. — That Sd. Baugh refused to make S. H. Edwards a deed to Sd. Lot except he the Sd. Edwards would pay him the Sd. Baugh something in consideration of Sd. Baugh's perfecting Edwards's title to Sd. Lot, & told Edwards his title was not good without his Baugh's deed, but that Sd. Baugh had no equitable interest whatever in the premises

John H Pace was then introduced as a witness on the part of the Compt who states that he supposes that he was the first person who told H S Pace that S. H. Edwards have paid Sd Baugh $70 when the Sd. Edwards got the deed to Sd. Lot from Sd. Baugh. That Sd. H S Pace asked Sd. witness what Sd. Edwards gave $70 to Sd Baugh for — That Sd. John H Pace replied that he the Sd. Edwards might get Sd Baugh's quit claim to Sd. Lot — He Sd. H. S. Pace then said that Sd. Baugh had no interest in Sd. Lot — for if he the Sd. Baugh had had any interest therein he the Sd. H S Pace would have pounced it long ago — that the foregoing conversation occurred in September

1849 — and that Sd Lot was the same property in dispute & described in Compts Bill.

S. G. Hicks was then introduced as a witness on the part of the Compt. who states that the bond was assigned by William Allen to him the Sd S. G. Hicks on the 18th day of September 1849 and handed to him. That H & Edwards paid the amount bid at Sheriffs sale of Sd Lot held by the Sheriff of Jefferson County by the Sd Hicks & H Edwards — to them the Sd Hicks & Edwards & that thereupon the Sd Hicks & Edwards assigned the Certificate of purchase given by the Sheriff of Jefferson County to them the Sd Hicks & Edwards to him the Sd H & Edwards Compt. — That Sd Allen was indebted to Sd Hicks for his trouble in attending to Sd Allen's business and that when the Sd Hicks informed Sd Allen that the Sd Hicks & Edwards had purchased Sd Lot at Sd Sheriffs sale — he the Sd Allen assigned said Bond to him the Sd Hicks. That Sd Hicks was Sd Allen's agent up to the time Sd Lot was sold by Sd Sheriff — That all the tenants who had occupied Sd Lot before Sd Sheriffs sale got possession thereof from Sd Hicks as Sd Allen's agent — That the improvements on Sd Lot were very much dilapidated at the time it was sold by Sd Sheriff — and that $54 was a high price for Sd Lot at the time it was sold by Sd Sheriff. That Sd Hicks assigned the Sd Bond before assigned by Sd Allen to him the Sd H & Edwards Compt. for a valuable consideration. — That Sd Hicks thinks that he received a little rent from some of the tenants who occupied Sd Lot but that the ~~amount~~ amt was very small.

The Sd S. G. Hicks having been cross examined on the part of the defendant states that the

House on Pd. Lot was a log pen without a chimney — floor — roof &c in fact scarcely constituting a house at the time that said Edwards Compt. purchased the same of him the Pd. Hicks & Pd. Wm Edwards — the Chimney cost about $30 to put it up.

William Thom was then introduced as a witness on the part of the Pd. Compt. and stated that he knew that Wm Allen had lived in the house on Pd. Lot — that he lived there about a year — that Pd House was not more than one hundred yards from Mr T. Pacos residence — that Pd. Allen made a glass front to Pd. House & erected a stable on Pd. Lot and that Pd. Allen kept a Medicine Shop in Pd. House — that it was a matter of common reputa that D Baugh had sold Pd. Lot to Pd. Allen — Pd. Thom thinks in 1837. That Pd. Lot was afterwards sold at the Court House door by the Sheriff of Jefferson County — and that J G Hicks & Wm Edwards were the purchasers thereof — that the time Pd. Hicks & Edwards purchased Pd Lot the buildings thereon were in a very dilapidated condition — and therefore Pd Thom thinks that $54 was as much as Pd. Lot was worth at the time.

Mr Mobs was then introduced as a witness on the part of the Compt. and stated that he was a House Carpenter — that he examined certain repairs made upon

a house situated on said Lot & which were pointed out to him by old Mrs Edwards – that he estimates said repairs to be worth $124 without including the Chimney.

J R Satterfield was then introduced and examined as a witness on the part of the Compt. who stated that he was Sheriff of Jefferson on the day of 18 – That the Certificate of purchase as to Lot &c. made by Sd Elijah Piper to S. G. Hicks & Wm Edwards was taken from the files of the Circuit Clerks Office of Jefferson County and that Sd Piper who was Sheriff of Jefferson County at the time of the purchase of the aforesaid Lot by Hicks & Edwards – filed the said Certificate of purchase in proper time in the Office of the Circuit Clerk of Jefferson County afores.d & that when the deed became due by virtue of said Certificate of purchase he the Sd Satterfield was Sheriff of Jefferson County – & was such on the Sd Certificate being presented to him. made a Deed to Sd property to Francis M Edwards as assignee of S. G. Hicks & Wm Edwards.

The Compt. before closing his case introduced a certain paper writing purporting to be a ~~Title~~ Title Bond made by Downing Baugh to William Allen to the property in dispute – which Sd Title Bond is the Bond referred by Witness Downing

Baugh & Stephen G. Hicks in their testimony & was proven by Sd. Baugh to be the same bond which he Baugh executed to William Allen for the property in dispute & that it was the same Bond that was assigned by Sd. Allen to Sd. Stephen G. Hicks — And furthermore that Sd. Bond was the same bond referred to by S. G. Hicks in his testimony as having been assigned to him Sd. Hicks by Sd. Mr Allen. And that upon Sd. bond having been delivered up to him Sd. Baugh by Sd. Edwards Compt. he Sd. Baugh made Sd. Edwards a deed to Sd. property — The Compt. also introduced in testimony before closing his case a deed made by Sd. Baugh to Sd. J. A. Edwards Compt. to the property in dispute which Sd. Title Bond is marked & referred to as Exhibit No 4

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(Copy of Bond above referred to by S. G. Hicks)
Ann Downing Baugh

Title Bond. Baugh to Allen

"In consideration of Two several Notes Executed by William Allen to me bearing even date herewith one for Two hundred dollars payable the 25th day of December 1838 and the other for Three hundred dollars payable the 25th day of December 1839. I hereby bind myself my heirs &c. to make to the said William Allen on the said 25th day of December 1839. a good and sufficient deed of conveyance to the following lot or parcel of ground situate lying and being in the town of Mt Vernon County of Jefferson and

State of Illinois and bounded as follows
to wit. beginning at the South West
68 Corner of the house sold to said Allen
by me on the East side of lot No (26)
Twenty Six on Main Street, running thence
North to the Alley, thence East to the N. E.
Corner of said lot No Twenty Six, thence
South to the S. E. Corner of said lot, thence
West to the beginning. Same variations as
lots in said town.

Provided however that
this obligation is upon the express condition
that said Allen shall pay or cause to be
paid the above Notes as they respectively
fall due and payable, and on no
other.

Witness my hand and seal this
16th day of April 1838.

D Baugh (Seal) "

(Endorsements on said Bond)

"For value received I assign the within
Bond. Sept. 10th 1849. Wm Allen ".

" Baugh's Bond."

" Filed for record Sept. 24th 1849.
Joel Pace Recorder".

" State of Illinois } I hereby certify the within bond was
Jefferson County } on the 25th day of Sept. 1849, recorded
in Book "D" pages 330 & 331, at the Recorders
Office in McLeansboro. Joel Pace, Recorder.

[8524-25A]

"Filed March 8th 1852. John Wilbourn, Clerk."

69

(And said Deed is marked & referred to as Exhibit No. 5.)

Exhibit No. 5. Deed. Baugh to Edwards.

"Whereas on the 16th day of April A.D. 1838 I sold to William Allen a certain lot or parcel of ground situate in Mt Vernon County of Jefferson and State of Illinois designated as follows to wit beginning at the South west corner of a house sold by me to said Allen by me on the East side of lot No. twenty six on Main Street running thence North to the Alley thence East to the N. E. Corner of said lot No. 26 thence South to the S. E. Corner of said lot No. 26 thence west to the beginning. Same variations as lots in said town. And whereas said Allen has assigned the bond I gave him for a title, dated the day and year aforesaid, to Francis H Edwards

And therefore this Indenture made and entered with this 24th day of September A.D. 1849 by and between Downing Baugh and Sophronia his wife of the County of Jefferson and State of Illinois of the first part and Francis H Edwards of the County & State aforesaid of the other part witnesseth. That the said party of the first part for and in consideration of the sum of four hundred dollars to him paid

by the said William Allen, and for and in consideration of the assignment of said bond by said Allen to Francis A Edwards hath this day sold and conveyed and by these presents doth sell and convey unto him the said Francis A Edwards, his heirs and assigns forever the following described lot or parcel of ground situate lying and being in the said town of Mt Vernon County of Jefferson and State of Illinois to wit. beginning at the South East corner of lot No twenty-six on Main Street running thence West twenty-two feet or to a lot of ground now owned by William B Thom, thence North to the Alley thence East to the North East corner of said lot No 26. thence South to the beginning to have and to hold the above described premises unto him the said Francis A Edwards and his heirs and assigns forever as a good and indefeasible estate in fee simple.

In witness whereof the said parties of the first part hereunto set our hands and seals this day and year last above written.

D Baugh (Seal)
S Baugh (Seal)

In presence of
Joel F Watson
A F Taylor

A knowledgement of Deed

State of Illinois }
Jefferson County }

Before me Joel F Watson, Clerk

[8524-36]

71
65

of the County Commissioners Court in and for said County, personally appeared D Baugh & Sophronia Baugh known to me to be the the persons described in and who executed the above deed, and acknowledged that they had signed sealed & delivered said deed freely and voluntarily for the uses and purposes therein contained. And the said Sophronia Baugh being by me made acquainted with the contents of said deed and examined separate & apart from her husband acknowledged that she had signed the same and relinquished her dower in ye premises freely & voluntarily and without compulsion of her said husband.

Given under my hand and the seal of said Court on the 24th day of September 1849.

J. H. Watson Clk

(Endorsements on said deed)

" Baugh
to
Edwards "

" Filed for record Sept. 25th 1849. John Pace Recorder "

" State of Illinois } I hereby certify the within deed
Jefferson County } of conveyance was on the 25th day of September 1849. Recorded in Book "D" Pages 331 & 332. at the Recorders Office in Mt Vernon.

" Fee. Recording 84 "
Certificate $\frac{25}{109}$ "

John Pace. Recorder. "

" Filed May 16th 1857. John McCarthy. Clerk "

I do hereby certify that all the documentary & oral testimony & exhibits stated & referred to in the 8 foregoing pages were offered, & received & considered in evidence by the Compt. in the cause wherein Francis & Edwards was Compt. & Harvey T. Pace was deft. in Chancery on a final hearing of sd. cause at May term Jefferson Circuit Court A. D. 1854. #

S. S. Marshall.

Note on margin. "Several of the papers referred to above as executions were Venditio. Ex. and not fi. fa's as will appear by reference to the copies of the papers themselves."

Defendant then introduced his Judgment on the records of the Jefferson Circuit Courts in his favor and against Downing Baugh rendered August 16th 1847 for $289.90.

Judgment H T Pace by D. Baugh.

"H. T. Pace
vs } Debt
D. Baugh

On this day came the parties into Court and by Consent Judgment is ordered by the Court and Clerk ordered to assess & report the Debt and Damages and that sd. plaintiff have execution against sd. defendant for the amt. of sd. debt & damages as herein ass.d

Viz. Debt & Damages $289.90.
together with costs thereof "

Deft then introduced fifa No issued

[9534-37]

Fi. Fa
H. J. Pace
vs
D. Baugh

on said Judgment dated 31st August 1847, which was returned levied on horse saddle & bridle &c.

"State of Illinois } ss. The People of the State
Jefferson County } of Illinois, To the Sheriff of said County, Greeting.

We command you that of the goods & chattels, lands and tenements of Downing Baugh in your County, you cause to be made the sum of two hundred & eighty nine & 90/100 which H J Pace on the 18th day of August before the Circuit Court of Jefferson County, recovered against him for an action of debt. Also the sum of three dollars and 50th cents, which was by the said Court adjudged to him for his costs and charges by him about said suit in that behalf expended, whereof the said Downing Baugh is convicted, as appears to us of record; and that you have said money ready at the office of the Clerk of said Court within ninety days from the date hereof, to render unto the said H. J. Pace together with the costs and charges aforesaid. And have you then there this writ. Witness: E H Ridgeway Clerk of said Court, who has hereunto set his name and affixed the seal thereof, at Mt Vernon this 31st day of August A.D. 1847.

(Seal)

E H Ridgeway Clerk
pr W W Bennett D.C.

(Endorsements on the above Execution)

"Came to hand the 2 day of September 1847" E. Piper Sheriff J.C.

"By virtue of this fi-fa I have levied on one Roan horse saddle and bridle taken as the property of Downing Baugh this 27th of November 1847.

E Piper Sheriff

74

" 526 "

" H. S. Pace
vs } fi-fa
D. Baugh } "

" Debt — — $289-90
Costs 3. 56¼
Sheriffs 62½
Levying 50
$1 12½
Returning 12½ "

" Returned by order of the plaintiff H S Pace Esq. this the 30th day of November 1847. E. Piper Shff "

Deft. then introduced in evidence Execution No , Dated May 12th 1849.

No 586.
fi. fa
Pace
vs
Baugh

State of Illinois } 1st The People of the State of
Jefferson County } Illinois to the Sheriff of said County - Greeting.

We command you that of the goods Chattels lands tenements and real estate of Downing Baugh in your County you cause to be made by levy and sale thereof according to law, the sum of two hundred and eighty Nine dollars and Ninety cents which Harvey S Pace lately in our Circuit Court for the said County recovered against him debt and damages in an action of debt together with interest thereon at the rate of Six per cent per annum from the 18th day of August 1847, till paid, and also the sum of five Dollars and 81¼ cents which have awarded to the said Harvey S. Pace in our said Court, for his costs and charges, which he laid out and expended in and about

[8524-38]

his suit in that behalf, and whereto the said Downing Baugh is convicted as appears to us of record, and have you the said money before us at Clerk's Office of said Court in McConnsville ninety days from the date hereof, to render unto the said plaintiff in this execution debt, damages and costs aforesaid; and have you there and then this writ.

75

Witness John Wilbanks Clerk of our said Court and the Judicial seal thereof at McConnsville this 12th day of January A. D. 1849. John Wilbanks, Clerk

(Seal)

per Lewis F. Casey D.C.

(Endorsements on above Execution)

"586"

"Harvey T. Pace
vs } fi fa
Downing Baugh"

"Debt $289.90
Cost 5.81¼"

"Came to hand the 12th day of January 1849. at 12 O'clock P M"

"By virtue of this execution I have levied on one horse taken as the property of D. Baugh in favor of H. T. Pace. January 14th 1849.

Elijah Piper Shff. J. C. Ill"

"This the 8th day of February 1849.

Rec'd by sale of one horse $29.12½

Keeping & advertising	75
Commission on sale	1.45
Returning	12½
Keeping horse 2 day	35

E Piper Shff"

"No other property found to levy on

E Piper Shff"

76

Defendant then introduces Execution No , dated Jany 13th. 1857 which leaves on the Cst in dispute.

No 620.
Execution.
H. J. Parr
vs
D. Baugh

"State of Illinois } The People of the State of
Jefferson County } Illinois to the Sheriff of
Jefferson County - Greeting.

We command you that of the goods and chattels lands and tenements and real estate of Downing Baugh in your County you cause to be made by levy and sale thereof according to law, the sum of two hundred eighty nine dollars and twenty cents which Harvey J. Parr lately in our Circuit Court for said County recovered against him the for his debt and damages in an action of debt together with interest thereon at the rate of 6 per centum per annum from the day of 16th August 1847 till paid and also the sum of dollars and 80 cents which were awarded to the said Harvey J. Parr in our said Court, for his cost and charges which he laid out and expended in and about said suit in that behalf and also whereof the said Downing Baugh stands convicted as appears to us of record: and have you the said moneys before us at the Clerks Office of our said Court in McLeansboro ninety days from this date hereof, to render unto the said Plaintiff in this execution, debt, damages and costs aforesaid, and have you then there this writ.

Witness John McCracken Clerk of our said Court and the

28524-39

14

Recd

Judicial Seal thereof at McLeansboro,
this 13th day of January A.D. 1851.
John Wilbourn Clerk
By G.D. Pulton D.C.

(Endorsements on above Execution)
"No. 630"
"Harvey T. Pace
vs
Downing Vaught"
"Debt $289.90
Cost 4.31"
"Filed 9th 1848. Received
$28.59"
"March 10th 1849
Rec'd $21.00"
"Came to hand January 13th 1851. at 1 O'clock P.M.
John R Satterfield Sheriff J.C. Ill."
"February 14th A.D. 1851, levied the within Execution on the East part of Lot Number 26. in McLeansboro, North side of Public Square, fronting on Main Street 22 feet & extending back 166 feet the entire length of said lot No 26. according to the original Survey of David Irwin of McLeansboro. J.R. Satterfield Shff. J.C. Ill."

"No Sale in Consequence of the proceedings being stayed by a Writ of Injunction being served on the Sheriff this 8th day of March A.D. 1851.
John R Satterfield Shff
J.C. Ill."

"Levying — 50 cents
advertising — 25
Returning — 10
85
J R Satterfield Shff. J.C. Ill"

78 All of which is certified and ordered to be preserved & filed as a part of the record herein.

S. S. Marshall Judge.

(Endorsement on Bill of Exceptions)

"L. H. Edwards

vs

H. L. Pace"

"Endorse"

"Filed August 31st 1854.

J. B. Tanner Clerk."

Pace
vs
Edwards

Appeal Bond.

Know all men by these Presents, that we, Francis H. Edwards, principal, and William Edwards, security are held and firmly bound unto Harvey J. Pace in the penal sum of two Hundred dollars, lawful money of the United States, for the payment whereof to him, the said Harvey J. Pace, we, the said Francis Edwards and William Edwards do bind ourselves, our heirs, executors, and administators firmly, jointly, and severally by these Presents. Witness our hands and seals, this 7th day of June, A. D. 1854.

The condition of the foregoing Bond is such, that whereas, the abovenamed Harvey J. Pace did, at the last May term of the Circuit Court of Jefferson County, State of Illinois, obtain a decree against the above bounden Francis Edwards in a cause heretofore pending in said Circuit Court, on the Chancery side thereof, for costs of suit; from which Decree of said Circuit Court, the said Francis has appealed to the Supreme Court of 1st Grand Division of this State of Illinois aforesaid. Now, therefore if the above bounden Francis Edwards shall not well and truly pay and discharge whatever Judgment may be obtained against him,

the said Francis, for costs, interest, or damages, in case the said Decree shall be affirmed, and shall also not well and truly prosecute said appeal without delay, then the above obligation shall be in full force — otherwise, the same shall be null and void

Francis H. Edwards (Seal)
William Edwards, (Seal)
By R. S. Nelson, their Agent and Attorney in fact.

Filed Aug. 31st 1852. J. B. Lanner, Clk

56

State of Illinois }
Jefferson County }

I John S Bogan, Clerk of the Circuit Court of Jefferson County and State of Illinois, do hereby Certify that the foregoing Eighty five pages Contains a true and perfect Copy of the Record & Files of the proceedings of the Circuit Court of Jefferson County Illinois, in the Case of Francis H Edwards vs Harvey S Parr, in Chancery. as the Same appears in my Office.

In Testimony whereof I have hereunto subscribed my Name and affixed the Seal of said Court this 15th day of November A D 1871.

John S. Bogan, Clk.

Edwards
vs
Pace
That

} additional brief of points referred
relied on by plaintiff in error or
appellant.

1st Baugh was only a trustee for allen
the Vendee - & the property in dispute
could never have been liable to be
sold under a Judgment & execution
vs Baugh unless indeed it is alledged
& proven that Baugh's sale to allen
was colorable only or fraudulent -
& fraud can not be presumed unless
charged & proven - Manly vs Hunt
1 Ohio 257 121. Statutes of Ohio page 467
Lockman vs Hallack & al 1 Ohio R 318
Douglas vs Heston 6th Ohio Reports. 156
8th Blackford 139 - 140

2 An Equitable Estate in possession can be sold
under Execution 20 Ohio Reports 566
601 Scott vs Douglas 238 7 Ohio Reports

3 Baugh had a right to convey directly
to Edwards as holder of equitable title
1st Ohio Rc 122

[8524-45]

4 Baugh never could convey the the legal Estate, but the holding the legal title - which he did in this case. his changing the holder of Equitable title can not impair the rights of Edwards he could have compelled Baugh to convey to him & if Baugh changed him for doing without suit what he could have been forced to - it cannot affect Edwards title - 5 & 7 20 Ohio Rep - Lawrence

5th lien for purchase Money is superior to all others 2 26 Ohio Reports 7 Vol

6th - Irregularities in the executions cannot be allowed to defeat Edwards title especially in favor of Baugh's general Creditors - 20 Lawrence 566 Ohio Rep

Nelson for plff in error

7 The lien of a Judgt its validity & extent are Matters ~~[illegible]~~ purely legal & can not be aided in Equity - 6 Ohio 156 - 3 Ohio 514 - 2 Ohio 21 - 7 Ohio Reports 227 - 5 Ohio 178

Nelson for plff in error

Edwards appellant.

vs

Van appellee

In the supreme Court

Writ of error & authorities relied on by appellants Chestnut vs Marsh 12 Ohio 173

1st Judgment held to be a lien until issued tho ~~[illegible]~~ irregular — and erroneous

4th Scammon 370 & Equitable Estate of debtor Can be sold under such Judgt 20 — 566 Ohio Reports

2nd Here the returns on the executions show all the diligence necessary — tho' the executions were irregular in some respects & prejudiced by a subsequent lapse of time cannot affect the rights of appellants — 1st Scammon Portland vs Morrison p 235 & in the case where no levy was made See 20 Ohio 566

3 Purchaser at Judicial Sale not bound to go back further than the Judgment when the facts appear necessary to confer Jurisdiction — Buchanan vs Carlin 3 Scammon 110 — 566 20 Ohio Reports & Judgt a lien on Equitable Estate of Debtor 556. 601 20 Ohio Reports.

4 All Judgments and decrees are to be taken subject to such Changes as the Law Making power may adopt for the purpose of enforcing them Williams vs Waldo 3 Scammon 268 by the Statute in force when the Judgment vs Allen. has rendered municipal interests could not be sold under execution, now at Com.

[8524-46]

Law — but the statute of 1845 changed the Law & a Judgment is not a Contract — ib 268 Rev R.C. 1845

5 Notice is implied where a Judgment creates a lien — as to all subsequent purchasers & Incumbrancers Rogers vs Dickey 6 B & L — Gilman

6 Lien rendition of Jmt & issuance of Exn creates a lien — Thorpe vs Henderson 110 2 Gilman

7 an Execution levied presumes the Judgment in life as to the property levied on — The Case Gilman 50 this is different from the Case of the Court of the Circuit & Thomas Wallace, 1 Wall 349 § 780 ib 354 § 887 — 2 U.S. Dig

8 The purchased with notice of Holding Judgment & had actual & Constructive and has not thereupon a bona fide purchaser Robinson vs Brown 2 Scam 501 — Ib is a bona fide purchaser 5 Paige 493, 4th Scammon 51

9 Our Statute is different from that of most other states in making real Estate liable to execution which has neither been at Common Law nor under the Statutes of most of the states — Page 493

U.S. Notice for appellee

Edwards
vs
Pair
brief of
appellant

Edwards vs. Pace Brown, Justice

We are satisfied from the proofs in the cause, answer and exhibits, that Allen had not such an interest in the lot as could be sold under a fi. fa. and that the purchaser under it acquired neither a legal or equitable title. He had a mere equity.

The bond for a deed from Baugh to Allen, not having been recorded until 1849 some two years after the Deft. Pace, obtained his judgment against Baugh, cannot affect Pace's lien acquired by his judgment, and no notice of that bond, or of any conveyance, or agreement to convey by Baugh being brought home to the knowledge of Pace, he cannot be affected by the bond, nor by the deed executed by Baugh, long after Pace obtained his judgt.

We are of opinion the judgt. of the circuit Court dismissing the bill, should be affirmed.

[1854-48]

Edwards vs Pace

Opinion of
Breese Justice

For Mt. Vernon

In the Supreme Court

November term A.D. 1854

Francis M. Edwards, appellant

Nancy T. Pace } defendant

appeal from Jefferson

Lengt Sept 1840

one Lewis G. Nolan recovered a Judgment against William Allen for $300 & Costs at the Sept term Jefferson Circuit Court 1840. on a note of hand given by ds Allen to Rosanna Baugh the Consideration of ds note was a house and lot situate in the town of Mt Vernon which Baugh sold Allen for $500 & took two notes for the purchase money - the $300 note being one - Baugh assigned the note to Pl alone for value & the ds Judgment was rendered thereon - on 3d oct 1840

1st Execution 3 oct 1840

a fi fa was issued on ds Judgmt which was levied on Lot No 26 East part 30, 27½ feet ~~back~~ front - Back the length of lot - on 29th December 1840 - on the back ds Execution was endorsed said levy & not time to sell - by Jas Bowman Shff - said lot being in Mt Vernon. - a Vendi Exponas was issued on 1st March 1841 to sell same property on same Judgment on the 21st May 1841 but not sold for want of bidders at 2/3ds of its value - it having been appraised under the valuation Law - by Jas Bowman Shff.

2d Execution Vendi

~~2d Kingmen~~

1st March 1841

3d Execution 2d fi fa 9th May 1841

another fi fa was issued on the 9th May 1841 but was not levied for the same Debt and on the 12th day of September 1842 another fi fa was again issued on said Judgment which regularly levied ~~and but sold for~~ on said Lot & returned not sold for want of bidders - lot appraised & offered for sale at 2/3ds - on the 23d day of August 1845 an alias Vendi was issued on ds Judgmt & ds property was again offered for sale but not sold for want of bidders - Wm. G. Stephenson Shff - on the 29th Nov 1848 an alias vendi was issued on ds Judgmt - levied on ds lot - & on the 16th Feby 1849 the lot was sold to Stephen G. Hicks and William Edward Elija Pepper Shff.

4th Execution 3 fi fa 12th Sept 1842

5th Execution 2 Vendi 23 Aug 1845

6th Execution 3 Vendi 29 Nov 1848

[0524-49]

Cert - 16th July/49

assigned 1 Sept 1849

Deed 20th Jany 1851

all of s^d Lyons was regularly docketed on Execution Book
16th February 1849 Elijah Piper gave Hicks & Edwards Cert
of purchase, who assigned the same on 1st Sept 1849 to
to Francis H. Edwards for value and 20th day of Jany
1851 a deed was made to Francis H. Edwards by
by John Le Sattersfield — which recites the vendi
tis in form — C.V.B. Certificate says first facias
Deed regularly acknowledged and recorded.
On the 16th day of April 1838 Downing Baugh
sold the said lot to said Allen, for which
Allen executed two notes one payable
25th December 1838, the other payable 25th
December 1839 being in all 500 dollars,
and Baugh executed his bond under
seal for a title to said Allen, by the
25th day of December 1839, provided
Allen paid said notes at maturity
and not otherwise, On the 10th day
of September 1839 Allen assigned
said bond in blank, bond recorded
on 25th September 1839. ~~On the 16th day of~~
~~April 1838~~ On the 24th September 1849
Baugh executed a deed for the consideration
of 500 dollars to Francis H. Edwards to whom
said Hicks as agent for said Allen deliv-
-ered said bond and on the said Baugh's
making said deed he took up his bond
from said Edwards. Said deed duly acknowledged
and recorded. On the 16th August 1847 Harvey
J. Pace, recovered a judgment against Downing
Baugh for $289,90, on which execution was
issued on the 31st August 1847, and on the
27th November 1847 the same was levied on
roan horse saddle and bridle taken as
the property of Downing Baugh & Piper
Sheriff, and on the 30th November 1847

said execution was returned by order of the plaintiff H. J. Rice; another execution was issued on the 12th January 1849 which was levied one one horse on the 14th January 1849 E. Piper Sheriff. On the 8th February 1849 horse sold for $29.12. And as to residue said execution returned nulla bona. Another execution was issued on said judgement 13th January 1851 which was levied on lot in dispute on 14th February 1851 but which was stayed by an injunction on the 8th March 1851. which said writ of injunction was issued on a bill filed by the said Francis H. Edwards appellant in the circuit court of Jefferson County at the May term of said Court 1851, in which said bill the complainant Edwards prayed for said writ of injunction as purchaser by deed from Baugh. at the same term an answer was filed by said Rice denying the allegations of said Edwards' bill as to notice of said Edwards title or the title of said Allen under whom said Edwards claimed and relied on his judgment. To this answer a replication was filed at the same term of court and cause continued until the next term. At the September term 1851 a motion was made to dissolve the injunction, but the motion was overruled by the court and cause continued until next term and set down for hearing with leave to take depositions, and at May term 1852 the cause was again continued till next term. At September term 1852 of said court a motion was again made to dissolve said injunction and the complainant moved for leave to amend his bill which was given and cause continued till next term on payment of costs.

[B5 24-60]

At the May term of the Jefferson circuit court said amended bill was filed by the appellant Francis H. Edwards who claimed said lot under his purchase at sheriffs sale as well as by virtue of his purchase from said Baugh. The appellee Harvey J. Pace filed his answer to the amended bill at the May term 1853 and denied as before all notice of title in Allen or Edwards by virtue of title bond from Baugh and denied that said bond was ever signed to said Edwards by said Allen and neither admitted or denied said Edwards title by virtue of his purchase at sheriffs sale and called for the proofs. The said answer was sworn to and a replication filed ~~the~~ Sept. term 1853, and the cause continued till next term of the court, at which terms of court the said cause came on to be heard upon bill, answer, depositions, exhibits, documents, and proofs, and by witnesses sworn in open court, as submitted and established at the last term of court before the Hon S. S. Marshall who dissolved the injunction and dismissed the bill, all the evidence adduced in the cause is contained in the bill of exceptions or certificate of evidence herewith filed, from which a judgment and decree. The said Francis H. Edwards prayed an appeal to this court, which was allowed, on entering into bond as required by law which was done accordingly, and thereupon the said appellant comes into this court and seeks to reverse said judgment and decree of the Jefferson circuit court for the errors assigned on the record

R. S. Nelson SS
For Appellant

In the Supreme Court 1st panel division November
A.D. 185

Francis Edwards appellant

vs

Harvey T. Pace appellee

error to Jefferson

and the said Francis by Richard Shelton and Stephen G. Hicks his solicitors comes and says that in the record proceedings and proceedings in the above styled Cause there is manifest error in this that the Circuit Court of Jefferson County ought to have rendered Judgment in favor of the appellant, whereas the Judgment of the said Court was rendered in favor of the appellee

and for assigning errors specially the appellant by his said solicitors says that the said Circuit Court erred in dissolving the injunction granted in the above styled Cause & dismissing the bill

2d That that the said Circuit erred in rendering a Judgment against the appellant for Costs & dismissing the bill filed by him against appellee

3d That the said Circuit Court further erred in this that the said Court did not by decree thereof perpetually enjoin the said appellee Harvey from proceeding at Law to sell the premises in appellants Bill by him filed in the Circuit Court of Jefferson County against him the said Harvey as in appellants said Bill prayed for, and for these and other errors manifest in the record proceedings & proceedings aforesaid he the said appellant prays that the said Judgment

And the said deft. says there is no error in said record

Francis H. Edwards
by Richd Shelton
& Stephen G. Hicks
his solicitors

Wm H. Underwood
Atty. for deft

[5524-51]

~~No 42~~ No 42

F. H. Edwards

vs

H. T. Pace

Clerk's fees for issuing it $21.00

Filed 14th Nov. 1854

T. B. Lanier Clk

By N. Johnston Dc

Credit on the fee bill in this case — Paid by A. H. Langston for Edwards 2d June 1857 — in Cash $3.75 — N. Johnston Clk

F. S. Edwards
vs.
H. T. Pace

No

Nov 1858

Edwards F. H.
vs
N J Pace

Error to Jefferson

8524

Affirmed