

No. **12154**

Supreme Court of Illinois

Young, et al

vs.

Dowling

71641  7

State of Illinois
Sixth Judicial Circuit } ss.
Carroll County

Be it remembered that
heretofore to wit, to the April Term
1852 of the Circuit Court of said County,
in the Chancery side thereof, in the case
of Bernard Dowling against Alexander
Young, Elizabeth Young, Francis
Marchildon, and Julia Ann Marchildon
the following proceedings were had -
The Hon. Ira O. Wilkinson presiding.
1st Bill in Chancery -

State of Illinois
Carroll County } ss.

In the Carroll Circuit
Circuit Court of the April Term A.D.
1852, On the Chancery side thereof.

To the Hon. Ira O. Wilkinson
Judge of the said Court and of the Sixth
Judicial Circuit in & for the State of
Illinois in Chancery sitting: -

Humblly
complaining your Orator sheweth unto
your Honor that on or about the 23rd day
of May A.D. 1840, one Thomas Drum
of the City of Galena was appointed
Guardian of two minor children of one
Abraham Bates then deceased, who died
on the day of A.D. 1835, that said

minor children of the said Bates deceased were on the said day without a legal guardian & that they resided and owned property in the City of Galena, County & State aforesaid & that their deceased father had resided in said City for some years previous to his death & that on the said 23^d day of May A.D. 1840 the said Thomas Drumm was duly & legally appointed Guardian of Elizabeth & Julia Ann Bates the minor Heirs of said N. Bates deceased, by the probate Court of the County of So. Daviess aforesaid by the order & decree of said Court, a copy of which said Order & decree & the proceedings relating thereto, and herunto annexed & marked Exhibit A^o & prayed to be taken as a part hereof.

And your Orator further shews unto your Honor that after the said Thomas Drumm was so appointed Guardian as aforesaid of the said Elizabeth and Julia Ann Bates he the said Thomas Drumm petitioned the Circuit Court of So. Daviess County for an Order of sale of a portion of the Real Estate of the said Wards Elizabeth & Julia Ann Bates according to law and the said Drumm gave notice as required by law, to all persons concerned of his intended application for an order to sell a portion of said real Estate in the a newspaper printed in said County more than three weeks before the sitting of the Court at which the application was made

and to which the petition was to be presented for the purpose of obtaining the said order of sale of a portion of the said real estate of the said wards or minor heirs Elizabeth & Julia Ann Bates & that such proceedings were thereupon had in the said Circuit Court of Jo Daviess County that a part of the real estate of said Wards to wit Lot Number Twelve in Block number twenty three on the East side of Fern in the City of Galena in the County of Jo Daviess & State of Illinois excepting & reserving a right of way across & over the Easterly end or rear of said lot Eight feet wide for the purpose of making an Alley through said Block, sixteen feet wide for the use and benefit of all the property in said Block henceforth & forever, as by reference to the deed hereto annexed marked " " will appear, was ordered to be sold for the support, maintainance & Education of said Wards Elizabeth & Julia Ann Bates, all of which will appear by reference to the records of said Circuit Court & to the petition & papers on file in said Court, to which your Orator prays leave to refer a copy of which said petition, notice of publication & papers on file, together with the order entered in & by the said Circuit Court is herunto annexed marked Exhibit "B" & prayed to be taken as a part hereof.

And your Orator further shews unto,

your Honor that after the Entry & making of the said Order & decree as aforesaid, the said Thomas Drum proceeded in pursuance of said order to make sale of a portion of said real estate of said wards and among others the following lot viz; Lot Twelve in Block twenty three on the East side of Fern River in the City of Galena as described above & in the deed hereto annexed

and that on Thursday the 30th day of April A.D. 1846 between the hours of nine o'clock A.M. & six o'clock P.M. of said day after having given notice of said sale as required by law and the order of said Court in the North Western Gazette & Galena Advertiser a newspaper printed in the City of Galena which said notice was published for three weeks successively the last publication whereof was on Saturday the 18th day of April A.D. 1846 the said Thomas Drum did cause the said Minors Elizabeth & Julia Ann. Bates right, title & interest in the premises herein described to be exposed for sale pursuant to the said decree & order of the said Circuit Court at public auction on the premises and that the same was then & there struck off to your Orator for the sum of three hundred & six dollars your orator being the highest & best bidder therefor

And your Orator further shews unto your Honor that he

purchased the said lot of ground, at the said Guardians Sale for the said sum of three hundred & six dollars, which was at that time a full & fair price & consideration and the fair value thereof and that at the time of the said sale your Orator paid one third of the purchase money down & executed notes for the residue thereof together with a Mortgage on the said Lot & premises for the security of the payment of said notes which were executed for the two thirds or balance of the purchase money - and your Orator further shews that he paid the said notes in full & the interest thereon, at or about the time of the maturity of the said notes that one third of the purchase money by the terms of the sale was to be paid down and one third in six months, and the residue in twelve months from the day of sale, with interest. And your Orator further shews that the said Drum as the Guardian of his said wards & in pursuance of his powers under & by virtue of the order & decree of the said Circuit Court after the said sale, executed to your Orator a deed for said premises a copy of which is herewith annexed marked Exhibit "A" & prayed to be taken as a part hercop, which said deed was duly recorded on the 9th day of May A.D. 1846 in the Recorder's office of said County.

And your Orator further shews unto your Honor that he supposed & believed his title to said lot to be perfect and that he went on & erected valuable improvements consisting of two fine dwelling Houses & all the necessary appurtenances of the value of twenty five hundred dollars or nearly of that value and that your Orator had no intimation of any imperfection in his title to said lot until sometime in A.D. 1849, about which time the said Wards Elizabeth & Julia Ann by themselves & the husband of the said Elizabeth Alexander Young & the said Julia Ann by her next friend Alexander Young for whom the husband of the said Julia Ann after her intermarriage with Francois Marchildon was substituted, on the record instituted an action of Ejectment against your Orator to recover back the said Lot & premises and then for the first time your Orator learned that his title to said Lot was defective by reason of the said Drumis not having made a return of his said doings in selling the said real Estate as Guardian aforesaid as required by law to the Circuit Court of said Jefferson County. And your Orator avers that the said Drum failed to make a return of the said sale as required by law to the said Circuit Court as it was his duty to do in trust of selling the same, and

your Orator further avers that the said Thomas
Drum departed this life on or about the
day of June A.D. 1847 - & that he
entirely failed to make a return of
the said sale & of his doings in that
behalf to the said Circuit Court, whereby
your Orator's title to said Lot is defective
in law without any fault on the part
of your Orator, although your Orator has
fully paid for the same a full & fair
price, & although your Orator bought the
same bona fide - And your Orator avers
that the failure to make said return was
entirely beyond his control & without his
consent & connivance & that your Orator
was ignorant of the same until at or
about the time of the commencement
of said Ejectment's Suit against him as
aforesaid in A.D. 1849

And your Orator further shews
that heretofore to wit on the day of
A.D. 1849 - the heirs of said Bates
and the former wards of the said Guardian
Thomas Drum now deceased formerly Elizabeth
& Julia Ann Bates now Elizabeth Young
& Julia Ann Marchildon & their husbands
Alexander Young & Francis Marchildon
[all of whom are prayed to be made
Defendants hereto], after the said action
had been instituted as aforesaid to recover
back the said Lot, such proceedings were

therein had that a change of Venue was obtained to the Circuit Court of Carroll County where a judgment was rendered on the day of A.D. 1851 at the September Term of said Court in favor of said Plaintiffs in said Ejectment suit, & an Estate in fee simple found to be in said Wards and a writ of restitution or possession was thereon awarded in favor of said Wards to recover & take the possession of said Lot from your Orator Contrary to Equity & the just & Equitable rights of your Orator in the premises.

And your Orator further shews unto your Honor that the said Defendants herein, & the said Plaintiffs in said Ejectment suit threaten to go on & take the possession the possession of said lot & improvements which your Orator has made on said Lot of the value of twenty five hundred dollars and to oust your Orator from the same & to dispossess him thereof to the great damage & irreparable injury of your Orator & Contrary to the equitable rights of your Orator in that behalf. Your Orator charges that in trust of selling the said lot as Guardian of said Wards it became & was the duty of said Drum to make a return of his proceedings to the said Circuit Court & that said Drum had a duty & trust to perform in selling said Lot & making the proper return to said Circuit Court which duty the said Drum

in his life time failed to perform and that
the said Drumm died before any steps could
have been taken by your Orator to compel
him to perform his duty in that behalf
as your Orator did not learn that said
Drumm had failed to make his return
of said proceedings until after the death
of said Drumm, which occurred about
one year after said sale, all which acting
& doing are contrary to Equity & good conscience
& tend to the manifest ^{injury} of your
Orator in the premises. In tender con-
sideration whereof, and forasmuch as
your Orator can only have relief in the
premises in a Court of Equity, where
matters of this kind are properly relivable
& Cognizable, To the end therefore that the
said defendants & each of them & their
Confederates when discovered may upon
their several & respective Oaths to the best
& utmost of their several & respective
Knowledge remembrance information
and belief full true direct & perfect answers
make to all & singular the premises & matters
aforesaid and that as fully & particularly
as if the same were here again repeated
& they & Every of them distinctly interrogated
thereto And may it please your Honor
to grant unto your Orator, the premises
Considered a writ of Injunction issuing
out of & under the Seal of this Hon Court

to be directed to the said Alexander
Young & Elizabeth Young his Wife &
Francis Marchildon & Julia Ann
Marchildon his Wife & their Attornies
restraining them from proceeding
any further in their said Ejectment
suit against your Orator & also from
taking the possession of said lot of land
until the further order of this Hon. Court
and also that your ~~Honour~~ Orator may
have such other or farther relief in the
premises as the nature & circumstances
of this Case may seem to require and to
your Honor shall seem meet and
may it please your Honor not only to
grant the writ of injunction as
aforesaid but also to grant unto your
Orator the People writ of Subpoena to be
directed to the said Alexander Young & Elizabeth
Young and Marchildon & Julia
Ann Marchildon commanding them
& each of them to be & appear before this
Hon. Court at the next term thereof &
answer the Bill of your Orator in the
premises & then & there full & true answers
to make to all & singular the premises &
further to stand ^{to} & abide such further order
direction & decree thereon as to your Honor
shall seem meet. And your Orator
shall ever pray &c. Bernard Dowling
Higgins & Strother
Solicitors for Complainant

State of Illinois {
Jo Daviess County { The said Bernard
Dowling above named, being duly sworn,
on his oath says that he has heard read
the foregoing Bill of Complaint and that
all the matters and things therein stated
as of his own knowledge are true, and
as to those matters and things therein stated
as derived from and upon the knowledge
of others he believes them to be true.
Subscribed & Sworn before me this 1st March 1852 } Bernard X Dowling
W. C. Postwick J.P. } his
mark

Exhibit "A"

At a special Term of the Court of Probate
held at the Court House in Galena and
County of Jo Daviess and State of Illinois
on the 23rd day of May 1840 the following
proceedings were had to wit Present Elijah
Charles Probate Justice of the Peace in and
for said County Robert R. McDowell heretofore
appointed Guardian for Elizabeth and Julia
and Bate minor heirs of Nehemiah Bate
deceased personally appeared in open Court
and tendered in writing the following
resignation, To Elijah Charles Probate
Justice of the Peace in and for the County of
Jo Daviess and State of Illinois Sw. P. this

do resign the office of Guardianship
for Elizabeth and Julia Ann Bates; and
Whereas the Court having accepted said
resignation and revoked the letters heretofore
granted to said McDonald and it appearing
to the satisfaction of the Court that the said
minors are possessed of real Estate do hereby
appoint Thomas Drum Guardian for
said Elizabeth and Julia Ann said
letters are in words and figures following
to wit:

State of Illinois

Jo Darre County 3ss.

The People of the State of
Illinois to Thomas Drum of said County
Greeting Whereas Robert M. Douell Guar-
dian for Elizabeth Bates of the age of eleven
years on February last and Julia Ann
Bates of the age of nine years minors heirs
of Nehemiah Bates deceased has on
this day filed in the office of Probate
Court his resignation as such guardian
and the said Court having accepted said
resignation and revoked the letters
heretofore granted to said M. Douell do
hereby appoint you Guardian of the said
Elizabeth and Julia Ann Bates person
and property until they shall arrive
at the age of Eighteen years.

Witness Elijah Charles Probate
Justice of the peace in and for said
County, at his Office in Galena This

the 23^d day of May A.D. 1846
Elijah Charles
Probate J.P.

Tuesday Morning 17th March A.D. 1846

In the matter of Thomas Drum Guardian of Elizabeth and Julia Ann Bates &c for the Sale of Real Estate

The said Thomas Drum Guardian of Elizabeth and Julia Ann Bates Infants &c. comes by his Attorney and files his petition for the sale of real Estate and also files proof of publication which is satisfactory to the Court of his intention to present this application and Messrs Strode & Sheldon enter their appearance for the Mother and Step Father of said Infants to resist this application.

Monday March 23. 1846

In the Matter of Thomas Drum }
Guardian of Elizabeth Bates & } On Petition for
Julia Ann Bates minor } Sale of Real Estate
Children of W. Bates dec^d }

And now at this day comes again the said Thomas Drum Guardian of the said Elizabeth & Julia Ann Bates and Archange McDowell the Mother of said Infants and Robert B. McDowell their Step

Father by Stroh & Sheldon their counsel
who resist the application of the said petition
and file their reasons therefor and proof of
publication having been heretofore filed
according to law and the Court after hearing
the proof and allegations of said petition
and also the argument of counsel in favor
of and in resistance of said application
and after the examination of the papers on
file and due deliberation the Court being
satisfied as to the facts stated in said
petition and that there are just and reasonable
causes for the sale of the real Estate therein
described doth order and decree that said ^{Thomas} ~~James~~
Guardian as aforesaid shall sell at public
the lots or tracts of Land mentioned in said
petition belonging to ^{the} said wards namely Lots
number one (1) two (2) three (3) four (4) five (5)
Six (6) Seven (7) Eight (8) nine (9) ten (10)
Eleven (11) twelve (12) in block number
twenty three (23) on the East side of River
in Galena - Also Lots number four
(4) five (5) and six (6) in block number
Twenty Eight (28) also on the East side of
River in the late town now City of
Galena, County of Jo Daviess and State
of Illinois, according to the United States
Survey of said Town now City of Galena
or so many of said lots as shall be deemed
necessary and expedient by the said Guardian
for the purposes set forth in said Petition

on Thursday the thirtieth day of April next
between the hours of nine o'clock in the
morning and six in the afternoon of said day
to the highest and best bidder and that
the said Petitioners give notice of said
Sale by publishing notice thereof in the
Jeffersonian or any other Newspaper printed
& published in said City of Galena for
three weeks successively the last publication
whereof to be at least ten days before the
said Sale to be on the premises terms
of the Sale one third of the purchase money
Cash, one third in six months and one
third in twelve months with interest from
date of Sale the purchaser or purchasers to
execute a Mortgage on the premises sold
to the said Guardian for the security of
notes taken for balance of purchase
money and the said Petitioner is hereby
authorized to make, execute, acknowledge
and deliver to the purchaser or purchasers
in due form of law a good and sufficient
deed for the said premises or any part thereof
conveying all the right and title of his said
Wards and it is further ordered that he
make a return of his doing in this behalf
to the next term of this Court to which Order
and decree of this Court for the sale of said
real Estate the said Archange and Robert
B. McDowell by their Counsel except and
pray an Appeal to the Supreme Court.

State of Illinois 3^{ds}
Jodavies County 3^{ds}

Bernard Dowling of said County & State being duly sworn, say that the foregoing Bill by him subscribed is true as to the matters therein stated on his own knowledge & as to the matters therein stated on his information & belief he believes it to be true.

Sworn & subscribed
before me at Galena
this 1st day of March
A.D. 1852
Robert H. McClellan
Master in Chancery

Bernard ^{his} X Dowling.
mark

Exhibit "C"

To all persons to whom these presents shall come, Thomas Drum of Galena in the County of Jodavies and State of Illinois Guardian of Elizabeth Bates and Julia Ann Bates minors and children of Nehemiah Bates late of said County deceased send greeting. Whereas by an Order of the Circuit Court holden at Galena within and for the said County of Jodavies at the March Term thereof in the year of our Lord one thousand eight hundred and forty six the said Thomas Drum in his capacity as guardian as aforesaid was empowered and licenced to make

sale of the real Estate of his wards hereinafter described on Thursday the thirtieth day of April A.D. 1846 between the hours of nine o'clock in the morning and six o'clock of the in the afternoon of the said day and having given notice of said sale by publishing notice thereof in the North Western Gazette and Galena Advertiser a Newspaper printed in Galena for three weeks successively the last publication whereof was on Saturday the Eighteenth day of April aforesaid did on Thursday the 30th day of April aforesaid within the hours aforesaid cause the said Minors right and title in the premises herein described to be exposed for sale pursuant to the said decree at public auction on the premises and the same was there and there struck off to Bernard Dowling for the sum of three hundred and six Dollars he being the highest and best bidder therefor. Now be it known that I Thomas Drum in my capacity as Guardian as aforesaid and by virtue of the license aforesaid and in consideration of the sum of Three Hundred and six Dollars to me paid by the said Bernard Dowling, the receipt whereof I hereby acknowledge, do hereby grant, bargain, sell, and convey unto the said Bernard Dowling his heirs and assigns the following lot or tract of land situate in the City of Galena to wit: Lot number twelve

(12) in Block No Twenty three (23) on the East side of River River in the County of Joliet and State of Illinois agreeably to the United States Survey of the Late Town of Galena, excepting and reserving a right of way across and over the Easterly end or rear of said lot, eight feet wide for the purpose of making an Alley through said Block in the center thereof sixteen feet wide for the use and benefit of all the property in said Block henceforth forever being all the right and title of the said minors therein, with all the privileges and appurtenances thereunto belonging. To Have and to Hold the above granted premises to him the said Bernard Dowling his heirs and assigns forever. And I the said Thomas Drum for myself my Executors and Administrators do covenant with the said Bernard Dowling his heirs and assigns that I will warrant and defend the granted premises to the said Bernard Dowling against the lawful claims of all persons claiming by, from, or under him in the capacity aforesaid. In Witness Whereof I have hereunto set my hand and Seal this thirtieth day of April A.D. 1846 -

Thomas Drum Exec
Guardian

Signed sealed and
delivered in presence of
John G. Polts

State of Illinois }
Jo Daviess County }^{ss}

Be it remembered that on
this fourth day of May A.D. 1846 Before
me John G. Potts a Justice of the Peace
in and for the County aforesaid appeared
Thomas Ennis who is personally known
to me to be the real person whose name
is subscribed to the foregoing deed as having
executed the same and acknowledged that
he signed, sealed, executed and delivered
the same as his free act and deed.

In testimony whereof I have
herewith set my hand and Seal
the day and year above written.

John G. Potts *Seal*

State of Illinois }
Jo Daviess County }^{ss}

Recorder's Office Galena
May 9. 1846 I Jeremiah Bettis
Recorder in and for said County do
hereby certify that the within deed of
conveyance and certificate of acknowl-
-edgement are recorded in Book "G"
pages 446 & 447.

Attest

Jeremiah Bettis
Recorder

State of Illinois }
Carroll County }^{ss}

On filing the within

Bill and the Bond of the Complainant
with James O'Brien as security in the
penal sum of five Hundred dollars less
our injunction issue restraining the
said defendants from further proceeding
to get the possession of the said premises
herein described & as prayed for on the
within Bill of complaint. Given under
my hand & Seal this 2nd day of March
A.D. 1852.

Leonard Goss Seal
Master in Chancery
for Carroll County.

Upon which Bill is the following
endorsement.

Bernard Dowling } Bill in Chancery.
Alex^r. Young & al } 3

Filed March 2nd 1852.

J. P. Emmert Clerk By Geo. W. Harris Deputy
CLK

Bond

Know all men by these presents that we
Bernard Dowling and James O'Brien
are held and firmly bound unto
Alexander Young & Elizabeth Young
his wife & Francois Marchildon &
Julia Ann Marchildon his wife

in the penal sum of Five Hundred Dollars,
lawful money of the United States
for the payment of which well and
truly to be made we hereby bind our-
selves, our Heirs, Executors and adminis-
trators firmly by these presents, Witness
our hand and Seals this 2nd day of March
A.D. 1852.

The condition of the above
obligation is such that whereas the above
named Bernard Dowling has prayed
for and obtained a writ of Injunction
from the Circuit Court of Canoe County
in the State of Illinois restraining and
enjoining the said Alexander Young and
Elizabeth Young his Wife & Francois Marchil-
don & Julia Ann Marchildon his Wife, from
proceeding to the enforcement of a judgment
at law obtained by them against the said
the said Bernard Dowling in the said
Circuit Court on the 26th day of September
A.D. 1851 in Ejectment until the said
Court shall make other order to the
contrary. Now if the said Bernard
Dowling shall pay or cause to be paid
to the said Alexander Young & Elizabeth
Young, & Francois Marchildon & Julia
Ann his Wife all money and costs due
or to be due in said action at law and
also all such costs and damages as shall be
awarded against the said Complainant in

case the said Injunction herein granted shall
be dissolved then this bond to be void, otherwise
to remain in full force and effect.

Attest
Wm T. Miller

Bernard ^{his} Dowling ^{Seal}
J. O'Brien ^{mark} ^{Seal}

Upon which Bond is the following
Endorsement to wit:

"Filed March 2^d 1852. J. P. Emmert Clerk
By Geo N. Harris Depty Clk.

Writ of Injunction

State of Illinois,
Carroll County } st.

To Alexander Young,
and Elizabeth Young, his Wife & Francois
Marchildon & Julia Ann Marchildon
his Wife and their Attornies Solicitors and
Agents greeting:

Whereas Bernard Dowling
has lately exhibited his Bill of complaint
to the Judge of the Circuit, in and for the
County and State aforesaid on the Chancery
side thereof against you the said Alexander
Young & Elizabeth Young Francois Marchildon
& Julia Ann Marchildon defendants wherein
among other things it is alleged that you unjustly
prosecute the said Complainant at Law, touching
the matters and things therein stated and set

forth. We therefore in consideration of the
premises do strictly Enjoin and command
you the said Alexander Young & Elizabeth Young
Francois Marchildon and Julia Ann Marchildon
and all and every the persons above mentioned
that you and each of you do absolutely
and entirely desist from all further proce-
ding at Law against the said Complainant
concerning any of the matters in the said bill
of complaint of, from taking possession of
the lot of land in said Bill described, until
you and each of you shall appear to, and
fully answer the Complainants Bill and the said
Court make other order to the contrary. Hereof
fail not under the penalty of what the Law
directs. To the Sheriff of the County of Davis
Illinois to Execute.

Witness Jacob P. Emmert Clerk
of our Circuit Court at Mount
Carroll this second day of
March A.D. 1852.
Attest J. P. Emmert Clerk
By George W. Harris Deputy Clk

which said Writ is endorsed as follows, to wit:
"Executed this Writ on said Alexander Young
and Elizabeth Young his Wife by delivering
to each of them a true & certified Copy thereof
on the 5th day of March A.D. 1852, the said
Francois Marchildon & Julia Ann Marchildon

not found.

Sheriff's Fees
Ferry & Rty \$2.10
2 Cts & Mileage .60
\$2.70

C. E. Sanders Sheriff
of Jo. Davis County Ill.

Subpoena

State of Illinois }
County of Carroll } sct. The People of the
State of Illinois To the
Sheriff of Jo. Davis County, Greeting:

We Command you
to summon Alexander Young, Elizabeth
Young, Francois Marchildon & Julio Ann
Marchildon if to be found in your County
personally to be and appear before the Judge of
our Circuit Court to be holden in and for
the said County and State at the Court House
in Mount Carroll on the second Monday in
the month of April next to answer the matters
and things contained in a certain bill in chancery
exhibited against them by Bernard Dowling
in our said Court on the Chancery side
thereof and further to do and receive whatever
the said Court may then and there consider
in this behalf, and this they shall in no wise omit
and have you then and there this writ.

Witness Jacob P. Emmert Clerk
of our Circuit Court at Mount

Carroll this 2nd day of
March A.D. 1852.
Attest J.P. Emmett Clerk
By Geo. H. Harris Deputy Clerk.

which writ of Subpoena has the following
Endorsement, to wit:

Bernard Howling }
Alex^r Young et al } Summons.

Executed the within writ
on said Alexander Young and Elizabeth
Young, by delivering to each of them a
true & certified Copy thereof on the 31th
day of March A.D. 1852, the said
Francis Marchildon, Julian
Marchildon not found in my
County.

Sheriff's fees
Serving & Retg \$1.10 }
2 Copies & Mileage 60 } C. E. Sanders Sheriff
\$1.70 } of Jos Davis County Ill.

Upon the Entry Book of the Circuit
Court of said Carroll County for the
April Term 1852 - appears the follow-
ing Docket Entry, to wit: under
the head of Appearances for said Term

Higgins P. Edward Dowling
& Strother } In Chancery.
S. M. Wiles Alexander Young
and others

And afterwards to wit on the 13th day
of April 1852, was filed the following:

Demurrer

State of Illinois Carroll County ss.

Circuit Court in Chancery sitting
April Term A. D. 1852.

The joint and separate demurrers of
Alexander Young & Elizabeth Young
Francis Marchildon & Julia Ann
Marchildon, defendants in the bill of
complaint of Bernard Dowling Com-
plainant.

These Defendants by protestation
not confessing or acknowledging all or any
of the matters and things in the said
Complainant's Bill contained to be
true in such manner and form as the
same are therein & thereby set forth and
alleged, do demur to the said Bill and
for cause of Demurrer show that the
said Complainant has not by his
said Bill made such a case as entitles

him in a Court of Equity to any discovery
from these defendants respectively or any of
them or to any relief against them as to the
matters contained in said Bill or any of such
matters and that any discovery which can
be made by these Defendants or any of them
touching the matters complained of, in the said
Bill or any of them cannot be of any avail
to the said Complainant for any of the
purposes for which a discovery is sought
against these defendants by the said Bill nor
entitle the said Complainant to any relief
in this Court touching any of the matters
therein complained of = Wherefore and
for divers other good causes of demurrer
appearing in the said Bill these Defendants
do demur thereto and they pray the judgment
of this Honorable Court whether they or
either of them shall be compelled to make
any further or other answer to the said Bill
& pray to be hence dismissed with their
reasonable costs in this behalf sustained
Hoyt & Wilson Sol.
for Dfnts -

said Demurrer endorsed as follows.

Alex^r Young et al
ads }

Bernard Nowling } Demurrer, Filed April
13th 1852. J. P. Emmert Clerk
Hoyt & Wilson Sol. for Dfnts.

and afterwards to wit for the October Term 1852 among the continuances appears the following Docket Entry.

Higgins & Strother - Bernard Dowling }
S. M. Wilson - Alexander Young et al } Injunction

And afterwards to wit for the April Term 1853, appears the following Docket Entry

Higgins & Strother - Bernard Dowling }
S. M. Wilson - Alexander Young } Injunction
Elizabeth Young }
Francis Marchildon }
Julia Ann Marchildon }

Also at the Term last aforesaid on the 28th day ~~the~~ of April 1853, there appears upon the Records the following Entry to wit:

Bernard Dowling }
Alexander Young, Elizabeth Young, } Injunction
Francis Marchildon and Julia }
Ann Marchildon }

At this time it is ordered by the Court that this cause be continued generally.

And afterwards to wit at the October Term A.D. 1853 of the Circuit Court of said County upon the Records appear the following Docket Entry. to wit:

Higgins & Strother -	Bernard Dowling	} Injunction
J. H. Wilson -	Alexander Young,	
	Elizabeth Young,	
	Francis Marchildon &	
	Julia Ann Marchildon	

Also at the Term last aforesaid on the 11th day of the said month upon the Records of said Court appears the following Entry to wit:

Bernard Dowling	} In Chancery.
Alexander Young,	
Elizabeth Young,	
Francis Marchildon	
& Julia Ann Marchildon	

And now at this time came on to be heard the demurrer of the said Defendants to the Complainant's bill, heretofore filed herein, which after argument thereon by Counsel is overruled by the Court, and the said Defendants electing to abide by their said Demurrer herein, and failing to answer the said Complainant's

Bill. It is therefore Ordered, adjudged and decreed by the Court now here by virtue of the power vested therein, and the Injunction heretofore granted in this case be made perpetual, and that the said Defendants and each of them, and all persons claiming by, through and under them be forever restrained from proceeding in Ejectment or otherwise against the said Complainant, or his heirs or assigns, to recover the possession of the Lands and Tenements in the said bill described to wit: Lot number Twelve 12 in Block No. Twenty three (23) on the East side of Fever River in the City of Galena in the County of Jo Daviess and State of Illinois, agreeably to the United States survey of the late Town of Galena, excepting and reserving a right of way across and over the Easterly end or rear of said Lot, eight feet wide for the purpose of making an Alley through said Block in the Center thereof fifteen feet wide for the use and benefit of all the property on said block thenceforth & forever, for or on account of any defect in the return to the Circuit Court of Jo Daviess County State of Illinois or for want of any return of Thomas Drum as Guardian of Elizabeth and Julia Ann Bates, and of his sale of said Lot as such Guardian. And that the said Defendants so far as they claim said lot by reason of being the Heirs of said Nehemiah Bates, and by

reason of the want of a return of the doings of said Drum as Guardian of said Elizabeth and Julia Ann Bates, be forever estopped and barred from further claiming the same, or in any manner interfering therewith. And it is further ordered adjudged and decreed that the said Defendants release to said Complainant all the right and of said Defendants which they inherited from said Nehemiah Bates to the said Lot and which are claimed by them solely because of a want of a return of the sale thereof by said Drum to the Circuit Court as is in the bill in this case alleged, and that such release be made within sixty days or in default thereof, that the Master of Chancery of this Court be appointed a special Commissioner to execute a release for and in the names of said defendants as then act and deed, of the said described lot and premises so far as the same are claimed by reason of the said Thomas Drum having failed in his life-time to make a return as such guardian as aforesaid. And it is further ordered, adjudged and decreed that the Defendants pay the costs of this proceeding, and that an Execution be issued therefor as on ordinary judgments at law. And it is also ordered, adjudged and decreed, that an Appeal to the Supreme Court be, and is hereby granted and allowed in this case, upon the said Defendants Alexander Young and Francois Marchildon, or either of them entering into bond

in the sum of Two Hundred and Fifty Dollars with James Carter as security, conditioned &c, as is in such cases required.

Power of Attorney

Know all men by these presents that we Francis Marchildon and Julia Ann Marchildon his wife (late Julia Ann Bates) of Cape Girardeau State of Missouri have made constituted and appointed and by these presents do make constitute and appoint Alexander Young of the City of Galena County of Goddards State of Illinois our true and lawful Attorney for us and in our names and for our sole use to take the charge have control and management of all the real Estate in the said County of Goddards belonging to us in right of the said wife Julia Ann, for us and in our names to rent so much and such portion of the same and upon such terms as to said Young shall seem advisable and to receive the rents and profits of the same for our use. And the said Alexander Young is hereby authorized and empowered as our attorney for us and in our names to sell, transfer and convey all of said Real Estate or any part

or portion thereof upon such terms as to the
said Young shall or may seem advisable
and to receive the monies & profits thereof
of the same for our use. And in the renting
selling, conveying and managing of the same
to execute for us and in our names all proper
& necessary deeds of conveyance and instru-
ments of writing conveying all our right and
interest in said real Estate in as full and
ample a manner as we might or could
do were we personally present. And the said
Alexander Young is hereby further author-
ized & Empowered as our Attorney, for
us and in our names to commence,
institute, conduct, prosecute and carry
on until final judgment, all actions
in law or equity, concerning any and
all real estate or any matter arising
or already grown out of the same owned
by us in right of the said Julia Ann
in said County, in such manner and upon
such terms and at such times as to him shall
seem for the benefit of said property. And
as certain suits in law and equity con-
cerning said property have been commenced
with the consent and by the request of
said Julia Ann prior to her intermarriage
with the said Francois Marchildon, and
the same are now pending in Court of Jo-
nathan County & State of Illinois, we the
undersigned in consideration of the benefit

derived to us from the same and the further sum of one dollar paid us by the said Young, the receipt whereof is hereby acknowledged have sanctioned and approved of all that has been there in done in that behalf and hereby do approve and ratify the same in all things that has been done in our name by our said Attorney Alexander Young. And do further Authorize and empower the said Alexander Young to manage, control direct & prosecute said last mentioned Suits, for us and in our names to final Judgment and said Young is further authorized to retain and Employ in all matters of law and Equity growing out of the same, or where he may deem the interest of the undersigned require it such Attorneys at law as he may deem best, hereby giving and granting unto our said Attorney Alexander Young full power & authority in the premises to use all lawful means in our names and for our sole benefits for the purposes aforesaid. Said Young is also authorized to defend any actions at law or Equity Concerning any of said property and may in all matters of dispute & controversy make and effect such compromises or settlements as he may deem advisable, and generally to do & perform all such acts, matters and things as our said attorney shall deem necessary or expedient for

the completion of the authority hereby given
as fully as we might and could do if
personally present, and finally hereby
ratifying and confirming all the acts of our
said Attorney or his substitutes done by
virtue of these presents. Whereas all
the real Estate in said County of Goddard
owned by the undersigned in right of the
said Julia Ann are undivided halves
the remaining and other undivided halves
belonging to said Alexander Young & Elizabeth
his wife in right of the said Elizabeth. now
it is understood by the undersigned and the
said Young is hereby directed to manage
& control and do all things which he is
herein empowered to do upon the same
basis and to the same end that the same
are conducted for himself and said
Elizabeth. In Witness Whereof we have
hereunto set our hands & seals this
day of March A.D. Eighteen Hundred
& fifty.

Signed & Sealed } Francois Marchildon Esq
in Presence of }
William S. Watson } Julia Ann Marchildon Esq

State of Missouri }
Cape Girardeau County } ss.

J. William S. Watson
a Justice of the peace in & for said County
do hereby certify that Francois Marchildon

+ Julia Ann Marchildon his wife
(late Julia Ann Bates) whose signatures
appear to the foregoing letter of Attorney
and who are personally known to me
to be the identical persons who signed
the same this day appeared before me
and acknowledged that they had signed,
sealed and delivered the same as their
free act & deed and for the uses & purposes
therein expressed. In testimony whereof
I have herunto set my name and
affixed my seal at Cape Girardeau
this Twenty third day of March AD 1850

William J. Watson Clerk
Justice of the Peace of
Cape Girardeau Township Cape
Girardeau County

Upon the margin of which Letter of Attorney
is the following to wit: Filed October 25th 1853
J. P. Emmert Clk.

also at the date of filing the aforesaid
Power of Attorney, the following
Bond was filed, to wit:

Bond

Know all men by these presents that we
Alexander Young and James Carter of the
County of Goddard and State of Illinois

are held and firmly bound unto
Bernard Dowling also of the same County
and State, in the penal sum of Five
Hundred and Fifty Dollars current money
of the United States, for the payment of
which well and truly to be made, we bind
ourselves, our Heirs, Executors and administra-
tors jointly, severally and firmly by these
presents. Witness our hands and seals.
this 22^d day of October A.D. 1853.

The condition of the above obligation is
such, that whereas the said Bernard Dowling
did, on the day of October A.D. 1853,
in the Circuit Court in, and for the County
of Carroll and State aforesaid, on the
Chancery side thereof, recover a judgment
against the above bounden Alexander Young,
together with Elizabeth Young, Francis
Marchildon and Juliana Marchildon
for a certain amount of costs as yet
not assessed by the Clerk of said Court,
from which said judgment of the said
Circuit Court the said Alexander
Young, Elizabeth Young, Francis Marchil-
don and Juliana Marchildon has
prayer for and obtained an appeal
to the Supreme Court of said State.
Now if the said Alexander Young,
Elizabeth Young, Francis Marchildon
& Juliana Marchildon or either of them.

shall duly prosecute their said Appeal with Effect, and shall moreover pay the amount of the Judgment costs, interest and damages rendered and to be rendered against them, in case the said Judgment shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force and effect.

Taken and approved by } Alex^r. Young Seal
me this 25th day of }
October AD 1853 } J. Carter Seal
J. P. Emmet Clerk }

which bond is endorsed as follows.

Alexander Young et al
ad
Bernard Bowling }

Bond, Filed October
25. 1853. J. P. Emmet Clerk.

At the time of filing the foregoing Bond the following was also filed.

Bond

Know all men by these Presents that we Alexander Young, Elizabeth Young, Francis Marchildon, Julia Ann Marchildon, and James Carter of the County of DoDaries and State of

Illinois are held and firmly bound unto Bernard Dowling also of the same County and State in the penal sum of Two Hundred & fifty dollars current money of the United States for the payments of which well and truly to be paid made we bind ourselves, our Heirs, Executors & Administrators jointly, severally & firmly by these presents. Witness our hands & Seals this twenty second day of October A.D. 1853.

The condition of the above obligation is such that whereas the said Bernard Dowling did on the day of October A.D. 1853 in the Circuit Court in & for the County of Carroll and State aforesaid on the Chancery side thereof recover a judgment against the above bound Alexander Young, Elizabeth Young, Francois Marchildon ~~Marchildon~~ & Julia Ann Marchildon for a certain amount of costs as yet not assessed by the Clerk of said Court, from which said judgment of the said Circuit Court the said Alexander Young, Elizabeth Young, Francois Marchildon and Julia Ann Marchildon has prayed for and obtained an appeal to the Supreme Court of said State. Now if the said Alexander Young, Elizabeth Young, Francois Marchildon & Julia Ann Marchildon shall duly

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prosecute their said Appeal with Effect, and shall moreover pay the amount of the Judgment, costs, interest and damages rendered and to be rendered against them in case the said Judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and effect.

Taken & approved by me) Alex^r. Young Seal
this day of October Elizabeth Young Seal
A.D. 1853 { Francois Marchildon Seal
by his atty Alex^r. Young Seal
Julia Ann Marchildon Seal
by her atty Alex^r. Young Seal
Jalarte Seal

Upon which Bond is the following endorsement.
Alexander Young et al, ads Bernard Dowling.
Bond. Filed October 25, 1853. J.P. Emmett Clerk.

State of Illinois,
Carroll County } J. J. P. Emmett Clerk of the
Circuit Court in and for said
County do certify that the foregoing is a full
complete and perfect transcript of all the
proceedings in said Court in the case of Bernard
Dowling against Alexander Young, Elizabeth Young, Francois
Marchildon and Julia Ann Marchildon.

Witness my hand and the Seal of said Court
at Mt. Carroll this 1st day of December A.D. 1853.
J.P. Emmett Clerk

And now Come the said appellants
by Blackwell & Beckwith their attorneys
and say that in the record of the
proceedings aforesaid and in the
 rendition of the decree aforesaid
manifest error hath intervened
to their prejudice in this Court.

1. The said Circuit Court erred
in ~~its~~ overruling the claim
of the said appellants to the
lot aforesaid

2 The said Court erred in
rendering a decree in favor
of the said appellee when by
the tenor of the said said
decree ought to have been
rendered in favor of the said
appellants.

Wherefore &c.

Blackwell & Beckwith
per G.

And said defendant in error says there
is no error in the record & proceedings aforesaid
Higgin & Shott
for depts in error

Bernard Goring

ato

Alexander Young

Elizabeth Young

Francois Marchildon

Julia Ann Marchildon

Transcript

Filed June 12, 1854.

Loisland Chh

~~42~~ 42.

Allen Young state

Bernard Dowling

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