

No. 12632

Supreme Court of Illinois

Seely, Guardian.

vs.

Grunsey.

S. P. Seeley ⁷² Guardians

~~34~~

34

Seeley Guardians
1863
Gunnery

~~1863~~

State of Illinois }
Franky County } In County Court
August Term AD 1856
Thursday August 7 1856

Frank and John M Gurnsey minors

This day comes Eliza Gurnsey widow
of John M Gurnsey late of Franky County
Illinois decessed by her Attorney DeClaf &
Baughen and files the following petition viz

Probate Court of Franky & State of Illinois
To the Hon^{ble} Patrick Hyndel
County Judge in and for said County

Your petitioner the undersigned
prays your honor to appoint Eliza Gurnsey
Guardian of her two minor sons Frank
Gurnsey aged Ten years January 7th 1856
and John M Gurnsey aged seven years
Sept 20 1855 said minors are the owners
in fee subject to the dower of your petitioner
of Lot two in Block Two in Chapin's addition
to the town of Morris and which is all the
property which they own or to which they have
any title.

Morris Aug 6 1856 Eliza Gurnsey
Whereupon it was ordered by the Court that
said petition be granted upon the said

E. P. Seely's Executing and filing in this Court a good and sufficient Bond in the penal sum of Two Thousand Dollars conditioned with the faithful performance of the duties and trusts of said office of Guardian and the said E. P. Seely having Executed and filed the following Bond viz (Here follows the Bond in the language of the Statute with Jacob Benjamin and Laban Gibson sureties)

"Which Bond was ordered by the Court to be approved and recorded and that Letters of Guardianship issue thereon to the said E. P. Seely in the usual form" (Which said Letters were in the language of the Statute bearing date August 7 1856 and attested by the Clerk & seal of said Court)

And afterwards to wit on the said 7th day of August 1856 Comes the said Eliza Gurney by her said Attorneys Seely & Bonphee and files the following claims against said Estate viz

John W. Gurney Dr to Eliza Gurney
 For Boarding and Clothing from Sept 20 1848 to
 July 20 1856 407 weeks at \$1.⁵⁰ per week \$610.00

Frank Gurney Dr to Eliza Gurney
 For boarding & clothing from July 13th 1848 to
 July 13th 1856 416 weeks at \$1.⁵⁰ per week \$624.00

Which was duly attested by an affidavit of the said E. P. Seely Guardian as aforesaid and the Court having carefully considered the

the matter orders that said claims be allowed
 at a reduction of 50 cents per cubic yd or
 one dollar per cubic as follows
 For Board and Cladding for John W Gurney \$407.00
 For " " " " Frank Gurney 416.00
 Total \$823.00

Copy of Petition for Sale of Real Estate
 In matter of the Guardianship of John W Gurney
 & Frank Gurney

To the Hon Patrick Hynds County Judge in
 and for the County of Grundy and State of Illinois
 Your petitioners the undersigned humbly sheweth
 that he is the Guardian of the persons and property of Frank
 Gurney and John W Gurney who are minors under
 the age of twenty one years duly appointed by the County
 Court of said Grundy County sitting as a Court of Probate
 as will appear by the letters of Guardianship now on file with the
 Court sheweth that there is no personal property in his
 hands belonging to said minors and none ever and the said
 minors own none the owners of any personal property but
 that said minors are the owners in fee simple subject to the
 claim of Eliza Gurney of Lot two in Block two in Chapin's
 addition to the town of Morris in said County and which
 is all the Real Estate which said minors own or own
 they have any title And your petitioners further sheweth
 that the said Frank Gurney is indebted to the said
 Eliza Gurney in the sum of four hundred and twenty

24
dollars for boarding clothing &c as will appear by the records
of said County Court when sitting as a Court of Probate
and that the said John W Gurney is indebted to
the said Eliza Gurney in the sum of four hundred &
seven dollars for boarding & clothing &c as will appear
by the records of the said County Court when sitting
as a Court of Probate And your petitioners further
sheweth that On the Eleventh day of August AD 1856 he
Caused three dentition Notices to be posted in three of
the most public places in said County giving notice
of the present application Your petitioners therefore
pray that an order may be made by this honorable
Court authorizing him to sell said Lat of land in such
divisions as will ensure the best price for the same
to pay said debts of said minors and your petitioners
will ever pray &c. E. S. Lacey

State of Illinois

Gurney County } E. S. Lacey being duly sworn on
oath says that the above petition and
the matters and things therein stated are correct and
true and subscribed before
me this 1st day of Sept. 1856 } E. S. Lacey
J. A. Armstrong co clw }

Filed Sept 1. 1856

J. A. Armstrong clw

In the Grand County Court
September Term AD 1856

" Ezra T. Seely Guardian of
Frank Gurnsey and John M Gurnsey Minors of Real Estate to
him of John M Gurnsey died pay debts and Educate
Estate of John M Gurnsey the children

And now writ on this first day of September,
AD 1856 the said Minors by their Guardian Ezra
T. Seely. Came into open Court and presented
a Petition setting forth that the said Ezra T
Seely is the Guardian of the persons and property
of the said John M Gurnsey and Frank Gurnsey
who are minors under the age of twenty one years
duly appointed by the County Court of said Grand County
sitting as a Court of Probate as will appear by the
Letter of Guardianship now here to the Court shown.
That there is no personal personal property in his
hands belonging to said Minors and none owed and
the said Minors are now the owners of any
personal property but that the said Minors own
in fee simple subject to the dower of Eliza Gurnsey
Lot two in Block two in Chapins addition to the town
of Morris in said County and which is all the
Real Estate which said Minors own or to which they
have any title And that the said Frank Gurnsey
is indebted to the said Eliza Gurnsey in the sum of
Four Hundred and sixteen dollars for boarding clothing
as will appear by the Records of said County Court
when sitting as a Court of Probate and that the
said John M Gurnsey is indebted to the said

6
Eliza Turney in the sum of Four hundred
and seven dollars for boarding clothing &c,
as will appear by the records of said County Court
when sitting as a Court of Probate and that on
the Eleventh day of August AD 1856 by the said Eliza
P & Cely caused three written Notices to be posted
in three of the most public places in said County
giving notice of the present application and praying
that an order may be made by this Honorable
Court authorizing him to sell said Lot of land in
such divisions as will ensure the best price for
the same to pay said debts of said Minors

And now being September Eighth AD 1856
it appearing to the Court that the matters and things
as stated in said petition are true and that the
said E P Suley is the Guardian duly appointed by
the County Court of said Grant County when sitting as
a Court of Probate, of the persons and property of
the said Frank Turney and John M Turney
and that the said Frank Turney is indebted to the
said Eliza Turney in the sum of Four hundred
and fifteen dollars for boarding clothing and other
necessaries furnished him and that the said John
M Turney is indebted to the said Eliza Turney in the
sum of Four hundred and seven dollars for boarding
clothing and other necessaries furnished him by her
and that there is no money or personal property of
any kind and none was in the hands of the said
E P Suley belonging to said Minors or either of them
and that neither of said Minors ever was the
owner of any personal property but that
the said Minors are the owners in fee simple
as tenants in common subject to the claim of
Eliza Turney each of an undivided half of

7
Last number Two in Block Two in Chapin's
Addition to the Town of Morris in said County of
Bundy and that the said C. P. Seely had given
Notice by causing three written notices to be posted
in three of the most public places in this County
that said Application to this Court should be made
at this term and which Notice was in
the Words and figures following to wit

Notice!! Notice!!

Notice is hereby given that as the Guardians of
John W. Burney and Frank Burney will
make application to the County Court of Bundy County
and State of Illinois at a term thereof to be
held on the first Monday of September A.D.
1856 at Morris in said County to sell Last Two
in Block Two in Chapin's Addition to the Town
of Morris in said County to pay the debts of said
Illinois at which time and place all persons
interested can be heard

Morris August 11th 1856

C. P. Seely - Guardian

Therefore it is ordered, adjudged and decreed
that the said C. P. Seely as Guardian aforesaid
do and he hereby is authorized and directed to sell
said Lot of Land or so much thereof as will sell
to advantage and in such divisions as will
insure the best price and that said Sale be
at public Auction at the door of the Court
House in said County on the following terms
to wit One fourth down at the time of sale
one fourth in six months with interest
and one fourth in twelve months with interest

and and fourth in Eighteen Months with interest and that Notice of sale be given by posting at least six dentures or printed Notices in six of the most public places in said County at least twenty days previous to said Sale and to secure the purchase money for which a credit may be given, a Mortgage or Mortgages on the price or parcel of said last sold shall be Executed by the purchaser or purchasers thereof and the said E P Sully as Guardian aforesaid is hereby ordered and desired to make and Execute to the purchaser or purchasers of said Lot or any piece parcel or parcels thereof a Deed or Deeds for the same and the same to acknowledge and deliver and that he make Report thereof to this Court at the next term thereof of his acting and doing herein"

And afterwards being at the December Term AD 1856 the following proceedings were had herein to wit

"In the Matter of the Sale of Real Estate of John W. Gurnsey late of Grundy County, Illinois decd. made by E P Sully Esq Guardian of Frank Gurnsey & John W Gurnsey minor heirs of said John W Gurnsey deceased under an order of this Court at the September Term last 1856	}	Report of Sale
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Be it remembered that on this thirteenth day of December AD 1856 the Court having

9
under Consideration the Report of Ezra P Seely
Esq Guardian of Frank Furness and John
W Furness in the above Entitled Case which
said Report was filed in this Court on the
9th day of this month and is in the words
and figures following to wit

To the Hon Patrick Hynds
County Judge in and for the County of Henry
and State of Illinois

The undersigned Ezra P Seely Guardian
of John W and Frank Furness hereby makes
Report that in pursuance of an Order made
by said Court at the September Term 1856 by
which he was directed to sell the interest of said
Minors or so much thereof as should be for their
advantage in Lot Two in Block Two in Chapins
addition to Morris and in such divisions as
would ensure the best price - he did on the 15th
day of October A.D. 1856 Expose a part of said lot
in subdivisions at the door of the Court House in
said County to sale on the terms hereinafter men-
tioned at public Vendue and at such Sale
James H Reading bid for twenty feet of the lot
off the East side of said Lot the sum of Two
Hundred and thirty five dollars and the same
was struck off and sold to him for that price
he being the highest and best bidder therefor and
that the highest and best price bid for the same
and that at said Sale and at said time and
place he Exposed to sale the middle third
part of said Lot described as follows to wit
Commencing at a point on the South line
of said lot at the distance of twenty feet west

from the South East Corner thereof running thence West along said South line twenty feet thence North one hundred and twenty feet to an Alley - thence East along the North line of said lot twenty feet thence South one hundred and twenty feet to the place of beginning and that at said Sale James H. Reading and William T. Hopkins bid for the said last mentioned and described piece of lot the sum of two hundred and twenty dollars and the same was struck off and said lot then at that price they being the highest and best bidders therefor and that the highest and best bid for the same and the undersigned further makes Report that on the twelfth day of September AD 1856 he posted six written Notices giving Notice of the said Sale in six of the most public places in said County and which said time of Posting was more than twenty days previous to said Sale and which Notice so posted was in the words and figures following to wit

Guardians Sale

Notice is hereby given that as the Guardian of Frank Gurnsey and John W. Gurnsey and by virtue of an Order of the County Court of the County of Frank and State of Illinois I shall on the sixth day of October AD 1856 between the hours of 10 o'clock A.M. and four o'clock P.M. proceed to sell in subdivisions at the door of the Court House in said County at public Vendue Lot Number Two (2) in Block Number Two (2) in Chapin's addition to the town of Illinois in said County. The terms of Sale will be one fourth in hand and one fourth in six

11
Months one fourth in Twelve Months and
one fourth in Eighteen Months with interest on
the back payments and the back payments to be
secured on the last or parcel of last purchase
Morris September 12 1856

S. P. Seely-Guardian

And said Guardian would further make
report that Euge Furness had a Deed in said
Lot and that she then obtain a part of the lot
as her dower therein and that she executed quitclaim
And for two thirds of said lot to the purchasers thereof
whose names are stated aforesaid and that in
Consequence he sold but two thirds of said lot
permitting the widow to retain the one third of
said lot which she had the right to do And said
Guardian would further make report that after said
sale he received from James St Reading the one
fourth of the purchase money for said Twenty feet
taken off the East side of said lot as aforesaid and
from James St Reading and William Hopkins
one fourth of the purchase money for said middle of
said lot and to secure the balance of the purchase
money for said Twenty feet taken off the East side of
said lot as aforesaid he took from said James
St Reading a Mortgage thereon as directed by said
Court to secure the balance of the purchase money
on said middle third of said lot as aforesaid
he took from said James St Reading and
William Hopkins a Mortgage thereon in
pursuance of the directions of said Court And
said Guardian would further make report
that after making sale of said parcels of said
lot as aforesaid he executed acknowledged and
delivered a Deed in pursuance of the order of said

Court to James St Reading for said Twenty five
 the return aff. the East side of said Lot and that
 also in pursuance of said order to execute to James
 St Reading and William T Hephens a deed for said
 middle third of said Lot and which said so executed
 to James St Reading and William T Hephens be acknow-
 ledged and delivered

All of which is respectfully submitted

E. P. Seely Guardian

And the Court having this day under consideration
 the foregoing Report of Sale and Affidavit showing
 been filed by John Skinner that there could not
 be a fair competition at said Sale and that on
 account of the vagueness of the Notices given and
 other reasons that said Real Estate sold for much
 less than its true value and the Court being satisfied
 that said Real Estate for same cause did not bring
 such price as the same was worth at the time
 of Sale refuse to affirm and confirm said Sale
 and orders the same to be set aside And it is
 further ordered that said Guardian E. P. Seely
 do and he hereby is directed to sell said East
 two thirds of said Lot number Two in Block number
 Two in Grapins addition to Morris on the 14th
 day of January AD 1857 on giving Notice by posting
 up to twenty or printed Notices in six of the most
 public places in the Town of Morris and also
 by having a copy of said Notice published in the
 Grundy County Herald for three consecutive issues
 of said paper commencing at least three weeks
 before said Sale and that said Guardian
 state in said Notice that the widow of said John
 M. Gurnsey deceased will sign her right of

of Dower in said East two thirds of said East Two
 thirds purchase and that the terms of said Sale are
 one third cash in hand one third in six months
 and the balance in one year from the day of Sale
 with interest at six percent per annum and
 secure the back payments by a Mortgage or Mortgages
 on the part of East sold and that said Guardian
 report his action at the next term of this Court"

State of Illinois
 Grundy County J. Perry A. Armstrong
 Clerk of the County Court within
 and for said County and State do hereby certify
 the foregoing to be a full and accurate copy of all
 the Record proceedings had in and before the said
 County Court of said County and State in said
 matter

In Testimony whereof I hereunto set
 my name and affix the seal of said Court
 at Illinois in said County and State this
 23^d day of January A.D. 1884 and of
 the Independence of the United States the
 Eighty first

Jerry A. Armstrong Clk

Copy of the affidavit of John Skinner
 referred to in the final order of the Court

"State of Illinois
 Grundy County John Skinner having been
 duly sworn an oath says that
 he was desirous of purchasing a part or portion
 of the Real Estate belonging to the Estate of John W
 Gurnsey lately sold under an order of the County
 Court of Grundy County Illinois That from the
 vagueness and uncertainty in the Notice posted by
 the Guardian of the Minor heirs of said John
 W Gurnsey deceased for whom benefit the said
 Real Estate was sold this deponent was utterly unable
 to ascertain what portion of said Real Estate would
 be sold or when it would be sold or what kind
 of Title would be given and that he verily believes
 that said Real Estate was sold for much less than its
 true value and that said Sale was not held at
 the door of the Court House - That this deponent
 supposes that said Sale was to take place on the
 26th of October last and that he called upon
 the Guardian of said Minors to ascertain when
 said Sale would take place and was led astray
 by the answer of said Guardian by being informed
 by said Guardian that the Sale would be in the
 "fourth of the said month of October he believed
 the 14th" and that if the requisite number of
 Notices were posted this Affiant believes they were
 defaced or torn down and this deponent
 further believes that owing to the causes hereinbefore

Stated that there were but few persons aware
 of the time place or conditions of said sale
 and that the affiant further believes that Ezra
 S. Seeley the Guardian of said Minors is
 Beneficially one of the purchasers of said property
 sold and that in the opinion of this affiant
 it would be greatly to the interest of said Minors
 to have the sale made of said Estate on the 6th
 of October last set aside and a new order of
 Publication and Sale made in said Matter
 Sworn to and subscribed }
 before me this 11th day of }
 December AD 1856 } John Skinner "
 Jerry A. Armstrong, Clerk }

Copy of Bill of Costs in the matter of
 Petition for sale of Real Estate

Sept 1856	Count for \$21 doc appd 10 fil petition 5 appd April 10	\$2 25
	appd atty 10 order to grant petition 20 Ent Judgt 25 doc 10	25
	recording order of sale \$1- Bill Costs 30 Copy 20	1 50
	Certif & seal	35
Dec 1856	Adm Report sale 5 Exam sum 50	55
	Ord to vend sum 20 Ord sitting aside sale 20	40
	Ord for new sale 20 recording report 20 th sale 85	1 05
Jan 23 1857	Fil Supersadies from Supreme Court	5
	Copying Records 145711 10 ^c	14 50
	Certificate & seal	25
	Copy Bill Costs	30
		5 10
		\$ 11 75

I certify the foregoing to be a correct copy from
my Fee Book in said Matter

Given under Hand & seal at Manis this
25th day of January AD 1884

Sam^l A. Armstrong AD

In the matter of
the sale of real Estate
of John W. Gurnsey deceased

Transcript of Record

Filed September 7, 1887

L. Leland

Clerk

State of Illinois
Grundy County / In the Grundy County
Court Dec Term 1856

In the Matter of the sale of
Real Estate of John W. Gurnsey
late of Grundy County Illinois
deceased made by E. P. Selby Esq
Guardian of Frank Gurnsey &
John W. Gurnsey minors heirs
of said John W. Gurnsey deceased
under an order of this Court at the
September Term last AD 1856 }

I Enoch A. Armstrong Clerk of said
Court do hereby certify that said Report
was filed in open Court and a motion
made for Confirmation thereof by E. P. Selby
Esq the Guardian in person on Tuesday the
9th day of December AD 1856 and being
the 2nd day of said December Term
and that the Motion was overruled
and disposed of on Saturday the 13th
day of December AD 1856 being the last
day of said Term of Court - the matter
being held open for further proofs and
argument of the said Guardian and
heirs having been afforded and that
at the time said sale was set aside

No Counsel were present as appears of
Record

In witness whereof I hereunto set
my hand & official seal at Morris
this 26th day of April AD 1858

Perry A. Armstrong Clerk

the time of the filing of said Report of Sale by
said Guardian and the Motion by said
Guardian for the Confirmation of said Report
and who, if any person or persons appeared for or
the behalf of said Guardian or purchasers or
purchasers or either of them at the time the said
proceedings were had before said County Court
when said Sale was ordered to be set aside

No 34

In Matter of the ~~Estate~~
Sale of Real Estate of
John M. Gurnsey decd.

Filed April 30, 1858
L. Leland
Clerk

hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient record sent in the plea aforesaid, but in the record there is a diminution: **YOU ARE, THEREFORE, HEREBY COMMANDED**, that, without delay, the said *record* therein you cause to be transmitted to the Supreme Court, *now in session* ~~to be~~ ~~held~~ at Ottawa, *forthwith* on the ~~next~~, without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises. according to law; whereof you are in no wise to fail; and send you then there this writ.

John D. Burton
WITNESS, the Hon. ~~SAMUEL H. TREAT~~, Chief Justice of said Court, and the seal thereof, at Ottawa, this *23^d* day of *April* in the year of our Lord one thousand eight hundred and fifty-*eight*.

Leland
Clerk of the Supreme Court.

by J. B. Rice Deputy

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa :

The People of the State of Illinois,

To the Clerk of the Circuit Court of ^{County} ~~Circuit~~ Grundy County, GREETING :

WHEREAS, in a certain plea ~~between~~ *in the matter of the sale of Real Estate* of John M. Gurnsey late of Grundy County plaintiff and State of Illinois made by J. Beeley Guardian of said John M. Gurnsey deceased defendant, lately depending in the Circuit Court of said county, wherein judgment was rendered for the said ~~setting aside the report~~ *and against the said* and the said ~~Guardian having~~ *Writ of Error to reverse* the judgment of said Court, rendered against ~~as aforesaid,~~ *from* the Supreme Court, held at Ottawa, on the *20th Day of April 12. 1858* and in pursuance of the said *Writ of Error* a transcript of the record and the proceedings in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said *Guardian* that the said record has been diminished, inasmuch as

No 34

Allison's Supreme
Court

In the matter of the
Estate of John
all Jersey Decd

Centurion to Clerk
Jersey County Court

In the Matter of the Sale
of Real Estate of Frank &
John M. Gurnsey Minors
by their Guardian E. P. Seely

Brief submitted by S. H. Hamlin
on the part of the said Minor
Children

The Record in this case presents
substantially but two questions.
1st Was it Error for the Probate Court
to receive and act upon the
affidavit of Skinner, he being a
stranger to the Record?—

2nd Was the Court below justified in
refusing to confirm the sale, upon
the facts set forth in Skinner's
affidavit—

It is true the guardian Seely,
assigns as error, that he was not
notified of the affidavit of Skinner.
But as to this point the Record
shows that he had made a motion
to have the sale confirmed, which
was pending & the affidavit was
filed as part & parcel of it,
Had he followed up his own

(he was not only guardian but ally)
Motion, he could have learned
that the Sale was not confirmed
and the Cause of it.

1st Did the Court Err in receiving the
affidavit of Skinner?

The Real Estate sold, belonged
to two minor children the eldest
not over thirteen years old, the
proceedings of the guardian were
adverse to their rights, who
then should protect them?

It is well settled that in
suits affecting either the person or
property of an infant he is treated
in Chancery as a ward of the Court,
and as being under its special
cognizance and protection—

2nd Story's Equity Juris. 785

Also cases there cited in note

2—

It follows then, that the Court
not only may, but ought to
act upon affidavits of persons
cognizant of any misconduct
on the part of the guardian
in violation the rights of his ward,
for the guardian is nothing

more than the Agent of the Court.
His appointment does not supersede
the right & duty of the Court to
watch over the rights of its
ward —

2nd Should the Court have confirmed the sale?
The 10th Sec. of the Act in
relation to guardian & ward
People Stat. p. 595, requires that
the Order of Sale "shall direct
the time and place of sale —

The Record in this case,
shows that the time of sale
was not directed by the order,
but was left to the caprice of
the guardian — Inevitably
any title whatever pass to the
purchaser without following
strictly the requirements of the
statute, as against minor
children?

Where a Statute says that a title
to land may be transferred in
a particular way, it must be
done in the way prescribed
or it receives no sanction from
^{the statute} and is void. Young et al vs.
Dwelling 15th Ill. 481.

But this may be considered in

Another vein, - Skinner in his affidavit swears, that from an inspection of the Notices of Sale posted he was utterly unable to ascertain either the time of sale or what portion of the land could be ^{sua} ~~be~~. He was anxious to bid, Had the order specified the Time of Sale he could have ascertained from the Record when the sale would take place - But he was compelled to apply directly to the guardian Sely, & he swears that he was put off with evasive answers which deceived him. That he was led by the guardian to believe the sale would be on the 14th of Oct. when in fact it is reported to have been on the 6th. Skinner further swears that the sale was not made at the place ordered - It was not made at the Court House door - He also swears that he believes Sely the guardian was the actual purchaser of one of the lots - and that they were bid in for very much less than their actual cash value -

The law is that a guardian
can not squander either directly
or indirectly out of the estate of
his ward. He is bound to act in
good faith, and in the sale of land
to secure open competition in the
bidding, so as to realize the most
he can, for his ward.

I respectfully ask your
Honors to examine carefully the
affidavit of Skinner, and see
whether the guardian in this case
has acted in good ^{faith} & whether the
sale was conducted, as the law
requires—

The Court below had discretion
any power over the confirmation
of the sale. — I am aware that
this discretion must conform
to established principles — and
that mere inadequacy of price
is not sufficient to set aside
the sale. *Agins vs. Baumgardner*
15 Ill. 414

But that case is entirely different
from this — In that case there
was an open sale & fair competition
& the Court lays stress upon
the point that inadequacy

of price there was not made out
by the proofs—

In this case the property
of these children has been sacrificed
for the want of proper notices
~~and~~ of the time of sale and
because the sale was not held
at the place ordered, and
in consequence for the want
of that competition in the bidding
which it was the duty of the
guardian to secure— It further
appears by the affidavit of
Skinner that the guardian did
all this for his own benefit

Will this Court reverse
the decision of the Court below,
in refusing to confirm a sale
made under these circumstances

Did not the Court below
exercise a sound discretion,
and according to established
principles? Was it not the duty
of the Court to exercise the utmost
vigilance over the rights and
interests of these children.

Supreme Court of the State of
Illinois

In the matter of the sale of Real
Estate of John M. Gurnsey late } On Error to
of Grundy County Illinois } Grundy County
made by E. Peely Guardian } Court
of Frank Gurnsey & John M. }
Gurnsey Minor heirs of said } Affidavit.
John M. Gurnsey deceased }

State of Illinois

Grundy County ss: William T. Hopkins and
James McNeel, being duly sworn
on their several oaths respectively say
that they are the persons mentioned
in the Report of the said Guardian as the
purchasers of the Real Estate at the
Sale aforesaid, and that they had
no knowledge or information of
any kind that any opposition
would be made to the Confirma-
tion of or that any objection existed
to the said Sale until after the same
had been ordered to be set aside
by said County Court. That neither
of them was present at the time of
the proceedings of said County Court
when said Sale was ordered to be

set aside, nor was any person
present for them, or either of them
at the time of the proceedings of said
County Court when said sale
was ordered to be set aside, but
that said proceedings were had
without their respective knowledge
and without any expectation on their
part that any such proceedings would
be had

J. N. Reading
W. J. Hopkins

Subscribed and ~~sworn to before~~
me this 22nd Day of April
A.D. 1858.

(Witness my hand and
Seal. This 22nd Day of
April 1858.

Edward Sanford
Notary Public



176 3/4

In the matter of the
Sale of Real Estate
of Frank & John M.
Gurnsey Minors by
E. P. Sely Guardian

Argument of
S. B. Harris
Submitted by leave
of Court on behalf
of the Minors

Filed May 22 1888
L. Deland
Clerk

May 21

Supreme Court of the State of Illinois

In the matter of the sale of Real
estate of John M Gurnsey late of
Grundy County Illinois made
by E P Seely Guardian of Frank
Gurnsey & John M Gurnsey minor
heirs of said John M Gurnsey deceased

On Error
to Grundy
County
Court
Affidavit.

Error to Grundy County Court
State of Illinois

Grundy County Jo: E P Seely being duly sworn
on his oath deposes that he is the person
mentioned as the Guardian in the
above entitled proceedings and that
as such Guardian he filed in said
County Court on the 9th day of December
AD 1836 his Report of the Sale of lands
in said proceedings. That said Court was
then in session. That he at that time
moved said Court to confirm said sale
and that he had no knowledge or infor-
mation of any kind. That any opposition
would be made to the confirmation of
said Sale and that he knew of no
objections to said Sale until after the
same had been ordered to be set aside
by said County Court. nor until after

seid Court had adjourned for the
said Term. That he was not present at
the time of the proceedings of said County
Court, when said sale was ordered to be
set aside ~~and~~ nor was any person present
for him, but that said proceedings were
had in his absence and without his
knowledge & without any expectation
on his part that such proceedings would
be had and that he is informed and
believes, that the Clerk of said County
Court has entirely omitted to certify to
said Supreme Court when said Report
was filed in said County Court and
the motion by said Guardian for the
Confirmation of said Sale, and the
fact that the proceedings of the said
County Court at the time said sale
was ordered to be set aside were in
the absence of said Guardian

Subscribed & sworn to be before me
the Subscriber a Notary Public in &
for the said County of Grundy

Wit my hand & seal of Office
this Twenty Second day of April A.D.
Eighteen Hundred & Fifty Eight

Edward Sanford
Notary Public

No 34
Illinois Sup
Court

In matter of the
sale of the Real
Estate of John
Mc Grubrey decd }

Affidavits

Filed April 23, 1854
L. Leland
clerk

STATE OF ILLINOIS—SUPREME COURT.

In the matter of the sale of the real estate of Frank Guernsey and John M. Guernsey, by their guardian, E. P. Seely.

BRIEF AND AUTHORITIES.

The guardian, as well as the purchasers, had a right to be present when the proceedings were had by the county court, ordering the sale to be set aside; and not having been present, nor had any notice, they are not bound by those proceedings. The question appears too plain for argument, that no person can officiously interfere, judicially, with the rights of another and bind him thereby, without notice.

In this case Skinner having filed his affidavit without any notice to the parties concerned, and the proceedings, in setting aside the sale, having been by him *ex parte*, and without notice to the guardian or the purchasers, their rights are not affected by those proceedings.

O'Connor vs. Mullen, 11 Ill. 57. *Id.* 116.

Chase vs. Hathaway, 14 Mass. 222.

Biddings at a master's sale will not be opened except in very special cases, and not then unless the purchaser is fully and liberally indemnified for all damages, costs and expenses to which he has been subjected. *Duncan et al vs. Dodd et al*, 2nd Paige's Chancery Reports, p. 99, and cases there cited.

And neither will the biddings be opened under the English practice, except a large advance shall be offered by some responsible person, and the advances, together with the costs, deposited in court. 2d Vesey 700. 6 Ib. 513. 8 Ib. 214.

Mere inadequacy of price is not sufficient cause for setting aside the sale. *Ayers vs. Baumgarten et al*, 15 Ill. R. 444—where the subject of the conformation of guardian's sales, and other matters pertaining thereunto, is fully discussed, and the authorities collected and referred to.

It is improper for any stranger to the record to officiously intermeddle with the rights of the parties while being adjudicated upon, and if any injury is done or like to be done to the infants, the proper practice is for a person who is willing to become liable for costs and take upon himself the burden of defending the rights of the infants to make application to the court for leave to appear as their next friend. By any other course, the estate of the infants would be subjected to the payment of large amounts of costs without any means of being remunerated.

By the order of the court the Guardian is directed to require the pay-

ment of one fourth of the amount of the purchase money in cash at the time of said sale. And in pursuance of that order one fourth the same was so paid, by which the purchaser or purchasers acquired rights, which could not be divested by the will of the county court simply, and if divested at all, by an order of court, must be by established rules of law. *Ayres vs. Baumgarten* 15th Illinois 444, above referred to.

We do not admit that said real estate sold for any thing less than its value, but insist it brought all it was worth and that every thing was done by the guardian which could be by him, to insure a good price and an advantageous sale for his wards. The court prescribed the terms of sale and the notice which should be given, and by the report of the guardian it appears that the directions of the court were fully complied with by him in making the sale. The report is very full showing every step which has been taken and what notice had been given, and that the court might be fully informed, a copy of the notice verbatim was included in the report, and the report was then sworn to by the guardian, so that it and every thing it contained was presented to the court under all the obligations which the solemnity of an oath could confer.

READING & HOPKINS, Att'ys. for Pl'ff.

34. = 124

In the matter of the
Sale of the Real Estate
of John M. Burnsey &c

Pleffs Brief

Filed May 18. 1838
A. L. Linnell
Clerk

Reading
for Pleffs.

Gundy County Court December Term AD
1856. Monday December 13th 1856

Inth matter of the sale of Real
Estate of John M Gurnsey late of
Gundy County Illinois made
by E P Keely Ex. Guardians of
Frank Gurnsey & John M Gurnsey
Minor Heirs of said John M
Gurnsey deceased, under an
order of this Court at the September
Term last AD 1856

Report of sale

The Clerk of the Supreme
Court at Atlanta will issue a Writ
of Error in the above entitled case
directed to the Clerk of said County
Court and returnable according to
law

Miss Laura, 3rd Nov 1854 J. M. Reading
Atty &

If any fees are required let me know
and they will be remitted as this is my
first suit in the Supreme Court I am
unacquainted with the practice

72
S. P. Seely Guardian

Recipe

Filed Jan 12. 1853
L. Leland
Clerk

STATE OF ILLINOIS—SUPREME COURT.

In the matter of the sale of the real estate of Frank Guernsey and John M. Guernsey, by their guardian, E. P. Seely.

BRIEF AND AUTHORITIES.

The guardian, as well as the purchasers, had a right to be present when the proceedings were had by the county court, ordering the sale to be set aside; and not having been present, nor had any notice, they are not bound by those proceedings. The question appears too plain for argument, that no person can officiously interfere, judicially, with the rights of another and bind him thereby, without notice.

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By the order of the court the Guardian is directed to require the pay-

ment of one fourth of the amount of the purchase money in cash at the time of said sale. And in pursuance of that order one fourth the same was so paid, by which the purchaser or purchasers acquired rights, which could not be divested by the will of the county court simply, and if divested at all, by an order of court, must be by established rules of law. *Ayres vs. Baumgarten* 15th Illinois 444, above referred to.

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READING & HOPKINS, Att'ys. for Pl'ff.

B 4. = 124

In the matter of
the sale of the Real
Estate of Henry J. the
Plff's Brief
Reading
for Plff

Submitted May 18.

Filed May 18. 1858

to be read

Clk

He had given back
but knew not how
much was to lose the
bake that milk'd her?

Supreme Court of the State of
Illinois - June Term - 1837

In the matter of the Sale of Real
Estate of John M Gunsey late of } In Error
Gundy County Illinois made } from
by E P Peely. Guardian of Frank } Gundy
Gunsey & John M Gunsey minor } County
Heirs of said John M Gunsey deceased } Court
Assignment of Errors

And now to wit at this day come
the said Peeding & Hopkins as well
for themselves as for the said J M
Peeding & the said E P Peely Guardian
v^e and assign for Error in the Record
and proceedings aforesaid the following
Causes to wit.

1 Because the said County Court
refused to confirm the said sale
made by said Guardian.

2 Because said Court permitted the
efficious intermeddling of a stranger
to the Record and to all of the proceedings;
having no interest therein, and not
being bound for any Costs, and having
obtained no leave to interfere and
not appearing as Guardian ad Litem
or next Friend to said Infants, or having

- Any interest or liability in the same
- 3 Because said Court set aside said sale
 - 4 Because it was Error in said Court to take any action in said Cause, other than confirming said sale without Notice to said Guardian & purchasers.
 - 5 Because of many other manifest errors uncertainties & insufficiencies in the proceedings of said County Court

Reading & Hopkins
Attys for
Plff

- 6 Because neither the Guardian nor either of the purchasers had Notice of or was present when the proceedings before said County Court were had when said sale was set aside

Reading & Hopkins
Attys for Plff

2/6 34

The Sup Court
In Matter of sale
of Real Estate of
John M. & Mary
Ward
affirmance of Error

Filed April 22, 1858
J. Leland
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