No. 14270

Supreme Court of Illinois

Smith

vs.

Huston

71641 7

STATE OF ILLINOIS,

15

SUPREME COURT,

Third Grand Division.

14270

No. 43.

Smith
vs
Haston

1862

STATE OF ILLINOIS, } ss.
SUPREME COURT,

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Iroquois — Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Iroquois County, before the Judge thereof, between

James Huston

plaintiff, and Annie G. Smith & others are

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Annie G. Smith & Roswell E. Smith

as we are informed by their 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 judgment 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. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 6th day of August in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

109

Annie G. Smith et al

No. vs.

James Huston

WRIT OF ERROR.

This writ of error is made a supersedeas and as such is to be obeyed by all concerned

L. Leland Clk

FILED August 6 A. D. 1860

L. Leland

Clerk.

Know all Men by these Presents, That We Annie G. Smith & Roswell C. Smith,

as principal, and George B. Joiner

as security, are held and firmly bound

unto James Huston

in the penal sum of One Thousand Dollars

good and lawful money of the United States, for the payment of which, well and truly to be made, the said Annie G. Smith & Roswell C. Smith

bind ourselves our ~~themselves their~~ heirs, executors and administrators, jointly, severally and firmly by these Presents.

Witness, our hands & seals

this Sixth day of August A. D. 1860.

The Condition of the above Obligation is such, That, whereas the above named James Huston,

did, at the November Term of the ~~Bureau~~ Iroquois Circuit Court, held in and for the County of Iroquois in the State of Illinois, A. D. 1859 recover a judgment against the above bounden Annie G. Smith & Roswell C. Smith, together with Henry W. Ellsworth, Henry G. Ellsworth, Ellen A. Rose, Julius C. Rose, Elizur Goodrich, Thomas S. Williams, Chauncey A. Goodrich, William W. Ellsworth, Henry White, Henry R. W. Welch, William S. Peckham, Special Administrator of the Estate of Henry L. Ellsworth, deceased, for the sum of Eighteen hundred and thirty three dollars & seventy two cents, besides interest costs and a decree for the sale of lands, to reverse which said judgment, the said Annie G. Smith & Roswell C. Smith,

have sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the said Annie G. Smith & Roswell C. Smith

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said judgment, and all judgments, costs, interest and damages which the said Supreme Court shall adjuge against them,

and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Annie G. Smith [SEAL.]

Roswell C. Smith [SEAL.]

[SEAL.]

[SEAL.]

Geo B Joiner {Seal}

109

No. .....

SUPREME COURT,

THIRD GRAND DIVISION.

Annie G. Smith et al

vs.

James Austin

SUPERSEDEAS BOND.

Filed Aug. 6th 1860

C. Velard Clerk.

Supreme Court of Illinois
Third Grand Division

Roswell C. Smith & others
vs
James Huston

} Error to Iroquois circuit Court

It is agreed by the parties that this cause at the next term of the court shall be continued generally to the succeeding term.

April 1st 1861

Huff & Jones
attys for pltffs

Jonathan Blodgett Atty for Pltffs

Orth & Stevens
for deft.

109
Smith
vs
Huston —

agt. to continue

Filed Apl. 8. 1861
L. Leland
Clk.

(Copy)

It is hereby agreed by James Huston on the one part and Henry W. Ellsworth et al. on the other part, that said Huston shall execute and deliver to said Ellsworth et al. a deed for 480 acres of land in Benton Co. and for 160 acres in Iroquois Co. Ill. which deed is now in the hands of Orth & Stein for delivery. that said Henry & the other heirs of Henry L. Ellsworth dec'd shall execute a release to said Huston of all claim in and to the residue of the lands embraced in the transactions between said Huston and said Henry L. Ellsworth.

It is further agreed that the suit now pending between said parties in Tipp. Cir Court shall be dismissed at the costs of said Huston, that the proceedings & judgt in Iroquois Co. Ill. shall be vacated at the costs of said Huston, except the costs subsequent to said decree, in the way of appeal to the Supreme Court, which shall be paid by said defendants.

That this shall be a full settlement release of all matters of accounts or money demands existing at any time between said Huston & said Henry L.

Ellsworth.

Witness our hands & seals this 17th day of April AD. 1861.

(signed) James Huston (Seal)

Roswell B. Smith Agt for himself was atty for the Heirs of said Ellsworth.

109 — 43

Copy of Agreement
between
Jas Huston —
Thos W. L. Ellsworth

Filed Oct. 1. 1862
L. Leland
clks

Annie G. Smith &
Roswell C. Smith
impleaded with &c.
&
vs
James Huston.

Error to Fairfax Circuit Court. —

I Annie G. Smith above named hereby authorize my husband Roswell C. Smith, in my name and behalf to prosecute a writ of error and ~~said~~ obtain a writ of supersedeas in said cause, and for this purpose to execute for me and in my name and behalf any bond or bonds, or other instrument in writing in that behalf.

Witness my hand & seal this 31st day of July AD 1860.

Annie G. Smith {Seal}

Filed August 11. 1860
L. Leland
Clerk

1

The People of the State of Illinois,-

To all to whom these Presents shall come, Greeting-

Know ye that we have caused to be inspected the Records, and proceedings, of our Circuit Court, in and for our county of Iroquois & do find certain records, and proceedings, in the words & figures following, (to wit.)

United States of America,
State of Illinois, } ss.
Iroquois County.

Pleas before the Honorable Charles R. Starr, Judge of the Twentieth Judicial Circuit, and presiding Judge of the Iroquois County Circuit Court, in the State of Illinois, at a term of the said Court begun and held at the Court House in Middleport in said county, and state aforesaid, on the third Tuesday (the same being the fifteenth day) in the month of November in the year of our Lord, One thousand Eight hundred and fifty nine, and of the Independence of the United States of America, the eighty fourth-

Present. Hon Charles R Starr, Presiding Judge of the Twentieth ~~Twelfth~~ Judicial Circuit.
Charles J. Beattie, States attorney, of said Circuit.
Theodore Ayres, Sheriff of Iroquois County.
Thomas Vennum, Clerk of the Circuit Court.-

And.-

Heretofore, to wit, on the Eighth day of August, AD 1859, came James Houston, by his Solicitors Messrs Orth & Stein, and filed in our said Court,

his Bill in Chancery, which reads in the words and figures following, to wit,-

State of Illinois,
Iroquois County } ss. In the Circuit Court of said County, November Term 1859.

James Houston, Complainant,

vs.

Henry W. Ellsworth, Annie G. Smith, Roswell C. Smith, Henry G. Ellsworth, Ellen A. Rose, Julius K. Rose, Elijah Goodrich, Thomas S. Williams, Chauncey A. Goodrich, William W. Ellsworth, Henry White, Henry K. W. Welch, and William S. Peckham, Special Administrator of the Estate of Henry L. Ellsworth, Dec'd. Defendants. } Bill.

To the Honorable, the Judges of said Court in Chancery sitting,-

Comes said Complainant by Otto & Stein, his Attorneys, and avers that said Complainant and One Henry L. Ellsworth, now deceased, in his life time to wit, on the 15th day of May 1851. entered into an agreement in writing, signed by said Ellsworth which reads as follows to wit,-

La Fayette Ind May 15. 1851.

Received of James Houston, Eleven Mexican Warrants, for One Hundred and Sixty acres each, viz numbers, 73034. 72523. 67682. 72930. 72321. 72891. 27795. 27503. 27783. 73036. 66658. six of which are to be located for the sole benefit of said Houston, on Section thirteen, Town Twenty-seven, and Range Ten west, and on the South

half of Section Twelve, Town Twenty seven, and Range Ten - The other five are to be located by said Ellsworth in Jasper County, for the benefit of said Houston & Ellsworth, in the manner following viz, in Houston's name, and when at the end of four or five years, said lands shall pay the capital and interest of Ten per cent, per annum on the cost of Six Hundred and ninety six Dollars, then the overplus is to be Equally divided between said Houston Ellsworth and said Ellsworth guarantees to said Houston, said Ten per cent. per annum and capital invested, and said Houston has placed in the hands of said Ellsworth, the sum of Two Thousand and Eighty-five dollars, to purchase Fifteen more Mexican warrants, and if they cost less than One Hundred and Thirty nine dollars, said Houston is to be handed the saving, and if they cost more to be charged. - These Fifteen last ~~Mexican~~ warrants are to be ~~located in~~ entered in James Houstons name, on the same terms as the five last named, except as to the place of location, ~~and if the profits before dividing the same~~, Whatever expense arises from the locations, is to be charged and taken out of the profits, before dividing the same - said Houston has expended Ten Dollars, and in case the land is previously entered in Sections Number Thirteen and Twelve, then said Ellsworth can enter said warrants of land elsewhere.

Attest. Aaron Bannatta. Henry L. Ellsworth.

Received of James Houston three warrants,

amounting to $280 acres. which its is agreed cost $130. for each 160 acres. and at that rate for the 80 & 40 acre warrants.

Number of Warrants 47.812.
9.105.
27.702.

These are to be entered on the same terms as the former entries, and I agree that the two thousand & Eighty ~~five~~ Dollars left to be invested, have been invested, at a cost of $130. for each warrant of 160 acres, and such as have been invested in my name, I agree to deed immediately to James Houston. Henry L. Ellsworth.
June 25th 1852.

Received of James Houston also, one Eighty acre warrant, No 28.677, which is to be located on the same terms as the last above deeded.- except this 80 acre warrant is to be estimated at Eighty Dollars. Henry L. Ellsworth
April 8th 1853.

That in pursuance of said agreement, said Complainant furnished to said Ellsworth the Land Warrants, and money therein specified, and said Ellsworth with a portion of said warrants and money located and entered, within the said County of Iroquois, the following Real Estate, to wit.- The South East Quarter of Section thirteen (13.) Township twenty-~~four~~ (24.) north, of Range fourteen (14.) West.- The South half of the South west Quarter of section twelve (12.) Township twenty-four (24)

Range thirteen (13.) west. The west half of section thirteen (13.) Town twenty-four (24.) Range thirteen (13.) The South East Quarter of section thirteen (13.) Town twenty-four (24.) Range thirteen (13.) ~~west.~~ The East half of section twenty one (21.) Town twenty four (24) Range thirteen (13) west. The South half of the South East Quarter of section Eleven (11.) Township twenty four (24.) Range Eleven (11) being in all Eleven Hundred and twenty (1120.) acres more or less.

Said Complainant further avers that the six several tracts of land firstly above described were in pursuance of said agreement, entered by said Ellsworth, for this complainant, for his own seperate use, benefit and behoof. and that said Ellsworth never had or pretended to have, any interest whatever in said six tracts of land, or in the proceeds or profits thereof.

Said complainant further avers, that said Ellsworth departed this life on or about the day of December 1858. that no arrangement or disposition with reference to said lands, or of the profits thereof, was ever made between said Ellsworth and this complainant, prior to the death of said Ellsworth, although this complainant, frequently urged and requested said Ellsworth to have said lands sold, and the profits if any divided between them, but said Ellsworth neglected and refused so to do. nor has any such disposition or settlement been made since his death by his legal representatives.

The said Ellsworth made a last will, and testament dated February 12. 1851. with a codicil

thereto attached, dated May 15th 1856. (which will and Codicil are not in the possession, or under the control of this Complainant.) by which said Ellsworth appointed said defendants Elizur Goodrich, Thomas S. Williams, William W. Ellsworth, and Chauncey A Goodrich his Executors, and devised and bequeathed to them all his Estate Real and personal, in trust for certain uses and purposes therein specified –

That said Ellsworth afterwards made another last Will and Testament dated April 28-1857. with Codicil attached dated August 26-1858, (which will & codicil are not in the possession, or under the control of this Complainant.) by which said Ellsworth appointed said defendants Chauncey A. Goodrich, Henry White, Elizur Goodrich, William S. Peckham and Henry K. W. Welch, his Executors, and devised, and bequeathed to them his estate real and personal, for certain uses and purposes therein specified – That both of said Wills are being contested by the parties, defendants aforesaid, severally interested in the same, that pending such litigation said defendant William S. Peckham, has been duly appointed Special Administrator of the Estate of said Henry L. Ellsworth, with full power & authority to take charge of said Estate, collect & pay the debts, thereof &c, and is now in the discharge of his duties as such Special administrator – That said Ellsworth left him surviving as children and heirs at Law, said defendants Henry W. Ellsworth, Annie G. Smith, married to Roswell

C. Smith, Henry G. Ellsworth, and Ellen A Rose, married to Julius K. Rose, said Complainant further avers, that there is due to him from the Estate of said Ellsworth under his contract with said Ellsworth, on account of said warrants and money, and on account of interest taxes, and expenses, a large sum of money to wit, the sum of Six Thousand Dollars, that all said lands (except the Six tracts, sixty above described) are held in trust by this Complainant for the payment of said sum of money, the payment of which was fully guaranteed to him by said Ellsworth. Said Complainant therefore asks the following Relief—

1st. That all of said defendants be duly notified of the pendency of this suit, and required to answer the same.

2nd. That an account be taken of what is due and owing to ~~said~~ Complainant in the premises, and a judgment therefor rendered against said Peckham as such administrator—

3rd. That said lands be decreed to be sold, and the proceeds thereof applied to the payment of the amount thus found to be due, and owing from the estate of said Ellsworth—

4th That the surplus if any arising from such sale after paying the amount so found due as aforesaid, be divided equally between this Complainant, and the Estate of said Ellsworth.

5th. That if the proceeds of such sale be insufficient, to meet the payment of the amount thus due—

and costs of suit, the deficiency be deemed to be paid by said Reckham, as such administrator out of any moneys in his hands belonging to said estate.

6th. Such General Relief, as Justice and Equity may require. Orth & Stein
Solicitors for Pltff.

And at the same time said Houston filed in our said Court with said Bill in Chancery, and attached thereto, ~~the follg~~ a certain affidavit, and certificates, and directions to Clerk of said Court, which read in the words and figures following to wit,—

State of Indiana
Tippecanoe County } ss.

Before the undersigned a Justice of the Peace in and for said County personally appeared Robert C. Gregory, who being by me duly sworn says, that Henry W Ellsworth, Annie G. Smith, Roswell B. Smith, Henry G. Ellsworth, Ellen A Rose, Julius K. Rose, Elizur Goodrich, Thomas S. Williams, Chauncey A. Goodrich, William W. Ellsworth, Henry White, Henry K W. Welch, and William S. Reckham (defendants in a suit in the Circuit Court of Sangamon County Illinois, wherein James Houston is Plaintiff,) are not residents of the State of Illinois and further saith not.—

Subscribed & sworn to before me this 4th day of August 1859 } Robert C. Gregory.
John S. Allen, Justice (Seal)

The State of Indiana }
Tippecanoe County } ss.

I, William R. Ellis, Clerk of the Common Pleas Court of said County, in the State of Indiana, do hereby certify that John S. Allen whose signature appears to the affidavit of the within Robert C. Gregory, and before whom the same appears to have been taken, was at the date thereof, to wit, the 4th day of August, 1859, an acting Justice of the Peace within and for the county and State aforesaid, duly elected, Commissioned and qualified, and as such full faith and credit are due to all his official acts, and that his signature to the same is genuine.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, at Office in Lafayette, on this 4th day of August AD 1859.

{Seal}

Wm. R. Ellis, Clerk.

State of Indiana, Tippecanoe County, ss.

I, Gustavus A. Wood, who am Judge of the Common Pleas Court of ~~said~~ Tippecanoe County, in said State, do hereby certify, that the same is a Court of Record, and that William R. Ellis, was on the 4th day of August 1859, and still is, the Clerk of said Court; that his signature to the foregoing certificate is his genuine signature, and that the seal of said Court thereto annexed is the genuine seal thereof, and that full faith and credit are due to said signature and seal. Witness my hand & seal this 4th of August 1859. Gustavus A. Wood (Seal)

Clerk, please make publication as defendants, pursuant to law. Orth & Stein, Solcs. for Plff.-

And,

that afterwards, to wit, on said 8th day of August AD 1859- the Clerk of said Court issued process, in said cause to the Sheriff of said County, which reads in the words & figures following, to wit:-

State of Illinois, }
Iroquois County } ss.

The People of the State of Illinois to the Sheriff of said County, Greeting:-

We command you that you summon Henry W. Ellsworth, Annie G. Smith, Roswell C. Smith, Henry G. Ellsworth, Ellen A Rose, Julius K Rose, Elizur Goodrich, Thomas S. Williams, Chauncey A Goodrich, William W. Ellsworth, Henry White, Henry K. W. Welch & William S. Peckham, Special Administrator of the Estate of Henry L. Ellsworth, deceased, if they shall 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 the Town of Middleport, in said County, on the 3rd Tuesday, in the month of November next, to answer James Houston in his certain Bill of Complaint, filed in said Court, on the Chancery side thereof, and have you then and there this writ- Witness Thomas Vennum Clerk of said Court, and the seal thereof, at Middleport in said County, this 8th day of August AD 1859.

{Seal}

Thomas Vennum
Clerk-

11

On which said Process, there appears the following return, in the words and figures following to wit,

"The within named Henry W. Ellsworth, Annie G. Smith, Roswell C. Smith, Henry G. Ellsworth, Ellen A. Rose, Julius K. Rose, Elizur Hodrich, William W. Ellsworth, Henry White, Henry K. W. Welch, & William S. Peckham, Thomas S. Williams, & Chauncey A. Hodrich, not found in my County. fees. 260 miles Travel $13.00
Return .10
$13.10

Nov 12th 1859.

Theodore Ayres. Sheriff.

And afterwards, to wit, on the 19th day of September AD 1859. said Houston filed in our said Court, in said cause, a Bond for costs, which reads in the words & figures following to wit.

State of Illinois,
Livingston County } ss. In the Circuit Court of said County, at November Term 1859.

James Houston
vs
Henry W. Ellsworth et al } Bill in Chancery.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party, or any of the Officers of this Court, in pursuance of the laws of this State.

Dated this 6th September 1859.

approved Sept. 9th 1859.
Thomas Denham, Clerk. } W. A. Coler (Seal)

And.

afterwards, to wit, on the first day of December, AD 1859. said Houston files in our said Court, in said cause, "Amendment of Bill", which reads in the words & figures following to wit,-

State of Illinois.
Iroquois County. } In the Circuit Court
November Term 1859.

James Houston
v
Henry W. Ellsworth et al

Said Plaintiff by leave of said Court, amends his bill in this behalf, by striking out of the sentence immediately preceding the prayer for relief, the following clause, viz, ("except the six tracts, firstly above described") also, by striking out the whole of the sentence, reading as follows, viz,-

"Said Complainant further avers, that the six, several tracts of land firstly above described, were in pursuance of said agreement entered by said Ellsworth for this Complainant for his own seperate use, benefit and behoof, and that said Ellsworth never had or pretended to have, any interest whatever in said six tracts of land, or in the proceeds or profits thereof.-

Orth & Stein. for Complts.

Which said Amendment of Bill, is endorsed, "Filed Dec 1. 1859. Thomas Brennum, Clerk".

13 And afterwards, to wit:- on the first day of December, in the Year of Our Lord AD 1859. it being the fifteenth judicial day, of the November Term AD 1859. of said Iroquois County Circuit Court, the said Court being then duly organized, and sitting in open Court for the transaction of business, the following proceedings were had and entered of Record, by the said Court, in the words and figures following, to wit,-

James Houston,
vs.
Henry W. Ellsworth, Annie G. Smith, Roswell C. Smith, Henry G. Ellsworth, Ellen A. Rose, Julius K. Rose, Eliguer Goodrich, Thomas S. Williams, Chauncey A. Goodrich, William W. Ellsworth, Henry White, Henry K. W. Welch, and William S. Peckham, Special administrator of H. L. Ellsworth, deceased.

Bill in Chancery.

Now at this time comes into Court, the said Complainant, by his Solicitor Otto Stein, and files the proof of Publication in this cause, which reads in the words and figures following, to wit,-

State of Illinois } Iroquois County Circuit Court,
Iroquois County } ss. of the November Term AD 1859.

James Houston vs. Henry W. Ellsworth, Annie G. Smith, Roswell C. Smith, Henry G. Ellsworth, Ellen A. Rose, Julius K. Rose, Eliguer Goodrich, Thos. S. Williams, Chauncey A. Goodrich, William W. Ellsworth,

Henry White, Henry K. W. Welch, and William S. Peckham, Special administrator of the Estate of Henry L. Ellsworth deceased. } In Chancery.

Affidavit of the non residence of the above named defendants having been filed, in the Office of the Clerk of the said Iroquois County Circuit Court, notice thereof is hereby given to the said Henry W. Ellsworth, Annie G. Smith, Roswell C. Smith, Henry G. Ellsworth, Ellen A Rose, Julius K. Rose, Elizur Goodrich, Thomas S. Williams, Chauncey A. Goodrich, William W. Ellsworth, Henry White, Henry K. W. Welch, and William S. Peckham, Special Administrator of the Estate of Henry L. Ellsworth deceased, that the above named Complainant James Kustm, filed his Bill of Complaint in said Court, on the Chancery side thereof, on the 8th day of August AD 1859. and that a Summons in Chancery thereupon issued, out of said Court, against said defendants, returnable on the third Tuesday in the month of November next as is by law required -

Now unless you the said defendants above mentioned, shall personally be and appear, before the said Iroquois County Circuit Court, on the first day of the next term thereof, to be holden at the Court House, in the Town of Middleport, in said Iroquois County on the third Tuesday, being the fifteenth day of the month, of November next, and plead, answer, or demur, to the said Complainants bill of Complaint, the

~~the~~ same, and the matters and things therein charged, and stated, will be taken as confessed by you, the said defendants, and a decree entered by said Court in said cause against you according to the prayer of said Bill -

Orth & Stein
Complt Solts -

Thomas Venneum
Clerk.

State of Illinois } ss. Nov. Term of
Iroquois County } Iroqs Cir. Court 1859.

I. Andrew Robertson publisher of the Iroquois Republican, a weekly newspaper printed in the Town of Middleport, Iroquois County, do hereby certify, that the prefixed notice was printed and published in said paper, four consecutive weeks, the first of which was inserted at least six weeks prior to the first day of the present term of the said Court -

Middleport, Illinois
Dec 1. 1859.

Andrew Robertson -

Whereby it appears that due notice has been given of the pendency of the Bill in this behalf, as required by law, and on motion said defendants Henry W. Annie G. Roswell C. Ellen A. Henry G. Thomas S. Chauncey A. William W. Henry & Julius K. are three times solemnly called and come not, but make default, and wholly fail to appear, and answer in this behalf - whereupon the matters and things charged in said Complainants Bill, are taken as and for confessed against them -

And comes said other defendants - Elizur

Henry K. W. & William S. by their Solicitor Chase & Wilstach, and file their answer to said Bill, reading as follows, to wit—

In the Bureau Circuit Court
November Term A.D. 1859.

James Austin
vs.
William S. Peckham
Henry K. W. Welch,
Elizur Goodrich et al.

The Defendants William S. Peckham, Henry K. W. Welch, and Elizur Goodrich, for answer admit the making of the contract, and the location of the lands, in Bureau County Illinois,—as charged in the Bill of Complaint,—and that there is due the complainant, on account of the principal and interest of the investment, the sum of Eighteen Hundred, and Thirty three, dollars, and Seventy two cents, and that the said lands in Bureau County, are liable to be sold to pay the same—

Chase & Wilstach, Attys for
Defts. Peckham, Goodrich & Welch.

And on motion, and by agreement of said parties appearing, this cause is set down for final hearing, on Bill, Answer, Exhibits, and proofs, and the court on due examination being fully advised in the premises do find, that the matters and things stated in said Bill are true as therein charged, and the court proceeding to take an account of what is due, and owing to the Complainant in the

17 premises, find that there is due and owing to him, the Complainant, on account of the purchase ~~money~~ of the lands described, in said Bill, and interest to this date, the sum of One Thousand Eight Hundred, and thirty three dollars, and seventy two cents, and that said lands hereinafter described are held in trust for the payment, said sum of money.

Whereupon it is considered adjudged and decreed, that the said lands described as follows,-viz. The South East Quarter of Section thirteen, Township Twenty-four, north of Range Fourteen West,- the South half of the South West Quarter of Section Twelve, Township Twenty-four north of Range Thirteen west,- the West half of Section Thirteen, Township Twenty four north, of Range thirteen west. The South East Quarter of Section thirteen, Township Twenty-four north, of Range thirteen west,- the East half of Section Twenty one, Township Twenty four north, of Range Thirteen west,- the South half of the South East Quarter of Section Eleven,- Township Twenty-four, north of Range Eleven West, being in all Eleven Hundred and Seventy acres, more or less, situate and being in said County, be sold by the Sheriff of ~~this~~ County, on the third Saturday of July ~~A.D. 1860~~ Eighteen Hundred and sixty, or on any other day thereafter, at door of the Court House at Middleport, in this County, between the hours of 10 A.M. and 4 P.M. to the highest and best bidder, the Sheriff giving previous notice, by Publication, for three successive weeks in

some newspaper printed and of General circulation in this County, that with the proceeds arising from such sales, said Sheriff pay firstly the costs of this suit, and of such sale, secondly pay to said Complainant, or his solicitor, the said sum of One thousand Eight Hundred and Thirty three dollars, and Seventy two cents, so found due as aforesaid, - together with interest on the sum of nine Hundred and ninety one dollars, and Twenty cents, at the rate of ten per cent per annum, from the date of this decree, to the said day of sale, and thirdly pay one half of the overplus, if any to the Complainant, herein, and the other half to said defendant, William S. Peckham, as Special administrator, of Henry L. Ellsworth deceased.

And by the consent of Complainant it is further ordered, and decreed, that should the proceeds of said lands, on such sale be insufficient, to pay said amount found coming to said Complainant, it shall nevertheless operate as a full discharge and release of all claim or demand against the Estate of Henry L. Ellsworth, on account of the purchase of said lands, the interest thereon, and the expenses incurred about the same, as charged in said Bill - And the said Sheriff is hereby directed, to execute, and deliver to the purchaser at said sale, a deed of said lands, conveying all and singular, the estate right title, and interest, of each, and all of the parties to this suit -

And the Clerk is directed to issue a certified copy of this decree to said Sheriff, which shall operate as a special warrant to him in the premises –

State of Illinois, }
Iroquois County } ss.

I, Thomas Vennum, Clerk of the Circuit Court, in and for said County, in the State aforesaid, - do hereby certify, that the foregoing, is a full true, and complete transcript, of all and singular the papers, and records, of the Iroquois County Circuit Court, of said State of Illinois, - in a certain cause, or suit in Chancery, wherein James Houston, was Plaintiff, - and Henry W. Ellsworth, Annie G. Smith, Roswell C. Smith, Henry G. Ellsworth, Ellen A. Rose, Julius K. Rose, Elizur Goodrich, Thos. S. Williams, Chauncey A. Goodrich, William W. Ellsworth Henry White, - Henry K. W. Welch, and William S. Peckham, Special administrator of Henry G. Ellsworth deceased, were defendants, lately pending in said court, as the same appears from the original papers in said cause, in my office, and from the Records of said Court -

Attest my hand and the seal of said Court affixed at Office in Middleport, this second day of August AD 1860.

Thomas Vennum
Clerk

State of Illinois. } Supreme Court. Third Grand Division-
April Term AD 1861.

Henry W. Ellsworth et al.
adl. } Error to Iroquois Circuit
James Houston. } Court.

And now comes ~~said Plaintiffs~~ Annie G. Smith & Roswell C. Smith two of the said defendants in the court below ~~in error~~, and assign the following Errors on the record viz –

1st. The Court erred in rendering any decree upon the Bill. Bill should have been dismissed for want of Equity –

2d. Court erred in ordering payment of any money to Beckham. He having no authority or right to receive the same –

3rd. Court erred in rendering decree, there having been no service and no sufficient publication –

4th. Court erred in rendering decree without proof, two of the defendants being married women.

5th. Court erred in ordering sale of all the premises – Only enough should have been sold to pay Houston's debt. & residue partitioned –

6th. Bill being, in effect for Partition – Court erred in giving a decree, when Bill was not sworn to –

7th. Court erred in ~~not requiring~~ permitting Miles Beckham & Goodrich to file an answer without oath –

8th. That the evidence & proofs upon which the Court acted if any do not appear of record –

R. Jones &
Jacob Wheeler
Atty's for Plaintiffs

State of Illinois } Supreme court
3d Division

~~Roswell~~ R. Smith et al } Error to the Iroquois
vs } Cir court
James Hunter

Personally appeared before me L Leland clerk of said Supreme court. George B Foster and after being duly sworn deposeth and saith that he is worth at least ten thousand dollars over and above all legal liabilities & debts saith not.

Subscribed & sworn to
before me August 3d 1860.

Geo B Foster

L. Leland Clerk Sup. Court

The State of Indiana } ss.
Schuyler County.

Roswell C. Smith being duly sworn upon his oath says, that the above named George B. Foster, is an attorney at Law, and resides at Middleport, in Iroquois County in said state, - and that said Foster has as he is credibly informed, and believes, at least ten thousand dollars worth of property, over & above his indebtedness, in real estate within said state of Illinois & further saith not.

Subscribed & sworn to before me
this 4 day of August AD 1860.

Roswell C. Smith

Subscribed & sworn to before me
this 4th day of August 1860. P. H. Walker

9th. That the Court erred in giving a decree to bear ten per cent interest after judgement.

10. The Court erred in directing a sale by Sheriff. Sale should have been ordered to be made by Master in chancery, or Commissioner.

R. Jones &
Joiner & Blades.
(By R. C. Smith)
attys for Defs in Error.

Filed 1860.

State of Illinois.

Let the writ of error in this case be made a supersedeas upon the plaintiffs in error entering into bond, with George B. Joiner of Sangamon county, in the penal sum of one thousand dollars conditioned according to law. Given under my hand at chambers at Springfield Illinois this 4th day of August 1860.

T. H. Walker
Sup. Court

109 43

Annie G. Smith &
Roswell C. Smith,
impleaded &c.
vs.
James Houston.

Transcript, Exas.
& justification –

Filed Aug. 6. 1860.
L. Leland
Clk.

James Houston
vs.
/