

No. 8553

Supreme Court of Illinois

McGindley et al

vs.

Ince

71641  7

46

1861.

McGouldley & Mayo

As

Due

Appl. from Jasper

Received for Mayman

8553

See file on page 478.

1
Pleas before Honorable Alfred Hitchel
Judge of the Jasper County Circuit Court
in the State of Illinois on the 18th day
of October A.D. 1860—

Horace L. Luce Plaintiff
against $\frac{3}{4}$ Assumpsit
Austin N. McGindley
and Winston Mayo $\frac{3}{4}$ Defendants

Here follows the Declaration in the words and
figures to wit

State of Illinois $\frac{3}{4}$

Jasper County $\frac{3}{4}$

Jasper Circuit Court
May term 1860

Dec 2
Horace L. Luce of Jasper County plaintiff
in this suit complains of Austin N. McGin-
dley and Winston Mayo both of the County afore-
said defendants being summoned &c. of a
plea of trespass on the Case on promises

For that Whereas the said defendants at
Newton in the County aforesaid on the 1st
day of October A.D. 1859 by their promissory
note by them subscribed bearing date on a
certain day and year therein mentioned to wit
the day and year above written and thereby
then and there promised to pay to the said
plaintiff to pay to him or his order Two
hundred and fourteen dollars Six months
after date being for value received by means
whereof and by force of the Statute in such Cases
made and provided the said defendants

2
Dec-
Court
became liable to pay to the said plaintiff the
said sum of money in the said promissory note
mentioned according to the tenor and effect
of the same and being so liable they the said
defendants in consideration thereof after-
wards to wit on the day and year aforesaid
at the County aforesaid undertook and then
and there faithfully promised the said plaintiff
to pay him the said sum of money in said
promissory note specified according to the
tenor and effect of said promissory note

And whereas also the said defendants her-
etofore to wit on the first day of January A.D.
1860 at the County aforesaid was indebted
to the said plaintiff in the sum of four
hundred and fifty dollars for so much money
by the said plaintiff lent and advanced to and
paid out and expended for the said de-
fendants and at their special instances and
request And also in the further sum of
four hundred and fifty dollars for so
much money by the said defendants before
that time had and received for and to the
use of the said plaintiff And being so indebted
they the said defendants in considera-
tion thereof afterwards to wit on the day and
year aforesaid at the County aforesaid under-
took and then and there faithfully promised
the said plaintiff to pay him the said sum
of money in this Court mentioned when he
was therunto afterwards requested

3

Dec
Cont

That the said defendants not regarding their promises and undertakings in this behalf have not as yet paid the said sum of money in the said special Court mentioned to the said plaintiff nor any part thereof neither according to the tenor and effect of the said promissory note nor otherwise howsoever nor have they as yet paid the said plaintiff the said sum in the general Courts mentioned nor any nor either of them nor any part thereof although often requested so to do but to pay the said sum the said defendants both wholly neglect and refuse so to do and still doth neglect and refuse to do to the damage of the said plaintiff of \$450 and therefore he sues &c

George E Hoare Attorney

And the said plaintiff herewith files the note on which this suit is brought together with his account &c

McGendley and Mayo

To Horace L Luce Jr

1 st January 1860	To Money lent	\$450
"	" Money had & rec ^d	450

Here follows Clerk's endorsement on Declaration in words & figures to wit

Dec when filed

Filed in my Office May 1st 1860

Hiram Wade, Clerk

Summons in words & figures to wit

State of Illinois
Jasper County

Summ

The People of the State of Illinois to the Sheriff

of said County granting, We Command you
that you summon Austin N. McGindley and
Winston Mayo if they can be found in your
County personally to be and appear before the
Circuit Court of Jasper County on the first
day of the next term thereof to be holden at the
Courthouse in Newton in and for said County
and State on the second Tuesday in the month
of May next to answer Horace L. Ince of a plea
of trespass on the Case on promises to the dam-
age of the plaintiff four hundred & fifty dollars as
he saith And hereof make legal service and due re-
turn as the law directs - Witness Hiram Wade

L. L. Ince

Clerk of our said Court and the seal
thereof at Newton this 1st day of May
A. D. 1860

Hiram Wade, Clerk

Sherriff's return on summons in words & figures
to wit

I have served the within summons
by reading the same to the within named
defendants

J. C. Melton Sherriff, J. C.

May term Jasper Circuit Court A. D. 1860

At a Circuit Court began and held at
the Courthouse in Newton County of Jasper
and State of Illinois on the 14th day of
May A. D. 1860 - Present honorable A. Mitchell
Judge the Court being regularly opened by the Sherriff -

Order at
opening Ct

Sherriff's return
on summons

Summons
Court

5
Order opening
Court 2nd day

Tuesday Morning second day Court met
pursuant to adjournment - Present as on
Yesterday - The Court regularly opened
by the Sheriff

Here follows Demurrer, in words and figures
To wit

May Term A.D. 1860 Jasper County
Circuit Court Illinois

Demurrer

And the said defendants in their own proper
persons comes and defends the wrong and
injury whereof and says that the said declara-
tion and the matters therein contained in
manner and form as the same are above
stated and set forth are not sufficient in
law for the said plaintiff to have or maintain
his aforesaid action thereof against the said
defendants and they the said defendants
are not bound by law to answer the same
and thus they are ready to verify wherefore by rea-
son of the insufficiency of the said declara-
tion in this behalf the said defendants
prays judgment and that the said plain-
tiff may be barred from having or main-
taining his aforesaid action thereof against
them &c.

A R M Gindley
Winston Mayo

Here follows Clerks endorsement thereon in
words & figures To wit

Order when filed

Filed in my Office May 16th 1860,
Hiram Wade, Clerk

Order opening
6th day

Saturday Morning Sixth day Court reg-
ularly opened by the Sheriff - Present as on
Yesterday

Here follows the Order of the Court in the
words and figures to wit.

Order leave to
Amend Dec
& Con

On this second
day of this term of the Court the parties appeared
by their attorneys and leave herein is granted to
plead in this Cause on the third day of this
term - And now on this 6th day of the term
comes the parties by their attorneys and by a-
greement of said parties this Cause is Con-
tinued untill the next term of this Court
and leave given to said plaintiff to Amend
declaration herein filed.

Here follows amended declaration which is in
the words and figures to wit, and being attached to
the original -

Amended
Dec

For that whereas the defendants on the
1st day of October A.D. 1889 made their promissory
note in writing and delivered the same to
the plaintiff and thereby promised to pay
to the plaintiff two hundred and fourteen
dollars six months after the date thereof
which period hath now elapsed And the
defendants in consideration of the premises
then promised to pay the amount of the said
note to the plaintiff according to the tenor
and effect thereof

7

this is the 1st Court amended

George E Hoare

October term of the Jasper County Circuit Court A.D. 1860

Order Opening
Court

At a circuit Court began and held at the
Courthouse in Newton County of Jasper and
State of Illinois on the fifteenth day of October
A.D. 1860. Present Honorable Alfred Mitchell
Judge. F. D. Preston prosecuting attorney, J. C. Milton
Sheriff ^{and Hyram Wade Clerk} - The Court being regularly Opened
by the Sheriff -

Order Opening
Oct 3rd day

Wednesday Morning third day October term
Jasper Circuit Court October 17th 1860
Present as on yesterday
Court regularly Opened by the Sheriff

Here follows the Order of the Court in the
words and figures to wit

Now at this day

Order extending
rule to plead

Comes the parties by their attorneys and the
defendants Not being ready for trial asks
leave that the rule to plead be extended
untill the fourth day of this term which
leave is granted by the Court untill
8 O'clock the fourth day of this term

8
Order Opening
Oct 4th day

October term A D 1860

Thursday Morning fourth day

Present as on Yesterday

Court regularly Opened by the Sheriff

Here follows pleas numbering 1 to 5 in words and figures to wit:

State of Illinois

Jasper County

3rd Of the October term A D 1860
of the Jasper Circuit Court

Plea of
and issue And the said defendants Come and defend
the wrong and injury when se And say that
they did not undertake and promise in
manner and form as the said plaintiff hath
above thereof Complained against them, And
of this they put themselves upon the Country se

And plaintiff doth the like

Hoare

2 And for a further plea in this behalf
the said defendants by leave of the Court here
for this purpose first had and obtained accord-
ing to the form of the statute in such Case
made and provided say that the said plain-
tiff ought not to have or maintain his aforesaid
action thereof against them because they say
that after the making of the said several supposed

Special
Plea

9
promises and undertakings in the said declaration
mentioned and before the Commencement of this
suit to wit on the 1st day of January A.D. 1860. at
the County aforesaid they paid to the said plaintiff
the said several sums of money in the said declara-
tion mentioned and thus they are ready to verify
wherefore they pray judgment of the said plaintiff
ought to have or maintain his aforesaid action
thereof against them

3- And for a further plea in this behalf as to
the 1st Count of said declaration the said defend-
ants by like leave of the Court here for this purpose
first had and obtained according to the form of
the Statute aforesaid, say Actionem Non se be-
cause they say that the said supposed promissory
note in said first Count mentioned was executed
without any Consideration whatever and this
they are ready to verify wherefore they pray judgment
of the said plaintiff ought to have or maintain
his aforesaid action thereof against them &c

4 And for a further plea in this behalf
as to said 1st Count, the said defendants by like
leave of the Court here for this purpose first had
and obtained according to the form of the Statute
aforesaid say Actionem Non se because they say
that the Consideration for which said supposed
promissory note in said first Count mentioned
hath wholly failed and thus the said defendants
are ready to verify wherefore they pray judgment
of the said plaintiff ought to have or maintain
his aforesaid action thereof against them &c

10
5- And for a further plea in this behalf as to the
said first Count the said defendants by their leave
of the Court here for this purpose first had and obtained
according to the form of the Statute aforesaid Acts
-new notes because they say that on the 1st day
of October A.D. 1859 at the County aforesaid the said
plaintiff pretended and represented that he as
administrator of Joseph H. Hale, dec^d had been
duly empowered by an order of the County Court
of said County to sell and convey the following
real Estate situate in said County to wit the
West-half of the North West-quarter of section
33 in township 7 North of Range 14 West Con-
taining Eighty acres for the payment of the debts
of said deceased, whereas in truth and in fact
the said plaintiff was empowered by an order
of said County Court to sell and convey 46
acres out of the North end of said tract of land
only, and said plaintiff was not empowered to
sell or convey the residue of said tract of land
by any order of said County Court or otherwise
and the said plaintiff pretending to act under
and by virtue of an order of said County Court
exposed the whole of said West-half of the
North West quarter of said section to sale at
public vendue in two separate quarter, quarter
section tracts of equal size that is to say said
plaintiff exposed to public sale the North West
quarter of the North West quarter of said section and
the South West quarter of the North West quarter of said
section, and the said defendant McGendley relying

Special
Plea

11
2
On such representations and being thereby induced to believe that said plaintiff was empowered by an order of said County Court to sell and convey both of said quarter, quarter sections then & there bid the sum of \$240.00 for the said North West quarter of said North West quarter of said section and the sum of \$188.00 for the said South West quarter of the said North West quarter of said section and the said McGindley being the highest bidder therefor the said two quarter quarter sections were then and there struck off to the said McGindley at the above bids respectively and the said plaintiff then & there executed a deed to said McGindley for the same, and the said McGindley and the said defendant Mayo as his security executed the said Note in said first Count mentioned and another Note of the same date and for the same amount payable twelve months after the date thereof in consideration of said two quarter, quarter sections of land and for no other consideration whatever, and the said defendants aver that the said Joseph H Hale died seized of said Real Estate and at the time of said sale the title to the same was wholly in the heirs at law of the said Hale dec'd and the said plaintiff had no title whatever to the same, and the said defendants aver that the said sale & conveyance of 34 acres in the south end of said half quarter section of land were wholly null and void and no title passed to said McGindley thereby, and that said 34 acres in said south end were at the time of said sale worth the sum of \$300.00 and that said

Plea
Cont

34 acres in the south end of said half quarter section
in consequence of the illegality of said sale & Con-
veyance as aforesaid is wholly lost to said McGindley
and so the said defendants say that the consideration
for which said note in said first Count mentioned hereby
reason of the premises in manner and form aforesaid
wholly failed and thus the said defendants are ready to
verify wherefore they pray judgment if the said plaintiff
ought to have or maintain his aforesaid action thereof
against them &c

A. H. McGindley
W. Mayo depts

Here follows Clerk's endorsement in words & figures to wit

Filed in open Court Oct. 1st 1860
Hiram Wade, Clerk

Here follows Replication in words & figures
to wit

Circuit Court Jasper County
Oct term 1860

And said plaintiff for replication to 2^d Plea
of 1st defendants above pleaded says the
Plff ought not to be barred from having
& maintaining his action by reason of any
thing in said Rep. alledged because he says
the matters & things therein alledged are not
true & thus he puts himself upon the
Country—

Heare

Rep-

13
Simulator

Simulator in words & figures to wit

And the depts do the like

Rep

And for said Rep No 3- the plaintiff says
that he ought to be barred &c because he says
the matters in 2^d Rep- are not true & thus he
puts himself upon the Country &c

Hoare

Simulator

Simulator to wit

And the depts do the like

Rep

And for Rep- to plea No 3 the plaintiff says
he ought not to be barred &c because he says
the matters & things in said plea are not
true & of this puts himself upon the Country

Hoare

Simulator

Simulator to wit

And the depts do the like

Rep

And for Replication to said plea No 5- the
plaintiff says he ought not to be barred &c
because the matters & things in said plea
are not true & of this he puts himself
upon the Country &c

Hoare

Simulator

Simulator to wit

And the defendants do the like

Rep when

Here follows Clerk's Endorsement on Rep &c to wit

Filed in Open Court Oct 1st 1860

Hiram Wade, Clerk

John

14
Here follows Order of Court in words & figures to wit

And now on this fourth day of this term Comes the parties by their attorneys and issues being joined upon pleas and duplications &c and this Cause being submitted to be tried by the Court as jury, and the Court having heard the allegations and Order of proofs of the parties and being sufficiently advised Court therein it is ordered by the Court that the plaintiff have judgment against the said defendants for the sum of Two hundred and Twenty dollars and Ninety Two Cents his damages sustained by the reason of the nonperformance of the said defendants of their undertaking in this behalf together with his Costs and Charges in this Cause Expended and thereof have Execution - Whereupon Comes the said defendants and move the Court for a new trial in this Cause which ~~Motion~~ is overruled by the Court to which judgment and opinion of the Court the said defendants Except and pray an appeal which is allowed by the Court on the defendants giving bond in ten days from the rising of this Court in the sum of four hundred dollars with Adison S. Harris or J. J. Martin their Security

Here follows Bill of Exceptions in the words and figures to wit

Be it remembered that on the trial of the above Bill & excepted Cause the said plaintiff introduced in evidence the following promissory note

Note refers to in bill of exceptions

"Six Months after date we or either of us promise,"
 "to pay Horace Lincee Administrator of the Estate,"
 "of Joseph H Hale or bearer two hundred and,"
 "fourteen dollars ^{being} the first instalment of the pur-,"
 "chase money of two tracts of land A N McGulley,"
 "bought at said Administrators sale dated this,"
 "1st day of October 1859 - Austin N McGulley,"
 "Winston Mayo"

Endorsement on the back there of

"Filed May 1st 1860 - H Wade, Clerk,"
 and then rests his Case, and thereupon the said defendants introduced in evidence the following order of the County Court of said County

Viz - State of Illinois Jasper County - August Term A.D. 1859 -
 County Court of Jasper County, sitting for the transaction of judicial business began and held at the Courthouse in the town of Newton in said County on Monday the 15th day of August A.D. 1859 - Present Hon W S Lea Judge & W Curtis Clerk and Thomas C Melton Sheriff - Court opened by proclamation

In the Matter of the Estate of Joseph H Hale deceased, Horace Lincee Administrator

Order City

Et refers to in bill of exceptions

3rd Petition to Sell Land

Sarah Maria Hale, Ezekiel Hale, Rebecca Hale,
 George Washington Hale, William Hale,
 Benjamin Hale, Sarah Elizabeth Hale,
 Rachel Lodema Hale and Mary Ann Hale

Now on this day Comes the plaintiff by

16
Attorney, George E. Hoan and it appearing to the Court that all of said defendants except William Hale were notified of the pendency of this suit by summons duly served according to law the summons having been returned by the Sheriff of Jasper County as to William Hale not found in said County of Jasper, And it appearing to the satisfaction of the Court that the said William Hale was duly notified according to law of the pendency of this suit by notice published in the Newton Enquirer a Newspaper of general Circulation published in said County of Jasper, Whereupon the defendants were three times solemnly Called and came not but made default When the matters and things contained in the plaintiffs petition were taken for Confessed against the adult defendants, When on Motion of plaintiffs attorney A. M. Peterson, is appointed guardian Ad litem for Benjamin Hale, Rachel Lodema Hale, and Mary Ann Hale, Minor heirs of the said Joseph H. Hale deceased Who accepted the trust and filed his answer & in answering says he knows nothing of the matter and things set forth in plaintiffs petition and asks that he be held to strict proof And this Cause coming on to be heard upon petition Exhibits and proofs, And it appearing to the Court that the said plaintiff has made a just and true account of the personal Estate of the said decedent is insufficient to pay the just Claims against said Estate, And it further appearing to the Court

Order Cty
Ct Court

17
that the said decedent died seized of the following
real estate lying and being in the County of Jasper
and State of Illinois To wit The West 1/2 of the
North West quarter of Section (33) Town 7. N of Range
14 West Containing 80. acres, Also the South East
quarter of the North West quarter of section 10,
Town 6. North of Range 14 West Containing 40.
acres, and the Court being sufficiently advised
in the premises it is ordered and decreed by the
Court that the aforesaid administrator have leave
and is hereby authorized to sell a part of the
aforesaid real estate as follows to wit the South
East quarter of the North West quarter of Section ten
Town 6 N of R 14 West Containing 40 acres, Also
46 acres off from the North End of the West
1/2 of the North West quarter of section 33. Town
7. N. R. 14 West according to law All at one time
or part at different times as may be most Expe-
dient and advantageous in the premises or so
much thereof as may be necessary to pay the debts
of said Estate and it is further ordered and
adjudged by the Court that the said admin-
istrator sell the said land on the first day of
October next at the hour prescribed by law at the
door of the Courthouse in the town of Newton
in the County of Jasper and State of Illinois
the said Administrator having first given notice
of such intended sale according to the require-
ments of the law and that in Case the said ad-
ministrator should deem it best for the interest
of the Estate he may postpone the said sale to such

Order Cty
Ct Court

Order City
Ch. Court

other day as he may appoint always giving notice of
such postponed sale the same as in the first instance
And it is further ordered that said land be sold
on the following terms one half in six months and
one half in twelve months the purchaser to give a
mortgage on the premises with approve personal se-
curity and that said administrator report his acts
and doings herein to this Court and that this appli-
cation be for that purpose Continued ^{to the next October term of this Court} Also the

the following other Order of said County Court
viz "February term A.D. 1860- County Court
of Jasper County sitting for the transaction of judicial
business Wednesday February 22 A.D. 1860 Court

Further Order met pursuant to adjournment present same as yesterday

City Ch. refers In the Matter of the Estate of Joseph H. Hale deceased Report of Sale of Land
to be held ex

Cepthous

Now comes the Administrator of said Estate
by his attorney George E. Hoare and presents to the
Court a report of the sale of land which is in
figures & words as follows (to wit)

Jasper County Court

Estate of Joseph H. Hale deceased February term 1860

To the Honble W. S. Lea County Judge of said County

In pursuance of an order and decree
of said Court Entered at the August term thereof
A.D. 1859 the undersigned Administrator of the
Estate of Joseph H. Hale having given notice of
the time and place of said sale according to law
did on 1st day of October 1859 proceed to sell at the
door of the Courthouse in Newton in the County of
Jasper the following tracts of land in said decree

Order City
Et Conto

Mentioned to wit the N. W. of the N. W. of section 33 in
Township 7. N. R. 14. W. and the S. W. of the N. W. of section
33. Town 7. N. R. 14. W. subject to the widow's right & claim
of dower in the premises at which sale A. N. M. Lindley
became the purchaser he being the highest and best
bidder therefor at the sum of two hundred and forty
dollars for the first tract and one hundred and
eighty eight dollars for the second tract and he
has given his notes with approved security for the
sum of \$428.00 and received my deed as administrator
for the same and has given according to the terms
of said sale a mortgage on the premises to secure
the payment of the notes above referred to. having
fully reported my actings and doings in the premises
I ask to be allowed my reasonable costs &c.

Horace L. Ince, Administrator

Order City
Et Conto

And the Court having examined said report and
it appearing that the said administrator caused
proper notice of the time and place of said sale
to be published and posted as by law and the order
of this Court required and the Court being sufficient-
ly advised touching said sale it is finally ordered
and decreed by the Court that the said acts and
doings of the said administrator in and about
said sale be approved and said sale confirmed
and the deed so made by him be approved and
that he deliver the same to the said A. N. M. Lindley.

Deed referred
to in bill, &c.

The defendants then introduced in evidence the
following deed & Certificate of Acknowledgment
viz "Whereas at the July term A. D. 1889 of the
County Court of Jasper County held at the

Decd refers
to in bill
Exceptions
Court

Courthouse in the town of Newton therein on the third Monday in July a petition duly notified in all respects according to law setting forth the insufficiency of the personal Estate to pay debts was presented by me as administrator of the Estate of Joseph H Hale to said Court praying for an order to sell certain real Estate of said deceased to wit the West half of the North West quarter of Section (83) in township 7. North of Range 14 West Containing (80) acres also the South East quarter of the North West quarter of section 10. in township 6. North of Range 14. West Containing 40. acres. And Whereas on hearing said petition and the proofs in support thereof an order was then and there granted by said Court and entered of record in the words and figures following

In the Matter of the Estate of
Joseph H Hale deceased
Morace L Ince Administrator

vs $\frac{2}{3}$ Petition to sell Land
Sarah Maria Hale Ezekiel Hale
Rebecca Hale, George Washington Hale,
William Hale, Benjamin Hale,
Sarah Maria Hale and Mary
Ann Hale

Now on this day comes the plaintiff by his attorney George E Hoare and it appearing to the Court that all of said defendants except William Hale were notified of the pendency of this suit by summons duly served according to law the summons as to William ~~Hale~~ having

Deed refers
to in bill
Exceptions
Contd

been returned by the Sheriff of Jasper County
not found in said County of Jasper and not appear-
ing to the satisfaction of the Court that the said
William Hale was duly notified according
to law of the pendency of this suit by notice
published in the Newton Enquirer a News-
paper of general Circulation published
in said County of Jasper whereupon the
defendants we three times solemnly called and
came not but made default when the matters and
things contained in the plaintiffs petition were
taken for confessed against the said adult-
defendants when on motion of plaintiffs at-
torney A M Peterson is appointed guardian
ad litem for Benjamin Hale Rachel Lodema
Hale and Mary Ann Hale minor heirs of the
said Joseph H Hale deceased who accepted
the trust and filed his answer in answer-
ing says he knows nothing of the matters and
things set forth in Plaintiffs petition and
asks that he may be held to strict proof
and the Cause coming on to be heard on pe-
tition exhibits and proofs and it appearing
to the Court that the said Plaintiff has made
a just and true account of the personal Estate
and it further appearing the said decedent
died seized of the following real Estate ly-
ing and being in the County of Jasper and
State of Illinois to wit the West half of the
North West quarter of Section 33 in Township 7
North of Range 14 West containing 80 acres

22
Also the south ^{west} ~~east~~ quarter of the N. W. qr of Sec. 10.
Town 6. N. R. 14. West Conty 40 acres and the
Court being sufficiently advised in the premises
it is ordered and directed by the Court that
the aforesaid Administrator have leave and
he is hereby authorized to sell a part of the
aforesaid real estate as follows to wit, the
the south east quarter of the North west quarter
of section ten in Township 6 North of Range
14 West containing 40 acres, Also 46 acres
off from the North end of the West half of
the North west quarter of section 33. town-
ship 7. N. R. 14 West according to law
all at one time or part at different times
as may be most expedient and advantageous
in the premises or so much thereof as may
be necessary to pay the debts of said Estate
And it is further ordered and ^{adjudged} ~~directed~~
by the Court that the said Administra-
tor sell the said land on the first day
of October next at the time prescribed by
law at the door of the Courthouse in
the town of Newton in the County of
Jasper and State of Illinois the said
administrator having first given notice
of such intended sale according to the
requirements of the law, and in case the
said administrator should deem it
best for the interest of the estate he may
postpone the sale to such other day as he

Deed Refr
to Court

may appoint always giving notice of such postponement and sale and it is further ordered that the said land be sold on the following terms to wit One half in six months and one half in twelve months the purchaser to give a mortgage on the premises with approved personal security and that the Deed Refr said administrator report his acts and to Court doings herein in this Court and that this application be for that purpose continued to the next October term of this Court —

And whereas in pursuance of said decree a notice of the sale of said land above described to take place at public vendue at the Courthouse in Newton aforesaid on the 1st day of October A D 1889 between the hours of ten o'clock A M. and five o'clock P M. was posted up in five of the most public places in the County of Jasper for six weeks successively and caused to be published in the Newton Enquirer a newspaper published in said County for the same time — And whereas in pursuance of said decree and notice I Horace L Luce as such administrator did at the place and on the day and between the hours specified in said notice expose to sale at public vendue the following denominations being part of the land described to wit the North West quarter of the North West quarter of Section 33. and the South West quarter of the North West quarter of Section 33. both in

25

Township 7 North of Range 14 West Containing 40.
acres each. And whereas A N McGindley did
bid for the said land the sum of two hundred
and forty dollars for the first lot above mentioned
and One hundred and eighty Eight dollars
for the second lot above described making in
all the sum of four hundred and twenty
eight dollars that being the largest bid and he
the best bidder therefor and whereas thereupon
the same was sold to him for the Consideration
of four hundred and twenty Eight dollars

Deed refd
to Court

And whereas on full report of said sale made to
said County Court the same was afterwards ap-
proved and Confirmed by said Court.

Now this indenture Witnesseth that I the said
Horace L Ince Administrator for and in-
Consideration of the sum of four hundred
and Twenty eight dollars to me in hand paid
the receipt whereof is hereby acknowledged And
by virtue of the Authority vested in me by law
have granted bargained sold Released and
Confirmed in and by these presents do grant
bargain sell Release and Confirm unto the
said A N McGindley all the right title and
interest of the said Joseph H Hale in his
lifetime and at the time of his decease in
and to all the Certain pieces or lots of land
in the County of Jasper and State of Illinois
described as follows, The North West quarter
of the North West quarter of Section 33. and the
South West quarter of the North West quarter of

25
Section 33. both in Township 7 North of Range 14 West
both tracts containing 80 acres together with the build-
ings and improvements thereon subject to the widows
right of dower. To have and to hold said lands
with the appurtenances to the said A N M Gindley
Deed refers his heirs and assigns forever. And I the
to Court said Horace L Luce Covenant with the said
A N M Gindley that I have in all things ob-
served the rules and directions of the law
in relation to every thing concerning said
sale. In witness whereof I have hereunto
set my hand and seal this 23rd day of
November A D 1859

Horace L Luce
Administrator of the Estate
of Joseph H Hale

State of Illinois
Jasper County 3 ss

I Hiram Wade Clerk of the Circuit
Court in and for the County and State aforesaid
hereby Certify that Horace L Luce whose signature
Certificate appears to the foregoing Deed and who is personally
acknowledged known to me to be the person described in and who
present to Deed executed the same this day came before me in his
referred to fiduciary capacity as administrator aforesaid
and acknowledged that he signed sealed & delivered
said deed for the uses & purposes therein specified
Witness my hand and the seal of said Court
at my Office in Newton this 24th day of Nov. 1859
Hiram Wade, Clerk



The defendants then introduced William H Eidson who after being duly sworn testified as follows viz I am acquainted with the west half of the North west quarter of section 33 in Township seven North of Range 14 West in this County I have been on it several times there are some improvements on it I think the improvements are on the North forty but am not certain. On the 1st day of October A.D. 1859 the tract of land was worth from six to ten dollars per acre about eight dollars was the fair value, and the thirty ^{four} acres in the south end of it was at that time worth the same per acre as the balance of it which was all the testimony of the said William H Eidson. The plaintiff then admitted for the purpose of said trial that the note read on in this Cause is one of the notes given for the purchase money of the land mentioned in said record and in said deed of Conveyance purchased by said McGindley at the sale had by said ^{plaintiff} administrator of the said Hale on the 1st of October A.D. 1859. The foregoing was all the evidence introduced on said trial by both plaintiff and defendants. And the Court after hearing the evidence and argument of Counsel rendered judgment in favor of plaintiff and against defendants for \$220.92 Cents & costs of suit. To which decision of the Court in rendering said judgment the said defendants then and there excepted and they pray

Bill Excep
tious Court

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that this their bill of exceptions be allowed and
Bill Excep signed and sealed by the Court and made a part
trans Court of the record in this Cause which is accordingly done
this 18th day of October A.D. 1860

A. Mitchell Judge Seal

Endorsement thereon as follows to wit

Bill of Exceptions
Whimfield

Filed in open Court Oct. 18th 1860

Hiram Wade, Clerk

Here follows Appeal bond in words and figures to wit

Appeal
Bond

Know all men by these presents that we Austin
N. M. Gindley, Winston Mayo, and Thomas J.
Martin of the County of Jasper and State of
Illinois are held and firmly bound unto Hor-
ace L. Luce also of the same County and State
in the penal sum of four hundred dollars
lawful money of the United States for the pay-
ment of which well and truly to be made we
bind ourselves our heirs Executors and ad-
ministrators jointly severally and firmly by
these presents Witness our hands and seals this
28th day of October A.D. 1860

The Condition of the above obligation is such that
Whereas the said Horace L. Luce on the 18th day of
October A.D. 1860 in the Circuit Court in and
for the County of Jasper and State of Illinois re-
covered a judgment against the above bounden
Austin N. M. Gindley and Winston Mayo for the
sum of two hundred and twenty dollars and

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Appeal
Bond
Cont

Ninety two Cents in damages and three dollars
and Eighty five Cents Costs of suit from which said
judgment of the said Circuit Court the said Austin
H McGindley and Winston Mayo has prayed for
and obtained an appeal to the Supreme Court
of said State of Illinois - Now if the said Austin
H McGindley and Winston Mayo shall duly pro-
secute 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 virtue -

Taken and entered into
before me in my Office
in Newton this 28th day
of October A.D 1860 and
Approved -

Austin H McGindley 
Winston Mayo 
Thomas J Martin 

Hiram Wade Clerk
of the Jasper County Circuit Court

Endorsement thereon as follows to wit

Filed in my Office Oct. 28th 1860
Hiram Wade, Clerk
Jasper County Circuit Court

State of Illinois
Jasper County ^{3rd}
I William M Jones
Clerk of the Circuit Court in and for the

County of Jasper and State of Illinois do
hereby Certify that the foregoing twenty Eight pages
contain a full true and complete copy of
the proceedings had in the above entitled Cause
and papers on file in my Office in said Cause
as well as a full true and complete copy of
the two Orders of the County Court of said Jasper
County as taken from the records of said County
Court which being introduced and read in evidence
upon the trial of said above entitled Cause
and referred to in the bill of Exceptions filed in
said Cause

Given under my hand and the
Seal of said Jasper County Circuit
Court at my Office in Newton
this 9th day of November A.D. 1861

William M. Jones Clerk

fee for Transcript - \$ 6.00
paid By W. Mayo

William M. Jones Clerk

And the said plaintiffs in error come and say
the said record is erroneous in this:

1st. Said court erred in rendering a judgment in
favor of said plaintiff below and against said
defendants below.

2d. Said record is otherwise uncertain and
informal; wherefore they pray judgment, &c.

N. Mayo, for
Pltffe in Error.

40
A R McCord
and W Mayo
Appellants

vs
J. J. Garrison
Respondent
Horace L. Ince
Appellee

Appeal from
Superior.

Filed Nov. 13. 1861.
at Lebanon Ct.
Paid by W. Mayo -
Paid - \$5.00

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

HORACE L. INCE

vs.

AUSTIN M. M'GINDLEY and
WINSTON MAYO.

In Assumpsit.

ABSTRACT.

- 1] Plaintiff declared on promissory note.
- 8] Defendants pleaded general issue and special pleas. 5th special plea, averring the consideration for which said note in which said first count mentioned was given, hath wholly failed by reason of the said plaintiff, as administrator of the estate of Joseph H. Hale, dec'd, on the first day of October, 1859, pretended and represented that he, as such administrator, was duly empowered by the County Court of Jasper county, in the State of Illinois, to sell and convey certain real estate of which the said Hale died seized, to wit: the west half of the north-west quarter of section 33 in township seven north of range 14 west, situate in said county of Jasper, that said defendant, M'Gindley, relying on such representation of said plaintiff, and thereby being induced to believe said plaintiff, was duly empowered by an order of said County Court to sell and convey said lands bid at the sale thereof by said plaintiff, as such administrator, on the first day of October, 1859, the sum of \$240, for the N. W. qr. of the N. W. qr. of said section 33, and the sum of 188 for the S. W. qr. of the N. W. qr. of said section 33, both in town and range aforesaid, the same being struck off and sold to the said defendant M'Gindley, at and for his respective bids, when the said plaintiff executed to said defendant, M'Gindley, a deed for the same, and the said defendant, M'Gindley, and the said defendant, Mayo, his security, executed the said promissory note in said first count mentioned for \$214, and another note of the same date and for the same amount, payable twelve months after the date thereof, in consideration of said two quarter-quarter sections of land, and for no other consideration whatever. And said defendants say in truth and in fact, the said plaintiff as such administrator was only empowered by an order of said County Court to sell and convey 46 acres off from the north end of the said W. half of the N. W. qr. of said section.

15] Bill of exceptions refers to the note introduced in evidence on the trial by the plaintiff, and there the plaintiff rested his case.

15] The defendants then introduced in evidence the order of the County Court empowering the said plaintiff, as administrator of said Hale, dec'd, to sell and convey 46 acres off from the north end of the said west half of said N. W. qr.

18] The defendant next introduced in evidence the order of said County Court approving report of sale of said W. half of the said N. W. qr. by said plaintiff, as such administrator.

19] Deed of conveyance from plaintiff, as administrator of said Hale, dec'd, to said defendant M'Gindley, for the W. half of the said N. W. qr.

The defendant next introduced William H. Edson, who being first duly sworn states he is acquainted with the W. half of the N. W. qr. of said section 33; had been on several times some improvements on it; thinks the improvements are on the north forty, but not certain; on first day of October, 1859, the tract of land was worth from six to ten dollars per acre; about eight dollars was a fair value. The 34 acres in the south end of it was at that time worth the same per acre as the balance of it;—which was all the testimony of the said William H. Edson.

The plaintiff then admitted for the purpose of said trial that the note sued on in this cause is one of the notes given for the purchase money of the land mentioned in said record, and in said deed of conveyance purchased by said M'Gindley at the sale had by said plaintiff, administrator of the said Hale, on the first day of October, 1859.

The foregoing was all the evidence introduced on said trial by both plaintiff and defendants, and the Court, after hearing the evidence and argument of counsel, rendered judgment in favor of the plaintiff, and against the defendants, for \$220 92 and costs of suit; to which decision of the Court defendants then and there excepted.

ERRORS ASSIGNED.

1st. Said Court erred in rendering a judgment in favor of said plaintiff below, and against said defendants below.

W. MAYO,

For Plaintiffs in Error.

Mr. Goodley and
Mago

W. L. L. L.

Abstract

No. 40

Filed Apr. 14 - 1866
A. Johnston Clerk

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

HORACE L. INCE	}	In Assumpsit.
vs.		
AUSTIN M. M'GINDLEY and WINSTON MAYO.		

ABSTRACT.

- 1] Plaintiff declared on promissory note.
- 8] Defendants pleaded general issue and special pleas. 5th special plea, averring the consideration for which said note in which said first count mentioned was given, hath wholly failed by reason of the said plaintiff, as administrator of the estate of Joseph H. Hale, dec'd, on the first day of October, 1859, pretended and represented that he, as such administrator, was duly empowered by the County Court of Jasper county, in the State of Illinois, to sell and convey certain real estate of which the said Hale died seized, to wit: the west half of the north-west quarter of section 33 in township seven north of range 14 west, situate in said county of Jasper, that said defendant, M'Gindley, relying on such representation of said plaintiff, and thereby being induced to believe said plaintiff, was duly empowered by an order of said County Court to sell and convey said lands bid at the sale thereof by said plaintiff, as such administrator, on the first day of October, 1859, the sum of \$240, for the N. W. qr. of the N. W. qr. of said section 33, and the sum of 188 for the S. W. qr. of the N. W. qr. of said section 33, both in town and range aforesaid, the same being struck off and sold to the said defendant M'Gindley, at and for his respective bids, when the said plaintiff executed to said defendant, M'Gindley, a deed for the same, and the said defendant, M'Gindley, and the said defendant, Mayo, his security, executed the said promissory note in said first count mentioned for \$214, and another note of the same date and for the same amount, payable twelve months after the date thereof, in consideration of said two quarter-quarter sections of land, and for no other consideration whatever. And said defendants say in truth and in fact, the said plaintiff as such administrator was only empowered by an order of said County Court to sell and convey 46 acres off from the north end of the said W. half of the N. W. qr. of said section.

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The plaintiff then admitted for the purpose of said trial that the note sued on in this cause is one of the notes given for the purchase money of the land mentioned in said record, and in said deed of conveyance purchased by said M'Gindley at the sale had by said plaintiff, administrator of the said Hale, on the first day of October, 1859.

The foregoing was all the evidence introduced on said trial by both plaintiff and defendants, and the Court, after hearing the evidence and argument of counsel, rendered judgment in favor of the plaintiff, and against the defendants, for \$220 92 and costs of suit; to which decision of the Court defendants then and there excepted.

ERRORS ASSIGNED.

1st. Said Court erred in rendering a judgment in favor of said plaintiff below, and against said defendants below.

W. MAYO,

For Plaintiffs in Error.

Mr. Cundley, and
Mrs.

W. M.

H. L. Luer

Abstract

No 40

Filed Nov. 14 - 1861 -
A. J. Johnston C. M.

Received. Wm. Vernon. Esq. November 14. 1861. of
W. Mayo, three dollars on acct printing
Brief Abstract in case of W. Grindley & Mayo
v. H. L. Grace -

Wendlinger & Russell