

No. 13256

Supreme Court of Illinois

Carter

vs.

Barnes

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 133.

Carter
vs
Barnes

1861

Repaired

ABSTRACT OF RECORD.

FROM ROCK ISLAND CIRCUIT COURT.

ELIJAH CARTER,
vs.
DAVID BARNES and his Wife. } *Bill for Foreclosure Mortgage.*

The Bill of complaint in this case is in the usual form for bills of foreclosure, and the mortgaged premises in both Bill and Mortgage, (the latter by reference made part of the Bill) are described as follows:

"A certain tract or parcel of land situated in the County of Rock Isl-
and State of Illinois, and described as follows, to wit: The East half of
"the South-west part of the North-east fractional quarter of section thirty-
"six (36) in Township eighteen (18) North of Range two (2) West of the
"4th P. M., excepting and reserving therefrom that portion of the above
"tract already conveyed to the Chicago & Rock Island Railroad Company
"as right of way for the Railroad."

To the complainant's Bill the defendant's interposed their demurer as-
signing as special cause,

"That the said complainant hath not in and by his said Bill made or
stated such a case as doth or in any manner ought to entitle him to such
discovery or relief as is thereby sought and prayed for," &c.

The Court sustained defendant's demurer, and dismissed complainant's
bill.

The only reason urged in support of the demurer, was, that the descrip-
tion of the premises in the bill and mortgage, is void for uncertainty; and
it is believed the above statement furnishes a sufficient abstract of the case
for the consideration of the question raised upon the record.

¹³³⁻
Abstract of Record

Elyah Custer

⁷
David Barner *vs*

Filed Apr 16. 1861
A. Deland
Clerk

ABSTRACT OF RECORD.

FROM ROCK ISLAND CIRCUIT COURT.

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vs.
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Abstract of Record

Elyah Carter

7

David Turner & wife

Filed April 16, 1861

D. Turner
Clerk

ABSTRACT OF RECORD.

DAVID TURNER and his wife

ELIAH CARTER

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Abstract of Record

Elijah Carter

⁷
David Bomer & wife

Filed April 16. 1861

A. A. Stuart
Clerk

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To the complainant's Bill the defendant's interposed their demurer assigning as special cause,

"That the said complainant hath not in and by his said Bill made or stated such a case as doth or in any manner ought to entitle him to such discovery or relief as is thereby sought and prayed for," &c.

The Court sustained defendant's demurer, and dismissed complainant's bill.

The only reason urged in support of the demurer, was, that the description of the premises in the bill and mortgage, is void for uncertainty; and it is believed the above statement furnishes a sufficient abstract of the case for the consideration of the question raised upon the record.

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Abstract of Record

Elijah Carter

David Barnes & wife

Filed April 16, 1861
A. A. Nelson
Clerk

ABSTRACT OF RECORD

FROM ROCK ISLAND CIRCUIT COURT

ELIJAH CARTER

DAVID BARNES and wife

vs. David Barnes & wife

The Bill of complaint in this case is in the usual form for bills of foreclosure and the material promises in both bill and mortgage (the latter

being already conveyed to the Chicago & Rock Island Railroad Company by J. M. Alexander) and it is urged thereby in that portion of the answer and reply in favor of the plaintiff (the Rock Island Railroad Company) that the mortgage is a lien on the land of the plaintiff and that the defendant is bound to pay the same. The first part of the answer is in the usual form and is in the following words: "The defendant is bound to pay the same."

To the complaint, the Bill of complaint, proposed that defendant should pay the same. The defendant's answer is in the following words: "The defendant is bound to pay the same."

The first meeting of the parties was on the 1st of January 1861. The defendant's answer is in the following words: "The defendant is bound to pay the same."

The only reason stated in support of the plaintiff's claim is the fact that the defendant is bound to pay the same. The defendant's answer is in the following words: "The defendant is bound to pay the same."

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To the complainant's Bill the defendant's interposed their demurer assigning as special cause,

"That the said complainant hath not in and by his said Bill made or stated such a case as doth or in any manner ought to entitle him to such discovery or relief as is thereby sought and prayed for," &c.

The Court sustained defendant's demurer, and dismissed complainant's bill.

The only reason urged in support of the demurer, was, that the description of the premises in the bill and mortgage, is void for uncertainty; and it is believed the above statement furnishes a sufficient abstract of the case for the consideration of the question raised upon the record.

Abstract of Record

Elyah Carter

Daniel Berners

Filed Apr 16, 1861
A. Nelson
Clerk

7, -

FROM HOUSE

PLAINTIFFS BRIEF.

ELIJAH CARTER, Plff in Error,
vs.
DAVID BARNES and his Wife, Def'ts in Error. } *In the Supreme Court, Ottawa,
wa, April Term, A. D. 1861.*

J. J. BEARDSLEY, Attorney for Plaintiff.

The only question presented in this case is whether the mortgaged premises are so described, as, that by the deed of mortgage, any interest therein, passed from the mortgagors to the mortgagee; in other words, whether the mortgage is void, by reason of uncertainty in the description of the land intended to be conveyed.

The description of the premises in the mortgage is as follows:

"A certain tract or parcel of land situated in the County of Rock Isl-
and State of Illinois, and described as follows, to wit: The East half of
the South-west part of the North-east fractional quarter of section thirty-
six (36) in Township eighteen (18) North of Range two (2) West of the
4th P. M., excepting and reserving therefrom that portion of the above
tract already conveyed to the Chicago & Rock Island Railroad Company
as right of way for the Railroad."

Is this a void description?

In order to justify the decision of the Court below sustaining the demurer to the bill, and thereupon dismissing it, it should be manifest that no extrinsic proof could be introduced to aid the description contained in the mortgage. This could scarcely be determined until the attempt was made.

But aside from this consideration, we contend, that the rule of construction applicable to a grantor deed, makes the description of the premises certain and sufficient. Courts will sometimes adopt an arbitrary construction to effectuate the intention of the parties, and give validity to the instrument; but in the case at bar, no such effort is needed.

We insist that the deed by its terms conveys all of the East half of the South-west quarter of the North-east fractional quarter of section 36 in the Township and range mentioned in the deed, with the exception of the part thereof, before conveyed to the Chicago & Rock Island Railroad for right of way. It is this exception of the land conveyed to the Railroad, that makes the land conveyed by the deed a part only of the E. 1/2 of S. W. of the N. E. fractional quarter. Using the word *part* in this sense it has a definite meaning, and limits the amount of the land conveyed by the deed; mixing to it any other meaning, renders the description of the land uncertain and indefinite. Suppose a comma had been placed next following the words South-west, or that the word *part*, had been included in brackets, would not the construction we contend for, been most obvious and apparent. The description would then have read and appeared thus:

"The East half of the South-west, part of the North-east," &c., "excepting and reserving therefrom," &c. or thus:

"The East half of the South-west, (part) of the North-east" &c.

It cannot be denied that the construction we contend for is admissible, and the only one, whereby the description can be made definite.

"If the intention of the parties on the face of the deed be ambiguous, the construction is to be most strongly against the grantor."—Cole vs. Haynes, 22 Vt. 588.

"Where a deed is so drawn that some will read it one way and some another, it is a well established rule that that meaning shall be adopted which is adverse to the interests of the grantor."—City of Alton vs. Ill. Trans. Co. 12 Ill. 58.

"Words of doubtful import in a deed of conveyance, should be construed most favorably to the grantee."—Winslow vs. Potter, 34 Maine R. Vt. R. 165.

Prize 133

Elijah Carter

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Daniel Rimmer & wife

Filed April 16. 1861

C. Delmon
Clerk

SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D., 1861.

ELIJAH CARTER,
vs.
DAVID BARNES, et ux.

BRIEF OF COUNSEL FOR DEFENDANTS IN ERROR.

I.

Neither a court of law or equity will assert its authority unless its judgment or decree can, to some purpose, be effectual. Equity will not interpose to enforce a pretended lien upon something which has no existence, or which can not be found.

II.

A bill to foreclose a mortgage of lands, or for any similar relief, IN REM, must therefore show that the subject matter, in respect to which the relief is sought, has existence, and is, in some way, capable of being fixed and ascertained; otherwise it would be but folly for the court to interpose. A bill to foreclose a mortgage upon lands of an impossible or void number, boundary, or description, is therefore bad.

III.

A defect of this sort may be taken advantage of by general demurrer for want of equity.

Story's Eq. Pl. §§447. 448.

Price vs. Griffith, 8 Eng. Law & Eq. R., 190.

IV.

The land described in this bill, and in the mortgage, which is made a part of the bill, has no existence; it can not be found, bounded or located; the sheriff, if the decree of foreclosure were granted, cannot put the purchaser into possession.

It is "the east half of the southwest part" of a certain quarter section of land,—excepting therefrom the portion before conveyed by the mortgagor to the Chicago & Rock Island Railroad Co.; but whether this "southeast part" is cut off by a straight line, or a curved line, or a crooked line, or if by either, where that line is to be drawn, does not appear, nor can it be ascertained.

Neither can the quantity be ascertained; it may be ten acres, it may be any number of acres less than eighty.

1. In *Evans vs. Corley*, a deed offered in evidence, granted as follows: "All that tract of land, containing 5751 acres, more or less, being part of a tract of 11,780 acres granted to William Minor, in the year 1793, situate, etc., as will more fully appear by reference to the annexed plat." The court said, in construing this deed—"That parcel containing, etc., is the thing to be conveyed;—but by this description it cannot be known;—'being a part of a tract, etc., granted to Wm. Minor, in 1793,' leaves it still uncertain what the part meant was;—for where the line of division shall be made, what the part meant is, northern, middle, southern or some other, has not yet been designated;" and it was held that, except by reference to the plat, the land intended to be conveyed, could not be fixed.

8 Rich. Law Rep., (S. C.), 315.

2. In *Marmaduke vs. Tenant's Heirs*, the marshal had levied upon a tract of land, containing 600 acres, by a sufficient description; he sold "a part" of it, "containing 190 acres," but without locating the part sold. Held that the sale was void.

(4 B. Monr., 211.)

3. In *Dorsey vs. Wyman*, specific performance of a contract for the sale of "all that part of a tract of land called 'Range Declined,' lying adjoining the turnpike road, near where Woodward now lives," was refused, because the contract being for only a part of the tract, and only one boundary of that part, to-wit: "the turnpike road," being given, and the other metes and bounds of the part being indeterminate, the contract was void for uncertainty. (6 Gill. Rep. 59)

V.

It will not answer to say that the exception of the land before granted to the Railroad Co., is what makes "the east half of the southwest," part of the northeast quarter, and that the deed conveys "all of the east half of the southwest of the northeast quarter, etc., except that before conveyed, etc.," for the land granted is one thing. The exception is out of this; the grant is void, therefore the exception is also void.

VI.

The uncertainty in this mortgage arises from the use of the word "part." Courts will sometimes reject some of the words of a contract; but this will be done only in cases where the intention of the parties can thereby be certainly ascertained; but in this case, suppose the word "part" to be stricken out, what shall be read in lieu of it? The parties may have intended ten acres, or twenty; can the court say which?

VII.

The words of the mortgage are absolutely senseless; construction cannot give them effect, for the office of construction is to ascertain the meaning of doubtful words, not to give a meaning to those which are, in themselves, meaningless.

HAWLEY & WELLS,

Counsel for Defendant in Error.

Filed Apr. 16th 1861
G. Leland
J. Clark

1890-1891

1. *Staphylococcus aureus*

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(1922, 1911)

SUPREME COURT OF ILLINOIS,

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1. In *Evans vs. Corley*, a deed offered in evidence, granted as follows: "All that tract of land, containing 5751 acres, more or less, being part of a tract of 11,730 acres granted to William Minor, in the year 1793, situate, etc., as will more fully appear by reference to the annexed plat." The court said, in construing this deed—"That parcel containing, etc., is the thing to be conveyed;—but by this description it cannot be known;—'being a part of a tract, etc., granted to Wm. Minor, in 1793,' leaves it still uncertain what the part meant was;—for where the line of division shall be made, what the part meant is, northern, middle, southern or some other, has not yet been designated;" and it was held that, except by reference to the plat, the land intended to be conveyed, could not be fixed.

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HAWLEY & WELLS,

Counsel for Defendant in Error.

Carter 183
as
Barnes
Trusts Brief

(Case of the People of the County of Essex
HALL v. WELLS)

is a phrase used in the
warrant of arrest, and not to have a meaning in the
law, and the effect of the words is to sustain the
warrant.

and, where the words are used, the court will not
be bound to sustain the warrant, but in this case, where the words
are used, the court will sustain the warrant, and the words of the
warrant will sustain the warrant, and the words of the
warrant will sustain the warrant.

The words, in this mortgage, are not the words of the
mortgage, but the words of the mortgage, and the words of the
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Filed Apr. 16th 1861
L. Leland
Clark

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HAWLEY & WELLS,

Counsel for Defendant in Error.

State of Illinois For the Supreme
Third Grand Division of Court at Ottawa
April Term A.D. 1861—

Elisha Carter Plaintiff in Error

^{vs}
David Barnes & Sarah L. Barnes
Defts in Error

To the Clerk of the Supreme
Court in & for said Division

Please issue a subpoena
or summons
in the above entitled cause in favor
of said Elisha Carter Plf & against
the said David Barnes & Sarah L.
^{Defts &}
~~Barnes~~ Ductee to the North of
Rock Island County and returnable
to the opening term of said
Supreme Court - Set at Rock
Island County in said Division
this 13th day of Feb. A.D. 1861—

L. L. Beardsley
Atty Gen Plf in
Error—

Prunpan 133

Elijah Cortis
Rly in Enon

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Dania Barnes &
Sarah L. Barnes
Opt in Enon

Filed February 14, 1860
L. Leland
Clerk

PLAINTIFF'S BRIEF.

ELIJAH CARTER, Plff in Error,
vs.
DAVID BARNES and his Wife, Def'ts in Error. } *In the Supreme Court, Ottawa,
wa, April Term, A. D. 1861.*

J. J. BEARDSLEY, Attorney for Plaintiff.

The only question presented in this case is whether the mortgaged premises are so described, as, that by the deed of mortgage, any interest therein, passed from the mortgagors to the mortgagee; in other words, whether the mortgage is void, by reason of uncertainty in the description of the land intended to be conveyed.

The description of the premises in the mortgage is as follows:

"A certain tract or parcel of land situated in the County of Rock Island and State of Illinois, and described as follows, to wit: The East half of the South-west part of the North-east fractional quarter of section thirty-six (36) in Township eighteen (18) North of Range two (2) West of the 4th P. M., excepting and reserving therefrom that portion of the above tract already conveyed to the Chicago & Rock Island Railroad Company "as right of way for the Railroad."

Is this a void description?

In order to justify the decision of the Court below sustaining the demurrer to the bill, and thereupon dismissing it, it should be manifest that no extrinsic proof could be introduced to aid the description contained in the mortgage. This could scarcely be determined until the attempt was made.

But aside from this consideration, we contend, that the rule of construction applicable to a grant or deed, makes the description of the premises certain and sufficient. Courts will sometimes adopt an arbitrary construction to effectuate the intention of the parties, and give validity to the instrument; but in the case at bar, no such effort is needed.

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"The East half of the South-west, part of the North-east," &c., "excepting and reserving therefrom," &c. or thus:

"The East half of the South-west, (part) of the North-east" &c.

It cannot be denied that the construction we contend for is admissible, and the only one, whereby the description can be made definite.

"If the intention of the parties on the face of the deed be ambiguous, the construction is to be most strongly against the grantor."—*Cole vs. Haynes*, 22 Vt. 588.

"Where a deed is so drawn that some will read it one way and some another, it is a well established rule that that meaning shall be adopted which is adverse to the interests of the grantor."—*City of Alton vs. Ill. Trans., Co.* 12 Ill. 58.

"Words of doubtful import in a deed of conveyance, should be construed most favorably to the grantee."—*Winslow vs. Potter*, 34 Maine R. Vt. R. 165.

Pruf

Elyah Carter

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Daniel Rome, wife

Trilut Apr 16, 1861

A. Leland

Clark

PLAINTIFF'S BRIEF.

ELIJAH CARTER, Plff in Error,
vs.
DAVID BARNES and his Wife, Def'ts in Error. } *In the Supreme Court, Otta-
wa, April Term, A. D. 1861.*

J. J. BEARDSLEY, Attorney for Plaintiff.

The only question presented in this case is whether the mortgaged premises are so described, as, that by the deed of mortgage, any interest therein, passed from the mortgagors to the mortgagee; in other words, whether the mortgage is void, by reason of uncertainty in the description of the land intended to be conveyed.

The description of the premises in the mortgage is as follows:

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six (36) in Township eighteen (18) North of Range two (2) West of the
4th P. M., excepting and reserving therefrom that portion of the above
tract already conveyed to the Chicago & Rock Island Railroad Company
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133
Prisep

Elijah Carter

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David Barnes & wife

Filed April 16, 1861
H. Deland
County

PLAINTIFF'S BRIEF.

ELIJAH CARTER, Plff in Error,
vs.
DAVID BARNES and his Wife, Def'ts in Error. } *In the Supreme Court, Otta-
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J. J. BEARDSLEY, Attorney for Plaintiff.

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Brief 133

Elyah Carter

Daniel Ramey & wife

Filed Apr 16. 1861

A. Kellard

Att. Genl.

J. J. BEHRENDSEY, Attorney for Plaintiff

DAVID M. MANNING, Plaintiff }
ELIJAH CARTER, Defendant }
vs.
DANIEL RAMEY & WIFE, Defendants }

IN EQUITY

PLAINTIFF'S BRIEF.

ELIJAH CARTER, Plff in Error,
vs.
DAVID BARNES and his Wife, Defs in Error. } In the Supreme Court, Otta-
wa, April Term, A. D. 1861;

J. J. BEARDSLEY, Attorney for Plaintiff.

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Chief 133

Elyah Carter

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David Jones & wife

Filed Apr 14, 1861
A. A. Carter
llrly

PLAINTIFF'S BRIEF.

ELIJAH CARTER, Plff in Error,
vs.
DAVID BARNES and his Wife, Def'ts in Error. } *In the Supreme Court, Otta-
wa, April Term, A. D. 1861.*

J. J. BEARDSLEY, Attorney for Plaintiff.

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Pris

Elyah Carter

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David Barnes wife

Filed April 16, 1861

A. Leland
Clerk

SUPREME COURT OF ILLINOIS,

APRIL TERM, A. D., 1861.

ELIJAH CARTER,
vs.
DAVID BARNES, et ux. }

BRIEF OF COUNSEL FOR DEFENDANTS IN ERROR.

I.

Neither a court of law or equity will assert its authority unless its judgment or decree can, to some purpose, be effectual. Equity will not interpose to enforce a pretended lien upon something which has no existence, or which can not be found.

II.

A bill to foreclose a mortgage of lands, or for any similar relief, *in rem*, must therefore show that the subject matter, in respect to which the relief is sought, has existence, and is, in some way, capable of being fixed and ascertained; otherwise it would be but folly for the court to interpose. A bill to foreclose a mortgage upon lands of an impossible or void number, boundary, or description, is therefore bad.

III.

A defect of this sort may be taken advantage of by general demurrer for want of equity.

Story's Eq. Pl. §§447. 448.

Price vs. Griffith, 8 Eng. Law & Eq. R., 190.

IV.

The land described in this bill, and in the mortgage, which is made a part of the bill, has no existence; it can not be found, bounded or located; the sheriff, if the decree of foreclosure were granted, cannot put the purchaser into possession.

It is "the east half of the southwest part" of a certain quarter section of land,—excepting therefrom the portion before conveyed by the mortgagor to the Chicago & Rock Island Railroad Co.; but whether this "southeast part" is cut off by a straight line, or a curved line, or a crooked line, or if by either, where that line is to be drawn, does not appear, nor can it be ascertained.

Neither can the quantity be ascertained; it may be ten acres, it may be any number of acres less than eighty.

2.

1. In *Evans vs. Corley*, a deed offered in evidence, granted as follows: "All that tract of land, containing 5751 acres, more or less, being part of a tract of 11,730 acres granted to William Minor, in the year 1793, situate, etc., as will more fully appear by reference to the annexed plat." The court said, in construing this deed—"That parcel containing, etc., is the thing to be conveyed;—but by this description it cannot be known;—'being a part of a tract, etc., granted to Wm. Minor, in 1793,' leaves it still uncertain what the part meant was;—for where the line of division shall be made, what the part meant is, northern, middle, southern or some other, has not yet been designated;" and it was held that, except by reference to the plat, the land intended to be conveyed, could not be fixed.

8 Rich. Law Rep., (S. C.,) 315.

2. In *Marmaduke vs. Tenant's Heirs*, the marshal had levied upon a tract of land, containing 600 acres, by a sufficient description; he sold "a part" of it, "containing 190 acres," but without locating the part sold. Held that the sale was void.

(4 B. Monr., 211.)

3. In *Dorsey vs. Wyman*, specific performance of a contract for the sale of "all that part of a tract of land called 'Range Declined,' lying adjoining the turnpike road, near where Woodward now lives," was refused, because the contract being for only a part of the tract, and only one boundary of that part, to-wit: "the turnpike road," being given, and the other metes and bounds of the part being indeterminate, the contract was void for uncertainty. (6 Gill. Ref. 59)

V.

It will not answer to say that the exception of the land before granted to the Railroad Co., is what makes "the east half of the southwest," part of the northeast quarter, and that the deed conveys "all of the east half of the southwest of the northeast quarter, etc., except that before conveyed, etc.," for the land granted is one thing. The exception is out of this; the grant is void, therefore the exception is also void.

VI.

The uncertainty in this mortgage arises from the use of the word "part." Courts will sometimes reject some of the words of a contract; but this will be done only in cases where the intention of the parties can thereby be certainly ascertained; but in this case, suppose the word "part" to be stricken out, what shall be read in lieu of it? The parties may have intended ten acres, or twenty; can the court say which?

VII.

The words of the mortgage are absolutely senseless; construction cannot give them effect, for the office of construction is to ascertain the meaning of doubtful words, not to give a meaning to those which are, in themselves, meaningless.

HAWLEY & WELLS,

Counsel for Defendant in Error.

Filed Apr. 16th 1861
L. Gelander
Clerk

... ..

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may have happened ten years, or twenty; and the court will simply expect, to be supplied with what shall be read in ten of it. The parties therefore are certainly disappointed; but in this case, suppose the word but this will be done only in cases where the intention of the parties can be shown. Courts will sometimes reject some of the words of a contract; and the meaning of this must be taken from the use of the words.

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also; the front is solid, therefore the excavation is also solid and even for the land beneath is one thing. The excavation is out of the southwest of the northwest corner etc., exactly the same corner of the northwest corner and that the good corners all at the west half, so the "Redwood Cove" is a part under the east half of the southwest, but it will not mislead to say that the excavation of the land before changed.

1.

contract was void for uncertainty, and the other notes and bonds of the bank being instruments, the validity of which was not in issue, the trustee was held to be bound by the contract being for only a part of the trust, and only regarding the trustee's own, near notice. He consented not to sue, and was not to be bound by a part of a trust called a trustee's deed, which was not a part of the trust, and was not to be bound by a contract for the

CHILDREN

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Rock Island Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Rock Island County, before the Judge thereof, between Elijah Carter

plaintiff, and David Barnes and Sarah L. Barnes

defendants, it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

_____ as we are informed by his complainant _____ and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 14th day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

133.

Elijah Carter

No.

vs.

David Barnes and
Sarah L. Barnes

WRIT OF ERROR.

FILED February 14 A. D. 1864

L. Leland

Clerk



133-30

Elizah Carter

vs

David Barnes &
Sarah L. Barnes

Transcript of
Record & assign of Emms

Filed February 14, 1860
L. Leland
Clerk

Elizah Carter
vs
David Barnes
Sarah L. Barnes



Record

Pleas before the Hon.
J. Wilson Drury, Judge of the Sixth
Judicial District of the State of
Illinois, sitting as a Court of
Chancery, at a term of the Circuit
Court begun and held at the Court
House within and for the County
of Rock Island and State aforesaid
on the Second Monday, the twelfth
day of September A. D. 1859.

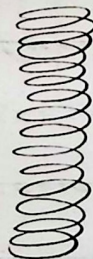
Present: Hon. J. W. Drury, Judge
Quincy McNeil, Clerk
Moses D. Merrill, Sheriff.

Elijah Caster

vs

David Barnes

Sarah L. Barnes



Be it remembered that
heretofore, to-wit:- on the Eighth day
of August A. D. 1859 the said com-
plainant by Beardsley & Smith
his solicitors, served out of the
Clerk's office of the Court aforesaid
his certain writ of summons in
chancery, which is in the words and
figures following, to-wit:-

State of Illinois }
Rock Island County- }^{ss} The People of
the State of Illinois,
To the Sheriff of Rock Island County, Greeting;

We command you to
summon David Barnes & Sarah
L. Barnes if to be found in your County;
personally to be and appear before the
Circuit Court of said County on the
first day of the next term thereof, to be
holden at the Court House in Rock
Island, on the second Monday in the
month of September next, to answer
to a bill of complaint, filed in our
said Circuit Court, on the chancery
side thereof, against them by
Elijah Carter. And have you there
and there this writ, and make
return thereon in what manner
you execute the same.

Witness, Quincy McNeil,
Clerk of our Circuit Court,
Seal } and the seal thereof affixed
at Rock Island, this
8th day of August in the year of our
Lord one thousand eight hundred
and fifty nine.

Quincy McNeil Clerk.

And afterwards, to wit:-
on the Eighteenth day of August
A.D. 1859, the said writ of summons
was returned by the Sheriff of the
County of Rock Island aforesaid, into
the Clerk's office of the Circuit Court
aforesaid, with his endorsement
of service thereon within, which is
as follows, to wit:-

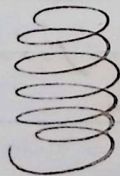
"I have served the within summons
by delivering a copy to the within
named David Barnes & Sarah L.
Barnes this 18th day of August A.D.
1859.

M. D. McNeill

Sheriff of Rock Island County

B. C. A. McLaughlin deputy.

Be it further remembered
that heretofore, to wit:- on the Eighth
day of August A.D. 1859 the said
complainant by his said Solicitor
filed in the Clerk's office of the Court
aforesaid, his certain Bill of Com-
plaint which is as follows, to wit:-



"State of Illinois
Rock Island Court ^{3rd} of the Sept.

Sum of the Circuit Court
of said County - at the September
Term thereof A.D. 1859

To the Hon. John W.
Omey Judge of the 6th Judicial
Circuit in the State of Illinois.

Respectfully sheweth
unto your Honor your Orator
Elijah Carter of Rock Island in
the State aforesaid, that heretofore
to-wit: on the 17th day of November
A.D. 1856 one David Barnes of said
County and State became and
was indebted to your Orator in the
sum of three thousand dollars
according to the tenor and effect
of a certain promissory note bear-
ing date the day & year last aforesaid
said executed by the said Barnes
and payable to your Orator for the
said sum of three thousand dol-
lars on the 17th day of Nov. A.D. 1857
And that in order to secure the due
payment of said sum of money

according to the tenor and effect
of said note the said Barnes
and his wife Sarah L. Barnes by
their deed of conveyance of that
date and commonly called a
mortgage deed granted bargained
and sold to your Orator the
following real estate situate and
lying in the County of Rock Island
in the State of Illinois described
as follows, to wit:- The East-half
of the South West part of the North
East fractional quarter of Section
Thirty-Six (36) in Township Eighteen
(18) North of Range Two (2) West 4th
P.M. excepting and reserving there-
from that portion of the above
tract already conveyed to the
Chicago & Rock Island Rail Road
Company as right-of-way for said
Rail-road. Together with all and
singular the hereditaments and
appurtenances thereto belonging
or in anywise appertaining. To have
and to hold the said premises to
your Orator his heirs and assigns
forever. To which said deed was
attached a condition, that if the
said Barnes his heirs and Executors

or administrators should well and truly pay to your Orator his heirs Executors, Administrators or assigns the just and full sum of three thousand dollars on the 17th day of November A.D. 1857 that there & from thenceforth the said deed was to be null and void.

And your Orator shows that the said sum of three thousand dollars mentioned in the consideration of said deed was the same money specified in said promissory note and which it was intended by said deed to secure the payment of to your Orator and which said note and deed your Orator herewith files and prays that the same be taken and deemed a part of this your Orator's Bill of Complaint.

And your Orator further shows that the said sum of three thousand dollars specified in said promissory note and mentioned in the consideration of said deed was not paid to your Orator nor any other person for him

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by the time therein limited in said note and deed and that the whole of said sum of three thousand dollars, with a large amount of interest: thereon still remains due to your orator and wholly unpaid.

And your orator further shows that he hath frequently of late applied to him the said Barnes and requested him to pay your orator the said sum of three thousand dollars and the interest thereon accrued or otherwise convey said premises to your orator free and discharged of all equity of redemption therein, which the said Barnes refuses to do, notwithstanding your orator's title to said premises hath become absolute at law.

And your orator shows that he hath no adequate remedy in the premises save in a Court of Equity where matters of this kind are cognizable and returnable.

Wherefore your orator prays that the said David Barnes and

Sarah L. Barnes his wife to
made party defendants herein
and that they they fully answer
their Bill of Complaint (but not
under oath, their oaths to their
said answer being fully expressly
waived) that an account be taken
of what is due from Orator on
said note and and mortgage
due, that said Defts. by some
short day be decreed to pay from
Orator the sum so found due
from Orator; that in event of the
neglect or failure of said Defts to
pay from Orator the sum so
found due agreeable to the decree
of this Court, that said premises be
sold and the proceeds applied to
the payment of the sum so found
due and to grow due from Orator
and the costs of this proceeding,
that process of summons or sub-
poena issue from this Hon. Court
requiring the said Defts to appear &
returnable & and that from Orator
have such other and further relief
in the premises as to Equity and
good conscience shall appear, and as

in duty-bound zone orator will
see from, &c.

By

Elijah Carter

Braddy & Smith

his atty.



"

(Note & Mortgage filed with said Bill)

"

Rock Island Nov. 17th 1857

On the 17th day of November 1857 I
promise to pay Elijah Carter or
order the sum of Three thousand
dollars for value received.

\$3000.

David Barnes.

"

This Indenture made this
Seventeenth day of November in
the year of our Lord one thousand
Eight hundred and Fifty-Six between
David Barnes & Sarah L. his wife
of the County of Rock Island and
State of Illinois party of the first
part, and Elijah Carter of the
County of Rock Island and State
of Illinois party of the second part,
witnesseth, that the said part-
of of the first part, for and in consid-
eration of the sum of Three thousand

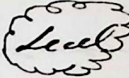
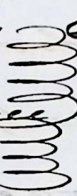
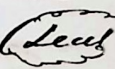
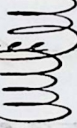
(\$3000.) Dollars paid by the said party of the second part, the receipt whereof is hereby acknowledged by these Presents, grant, bargain, sell and convey, unto the said party of the second part, his heirs and assigns, a certain tract or parcel of land, situated in the County of Rock Island and State of Illinois, and described as follows, to-wit:- The East half of the South West part of the North East Fractional quarter of Section thirty six (36) in Township Eighteen (18) North of Range Two (2) West of the 4th P.M. excepting and reserving therefrom that portion of the above tract already conveyed to the Chicago & Rock Island Rail Road Company as right of way for the Rail Road. Together with all and singular the tenements and appurtenances thereto belonging in any wise appertaining, to Have and to Hold, the said premises as above described, with the appurtenances, unto the said party of the second part his heirs and assigns

6
1 1 1 1
Forever. And the said David
Barnes and wife party of the first
part themselves and their heirs,
executors and administrators
do hereby covenant to and with
the party of the second part, his
heirs and assigns, that they are
well seized of the premises above
conveyed, as of a good and indefea-
sible estate in fee simple, and
have good right to sell and convey
the same in manner and form
aforesaid; that they are free from
all incumbrance; and that the
above bargained premises, in the
quiet and peaceable possession
of the said party of the second part,
his heirs and assigns against the
claims of all persons whomsoever,
he will forever warrant and
Defend.

Provided, nevertheless, that if
the said David Barnes party of the
first part his heirs, executors, or
administrators shall well and
truly pay to the said party of the
second part his heirs, executors,
administrators or assigns, the just
and full sum of Three Thousand

dollars on the seventeenth day of
November A.D. 1857. That then
and from thenceforth, these presents,
and everything herein contained,
shall be null and void.

In witness whereof, the said
party of the ^{first} ~~second~~ part have here-
unto set their hands and seals,
the day and year first above
written.

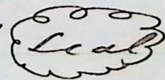
David Barnes 
Signed, sealed and  Sarah L. Barnes 
delivered, in presence
of E. R. Bean 

State of Illinois

Rock Island County  J. E. R. Bean,
a Justice of the Peace, in and for
said County, in the State aforesaid,
do hereby certify, that David Barnes
and Sarah L. his wife personally
known to me as the same persons
whose names are subscribed to
the annexed Deed, appeared before
me this day, in person, and ack-
nowledged that they signed, seal-
ed and delivered the said instru-
ment of writing as their free and
voluntary act, for the uses and purposes

therein set forth. And said Sara
L. wife of the said David Barnes
having been by me examined separ-
ate and apart and out of the
hearing of her husband, and the
contents and meaning of the said
instrument of writing having been
by me fully made known and
explained to her, acknowledged that
she had freely and voluntarily
executed the same, and relin-
quished her dower to the lands and
tenements therein mentioned,
without compulsion of her said
husband, and that she does
not wish to retract the same.

Given under my hand and seal
this Seventeenth day of Novem-
ber A. D. 1854.

E. R. Rame J. P. 

(Upon the back of which, is:-)

"N.º 213"

Filed and Recorded, November
17th 1850. Volume E of Mortgages

Page 321

Granger Wilson

Recorded

And afterwards, to wit:- on the
twelfth day of September A.D. 1859
the said defendants by E. S. Wells
their solicitors filed in the Clerk's
office of the Court aforesaid, their
certain demurrer to the said Com-
plainant's said Bill of Complaint
which is as follows, to wit:-

"State of Illinois
Rock Island Court at the Sept
Term A.D. 1859 of the Rock
Island Circuit Court.

In Chancery.

The Demurrer of David Barnes
and Sarah L. Barnes ~~his~~ wife of the
said David Barnes defendants
to the Bill of Complaint of Elijah
Carter, Complainant.

These defendants respectively
by protestation not confessing or
acknowledging all or any of the
several matters and things in the
said complainant's Bill of Com-
plaint contained to be true in man-
ner and form as the same are
therein set forth and alleged, do

8
demer thereto. and for cause of
Demer show within Honorable
Court.

That the said Complainant
hath not in and by his said
Bill ~~or~~ made or stated such a case
as doth or in any manner ought
to entitle him, to such discovery
or relief as is thereby sought and
prayed for, from or against these
defendants.

Wherefore these defendants
respectively demand the judgment
of this Honorable Court whether
they or either of them shall be com-
pelled to make any further answer
to the said bill or any of the matters
and things therein contained, and
pray to be hence dismissed with
their costs in this behalf sustained.

E. S. Mills
Neph. Solicitor

David Barnes
Sarah L. Barnes

And afterwards, to wit:-
on the twenty third day of June
A. D. 1860 and at the May term
of the Court aforesaid, the fol-
lowing proceedings were had, to wit.

9
Elijah Carter

Complainant

vs.

David Paine &

Sarah L. Paine

Defendants

Bill to foreclose

In Chancery.

This day came the parties by their solicitors, and the answer of the Defendants to Complainants bill being agreed by Counsel and by the Court duly considered, is sustained.

It is ordered and decreed by the Court that Complainants bill be dismissed at his costs and that execution may issue therefore.

State of Illinois
Rock Island Court 3rd I Quincy
McNeil Clerk of the Circuit
Court in and for said County, do
hereby certify that the foregoing is
a true, full & complete record of all
writs, pleadings, motions, orders,
proceedings and judgments & decrees
in the above entitled cause, as
appears of record in my office

Wherein Quincy McNeil
Clerk of the said Court and
the real thereof appeared, at
Rock Island, this sixth
day of December in the
year of our Lord one thousand
Eight hundred & sixty

Louisa M. Mait
Clerk

State of Illinois } In the Supreme Court
Third Grand Division } ss in and for said Division
at the April Term thereof
A.D. 1861 -

Now now comes the said
Elijah Carter Plaintiff in Error
in this ^{suit} and says that in the
record and proceedings and in
the rendition of the Decree against
said there is manifest error
in this, to wit:

1. The Circuit Court erred in sus=
taining Defendants Decree
to Complainants bill -
2. The Circuit Court erred ⁱⁿ not
overruling Defts Decree to
Complts bill -
3. The Circuit Court erred in
rendering a Decree dismissing
Complts bill -
4. The Circuit Court erred in not
rendering a Decree against
said Defendants -

For there are other manifest
errors said Pls prays said judgment
& Decree may be reversed set aside
and for new trial held -

L. L. Beardsley
Pls Solicitor -

Leah Barnes and
Sarah L. Barnes
ads
Elijah Carter

And now come the said
defendants by Hawley & Wells their
Solicitors and say that in the
Record, proceedings and decree
aforesaid there is not any error
therefore they pray that the said
decree may in all things be
affirmed and that they may
recover their costs herein

Hawley & Wells
Solicitors for defendants