No. 4968 Equity

The Respondent filed with the Examiner Exhibit "Nrw" which is herewith returned.

John B Thomas a witness of lawful age produced on the part of the Exceptant being duly sworn and examined deposes and says

I know the parties to this suit. The connection which I had with the property since its advertisement is this: Mr Cyrus Poole called on me (Excepted to by Respondent) and asked me if I would not give Mrs Simmons the amount of her Mortgage and take up the mortgage, on the property mentioned in this cause, I first refused to do it. I then wrote to him to come in and see me. I then stated to him, See Mrs Simmons and if she will make an assignment of the mortgage to me I will give her the money. She sent me word through Mr Charles Ritter her brother in law that I should see her counsel Mr M G Urner. I called on Mr Urner and made the same offer to him My offer included the Mortgage debt costs and half of the Commissions, which Mr Urner said would be due her, He (Mr Urner) said he would like to see her before he could do any thing

To Cross Interrogatories the said John B Thomas deposes and says:

I dont exactly remember when this was but I suppose ten days or two weeks before the sale as well as I can remember. I had several (I think three) interviews with Mr Urner I offered Mr Urner to buy the Mortgage and have the mortgage assigned to me so that the Poole family could sell it and have the benefit of it, I was acting as the friend of the Pooles who thought they could sell it to better advantage. I did not want to have any thing to do with the sale of it. All the time I claimed the Mortgage must be assigned to me. Mr Urner told me he did not think she would sell it; that he thought she had been advised not to sell it. Neither Mr Urner nor Mrs Simmons ever told me positively the would not accept the money more than that Statement which Mr Urner Made to me I never saw Mrs Simmons personally on the subject. The last interview I had with Mr Urner was a few days before the sale and he told me that if I let Mr Poole sell it and give the deed the judgments against Dr Poole would come in against the property I then concluded after my last interview with Mr Urner that if that was the case I had better not have anything to do with it. All these interviews was after the property was advertised for Sale. After this last interview with Mr Urner and Mr Cyrus Poole did not come up to see me the matter just naturally fell through. I never had any conversation on the subject with Dr Bushrod Poole, the Mortgagor. I did not see Cyrus Poole after the last interview with Mr Urner and before the sale

Signed John B Thomas

Cyrus H Poole a witness of lawful age produced on the part of the Exceptant being duly sworn deposes and says:

I am a son of Dr Bushrod Poole the Mortgagor. I have a power of attorney from Bushrod Poole (Excepted to) as to evidence of Power of atty without its production) After the advertisement of the property I went to see Col Jno B Thomas and made arrangements with him (Excepted to) to pay off the Mortgage Costs and expenses and one half of the Commissions The Col finally agreed to raise the money. The following Wednesday which was the next day after I saw Col Thomas I went to see Mrs Simmons and communicated to her the arrangements Col Thomas had made with me. I told her if she would make an assignment of the Mortgage that he would pay the mortgage debt Costs and expenses and every thing and one half of the Commissions, She first objected and finally Consented and she set the following Saturday which was two Saturdays before the sale I see I am wrong about the exact time, but now I cant tell whether it was one or two Saturdays before the Sale She agreed to meet me in town to conclude the arrangement, to accept Mr Thomas terms, I came to town and she was not here. She was to come to town to get the money. She never notified me that she would not carry out the agreement and I expected her to carry out the agreement up till the day of sale. The property is worth at least $2500.00 It is about a half acre