

8846

No. _____

Supreme Court of Illinois

Thomas W. Elliot, et al

vs.

Samuel D. Blair, et al

71641  7

54 ————— 52

Elliott et al

vs

Blair et al

d.

1868

1
United States of America,
State of Illinois, }
Wayne County. } In the Circuit Court,
}
} At a Court Term, A.D. 1868
Pleas before the Honorable James M. Pollock
Judge of the 12th Judicial Circuit of the State
of Illinois, and his presiding judge of the
Circuit Court of Wayne County, in the State
aforesaid. And at a time thereof began and
held at the Court House in the Town of
Fairfield in said County, on ^{the} third Monday
(being the sixteenth day) of March, in the
Year of our Lord one thousand Eight hun-
dred and Sixty Eight.

Present Honorable James M. Pollock Judge
of the 12th Judicial Circuit of the State
of Illinois.

Thomas S. Casey State attorney,

Newton J. Odell Sheriff;

Attist William G. Gash Clerk.

Be it remembered that hereofore
to wit, on the 9th day of August, 1866,
Samuel D. Blair, Absalom Blair and
Elizabeth Blair, filed in the office of the
Clerk of said Court, the following bill in
Chancery, to wit:

" To the Honorable James M. Pollock,

" Judge of the ~~Circuit Court~~ in and for

the County of Wayne and State of Illinois
in balancing billing.

Humbly complaining sheweth unto your
Honor, your Orator, Samuel D. Blair, Abraham
H. Blair, and Elizabeth F. Blair, Administrators
of the Estate of Thomas P. Blair ~~deceased~~ deceased,
late of the County of White and State of Illinois,
that on the 22nd day of May A.D. 1862, Thomas
W. Elliott and Phoebe Co. Elliott (whom your
Orator pray may be made parties defendants
to this your Petitioner's bill of Complaint) purchased
the following described tracts or parcels of Land,
to-wit: The West half of the South East quarter of
Section Number Fourteen, (14) containing Eighty
acres, The South West quarter of the North East
quarter of Section N^o. fourteen (14) Forty acres,
The South half of the North West quarter of
Section N^o Fourteen (14) containing Eighty acres,
The North East quarter of the South East quarter
of Section N^o Fifteen (except Five acres off the
West side thereof, thirty five (35) acres, The
West half of the North East quarter of Section
N^o Twenty three (23) containing Eighty acres,
and the North East quarter of the North
East quarter of Section N^o Fourteen (14)
containing Forty acres, all in Township
Five South of Range Nine East, of the
third principal Meridian in the County

of Wayne and State of Illinois, and certainly
altogether their pecuniary need fifty five acres.
for the purchase money of which above described
premises the above named defendants Thomas
H. Elliott, and Phoebe C. Elliott agreed, and
promised to pay the Thomas P. Warrick his
heir, Administrator ~~of~~ ^{of} ~~the~~ ^{the} full sum
of three thousand dollars. One thousand two
hundred and seventy five dollars, of which sum
was paid to the said Thomas P. Warrick at the
time of said sale, above described, and since
that time, remains to this and the balance
to wit the sum of one thousand seven hundred
and twenty five dollars, as follows to wit:
The sum of five hundred and seventy five
dollars two years from the date of said sale,
to wit: the day and year last aforesaid,
with interest at the rate of six per cent.
per annum from the date thereof. Five
hundred and seventy five dollars in three
years from the date thereof, to wit from the
date last before mentioned with interest
at the rate of six per cent. from the date
thereof; and five hundred and seventy five
dollars in four years from the date thereof
to wit: the day and year last aforesaid,
with interest at the rate of six per cent
per annum from the date thereof, for.

for each of said sums. one of the said
defendants to wit the said Thomas W Elliott
gave his promising notes bearing date on
the day and year last aforesaid with interest
at the rate of six per cent. per annum as
aforesaid. And your brother further shows
unto your Honor that for securing the pay-
ment of the said several sums of money so
due as aforesaid for the purchase of the above
described bonds or parcels of land with the
interest thereon as aforesaid by deed bearing
date on the 22nd day of May A.D. 1865. and
made executed and delivered by the said
Thomas W Elliott and Phebe C. Elliott and
grant bargain sell and convey unto the
said Thomas P. Warwick the premises above
described. In and to the said Thomas
P. Warwick his heirs administrators
and assigns in fee simple forever. Subject
nevertheless to a proviso for the redemption
of the said premises on payment by the said
Thomas W. Elliott and Phebe C. Elliott
their Executors administrators and assigns,
to the said Thomas P. Warwick his heirs
administrators and assigns, of the several sums
to wit: the sum of Two hundred and twenty
five dollars in Two years from the date thereof
with six per cent. interest thereon, the

Sum of five hundred and seventy five dollars. in
three years from the date thereof, with interest
as aforesaid, and the sum of five hundred
and seventy five dollars in four years from
the date thereof, with interest as aforesaid, as
by the said deed, reference thereto being
had, will more fully appear, a copy of which
deed is hereto attached and marked Exhibit
"A" making in all the sum of one thousand
seven hundred and seventy five dollars exclu-
sive of the interest thereon.

And you Crates further show unto your
Honor that the said sum of one thousand
seven hundred and seventy five dollars, or
any part thereof, was not paid to the said
Thomas P. Warrick or to any person on his
behalf, according to the said proviso in said
deed at the time therein mentioned, and
has not now been paid to the said Thomas
P. Warrick or to any other person on his behalf,
but the same is still due and owing, together
with a great amount of interest thereon.

And you Crates well know that the
said Thomas W. Elliot and Phibe Elliot
would either have paid to the said Thomas
P. Warrick or to his legal representatives, the
said three sums of five hundred and
seventy five dollars each, to wit, the

The full sum of One thousand Seven hundred
and twenty five dollars, with the interest
thereon, or would have suffered your Graces
to have peacefully and quietly held and
enjoyed the said premises, and for that
purpose your Graces have frequently applied
to the said Thomas W. Elliott and Phibe
Co. Elliott, and requested them to pay the
said several Sums due as aforesaid, and
the interest due on the same, or else peacefully
to deliver up possession to your Graces, of the
said Mortgage premises, together with all
deeds, Inclosures, writings &c relating to or Con-
-cerning the same, and to release all their
right title and Equity of redemption of us and
to the said premises to your Graces the said
Thomas W. Elliott and Phibe Co. Elliott well
knowing, as your Graces charge the truth
to be, that the said premises are a very
scant security for the principal and interest
now due to your Graces therein.

And your Graces will be sure that said
Thomas W. Elliott and Phibe Elliott would
have complied with such your Graces reason-
able request as in Justice and Equity they
ought to have done.

But now so it is the said Thomas
W. Elliott and Phibe Co. Elliott refused.

and still will refuse their reasonable requests
of your Orators to pay the said several sums of
Money or any part thereof, or to deliver to your
Orators the quiet and peaceable possession of the
said Premises, or any part thereof, all which
actings, and doings of the said defendants are
Contrary to Equity and good conscience, and
tend to the manifest wrong, injury and
oppression of your Orators in the premises, and
your Orators further show unto your Honor,
that they are the legal representatives, and
administrators of the ~~said~~ Estate of the said
Thomas P. Warrick deceased, who departed
this life in the County of White and State of
Illinois, on the 2nd day of January A.D. 1865,
and that upon the 17th day of January A.D. 1865
your Orators were legally appointed by the
Probate Court of the County of White and
State of aforesaid, Administrators of the Estate
both real and personal of the said Thomas
P. Warrick deceased, and that from the time
since of the said appointment of your Orators
as administrators as aforesaid they have con-
tinued and still do continue to act, as
such, Administrators, and have a legal and
Equitable right to act herein, as represen-
tatives of the said Thomas P. Warrick,
deceased, as fully as if the said Thomas,

P Warrick was still living and asking for
relief in his own proper person,

To the end therefore that the said
Thomas W. Elliott, and Phibe C. Elliott may
upon their several oaths to the best of their
respective knowledge, remembrance, information
and belief, full, true, direct and perfect
answers make to all and singular the matters
aforesaid, come that in fully and particularly
as if the same were here repeated, and they
and each of them distinctly interrogated thereto,
they shall make true answers to all the
material allegations hereof set forth in
this your Orator's bill of complaint

And that the said Thomas W. Elliott, and
Phibe C. Elliott may discover whether there
is, or are any other, and what incumbrance
or incumbrances upon or affecting the said
Mortgaged premises, or if so in whom the
same is or are vested, and that an
account may be taken by, and under the
direction and decree of the Honorable Court
of what is due and owing to your
Orator as Administrator of the Estate of
Thomas P. Warrick aforesaid, for principle
and interest money upon and virtue
of his said recited Mortgage Securities
and that the said Thomas W. Elliott,

and Phoebe Le. Elliott may be desired to pay
and satisfy your claims as aforesaid what
shall appear to be due and owing to them
in the taking of the aforesaid account. by a
short day to be appointed by His Honorable Court
together with your costs &c.

And in default thereof, that the said Thomas
W. Elliott, and Phoebe Elliott, and all persons
claiming by through or under them or either
of them may be absolutely barred and fore-
closed of and from all Equity of redemption
or claim in and to said Mortgage premises
and each and every part thereof, and
delivered over to you orator all deeds writings
and documents whatsoever in their custody
or possession relating to or concerning the said
premises, and every part thereof.

And that your orator may have such
other and further relief in the premises as
the nature of the Circumstances of this Case
may require, and to you Honor shall seem
meet.

May it please the your Honor to grant
unto your orator the Peoples writ of habeas corpus
directed to the said Thomas W. Elliott and
Phoebe Le. Elliott commanding them and
each of them by a certain day to appear
before your Honor in the Circuit Court of
the County of -

Wayne and State of Illinois at the next
Term thereof, then and there answer the
premises, and abide the order and decree
of the Court. And given under my seal
privy. &c.

Samuel D. Blair


Abraham W. Blair

& Elizabeth G. Blair. Petitioners

J. M. Campbell

Attly. in Complament.

Copy of notes here upon N^o 2,
\$ 575 - Two years after date I promise to
pay unto Thomas P. Warrick or Order the sum
of five hundred and seventy five (\$575) dollars
with interest at the rate of six per cent. per
annum from date for value received.

Champaign May 22nd 1862. J. H. Elliott 

\$ 575 -

N^o 3.

Three years after date I promise to pay
unto Thomas P. Warrick or Order the sum of
five hundred and seventy five (\$575) dollars
with interest at the rate of six per cent.
per annum from date for value received.

Champaign May 22nd 1862. J. H. Elliott 

\$ 575.

N^o 4

Four years after date I promise to pay
unto Thomas P. Warrick or Order the sum
of Five hundred, and seventy five (\$575)

dollars for value received with interest
at the rate of Six per cent. from date.

Hayville May 22^d 1862. J. H. Elliott *JHE*

Copy of the Mortgage

This Indenture made and Enrolled unto
this 22^d day of May in the year of our Lord
one thousand Eight hundred and Sixty Two
between Thomas H. Elliott and Phoebe Co.
Elliott his wife of the County of Wayne and
State of Illinois, parties of the first part, and
Thomas P. Warwick of the Town of Hayville County
of White and State of Illinois, party of the
second part. Witnesseth, that the said party
of the first part, for and in consideration of the
sum of Two thousand Three hundred
dollars to them in hand paid by the said
party of the second part, the receipt whereof is
hereby acknowledged, have granted bargained
and sold and by these presents do grant
bargain and sell unto the said party of the
second part his heirs and assigns all of those
several tracts or parcels of lands situate
lying and being in the County of Wayne and
State of Illinois, known and designated as
follows to wit, The West Half of the South
East quarter of Section number fourteen (14)
Eighty and. The South West quarter of the

North East quarter of Section number fourteen
(14) forty acres. The South half of the North East
quarter of Section number fourteen (14) Eighty. 80
acres. The North East quarter of the South
East quarter of Section number fifteen (15)
Eighty five (85) acres on the West side thereof
Thirty five 35. acres. The West half of the North
East quarter of Section number twenty three (23)
Eighty (80) acres. And the North East quarter
of the North East quarter of Section number fourteen
(14) forty (40) acres all in Township Number
Two South of Range number Five East. and
containing altogether three hundred and fifty
five (355) acres of land. Situate lying and
being in the County of Wayne and State of
Illinois. To have and to hold all of said
tracts or parcels of land together with all
the appurtenances thereto belonging or in
anywise appertaining, to the only proper use
of him the said party of the second part his
heirs and assigns forever. And the said
party of the first part for themselves, heirs
Executors and administrators do covenant
with the said party of the second part.
That they or lawfully assigns have a full
right to convey, sell, give, devise, warrant
and defend the tracts of land from the
claim or claims of the said party of

the first part their heirs and assigns, and against the claim or claims of any other persons, or person whatsoever.

Nevertheless, the above indenture of Mortgage is upon this express and only condition, That whereas the said Thomas W. Ellett is fully indebted to the said Thomas P. Warrick in the sum of Two thousand three hundred and \$23.00, dollars, for which sum he has executed to the said Thomas P. Warrick his four promising notes, due and payable as follows, viz: One note due and payable Twelve months after date, for the sum of five hundred and seventy five dollars, with interest at the rate of six per cent. per Annum from date, One note due and payable two years after date, for the sum of five hundred and seventy five dollars with interest at the rate of six per cent. per annum from date, One note due and payable three years after date for the sum of five hundred and seventy five dollars with interest at the rate of six per cent. per annum from date, and One note due and payable four years after date for the sum of five hundred and seventy five dollars with interest at the rate of six per cent. per annum.

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said conveyance being fully made known to
her, acknowledged that she freely and voluntar-
ily came without compulsion of her said husband
she executed the same and never relinquish-
ed her dower to the said lands, and does
not wish to retract,

Given under my hand and seal of
office at Grayville the 22nd day of May AD 1862

S. J. Grange

Notary Public

And afterwards to wit on the 9th day
of August 1866, the following summons was
issued by the clerk of said court to wit:

"State of Illinois, Wayne County Sd.

Summ.
The People of the State of Illinois, To the Sheriff
of Wayne County Greeting, We command you
to summon Thomas W. Elliott & Phoebe Elliott
of to be found in your county to appear before
the Circuit Court of Wayne County, on the first
day of the next term thereof to be holden at the
Court House in Fairfield on the 4th Monday
in the month of August next, to answer a
Bill in Chancery for Fraudulent title in the
office of the clerk of the Circuit Court of Wayne
County against them by Samuel D. Blair
et al. Advers of Thos. P. Merritt, and hereof
make due return to our said court as the law
directs.

Witness My Hand Clerk of

134. said court and the Judicial Seal thereof
at Fairfield this 9th day of August A.D. 1866
The Clerk

on the back of which summons is the
following endorsement, to wit:

"Served by reading the within summons to
the within named Pheby L. Elliott, and
delivering a true copy of the same to the within
Pheby L. Elliott, and leaving a true copy of
the same at the residence of Thomas S. Elliott
with Pheby L. Elliott a white person of the
family under the age of 10 years, and
informing said person of the contents thereof:
this August 11th 1866 Wm. C. Murphy Sheriff

By Wm. C. Murphy Sheriff

And afterwards at the August Term 1866
of said court the following Order was made
by said court in said cause, to wit:

"Samuel D. Blair, et al

135.

vs. }
Thomas S. Elliott et al }
} Foreclosure.

On this 2^d day of the Term
came said Complainant, and on his Motion
It is ordered that said Complainant have
leave to amend his bill, herein. And on
further Motion It is ordered that said
defendants, answer plead or demur.

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to complaints ^{by} herein, in sixty days, and
this cause be put in issue, and set for trial
at the next Term of this Court, and that
this cause be continued &c"

And afterwards, to wit on the 27th
day of November 1866, the following answer
was filed by Thomas W. Elliott, in the Clerk's
office of said Court, to wit,

"The answer of Thomas W. Elliott on of
the defendants to a bill of complaint filed
against him and others, by Samuel & Blair,
Abraham Blair, and Elizabeth F. Blair in the
Wayne Circuit Court,

This defendant now and at all times
hereafter saving to himself all, and all man-
ner of benefit or advantage of exception or
otherwise that can or may be had or taken
of the many errors uncertainties, and imper-
fections in the said bill contained, for
answer thereto, or to so much thereof as this
defendant is advised it is material or
necessary for him to make answer to, for
answer says,

That as far as he knows or is advised
he does not know whether or not, the said
Complainants in said bill Samuel & Blair,
Abraham Blair, and Elizabeth F. Blair are
only appointed, and legally acting

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Administrators of the Estate of Thomas O. Warrick
deceased, as we said, bills they charge them-
selves to be. And as to the allegation that
on the 22nd day of May A.D. 1862, the defendant
and Thos. G. Elliott purchased from said
Thomas O. Warrick certain described lands, or
at fault in said complainant's bill of com-
plaint, said allegation is untrue. That this
defendant never purchased any land from
said Thomas O. Warrick, and he does not
know of the said Thos. G. Elliott purchasing
any land from the said Thomas O. Warrick,
and consequently the notes given by this
defendant to said Warrick could not have
been, and were not given for the purchase
money of said lands as alleged in said
complainant's bill of complaint.

This defendant for answer further states
that, true it is, that on ~~the~~ about the 22nd
day of May A.D. 1862, he gave certain notes
payable to said Thomas O. Warrick or his order,
but as this defendant is informed and verily
believes, and charges the facts to be said
notes were afterwards fraudulently changed
by parties having them in possession, and
without the license, or consent of this
defendant, and made payable to Thomas O.
Warrick & Co. This defendant further

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says, that said promissory notes were again
changed without his knowledge or consent,
and made payable to Thomas & Wornick in
his order, as they are now set forth in said
bill. And this defendant further
answers and says, that at the time of
making said Mortgage, this defendant was
living on and occupying said premises
as his homestead, and that since that time
until the present, he has not been out of
possession of said premises, and that he
at this time claims a homestead in said
lands. And this defendant further
answers says that at the time of executing
said Mortgage, this defendant only had
an Estate by Leases, in and to said lands,
that Phoebe Le. Ellittle was the bona vi
fa of said lands.

And this defendant further denies all,
and all manner of unlawful combination,
and confederacy, which with him is by the
said bill charged, without this, that there
is any other matter, thing or cause in the
said bill of complaint contained material
or necessary for this defendant to make
answer unto, and not herein well and
sufficiently answered, traversed, and
avoided, or denied, is true to the

[2046-12]

Knowledge or belief of this defendant all
which Matters and things this defendant
is ready and willing to avow and prove,
as this honorable Court shall direct, and
having answered he prays to be hence dis-
missed with his reasonable costs and charges.
J. H. Elliott

State of Illinois, Wayne County Sh.

Personally appeared before me a Notary
Public in and for said County, J. H. Elliott
above named, who after being duly sworn
says that the Matters and things aforesaid
set forth in the foregoing Answer, as far as he
states them from his own information and
belief are true and correct, and as far
as he states them from the information of
Others he believes them to be correct.

Sworn to and Subscribed before me
this 28th August A.D. 1866.
G. A. Beaman

And also, on the day and year last
aforesaid, the said Phileas C. Elliott files
with the Clerk of said Court the following
Answer, to wit,

* The answer of Phileas C. Elliott one of the
defendants to a bill of Complaint filed against
him and others by Samuel S. Blair, Abraham
Blair and Elizabeth J. Blair, in the Wayne

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Said Court. This defendant now and all
times hereafter saving to herself all and all
manners of benefit and advantage of Exceptions
or otherwise that can or may be had or taken
of the many errors uncertainties and imperfec-
tions in the said bill contained, for answer
there to, or to so much thereof as this defendant
is advised it is material or necessary for her
to make answer to, for answer says

That as far as she knows or is advised
she knows not whether the said complainants
in said bill, Samuel D. Blain, Absalom Blain
and Elizabeth F. Blain are the duly appointed
and legally acting Administrators of Thomas
D. Warrick dec'd or not. And as to the Allegation
in said bill of Complaint, that she purchased
certain lands therein described, from the
said Thomas D. Warrick on or about the 22nd
day of May A.D. 1862, said Allegation is untrue
that this respondent, never did at that or
any other time purchase any lands whatever
from said Thomas D. Warrick.

This defendant for further answer says,
that true it is that she joined with one
Thimney W. Elliott in the Execution of a
certain Mortgage on the lands, described
in said Complainants bill, but at the
time of the Execution of said Mortgage

She was the true wife simple of the said land therein described. And by said Mortgage she did not convey her title in said to said lands by only conveyed her dower interest to said as by said Mortgage and the acknowledgements thereto attached will more fully appear.

This respondent further answers. Says that at the time of executing said Mortgage she was living on said premises, and occupying them as her homestead, and that she has ^{an} heir, and does at this time hold possession of said lands as described in said bill of Complaint, and claims ~~as~~ homestead on said premises at this time.

This respondent for answer further says that she purchased the lands described in the said Bill of Complaint, from one John Piggall and that the same was conveyed to her by good and sufficient Warranty deed from said Piggall, which said deed is herewith presented to the Court, and asked to be made a part of the record in this Cause. And is marked "Exhibit A"

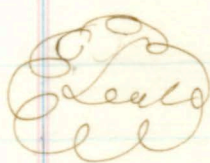
And this defendant further claims and all manner of unlawful combination and confederacy whereunto she is by the said bill charged, without this, that there is any other matter thing or cause in the said bill of Complaint contained.

material or necessary for this defendant to
make answer unto, and not herein set
and sufficiently answered heretofore or deemed
is true to the knowledge or belief of this defen-
dant. All which matters and things this
defendant is ready and willing to aver and
prove as this honorable Court shall direct.

And having answered, she prays to be
dismissed with her reasonable costs and charges.
She be Elliott"

State of Illinois, Wayne County St.

Personally appeared before me the undersigned
Justice of the Peace in and for said County Phoebe
E. Elliott above named, who after being by
me duly sworn says that the matters and
things as set forth in the foregoing answer as
far as she states therein from her own infor-
mation and belief are true and correct
And as far as she states therein from the infor-
mation of others she believes to be correct.



Witness my hand and official seal
This 28th day of August A.D. 1866"

J. P. Beekun J. P.

And afterwards on the 11th day of
December 1866. the said Plaintiff, or
Complainant filed in the Clerk's office of said
Court. the following replication to said
defendant's answer: as follows, to wit:

4 State of Illinois, Wayne County ss
To August Term AD 1866

Wayne County Circuit Court
Samuel D. Blair et al }
vs }
Thomas W. Elliott et al }

The said complainants Samuel D. Blair, Absalom Blair and Elizabeth F. Blair Administrators of the Estate of Thomas D. Wornick deceased hereby join issue with the defendants in this cause. Thomas W. Elliott and Phibe C. Elliott, on the several answers by them in this cause filed.

By Leab. Campbell & } Samuel D. Blair
McIntyre Their Sol. } Absalom Blair &
Elizabeth F. Blair,

And afterwards took, at the second Term of said Court in the year 1867. The following plea was made by said Court in said cause viz:

" Samuel D. Blair et al }
vs }
Thomas W. Elliott et al }

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This cause being submitted to the Court, the case to be entered in vacation, as of this Term, and in the mean time the arguments to be submitted at the sitting of the Supreme Court at St. Louis in June next.

And afterwards at the August Term 1867
of said Court the following order was
made by said Court in said Cause viz:

77 Samuel D. Blair et al }
vs } Faciem.
Thomas W. Elliott et al } 10th day.

At this day came said
parties by their Attorneys, and issue being
joined, and the evidence being submitted
to the Court, and the Court not being
fully advised took time, and this cause
is continued.

And afterwards at the March
Term of said Court in the year 1868. to wit
on the 28th day of March 1868. the following
order was made by said Court in said
Cause to wit:

Samuel D. Blair et al }
Att^{ys} of Thos. P. Warrell et al }
vs } Faciem.
Thomas W. Elliott + Phebe Elliott } 13th day.

At this day again came said
parties by their Attorneys, and this cause
having been submitted, and argued at the
last August term of this Court, and held
under advisement.

And the Court now being fully
advised in the premises, it is found by

the court. That Thomas W. Elliott made his three promissory notes, each for the sum of five hundred and twenty five dollars, which with the interest amounts to twenty three hundred and thirty one dollar and ten cents, which is now due and payable and that this mortgage was given by Thomas W. Elliott and Phoebe Elliott his wife to secure the payment of these notes.

It is further found by the court that these notes were altered so as to read Thomas P. Hamide " & Co." as the payee therein, which addition of " & Co." was erased before this proceeding was instituted, leaving the notes as originally made.

It is further found by the court that this alteration was not made by the payee, or legal holder of the notes; that Phoebe Elliott is the owner of the said land as her separate property, and that these notes were given for a part of the purchase money, and this mortgage given by the said Elliott and wife to secure their payment. That the taking of these notes was a relinquishment of the vendors lien, and that the right of homestead vested in the said Phoebe Elliott and continues.

Therefore it is ordered adjudged and

decree by the Court, that the said Mortgage
be foreclosed, and that the respondents do
within thirty days from their date pay to
the said complainants the said sum of
Twenty three hundred and thirty one dollars
and ten cents with the costs of this Suit
And in default thereof, that the said land
or so much thereof as may be necessary to
Satisfy said sum with interest and costs
be sold as directed by law in such cases.
And that the Commission shall first set
aside and apportion one thousand dollars
worth of the said land as homestead in-
cluding the dwelling house occupied by the
respondent Phil Elliott, to and for their
use and benefit, and that Ezra B.
Arden, be and is hereby appointed Special
Commissioner to sell and convey.

In all of which order the respondent
excepts and pray that a Bill of Exceptions
may be signed and sealed and made
a part of the record.

And on the 15th day of May 1868
the following Bill of Exceptions was signed
sealed and filed in said court, and by
Order made a part of the record, and is
as follows. to-wit:

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State of Illinois, County of Wayne S.S.

Wayne Circuit Court, March Term A.D. 1868

Be it remembered that at a term of the
Circuit Court, began and holden at Fairfeld
in the County of Wayne and State of Illinois
on Monday the 16th day of March A.D. 1868.

Present, Hon. James M. Pollock Judge,

Abraham J. Odell Sheriff,

William L. Gash Clerk,

and on the ~~Saturday~~ the 13th day of the Term
present, same as above. The following

Case came on for hearing. To wit:

Samuel D. Blair,

Abraham N. Blair, +

Elizabeth A. Blair, Administrators

of Thomas P. Warrick deceased.

vs. } Debt to fulfill
Thomas W. Elliott, + } Mortgage
Melvin Elliott }

And on the trial of the
above entitled Cause the following three
certain notes were offered in evidence, by
the Complainants, to sustain their side of
the case herein, to wit:

"\$575, Two years after date I
promise to pay unto Thomas P. Warrick
or order the sum of five hundred and
seventy five (\$575,) dollars with interest

at the rate of six per cent. per annum from date for value received.

Hayville May 22nd 1862.

J. W. Elliott

\$575-

Three years after date I promise to pay unto Thomas P. Warrick or order the sum of five hundred and seventy five (\$575) dollars with interest at the rate of six per cent. per annum from date for value received.

Hayville May 22nd 1862. J. W. Elliott

\$575- Four years after date I promise to pay unto Thomas P. Warrick or order the sum of five hundred and seventy five dollars for value received, with interest at the rate of six per cent. per annum from date.

Hayville May 22nd 1862. J. W. Elliott

After the introduction of which a civil promissory Note, the Complainants offered to read, and did read in evidence the following affidavits to wit,

"Wagon Service Court March Term 1867,
Blair Adm^r of Thomas P. Warrick;

vs. J. W. Elliott & al
Defendants

John Reggall being duly sworn on oath says he was at one

the name of the lands mentioned and described in the Bill herein, and that he being indebted to one Thomas P. Warwick made Execute and delivered to him a Mortgage on the said lands, and that afterwards he offered said said lands to said Elliott, and on the request of said Elliott, he offered conveyed the lands to the wife of said Elliott. The other defendant in the Bill, and that to settle his debt, that he owed to said Warwick, and by agreement with said Warwick, and said Elliott, after conveying the lands to said Elliott's wife for the balance of the purchase money, which was then being the amount of money named in the Mortgage herein, they said Elliott & wife were to make Execute and deliver to said Warwick the notes and Mortgage for the same amount named in said Bill herein, and that said defendant Thomas Elliott afterwards told him that he had made the notes and Mortgage to said Warwick, and the debt from said defendant to Warwick was by said arrangement extinguished, he further states that the trading & arrangement he made, was made with said defd. Tho. Elliott, & he had no arrangement with the other

3)
defendants, except through the Defendant
John Reggall,

sworn to and subscribed before me this
20th day of March A.D. 1867.

James M. Pollack.

Judge.

After which the complainant read in
evidence the following affidavit, to wit,

David Blair one of the complainants
in the above styled cause being duly sworn
on oath says that he and his Co. Complainant,
The Admrs. of Thomas P. Warrick decd.
that as such administrators the notes
described in the bill herein, came into their
hands from Hugh Blair survivor of the
firm of J. P. Warrick & Co. about six months
after said Warrick's death, and that when
first received by them the words ("& Co") were
in the notes in different ink, and different
writing, after and added to the name of
J. P. Warrick, which addition had evidently
changed the notes from J. P. Warrick as the
payer, to J. P. Warrick & Co. making them the
payer, Affiant states further that he
bought said notes to Fairfield, and
placed them in the hands of Joseph M.
Campbell for debt, and he said Campbell
finding the mortgage was only given to

Said J. P. Warrick, and the notes to J. P. Warrick
Co, said receipt struck out of said
notes the abbreviation "Co" leaving said notes
as executed by said Elliott.

He states further that he does not
know who made the first change in the
notes, but swears it was not made in the
hand writing of said Warrick, nor was
it made by said administrators of said
Warrick, or by their affairs. Current
he states further that after said Elliott
had seen and known of said change
in said notes, he admitted to this affair
that they were just, and that he would
pay the same, but has not, and further
this affiant says the not. S. D. Blew,

Sworn to and subscribed before me
March 20th 1867. Samuel Pollard,

After which the complainant ^{Judge}
affiant in evidence their letters of Administrators
which are as follows.

" State of Illinois, White County.
The People of the State of Illinois, to all to
whom these presents shall come greeting,
Know ye that whereas Thos. P. Warrick late
of the County of White and State of Illinois
died intestate as it is said on or about
the 3rd day of June 1865, leaving at the

55
time of his death personal property in this State
which may be lost or destroyed, or diminished
in value, if speedy care be not taken of the
same. To the End therefore that said property
may be collected and preserved for those
whom shall appear to have a legal right or
interest therein. We do hereby appoint Elizabeth
Blair, Samuel D. Blair, & Absalom Blair of
the County of White and State of Illinois Ad-
ministrators of all and singular the goods
and chattels, rights and credits which were
of the Estate said Thomas D. Warrick at the
time of his death, with full power and
Authority to secure and collect the said
property, and debts, wherever the same
may be found, in this State, and in
General to do and perform all other acts
which now or may hereafter be required
of them by Law.

Witness R. H. Graham Clerk of
County Court of White at his Office in
Leavenworth this 17th day of July ad 1865
Revenue Stamp \$5.00. R. H. Graham Clerk

After which the complainants offered in
evidence the following deed of Mortgage. To wit:
" This Indenture and Estate unto

14
This 21st day of May in the year of our Lord
Eighteen hundred and sixty Two, between
Thos. W. Elliott and Sheba C. Elliott his wife
of the County of Wayne and State of Illinois
party of the first part, and Thomas S. Warren
of the Town of Grayville County of White and
State of Illinois party of the second part. Witnesseth:
That the said party of the first part for and
in consideration of the sum of two thousand
three hundred dollars (\$2,300.00) to them in
hand paid by the said party of the second part,
the receipt whereof is hereby acknowledged,
have granted bargained and sold and by
these presents do grant bargain and sell
to the said party of the second part his heirs
and assigns all several tracts or parcels of
land situated by and being in the County
of Wayne and State of Illinois, known and
described as follows, to wit: The West half of
the South East quarter of Section number four-
teen (14) Eighty acres; The South West quarter
of the North East quarter of Section number
fourteen (14) 40 acres; The South West quarter
of the North East quarter of Section number
fourteen (14) forty 40 acres; The South
half of the North West quarter of Section (14)
80 acres; The North East quarter of the South

East quarter of Section fifteen (15) except five
acres on the West side thereof. The West half
of the North East quarter of Section number 23.
Eighty acres. and the North East quarter of
the North East quarter of Section fourteen (14)
fully acres. all in Township Two South of
Range Four East, and containing altogether
thirteen thousand and fifty five (3555) acres of
land. Situate and being in the County of
Wayne and State of Illinois.

To have and to hold all of the said parts of
land together with all the appurtenances thereto
belonging or in anywise appertaining, to the only
proprietor of them the said party of the second
part his heirs and assigns forever. And the
said party of the first part for themselves, heirs
Executors and administrators do covenant
with the said party of the second part that
they are lawfully seized, have full right to
convey, and will forever warrant and defend
the said parts of land from the said claims
of all persons whomsoever.

Nevertheless the above recitation of Mortgage
is upon their express and only condition,
that whereas the said John W. Elliott is
justly indebted to the said Thomas O'Meara
in the sum of Two thousand three hundred
(2300) dollars for which sum he has

By and to the said Thomas D. Hamblet has
four (4) promissory notes due and payable as
follows. viz: One note due and payable
within months after date for the sum
of five hundred and seventy five dollars
with interest at the rate of six per cent
per annum from date. One note due and
payable two years after date for the sum of
five hundred and seventy five dollars with
interest at six per cent from date. One
note due and payable three years after date
for the sum of five hundred and seventy
five dollars with interest at the rate of
six per cent per annum from date. And
One note due and payable four years after
date for the sum of five hundred and
seventy five dollars with interest at the
rate of six per cent per annum from date
all of even date herewith, and payable for
value received.

Now of the said Thomas D. Elliott shall
well and truly pay or cause to be paid all of
said notes at maturity thereof, together with
the interest that shall have accrued thereon
according to the tenor of said notes, then these
promises to become null and void, otherwise
to remain in full force and virtue.

In witness whereof the said party

then presents at their hands and reads this
the day and date first above written.

In presence of

J. W. Elliott

J. J. Grange A.P.

Phibe to Elliott

State of Illinois, White County Sd

Before me the undersigned Notary Public within
and for the County of said State came Thomas W
Elliott & Phibe to Elliott who are personally known
to me as the real persons by whom, and in
whose name the above conveyance was executed,
and by whom the same was acknowledged, they
severally acknowledged their signatures thereto, to
be their free and voluntary act and deed,
for the purposes therein expressed.

And the said Phibe to Elliott wife of the said
Thos. W. Elliott being by me examined separately
and apart from her said husband, and the
contents of said conveyance being fully made
known to her, acknowledged that fully and
voluntarily, and without compulsion of her
said husband, she executed the same
and freely relinquished her right of dower
to the said lands & was not to contract,

(Seal)

Whose name my name and seal
of office at Grayville, the 22nd day of
May A.D. 1862.

J. J. Grange Notary Public

~~_____~~ after which the





some Complainants offered in Evidence the following deed, to wit: which was then read in Evidence:

"This indenture made this thirteenth day of May in the year of our Lord one thousand Eight hundred and Sixty Two, between John Reggall and Mary B. Reggall his wife of Grayville White County, Illinois of the first part and Phoebe Elliott of the County of Wayne and State of Illinois, of the second part. Witnesseth that the said party of the first part for and in consideration of the sum of Seven thousand and one hundred dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, resigned, released, aliened and confirmed, and by these presents do grant, bargain, sell, resign, alien, and confirm unto the said party of the second part, and to her heirs and assigns from all the following described pieces and parcels of Land Situate in the County of Wayne and State of Illinois, and known and described as follows, to wit:

The West half of the South East quarter of Section No. Fourteen (14), 80 acres. The South

West fourth of the North East quarter of Section No. Fourteen (14) 40 acres. The South half of the North West quarter of Sec. No. Fourteen (14) 80 acres. The North East fourth of the South East quarter of Section No. fifteen (15) (Except five acres on the West side thereof) 35 acres.

The West half of the North East quarter of Section No. twenty three (23) 80 acres, and the North East quarter of the North East quarter of Section No. fourteen (14) 40 acres, all in Township No. Two South Range No. Five East containing altogether three hundred and fifty five acres of land, situate by my and being in the County of Wayne and State of Illinois, Together with all and singular the tenements and appurtenances thereto belonging or in any way appertaining, and the ^{reversion} ~~reversion~~ and reversions, remainders and remainders mes and profits thereof, and all the Estate, rights titles interests claims or demands whatsoever of the said party of the first part, either in Law, or Equity, of or to the above mentioned, herein named premises with the tenements and appurtenances. To have and to hold the said premises above herein and described with the appurtenances unto the said party of the second part, his heirs and assigns forever, and the said John Rygall and Mary B.

Riggall his wife party of the first part their
 heirs and Executors and administrators do
 Covenant, grant bargain and agree to and with
 the said party of the second part her heirs and
 assigns, that at the time of the execution and
 delivery of these presents, they are well seized of
 the premises above conveyed as of a good law
 full, perfect, absolute and indefeasible Estate of
 inheritance at law in fee simple, and have
 good right, full power and lawful authority
 to grant, bargain sell and convey the same
 in manner and form aforesaid, and that the
 same is free and clear from all forms and
 other grants bargains sales leases taxes
 appointments and incumbrances of what kind
 or nature soever, and the above bargained pro-
 mises in the quiet and peaceable possession of the
 said party of the second part her heirs and
 assigns, against all and every person or
 persons lawfully claiming or to claim the
 whole or any part thereof, the said party of
 the first part shall and well warrant and
 defend forever. In testimony whereof the
 said party of the first part have hereunto set
 their hands and seals the day and year
 first above written, (Signed) John Riggall 
 Aquil sealed and delivered  Mary B. Riggall 
 in presence of A. A. White 

State of Illinois, White County.

I, A. A. White Notary Public in and for said County, in the State of said Illinois, do hereby solemnly certify that John Riggall & Mary B. Riggall his wife who are personally known to me as the real persons whose names are subscribed to the above deed, appeared before me this day in person and acknowledged that they executed and delivered the said deed as their free and voluntary act, for the uses and purposes therein set forth, and that the said Mary B. Riggall wife of said John Riggall having been by me examined separately and apart from, and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known, and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her claim to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

A. A. White

Given under my hand and official seal this thirteenth day of May in the year of our Lord one thousand Eight hundred and Sixty Two "

A. A. White - Notary Public "

which was all the evidence offered by Complainant in this case "

And thereupon the defendants offered as a Witness to sustain their side of the issue in this Cause Thomas W. Elliott, one of the defendants in this Cause who after being first duly sworn the truth to speak testified as follows, to wit,

That he purchased the land in question of John Riggall for his wife Phibe C. Elliott, but at the time of the purchase did not make known to said Riggall, that the purchase was being made for her, but in the Execution of the deed, on the 15th day of May 1862. The Witness admitted the deed to be made to her which was done, That in part payment for said land, Witness sent his wife conveyed to said John Riggall two tracts of Land, one in the State of Kentucky, and one in Ohio, which lands were the property of Phibe C. Elliott. He further states that after the Execution of said deed by said John Riggall, by agreement between all parties, said deed was left in possession of one A. K. White the Justice of the Peace before whom the same was executed, to be retained by him until said deed and his wife Phibe C. Elliott, should properly Execute their three promissory notes and Mortgage to secure the same, for the balance of the purchase money, of the said land, purchased from Riggall by Elliott, which Mortgage

43
was Executed on the 22^d of May A.D. 1862,
That on the 27th of May 1862 affiant J. P.
Warrick and John Riggall went to Fairfield
and put their deeds and Mortgage Book,
and J. P. Warrick. Entered Satisfaction to the
Mortgage he held on said land for the
debt due him from said Riggall. He further
states that he Executed the three notes to
Thomas D. Warrick, and not to J. P. Warrick & Co.
and that the notes were not changed or
altered by or with his consent, and that
affiant does not Executed the Mortgage in
question. affiant alleges that he Executed
at the time four notes, and that after-
wards he paid to Thos. D. Warrick all of
the said notes, and at that time the
notes were payable to Thos. D. Warrick, and
not to J. P. Warrick & Co. which was all the
Evidence offered by either party in this
Case. Whereupon the Court Entered a
decree against said defendants and in
favor of said Complainant, and ordered
that the amount of \$2329.10, being the
amount found to be due on the three
Several promising notes offered in Evidence
in this Case. To the Entering of which
said decree said defendants by their
Counsel at the time of apts. They

44
Therefore pray that this their bill of exceptions
may be signed sealed and become a part
of the records of this Court. which is
accordingly done

Witness my hand and seal on
this the 14th day of March A.D. 1868.

James M. Pollock,
Judge 12th Jud. Cir. Ill^s

State of Illinois

Wayne County } s.

J. Williams, Clerk of the Circuit Court in and for said County, do hereby certify that the foregoing 44 page contains a true and correct copy of the paper above described, as filed in a certain Cause pending in said Court in the following title, to-wit:

William B. Brown, Plaintiff vs. J. Williams, Clerk of the Circuit Court, and J. Williams, Defendant.

Witness my hand and seal on this the 19th day of March A.D. 1868.

J. Williams, Clerk

Assignment of Errors

- 1st The decree is erroneous, in ordering a foreclosure of the Mortgage, upon the evidence
- 2nd The Court erred in ordering a sale of the premises
- 3rd The Court ^{erred} in finding that the Mortgage was given for the purchase money
- 4th The decree of the Court is unsupported by the evidence
- 5th The allegations of the bill and the proofs do not correspond
- 6th The decree is inconsistent and contradictory
- 7th The Decree & copy of the bill are inconsistent and for these, and other manifest errors in the record, the decree should be reversed

H. A. Beecher &
Harner & Casey Solrs
for plffs in error

54 Supreme Court—
June Term 1868

Thomas H Elliott et al

vs
Samuel D Blair
et al

Filed 2^d June 1868
R. H. Strickland
clerk

Printed by James G. Coe

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

THOMAS W. ELLIOTT and }
PHOEBE C. ELLIOTT. }
vs. } Error to Wayne.
SAMUEL D. BLAIR, et al. }

This proceeding was instituted on the Chancery side of the Wayne Circuit Court, at the March term, A. D. 1867, for the foreclosure of a deed of mortgage, and heard upon bill, answers and exhibits.

1 Contains the organization of the Court.

2 The complainants are administrators of the estate of Thos. P. Warrick, deceased. May
3 22d, 1862, defendants purchased certain described real estate, lying in said county of Wayne,
containing 355 acres, for the consideration of \$3000, to be paid to Thos. P. Warrick or his
administrators. Of said sum \$1275 was paid at the time of sale. The residue was to be paid
4 in three installments of \$575 each, in two, three and four years, with interest at 6 per cent. per
annum. For said several installments the said Thos. W. Elliott executed his three several prom-
issory notes. To secure said notes, Elliott and wife on the said 22d day of May, 1862, executed
and delivered to the said Warrick a deed of mortgage on all of the lands in the deed to the said
Thos. W. Elliott and Phoebe C. Elliott described.

5 Deed of referred to as exhibits "A." The sum of \$1725 still due from the defts. with in-
terest at 6 per cent. from said 22nd of May, 1862.

6 Defts. always had possession of the premises—would neither pay the said indebtedness or
surrender possession of said premises, which are scant, with the amount of indebtedness now
7 due. The compts. are the administrators of the goods and chattles of Thos. P. Warrick, dec'd,
who died January 2nd, 1865. Letters of Guardianship issued to compts. January 17th, 1865,
and authority, as such, in full force.

Prayer, that Thos. W. Elliott and Phoebe C. Elliott shall answer under oath, fully, and
discover all other, if any incumbrances, exist upon said mortgaged premises, and an account of
the amount due on said mortgage be taken, &c.

9 And that decree be rendered against the said Elliotts, for the sum so found due, to be paid
at a short day. Prayer for a summons in chancery, &c.

10 Copies of notes.

11 12 13 14 15 Copy of mortgage.

15 Copy of summons.

16 Service shown.

16 17 Leave given complainants, at the August term of said court, to amend bill. Rule on defts.
to answer within 60 days and cause set down for hearing at next term and continued. Separate
answer of Thos. W. Elliott.

18 He denies that he and his wife ever purchased the land in said bill described, from the said
Thos. P. Warrick, dec'd; nor did his wife purchase said lands from said Warrick; and that said
notes executed by him to said Warrick were not for the purchase money for said lands. Admits
that he did as charged on the 22nd day of May, 1862, executed and delivered to said Warrick
the several promissory notes, but wholly denies that he executed and delivered to said Warrick
any note or notes payable to "Thos. P. Warrick & Co." He charges that the notes executed
and delivered as aforesad were fraudulently changed and altered after their delivery without his
knowledge or consent.

19 That, at the time of the execution and delivery of said notes, he was occupying and enjoy-

IN SUPREME COURT

ing the said real estate as his *homestead*, and has never been out of possession thereof since. Denies having any interest in the said real estate otherwise than by courtesy.

Denies any and all unlawful combination, as in said bill charged.

20 Conclusion of answer.

Affidavit of the truth of answer.

21 Beginning the answer of Phœbe C. Elliott. She denies purchasing the premises from said Thomas P. Warrick. Admits that she joined her husband in the execution of a deed of mortgage to the said Warrick, deceased. That at the time of the execution of said mortgage she was the owner in fee of the said lands. She did nothing but relinquish dower in form. That at the time of the execution of said mortgage she was occupying the said premises as a homestead, and has always since continued to possess the same as such. She alleges that she purchased the said real estate from one John Riggoll, and refers to the said deed as exhibit "A." She denies all unlawful and fraudulent combination.

23 Conclusion of answer and affidavit of truth of answer.

24 Replication.

25 Cause submitted to the Court at the August term, A. D. 1867, and taken under advisement.

26 March term, 1868, cause decided and decreed in substance: That the Court finds that said Thos. W. Elliott executed said notes; that there is due thereon \$2375, and said mortgage was given to secure said sum by said Elliott and wife; that the notes were altered and made payable to "Thomas P. Warrick & Co." That the addition of "& Co." was erased before suit. That the said notes were not altered by the holder or payee thereof. That the said Phœbe C. Elliott is the owner of the said land in her own right. That the notes were given for a part of the purchase money. That said mortgage was given by Elliott and wife to secure the payment of the purchase money. That the taking of the notes were a relinquishment of the vendor's lien. That the right of homestead vested and still exists in the said Phœbe C. Elliott.

27 It is decreed by the Court that the said mortgage be foreclosed. That the defendants pay, within ninety days, to the complainant \$2331 10 and costs of suit. And in case of default, the land or so much as shall be required to pay debt, interest and costs, be sold, as directed by law. That the Commissioner shall first set apart to Phœbe C. Elliott one thousand dollars worth of said lands as a homestead, including the dwelling house occupied by said Phœbe. Commissioner appointed to sell and convey. Defendants except to the rendition of said decree and all the rulings of the Court. Bill of exceptions filed, allowed and made a part of the record.

The bill of exceptions contains nothing in addition to the foregoing record except the testimony of John Riggoll, Samuel D. Blair and the defendants.

29 John Riggoll testified on behalf of complainants: That he was at one time the owner of
30 said lands, and was then indebted to Thomas P. Warrick. That, to secure his said indebtedness he conveyed by deed of mortgage to Warrick the said lands. Witness afterwards sold said lands to Elliott and at his request conveyed the lands to said Elliott's wife. That to pay off his debt to said Warrick, and by agreement of said Warrick and said Elliott, after conveying the lands to Elliott's wife, for the balance of the purchase money which was due, being the amount of money named in the mortgage herein, then Elliott and wife were to execute and deliver to Warrick the notes and mortgage for the amount specified in complainants bill. That Elliott afterwards said he had made the notes and mortgage to Warrick, and that the debt of witness to said Warrick was extinguished. That he made the trade with Thos. P. Elliott and had nothing to do with Mrs. Elliott except thro' her husband.

31 Complainants then read in evidence the affidavit of Saml. D. Blair, one of complainants, which state that the notes in suit came into the possession of himself and co-complainants about six months after the death of Thos. P. Warrick, from Hugh Blair, survivor of T. P. Warrick & Co., and that the words "& Co." were added to and following the name T. P. Warrick, in different ink and different writing, which, in his opinion had changed the payee from "T. P. Warrick" to "T. P. Warrick & Co." That her affiant gave the notes in that
32 condition to Joseph M. Campbell for suit, and said Campbell erased the words or contraction "& Co." Don't know who made the first change, but it was not in the handwriting of Thos. P. Warrick. Nor was it made by affiant or his co-administrators, or by affiant's consent. That after Elliott learned of such change, he said the notes were just and he would pay them.

33 Profert of letters of administration, &c.

33 4 5 6 7 Contain a copy of mortgage in suit.

38 39 40 41 Deed from Riggoll to Phoebe C. Elliott.

- 42 Defendant Thos. W. Elliott, being sworn in support of answer says: that he purchased the lands from Riggoll for his wife and had them conveyed to her. He did not make known at the time for whom he made the purchase, but did when the deed was made, to-wit: on the 13th day of May, 1862. That in part payment for said lands he and wife conveyed to Riggoll two tracts of land belonging to his wife, Phoebe C. Elliott, the grantee. That the deed from Riggoll to his wife after execution, was by agreement of all parties to be left with the officer before whom the same was executed, until affiant and his wife should execute the notes and mortgage for the balance of the purchase money, which mortgage was executed May 22d, 1862. On May 27th, 1862, affiant Warrick and Riggoll went to Fairfield and put their deeds and mortgage upon record, and Warrick satisfied the mortgage he held on said land for the debt due him from Riggoll. That he executed his notes to Thomas P. Warrick and not to "T. P. Warrick & Co.," and that they were not changed by his knowledge or consent. That he and wife executed said mortgage. That he executed four notes to Thomas P. Warrick, and had paid one to said Warrick.
- 44 No other testimony offered by either party. Decree entered as aforesaid. Bill of exceptions signed and made a part of the record. Transcript certified under seal, &c.

ASSIGNMENT OF ERRORS.

- 1st. The decree is erroneous in ordering a foreclosure of the mortgage upon the evidence.
- 2d. The Court erred in ordering a sale of the premises.
- 3d. The Court erred in finding that the mortgage was given for the purchase money.
- 4th. The decree of the Court is unsupported by the evidence.
- 5th. The allegations of the bill and the proofs do not correspond.
- 6th. The decree is inconsistent and contradictory.

And for these and other manifest errors in the record, the decree should be reversed.

C. A. BEECHER and

TANNER & CASEY,

Solicitors for Plaintiff in Error.

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

THOMAS W. ELLIOTT, et al. }
vs. } Error to Wayne.
SAMUEL D. BLAIR, et al. }

PLAINTIFF'S BRIEF.

The allegations and proofs in a bill in chancery must correspond in all cases. Chaffin vs. Heirs of Kimball, 23 Ill. 37. Rowan vs. Bowles, 21 Ill. 19.

Every material alteration of a promisory note after issue, made by the holder, without the consent of the maker, renders it *void*. 2d Parsons—Notes—551, 571 and 580.

It is not material to inquire whether the alteration was fraudulently made or not. If fraudulently made, the note is not only void, but the liability of the maker is wholly extinguished. If the alteration changes the contract without being tainted with fraud, the rights of the holder may be saved by resorting to the original consideration. 2d Parsons 572 and authorities referred to.

Every *immaterial* alteration, if made with a fraudulent intent, renders the note void. 2d Parsons Notes 572 and the authorities there referred to.

It is not material to inquire what advantage the holder was to derive from the change. 2d Parsons 551, 579 and 582.

The question is not, has the maker been injured? But might he have been ~~injured~~ ^{injured} 2d Parsons 551, 19 Penn. 119.

The holder is bound to account for the alteration consistent with innocence. 2d Parsons, 575, 678-9. V, Gil. 252.

A note can not be realtered at the trial to its original state. For proof of what, that state was, is inadmissible for the benefit of one in ~~possession~~ ^{possession} of knowledge and interest with the alteration. Accordingly a note once issued and then altered is void. 2d Parsons 581.

TANNER & CASEY,

C. A. BEECHER,

Solicitors for Plaintiff.

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No 54
 Thomas W Elliott
 et als

vs
 Saml. D Blair
 et al

Abstract & Brief

filed 4th June 1868
 W. W. Wickham
 clk

JUNE 16th V. D. 1868

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Elliott

~~Blair~~

Mr. Justice Lawrence delivered the opinion of the Court -

This was a bill to preclude a mortgage, and a decree was resisted on the ground that the notes secured by the mortgage had been altered. The notes were originally payable to Thomas P. Harwick, and they appeared to have been altered so as to be payable to Thomas P. Harwick & Co., the words "& Co." having been added in a different ink and writing. These words were struck out by the attorney of complainant. The notes and mortgage were originally given to Harwick, who had since died, and this suit was brought by his administrators. It was proved that the words "& Co." were not in the handwriting of Harwick. Proof was given, independently of the notes, that the defendant was indebted to Harwick ^{for} the amount

specified in the notes and mortgage, and on that point there was no controversy. The circuit court rendered a decree for complainant.

In doing this the court did not err. There is nothing disclosed by this record which would make this alteration in any way material to the maker of the notes. ~~His~~^{His} liability is not affected. But even regarding the alteration as material, we can not conceive it to have been fraudulently made, and in such cases the rule is properly laid down in ²Parsons on Notes and Bills 571. that a party may recuse on the original consideration. A fraudulent alteration ~~of a note~~ not only avoids the note, but presents a security upon the original consideration, but there is no reason why an alteration made without any intent to injure or defraud, should have any other effect than to present a security upon the note itself by destroying its validity as evidence. In the case before us the debt was created by the sale of the ~~real~~ premises

to the defendant upon which
he gave ^{back} a mortgage ~~back~~ to
secure a part of the purchase
money. The notes were merely the
evidence of this debt, but the
debt itself, independently of the
notes, is proven by the recitals of
the mortgage and the parol evidence
given on the hearing, as to the
manner in which the debt originated.

That the alteration
of the notes was not fraudulently
made is fairly inferrible from
the facts of the case. It was not
of a character to change the liability
of the ~~maker~~ ~~defendant~~ maker of
the notes, and was prejudicial to
the payee as it went to show
that the notes belonged to the firm
of which he was a member, instead
of to himself. The added words
are not in his handwriting, and
they may have been placed there
without his knowledge. As he is
dead no explanation can be given,
but as no possible advantage
could accrue to him from the
alteration, and no harm to the
maker, it is but reasonable to

presume the alteration was made
without fraudulent intent, and
to allow the mortgage to be foreclosed
for the payment of the debt which
both mortgage and notes were
given to secure.

Deceit affirmed

Elliott ⁵²

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Blair

Opium

Samuel J.

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Supreme Court.

First Grand Division

Jan Term 1868

Thomas W Elliott

Phoebe L Elliott

vs

Samuel D Blair

Abraham Blair &

Eliabth Blair

Administrators of

Thomas P Harick decd

Ernest Wayne

The clerk will please observe the above style, in docketing this suit

Truly &

Samuel Hasey

Attor for Plffs

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54
Supreme Court
of the State of New York
from Jan 1808

Thomas W Elliott
Phoebe C Elliott

vs

Samuel S Blair
et al

Receipt

Filed 2nd June 1808
Wm. Williams
clerk

76.

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

THOMAS W. ELLIOTT and }
PHOEBE C. ELLIOTT, }
vs. } Error to Wayne.
SAMUEL D. BLAIR, et al. }

This proceeding was instituted on the Chancery side of the Wayne Circuit Court, at the March term, A. D. 1867, for the foreclosure of a deed of mortgage, and heard upon bill, answers and exhibits.

1 Contains the organization of the Court.

2 The complainants are administrators of the estate of Thos. P. Warrick, deceased. May
3 22d, 1862, defendants purchased certain described real estate, lying in said county of Wayne,
containing 355 acres, for the consideration of \$3000, to be paid to Thos. P. Warrick or his
administrators. Of said sum \$1275 was paid at the time of sale. The residue was to be paid
4 in three installments of \$575 each, in two, three and four years, with interest at 6 per cent. per
annum. For said several installments the said Thos. W. Elliott executed his three several prom-
issory notes. To secure said notes, Elliott and wife on the said 22d day of May, 1862, executed
and delivered to the said Warrick a deed of mortgage on all of the lands in the deed to the said
Thos. W. Elliott and Phoebe C. Elliott described.

5 Deed of referred to as exhibits "A." The sum of \$1725 still due from the debts, with in-
terest at 6 per cent. from said 22nd of May, 1862.

6 Defts. always had possession of the premises—would neither pay the said indebtedness or
surrender possession of said premises, which are scant, with the amount of indebtedness now
7 due. The compts. are the administrators of the goods and chattles of Thos. P. Warrick, dec'd,
who died January 2nd, 1865. Letters of Guardianship issued to compts. January 17th, 1865,
and authority, as such, in full force.

Prayer, that Thos. W. Elliott and Phoebe C. Elliott shall answer under oath, fully, and
discover all other, if any incumbrances, exist upon said mortgaged premises, and an account of
the amount due on said mortgage be taken, &c.

9 And that decree be rendered against the said Elliotts, for the sum so found due, to be paid
at a short day. Prayer for a summons in chancery, &c.

10 Copies of notes.

11 12 13 14 15 Copy of mortgage.

15 Copy of summons.

16 Service shown.

16 17 Leave given complainants, at the August term of said court, to amend bill. Rule on debts.
to answer within 60 days and cause set down for hearing at next term and continued. Separate
answer of Thos. W. Elliott.

18 He denies that he and his wife ever purchased the land in said bill described, from the said
Thos. P. Warrick, dec'd; nor did his wife purchase said lands from said Warrick; and that said
notes executed by him to said Warrick were not for the purchase money for said lands. Admits
that he did as charged on the 22nd day of May, 1862, executed and delivered to said Warrick
the several promissory notes, but wholly denies that he executed and delivered to said Warrick
any note or notes payable to "Thos. P. Warrick & Co." He charges that the notes executed
and delivered as aforesad were fraudulently changed and altered after their delivery without his
knowledge or consent.

19 That, at the time of the execution and delivery of said notes, he was occupying and enjoy-

IN SUPREME COURT

ing the said real estate as his *homestead*, and has never been out of possession thereof since. Denies having any interest in the said real estate otherwise than by courtesy.

Denies any and all unlawful combination, as in said bill charged.

20 Conclusion of answer.

Affidavit of the truth of answer.

21 Beginning the answer of Phœbe C. Elliott. She denies purchasing the premises from said Thomas P. Warrick. Admits that she joined her husband in the execution of a deed of mortgage to the said Warrick, deceased. That at the time of the execution of said mortgage she was the owner in fee of the said lands. She did nothing but relinquish dower in form. That 22 at the time of the execution of said mortgage she was occupying the said premises as a homestead, and has always since continued to possess the same as such. She alleges that she purchased the said real estate from one John Riggoll, and refers to the said deed as exhibit "A." She denies all unlawful and fraudulent combination.

23 Conclusion of answer and affidavit of truth of answer.

24 Replication.

25 Cause submitted to the Court at the August term, A. D. 1867, and taken under advisement.

26 March term, 1868, cause decided and decreed in substance: That the Court finds that said Thos. W. Elliott executed said notes; that there is due thereon \$2375, and said mortgage was given to secure said sum by said Elliott and wife; that the notes were altered and made payable to "Thomas P. Warrick & Co." That the addition of "& Co." was erased before suit. That the said notes were not altered by the holder or payee thereof. That the said Phœbe C. Elliott is the owner of the said land in her own right. That the notes were given for a part of the purchase money. That said mortgage was given by Elliott and wife to secure the payment of the purchase money. That the taking of the notes were a relinquishment of the vendor's lien. That the right of homestead vested and still exists in the said Phœbe C. Elliott.

27 It is decreed by the Court that the said mortgage be foreclosed. That the defendants pay, within ninety days, to the complainant \$2331 10 and costs of suit. And in case of default, the land or so much as shall be required to pay debt, interest and costs, be sold, as directed by law. That the Commissioner shall first set apart to Phœbe C. Elliott one thousand dollars worth of said lands as a homestead, including the dwelling house occupied by said Phœbe. Commissioner appointed to sell and convey. Defendants except to the rendition of said decree and all the rulings of the Court. Bill of exceptions filed, allowed and made a part of the record.

The bill of exceptions contains nothing in addition to the foregoing record except the testimony of John Riggoll, Samuel D. Blair and the defendants.

29 John Riggoll testified on behalf of complainants: That he was at one time the owner of 30 said lands, and was then indebted to Thomas P. Warrick. That, to secure his said indebtedness he conveyed by deed of mortgage to Warrick the said lands. Witness afterwards sold said lands to Elliott and at his request conveyed the lands to said Elliott's wife. That to pay off his debt to said Warrick, and by agreement of said Warrick and said Elliott, after conveying the lands to Elliott's wife, for the balance of the purchase money which was due, being the amount of mency named in the mortgage herein, then Elliott and wife were to execute and deliver to Warrick the notes and mortgage for the amount specified in complainants bill. That Elliott afterwards said he had made the notes and mortgage to Warrick, and that the debt of witness to said Warrick was extinguished. That he made the trade with Thos. P. Elliott and had nothing to do with Mrs. Elliott except thro' her husband.

31 Complainants then read in evidence the affidavit of Saml. D. Blair, one of complainants, which state that the notes in suit came into the possession of himself and co-complainants about six months after the death of Thos. P. Warrick, from Hugh Blair, survivor of T. P. Warrick & Co., and that the words "& Co." were added to and following the name T. P. Warrick, in different ink and different writing, which, in his opinion had changed the payee from "T. P. Warrick" to "T. P. Warrick & Co." That her affiant gave the notes in that 32 condition to Joseph M. Campbell for suit, and said Campbell erased the words or contraction "& Co." Don't know who made the first change, but it was not in the handwriting of Thos. P. Warrick. Nor was it made by affiant or his co-administrators, or by affiant's consent. That after Elliott learned of such change, he said the notes were just and he would pay them.

33 Profert of letters of administration, &c.

33 4 5 6 7 Contain a copy of mortgage in suit.

38 39 40 41 Deed from Riggoll to Phæbe C. Elliott.

- 42 Defendant Thos. W. Elliott, being sworn in support of answer says: that he purchased the lands from Riggoll for his wife and had them conveyed to her. He did not make known at the time for whom he made the purchase, but did when the deed was made, to-wit: on the 13th day of May, 1862. That in part payment for said lands he and wife conveyed to Riggoll two tracts of land belonging to his wife, Phoebe C. Elliott, the grantee. That the deed from Riggoll to his wife after execution, was by agreement of all parties to be left with the officer before whom the same was executed, until affiant and his wife should execute the notes and mortgage for the
- 43 balance of the purchase money, which mortgage was executed May 22d, 1862. On May 27th, 1862, affiant Warrick and Riggoll went to Fairfield and put their deeds and mortgage upon record, and Warrick satisfied the mortgage he held on said land for the debt due him from Riggoll. That he executed his notes to Thomas P. Warrick and not to "T. P. Warrick & Co.," and that they were not changed by his knowledge or consent. That he and wife executed said mortgage. That he executed four notes to Thomas P. Warrick, and had paid one to said Warrick.
- 44 No other testimony offered by either party. Decree entered as aforesaid. Bill of exceptions signed and made a part of the record. Transcript certified under seal, &c.

ASSIGNMENT OF ERRORS.

- 1st. The decree is erroneous in ordering a foreclosure of the mortgage upon the evidence.
- 2d. The Court erred in ordering a sale of the premises.
- 3d. The Court erred in finding that the mortgage was given for the purchase money.
- 4th. The decree of the Court is unsupported by the evidence.
- 5th. The allegations of the bill and the proofs do not correspond.
- 6th. The decree is inconsistent and contradictory.

And for these and other manifest errors in the record, the decree should be reversed.

C. A. BEECHER and
TANNER & CASEY,

Solicitors for Plaintiff in Error.

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

THOMAS W. ELLIOTT, et al. }
vs. } Errrr to Wayne.
SAMUEL D. BLAIR, et al. }

PLAINTIFF'S BRIEF.

The allegations and proofs in a bill in chancery must correspond in all cases. Chaffin vs. Heirs of Kimball, 23 Ill. 37. Rowan vs. Bowles, 21 Ill. 19.

Every material alteration of a promisory note after issue, made by the holder, without the consent of the maker, renders it *void*. 2d Parsons—Notes—551, 571 and 580.

It is not material to inquire whether the alteration was fraudulently made or not. If fraudulently made, the note is not only void, but the liability of the maker is wholly extinguished. If the alteration changes the contract without being tainted with fraud, the rights of the holder may be saved by resorting to the original consideration. 2d Parsons 572 and authorities referred to.

Every *immaterial* alteration, if made with a fraudulent intent, renders the note void. 2d Parsons Notes 572 and the authorities there referred to.

It is not material to inquire what advantage the holder was to derive from the change. 2d Parsons 551, 579 and 582.

The question is not, has the maker been injured? But might he have been ^{injured} ~~issued~~. 2d Parsons 551, 19 Penn. 119.

The holder is bound to account for the alteration consistent with innocence. 2d Parsons, 575, 678-9. V, Gil. 252.

A note can not be realterd at the trial to its original state. For parol of what, that state was, is inadmissible for the benefit of one in ^{possession} ~~possession~~ of knowledge and interest with the alteration. Accordingly a note once issued and then altered is void. 2d Parsons 581.

TANNER & CASEY,
C. A. BEECHER,

Solicitors for Plaintiff.

No 54

Thomas W Elliott
et al

vs
Samuel D Blair
et al

Abstracts & Briefs

8846

Filed 4th June 1858
W. Williams
clerk

~~1846~~

IN SUPREME COURT

JUNE TERM, A. D. 1858.

LETTERS DROPPED

ANDREW H. BENTON, et al }
vs }
THOMAS W. ELLIOTT, et al }

FOR RECORD OF RECORDS, THIS CASE IS FILED

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