

7011
State of Wisconsin,
Circuit Court---Calumet County.

Nettie M. Connell,)
Plaintiff,)
VS.)
Jennett Welch, Abbie Jane Doxtater,)
Hira Doxtater, Truman Doxtater)
Ruben Doxtater, Frederick Doxtater)
and J.E. McMullen,)
Defendants.)

complaint ↑

Plaintiff complains of the defendants and for cause
to the Court and alleges:-

Feb 27 1897

and prior to December 2, 1885, one Hira Welch,
and in possession of the following real estate sit-
being in the Town of Stockbridge, Calumet County,

to:-

The East forty two and one half acres of land of Lot
Fifty Four, and Twelve and a half acres of land off the West end of
Lot One Hundred and Fifty Nine.

" 2
That on or about said second day of December 1885, the
said Hira Welch made, executed and delivered to one Henry Kersten
of Chilton, Calumet County, Wisconsin, his certain promissory note
bearing date, December 2, 1885, wherein the said Hira Welch
promised to pay to said Henry Kersten one year after the date
thereof the sum of One Hundred and Fifty Dollars with interest
thereon at the rate of ten per cent per annum until paid, int-
erest payable annually.

" 3
That as collateral security for the payment of the above
indebtedness, the said Hira Welch and the above named defendants
Jennett Welch, who was then the wife of the said Hira Welch, did
at the same time duly execute, under their hands and seals and
acknowledge and deliver to the said Henry Kersten a mortgage bear-
ing even date with said note on all lands hereinbefore described
and conditioned for the payment of the above indebtedness mention-
ed in the said note, as therein specified, wherein and whereby
they mortgaged, granted, conveyed, bargained and sold to the said
Henry Kersten, the lands and premises above described, with the
privileges and appurtenances thereunto belonging, but upon the
express condition, that if the said Hira Welch, one of the said
mortgagors, his heirs, executors, administrators or assigns should
well and truly pay or cause to be paid to the said mortgagee, his
heirs, executors or assigns, the said sum of One Hundred and Fifty
Dollars, according to the tenor of said note to secure which said
mortgage was given, as aforesaid, then the said note and said
mortgage should cease and be null and void.

Circuit Court, Calumet County.

Nettie M. Howell,
Plaintiff.

VS.

Jennett Welch, Abbie Jane Doytater,
Hira Doytater, Truman Doytater,
Rubin Doytater, Ferdinand Doytater,
and J. E. Mc. Muller,
Defendants

Summons.

The State of Wisconsin:-- To THE SAID DEFENDANT

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint; of which a copy is herewith served upon you.

Humphrey Perce
Plaintiff Attorney

P. O. Address Appleton, Outagamie County, Wis.

said Hira Welch

Court
County
Plaintiff
vs.
Defendant
Summons.
Ch. 273, 1895.
STATE OF WISCONSIN, } ss. of _____
I hereby certify that the within copy of _____ was served by me on the within defendant _____ the _____ day of _____ 189 _____ ed _____, 189 _____ of _____ County, Wis.
4 97 ad

STATE OF WISCONSIN, } ss.
 County of _____

HICKEY CERTIFY:

(1) That on the _____ day of _____
 I served the within summons _____
 upon the within named defendant _____
 at the _____ of _____
 County, by delivering in _____
 _____ personally _____

(2) That on the _____
 I served the within summons _____
 on the within named defendant _____
 at the _____ of _____
 County _____
 not being found, by leaving _____ copy _____
 usual place of abode, in the presence of _____
 _____ one of the family
 age and discretion, whom I have for the cause

(3) That the within named defendant _____
 my County and his _____ place of abode therein;

(4) That at the time of the service aforesaid
 upon the copy _____ of such summons, I delivered _____
 defendant _____ above named in the within certified
 date upon which the same was served, as _____
 name thereto and added my official title;

(5) That I struck out paragraph _____ of _____
 certificate before signing.

Fees: Travel _____ miles, \$ _____
 Service _____ \$ _____
 Copy _____ \$ _____

County, _____
 By _____

That among other provisions it was provided in and by said mortgage and it was made an express condition thereof, that the said Hira Welch and Jennett Welch should pay annually to the proper officers all taxes which should be assessed on said mortgaged premises; that said mortgage was duly attested by two subscribing witnesses and was duly acknowledged, so as to entitle it to be recorded and was received for record in the office of the Register of Deeds for the County of Calumet, Wisconsin on the 3rd day of December A.D. 1885 at 8 o'clock A. M. and recorded in Vol. I of mortgages on page 176.

That said Hira Welch and Jennett Welch, mortgagors, failed to comply with the terms of the said note and the condition of said mortgage by failing and neglecting to pay said sum of One Hundred and Fifty Dollars and interest thereon at the maturity of said note and have never paid the same or any part thereof except the interest up to December 2nd. 1887; that there still remains wholly unpaid thereon the sum of One Hundred and Fifty Dollars principal and interest thereon from December 2, 1887, and said sums are a lien upon and charge against said mortgaged lands in favor of this plaintiff as hereinafter set forth.

Plaintiff further alleges that on or about the 5th. day of November 1886, the said Hira Welch, who was the owner and in possession of said real estate, ~~then~~ executed and delivered to said Henry Kersten his certain promissory note bearing date on said November 5, 1886 wherein the said Hira Welch promised to pay to the said Henry Kersten one year after date thereof the sum of One Hundred and Fifty Dollars with interest thereon at the rate of ten per cent per annum until paid, interest payable annually.

That as collateral security for the payment of the last above stated indebtedness the said Hira Welch and the above named defendant, Jennett Welch, who was then the wife of the said Hira Welch, did at the same time duly execute, under their hands and seals and acknowledge and deliver to the said Henry Kersten, another mortgage on all the lands hereinbefore described, bearing even date with the said note and conditioned for the payment of the last above named indebtedness mentioned in said note as therein specified, wherein and whereby they mortgaged, granted, conveyed, bargained, and sold to the said Henry Kersten the lands and premises above described with the privileges and appurtenances thereunto belonging but upon the express condition that if the said Hira Welch, one of the said mortgagors, his heirs, executors administrators or assigns should well and truly pay or cause to be paid to the said mortgagee, his heirs, executors or assigns, the said sum of One Hundred and Fifty Dollars according to the tenor of said note to secure which said mortgage was given, as aforesaid then the said note and said mortgage should cease and be null and void.

That among other provisions it was provided in and by said mortgage and it was made an express condition thereof, that the said Hira Welch and Jennett Welch should pay annually to the proper officers all taxes which should be assessed on said mortgaged premises.

119 That said mortgage was duly attested by two subscribing witnesses and was duly acknowledged so as to entitle it to record, and was received for record in the office of the Register of Deeds for the County of Calumet, Wisconsin, on the 9th. day of November A.D. 1836 and recorded in Vol. I of Mortgages on page 342.

110 That the said Hira Welch and Jennett Welch mortgagors, failed to comply with the terms of said note and the conditions of said mortgage by failing and neglecting to pay said sum of One Hundred and Fifty Dollars and interest thereon at the maturity of said note and have never paid the same or any part thereof; that there still remains wholly unpaid thereon the sum of One Hundred and Fifty Dollars of principal and interest thereon from November 5, 1836, and said sums are a lien upon and charge against said mortgaged lands in favor of this plaintiff as hereinafter set forth.

That the mortgagors also failed and neglected to pay the taxes on said lands for the years 1890 and 1891, and the part of said lands in said Lot 159 were returned delinquent to the County Treasurer of said Calumet County for the year 1890 and sold for said taxes on May 19, 1891, for the sum of \$2.31; that the portion of said lands in Lot 54 were returned delinquent for the taxes of 1890 to the County Treasurer of said County and sold for said taxes May 19, 1891 for the sum of \$8.00.

112 That on or about the 29th. day of August 1887 at the Town of Stockbridge in said Calumet County, the said Hira Welch, died intestate; that no administration has ever been had upon the estate of said deceased; that said Hira Welch, deceased, left surviving him his widow, the above named defendant, Jennett Welch, and also Dora Welch, Abbie DeGroat, and Matilda Doxtater, who were the children and heirs at law of said deceased Hira Welch, and also left surviving him the above named defendants, Abbie Jane Doxtater, Hira Doxtater, Truman Doxtater, Ruben Doxtater and Frederick Doxtater, who are the children and only heirs at law of Emma M. Doxtater, deceased, *who has the daughter* and one of the heirs at law of the said Hira Welch, deceased; that said Emma M. Doxtater, deceased, departed this life on or about the day of 18__ intestate, and that no administration has ever been had upon her estate.

113 That on the 18th. day of February 1892 the plaintiff purchased of the said Abbie DeGroat one of the said heirs at law of the said Hira Welch, deceased, an undivided one fourth interest in and to all said land being all the right, title and interest therein of the said Abbie DeGroat, and the said Abbie DeGroat by her certain deed of the date last aforesaid, conveyed all her said interest in said property by deed to the plaintiff, which said deed is recorded in the office of the Register of Deeds of said Calumet County, in Vol. 21 of Deeds on page 245, and was so

recorded, being entitled to such record on the 17th. day of March 1892.

11/4 That on the 10th. day of March 1892, the plaintiff purchased of the said Matilda Doxtater also one of the said heirs at law of the said Hira Welch, an undivided one fourth interest in and to all of said lands, being all the right, title and interest therein of the said Matilda Doxtater, and the said Matilda Doxtater by her certain deed of the date last aforesaid, conveyed all her said interest in said property by deed to the plaintiff, which said deed is recorded in the office of the Register of Deeds of said Calumet County in Vol. 21 of Deeds, on page 244 and was so recorded, being entitled to such record, on the 17th. day of March 1892.

11/5 That the plaintiff in and by said deeds acquired and ever since has and now owns an undivided one-half interest in and to said lands; that said Dora Welch, one of the said heirs at law of said Hira Welch, deceased, by deed dated January 30, 1892, conveyed to the defendant, Jennett Welch, all her right, title and interest in and to said lands, being an undivided one fourth interest therein, which said deed is recorded in the office of the Register of Deeds of said Calumet County in Vol. 25 of Deeds on page 5 and was so recorded April 17, 1894.

11/6 That on the 13th. day of January 1891 the said Henry Kersten commenced an action in the Circuit Court of Calumet County Wisconsin, for the foreclosure of the mortgage hereinbefore described as bearing date November 5, 1886, in which said action each and all the parties then having an interest in said property that is to say, Jennett Welch, Dora Welch, Abbie DeGroat, Matilda Doxtater and Hira Doxtater, Abbie Jane Doxtater, Truman Doxtater, Ruben Doxtater and Frederick Doxtater, children of and only heirs of Emma M. Doxtater, deceased, were defendants.

11/7 That due service of the summons and other papers in said action was made and had upon each and all said defendants in said last above described action named, and the Court thereby acquired full and complete jurisdiction for the purpose of said action over each and all said defendants; that said action was prosecuted to a final judgment May 13, 1891, and said judgment docketed and perfected in the office of the Clerk of said Court on May 15, 1891, in and by which judgment it was decreed that there was due and unpaid on the note to secure the payment of which said mortgage was given, the sum of One Hundred and Eighty Seven Dollars and Eighty Three Cents of principal and interest and the further sum of One Hundred and Eighty Two Dollars and Eight Cents, costs of said action, and further adjudging that said mortgaged premises be sold as provided by law in such cases after the expiration of one year from the date of said judgment, unless sooner redeemed, and the proceeds applied in the payment of said costs and mortgage debt and interest thereon, said judgment of foreclosure being in all respects in the usual form; that said mortgaged premises remained wholly unredeemed from said judgment at the expiration of one year and over from the date of said judgment; that in pursu-

18
 suance of said judgment the said Henry Kersten, plaintiff in said action, caused the said mortgaged lands to be advertised for sale for the full period of time prescribed by law, and that said foreclosure sale was fixed by said advertisement to take place on the 6th day of July 1892 at 11 o'clock in the forenoon of said day. That on said 6th day of July 1892, there was due and wholly unpaid on said judgment of foreclosure the sum of Four Hundred and Thirty One Dollars and Seventy Three Cents for principal, costs and interest thereon and subsequent costs.

19
 That on said last named date there was also due and wholly unpaid on said note and mortgage given by said Hira Welch and wife to said Henry Kersten, under date of December 2, 1885, the sum of One Hundred and Fifty Dollars and interest thereon at ten per cent per annum from and after Dec. 2, 1887, amounting to the sum of Two Hundred and Nineteen Dollars; that there was also due and unpaid outstanding tax certificates for which said land had been sold as aforesaid for the delinquent taxes of 1890, at the tax sale of lands in 1891 and the accrued interest thereon the sum of Twelve Dollars and Sixty Cents.

20
 That on the 6th day of July 1892, the plaintiff for the sole purpose of protecting and saving her said undivided one half interest in and to said mortgaged lands, was compelled to and did advance and pay over to the proper officers in discharge of said judgment of foreclosure and sale and said mortgage and tax liens against said lands, the following sums of money, to wit:-

On account of said foreclosure judgment and pending sale thereunder the sum of \$431.73.

On account of the redemption of said lands from said tax sale, the sum of \$12.66.

21
 And on account of the said note and mortgage given and held by said Henry Kersten as aforesaid, and dated Dec. 2, 1885, the sum of \$219. That by said payments said liens were prevented from being enforced against said lands so far as the rights and interest of the holders and owners of said liens were concerned; that without such payment the plaintiff's said right and interest in said lands would have been wholly lost to her.

22
 That at the time of the making of said payments by the plaintiff as aforesaid, it was the intention and purpose, and was so stated and declared, by the plaintiff and expressed in the written evidence taken at the time of the making of said payments by the plaintiff, of the fact of such payments, that said liens were to be kept separate and distinct from her legal estate in said mortgaged lands theretofore acquired as aforesaid, and that said liens were to be and remain in full force and effect in favor of the plaintiff and against said mortgaged lands for the purpose of enabling the plaintiff to enforce as against said mortgaged lands and all others claiming an interest therein, the re-payment to her of such part and portion of the amounts so paid in discharge of said liens and interest thereon from the date of such payment as should be equitable and just. That plaintiff on November 12th.

That the defendants have not nor has either of them ever repaid to the plaintiff any part or portion of said sums of money so paid by her in discharge of said mortgage, tax and judgment liens, nor interest thereon since the date of such payment.

23 That the defendant, Jennett Welch has or claims to have homestead and dower right in said lands, but which are subject to the rights of the plaintiff; that the said interest of said Jennett Welch in said lands ought of right to pay of the money so paid as aforesaid by the plaintiff in discharge of said liens against said lands five twelfths thereof, to wit:- the sum of \$276.41 with interest thereon from the date of said payments by the plaintiff to wit:- July 6, 1892, and the interest of the defendants Abbie Jane Doxtater, Hira Doxtater, Truman Doxtater, Ruben Doxtater and Frederick Doxtater ought of right to pay of the money so paid as aforesaid by the plaintiff in discharge of said lien against said lands, three twelfths thereof, to wit:- the sum of \$166.85 with interest thereon from the date of said payments by the plaintiff to wit:- July 6, 1892.

That the defendant J.E.McMullen has or claims to have some interest in said mortgaged premises, but which interest if any is subsequent and subject to the rights aforesaid of the plaintiff in said lands.

The plaintiff further alleges on information and belief that the above named defendants Abbie Jane Doxtater, Truman Doxtater, Ruben Doxtater and Frederick Doxtater are minors.

WHEREFORE plaintiff demands judgment:-

25 First:- That the part and portion of said several sums of money paid and advanced by the plaintiff in discharge of said liens as aforesaid which said defendants respectively ought of right to repay to the plaintiff, be ascertained and determined and that plaintiff have judgment therefor and for the costs of this action.

Second:- That said sums of money so ascertained and determined and the costs of this action be adjudged and established a lien upon and against all the right title and interest of said defendants respectively in and to said lands in favor of this plaintiff.

26 Third:- That unless said sums of money with interest thereon at the rate of six per cent per annum shall be paid before the expiration of one year from the date of said judgment, that all the right, title and interest of said defendants respectively, who shall not have redeemed the same from the lien so established in favor of the plaintiff, or so much thereof as shall be sufficient to satisfy the amount then due upon said judgment, and which can be sold separately and without prejudice to the interests of the parties, after the expiration of said year, be sold by or under the direction of the Sheriff of said Calumet County according to law and the rules and practice of this Court, and that a deed or deeds therefor be executed and delivered to the purchaser or purchasers thereof, and after redeeming or paying as the case may xxx require, all the taxes or tax liens outstanding against said interests of the defendants respectively in addition to the liens so established in

27

favor of the plaintiff, that the surplus if any, arising from such sale be brought into Court to abide the further order of this Court; that said Sheriff be required to make report of such sale according to law; that in the event of a sale as aforesaid, all ~~defendants, and all the persons claiming under them, or either of them, be barred and foreclosed, of all their right, title and equity of redemption of, in and to the premises so sold, and that~~ the defendants be enjoined from committing waste on said premises, or doing any other act that may impair the value of the same at any time between the date of such judgment and the date of the sale of said premises; that the purchaser or purchasers of such sale be let into possession of said premises on the production of the Sheriff's deed thereof; and that the plaintiff have such other or further judgment, order or relief as is provided by law in such cases, and as may be just and equitable.

" 29

Humphreys
Attorney for Plaintiff

James Kirwan
Of Counsel

State of Wisconsin)
) ss
Calumet County)

Nettie M. Connell being first duly sworn deposes and says that she is the plaintiff in the above entitled action; that she has heard read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge except as to matters therein stated on information and belief; that as to those matters she believes it to be true.

Subscribed and sworn to before me this 27th day of February A.D. 1897,

Nettie M. Connell

" 30

Julius Freund
Notary Public,

Wisconsin;