

No. 13027

# Supreme Court of Illinois

Harvey

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vs.

Ellithorp et al

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 83.  
1860

Harvey  
vs  
Elthrop  
& etal

1202



STATE OF ILLINOIS,  
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Kane 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 Kane County, before the Judge thereof, between George P. Harvey

plaintiff, and Stephen R. Ellithorpe, Stella B. Ferguson and Emma Ferguson

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Stephen R. Ellithorpe  
R. Ferguson

as we are informed by his complaint 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 10th day of January in the Year of Our Lord one thousand eight hundred and sixty  
five  
L. Leland

Clerk of the Supreme Court.  
by J. R. H. Deput



Stephen R. Ellsworth  
83  
as  
George R. Harvey  

---

Writ of Error

This writ of Error is  
made a supersedeas &  
as such is to be obeyed  
by all concerned.

L. Leland  
Clerk  
of J. D. Thur Dept

Filed January 9 1860

L. Leland  
Clerk





State of Illinois }  
Kane County } ss.  
3

Nathan Smith

being duly sworn deposes and says that he  
is one of the parties in the annexed Bond, and  
that he is worth three thousand Dollars  
over and above all his debts - that his property  
consists in part of 160 one hundred <sup>sixty</sup> acres of land  
situate in County of Kane State of Illinois  
worth four thousand Dollars and other Property  
to the amount of one thousand Dollars: that  
he owes to the Best of his knowledge twelve  
hundred Dollars

Subscribed and sworn to before me this 2<sup>nd</sup> day of  
January A 1860

Nathan Smith

Garnett M Cook  
justice of the peace



State of Illinois  
Kane County } ss.

S. M. Cook

being duly sworn deposes and says that  
he is one of the sureties in the annexed Bond,  
and that he is worth five thousand  
Dollars over and above all his debts - that  
his property consists in part of one hundred & twenty  
four acres of land situate in County of Kane and  
State of Illinois: worth the same Land <sup>in</sup> ~~value~~  
and worth five thousand Dollars  
I signed at Cook a justice of the peace

S. M. Cook

Subscribed & Sworn to

this 1<sup>st</sup> day of January 1866

Samuel M. Cook J.P.



Know all Men by these Presents, That *Stephen R. Ellithorp*

as principal, and

*Walter Smith* as security, are held and firmly bound

unto *George T. Harvey*

in the penal sum of *Twenty Five Hundred Dollars (\$2500)* good and lawful money of the United States, for the payment of which, well and truly to be made, the said *Stephen R. Ellithorp*

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

Witness, our hands and seals

this *second* day of *January* A. D. 186*6*.

The Condition of the above Obligation is such, That, whereas the above named *George T. Harvey*

did, at the *November* Term of the *Circuit* Court, held in and for the County of *NAVES* in the State of *Illinois*, A. D. 18*65* ~~obtain a judgment against the above bounden~~ *obtain a decree appointing Lawrence Barker a trustee in a certain complaint therein pending on the Chancery Side thereof wherein the said George T. Harvey was complainant and the said Stephen R. Ellithorp and Stella B. Ferguson and Emma Ferguson were Defendants* ~~for the sum of~~ *to reverse which said decree* the said *Stephen R. Ellithorp*

has 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 *Stephen R. Ellithorp*

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said ~~judgment~~ *decree*, and all judgments, costs, interest and damages which the said Supreme Court shall adjudge against him

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.

*S. R. Ellithorp* [SEAL.]

*Walter Smith* [SEAL.]

*W. H. Black* [SEAL.]

[SEAL.]



State of Illinois,  
KANE COUNTY. } ss:

I, John Greene, Clerk of the County Court, within and for the said County, do hereby Certify, that *Samuel W. Scott* was on the *sevent* day of *January* A. D. 18*80* an acting County Justice of the Peace, within and for said County, duly commissioned and sworn. And that I am well acquainted with the hand writing of said Justice, and verily believe his signature above is genuine.

Given under my hand and the seal of said Court, this *thir*  
day of *January* A. D. 18*80*

*John Greene* Clerk.

No. 83

SUPREME COURT,

THIRD GRAND DIVISION.

*George T. Hawley*

*S. R. Ellithorpe* vs.

SUPERSEDEAS BOND.

Filed *January 9* 18*80*  
*L. Leland* Clerk.



State of Illinois ss Office of the Clerk of the  
Kane County } Circuit Court of Kane County

Best it remembered that on the <sup>3<sup>rd</sup></sup> ~~18<sup>th</sup>~~ day  
of <sup>October</sup> ~~August~~ AD 1859, ~~that~~ <sup>said</sup> there was filed in  
the Office of the Clerk of the Court of ~~Common Pleas~~  
~~Pleas of the City of Elgin County & State of Illinois~~  
a precept in the words & figures following to wit:  
State of Illinois } Septuaginta Term of the Court of  
Kane County } Common Pleas of the City of  
City of Elgin } Elgin AD 1859.

George R. Hawley  
v  
Stephen R. Ellithorpe  
Stella B. Ferguson  
& Emma Ferguson } Petition for Aft of  
Incest

The Clerk will please  
issue Summons in the above entitled Suit returnable  
to the next Term of said Court. directed to the Sheriff of  
said County and Ob. Sherr, &c

Attest: Hawley & L.V.R.

Entered & Filed Aug. 18<sup>th</sup> 1859, R. M. Padelford

Atty. Atty

And ~~after~~ <sup>on the</sup> ~~19<sup>th</sup>~~ day of August AD  
~~1859~~ <sup>1859</sup> there was ~~filed~~ <sup>filed</sup> in the Clerk's Office a Summons  
which was in the words and figures following to wit:  
State of Illinois } The People of the State of Illinois  
Kane County } to the Sheriff of said County, Sherr  
City of Elgin }

We command you that you Summons  
Stephen R. Ellithorpe Stella B. Ferguson & Emma Ferguson  
shall be found in said County personally to be and appear  
before the Court of Common Pleas of said City on the first  
day of the next Term thereof to be holden at the Court  
House in the City of Elgin in said County on the Second



Monday of September next - to answer unto Geo  
P Harvey in his Certain Bill of Complaint or Petition  
for the apprehension of a Justice filed in said Court in the  
Chancery side thereof, and have you then & there the  
Writ with an endorsement thereon in what manner you  
shall have executed the same.

Seal

Witness my hand & the Seal thereof at Elgin in said  
County this 19<sup>th</sup> day of August AD 1859.

R W Padelford Clerk

And which Summons was served & returned in the  
following manner as appears by endorsement of the  
Shuff thereon

Served this writ in the within manner  
Stephen R Ellithorpe within the City of Elgin in Kane  
County by delivering a Copy thereof to him the 27<sup>th</sup> day  
of August 1859 Fee Service .50 Copy .50 1 Mile .5 return 10  
\$1.15 Ethan J Allen Shuff of Kane Co by I Kincaid  
Deputy"

"Filed September 3<sup>d</sup> 1859

R W Padelford, Clerk

And on the <sup>31<sup>st</sup></sup> ~~18<sup>th</sup>~~ day of <sup>Petition</sup> ~~August~~ AD 1859 the  
was filed in said Clarks office a Petition, which was in  
the Words & figures following to wit:

State of Illinois }  
Kane County } ss.  
City of Elgin }

To the Hon Benjamin F Parks Presiding  
Judge of the Court of Common Pleas of the  
City of Elgin State of Illinois in Chancery  
Sitting at the September Term of said  
Court AD 1859,

Your Petitioner George

P Harvey a resident of said City and County respectfully  
represents, that on or about the 7<sup>th</sup> day of April AD 1857  
as your petitioner is informed and believes true one Stephen  
R Ellithorpe of said County, was justly indebted to an



John C. Wilson in about the sum of Two Thousand Dollars upon a Certain Promissory Note of said date due in two Years with interest at ten per Cent per annum payable annually; That said Ellithorpe & Emily to Ellithorpe his Wife, to secure the payment of said Note according to its tenor and effect, executed a Conveyance (commonly called a trust deed) to one John H. Ferguson then a resident of said County of Haver as trustee for the benefit of said Wilson, upon the following lands to wit: "The North half of Section Twenty Seven Township Forty one (41) Range Six East of the third principal Meridian in the County of Haver. & also the following described premises situate in the County of De Kalb & State of Illinois to wit: The North East quarter of Section thirty Six. Town Forty Range Seven East of the third principal Meridian; that by the terms and conditions of said Trust Deed, the said Ferguson or his legal representatives was assuming other things authorized and empowered as such trustee in case default was made in the payment of said Note or any part thereof, at the time the same became due either of principal or interest, to sell the said premises and all right and equities of the said Ellithorpe and wife therein at public Auction at the Court House door in said Haver County, after publishing a notice for thirty days in some newspaper <sup>published</sup> in said Haver County giving the time and place of such sale, which said trust deed was duly acknowledged and Recorded in the Counties of De Kalb and Haver,

Now Petitioner further represents, that afterwards to wit on or about the third day of December AD 1857 the said John H. Ferguson departed this life, leaving the said trust unexecuted, and also leaving a wife Stella B. Ferguson and one infant child Emma Ferguson aged about five Years.



Y<sup>rs</sup> Petitioner further represents, that after-  
on or about the 12<sup>th</sup> day of October A.D. 1858, and  
before the said Note became due, the said John  
Wilson to whom the said Note was payable, and for  
whom use and benefit the said Trust deed was executed  
as aforesaid, for a valuable consideration therein paid  
by Y<sup>rs</sup> Petitioner, assigned and delivered the said Note  
to Y<sup>rs</sup> Petitioner (who thereby became the legal holder  
and owner of such Note, and from thence hitherto  
has been and still is such holder) and also, and  
his right title and interest in and to <sup>the</sup> said Trust deed,  
all of which will more fully appear, reference being  
had to said Trust deed and Note, now ready to be pro-  
duced, <sup>before</sup> this Honorable Court,

Y<sup>rs</sup> Petitioner further represents, that said  
Ellithorp has paid to Y<sup>rs</sup> Petitioner in account of said  
Note since its Maturity, Two Thousand Dollars - That  
there still remains due Y<sup>rs</sup> Petitioner upon the same  
about Ninety hundred and fifty dollars, which  
since the said Ellithorp has neglected and refused  
and still neglects and refuses to pay to Y<sup>rs</sup> Petitioner  
although the same has long been due, and the said  
Ellithorp equitably and legally bound to pay the same.

Y<sup>rs</sup> Petitioner therefore prays (inasmuch as  
he is remediless in the premises at Common Law,)  
that some Comptant and proper person may be  
appointed by this Court, to act as trustee, in the place  
and stead of the said Ferguson deceased, with full  
power to carry out the said trusts in <sup>the</sup> said deed  
contained and which the said Ferguson, by the terms  
thereof was authorized and required to perform.  
That the usual writ of Summons may issue against  
the said Stephen R Ellithorp, Still B Ferguson  
and Emma Ferguson to compel their appearance



before this Honorable Court, and then & then to give  
direct and perfect answers make (without oath) to  
all and singular the premises aforesaid - And that  
Your petitioner may have such other and further  
relief as the case may require and Your petitioner  
will ever pray &c

Geo P Harvey

Plaw (Harvey)  
Solvr for Petr.

State of Illinois  
County of Kane } Be it remembered that on this 18<sup>th</sup> day of  
August AD 1859, personally appeared before the  
undersigned, the above named Petitioner, George P.  
Harvey, and made oath that he has <sup>read</sup> the forgo-  
-ing Petition by him subscribed and knows the  
contents thereof, and that the same is true of his  
own knowledge except as to matters which are therein  
stated to be upon information and belief, and as  
to those matters he believes it to be true

Geo P Harvey.

Sworn and Subscribed to before  
Me this 18<sup>th</sup> day of August AD 1859  
James S Taylor Justice  
Justice of the Peace

Endorsed, "Filed Aug 18, 1859. R. M. Ladelford, Clerk."

And afterwards to wit on the <sup>31<sup>st</sup></sup> day of October  
AD 1859, it being one of the days of the October Term  
of the said Court of Common Pleas of the City of Elgin  
aforesaid a Return was filed by the undersigned  
- ~~that~~ <sup>in the office of the Clerk</sup> said Petition which was in the words and  
figures following to wit:

Stephen R Ellithorpe  
at

George P Harvey } And now comes the said



defendant comes & C and says that the said Complainants Bill of Complaint is not sufficient in law. Whereupon he prays Judgment.

And as Special Cause of Dismissal the defendant assigns the following

First The said Bill does not allege that the Cause of Action arose within the limits of the City of Elgin, or that the land in question is within the said City, or that the ~~said~~ defendant resides within the Jurisdiction of this Court,

Second That the Bill shows no such legal Trans-  
-fer of the said deed of trust as to authorize the Complainant to bring this suit

Third There is no allegation that the defendant has ever been called upon to appoint a trustee so as to put him in default in the matter,

Fourth That the Bill does not show but one party defendant, and that it is otherwise informal uncertain and insufficient.

Embraced" Filed Oct. 17, 1859 E. Gifford  
R. M. Padelford, Clerk Depts. Atty.

And ~~afterwards~~ <sup>said 3<sup>rd</sup> day</sup> ~~to wit~~ on the ~~17<sup>th</sup>~~ day of Oct. AD 1859, there was filed in said Clerk's Office an Affidavit of which the following is a true Copy in the words & figures following to wit:

Stephen R. Ellithorp  
at

George R. Harvey & Stephen R. Ellithorp the said defendant being first duly sworn on oath depose and say that he believes that Justice and a fair and impartial trial, require that the venue in the above entitled Cause should be changed, and that his said belief is based upon the fact among other things, that he having filed a plea to the



Jurisdiction of this Court, the said defendant  
has been informed, and believes it to be true,  
that this Court Claims Jurisdiction over the person  
of parties accident in the County of Kane outside  
of the limits of the City of Elgin, and that process  
may be served on persons so residing outside of  
said City limits; and also over causes of action  
arising not within the said City limits, but in  
any and all parts of the County, therefore he prays  
that the venue in ~~said~~ <sup>this</sup> cause may be changed

Sworn and Subscribed to  
before me this 17<sup>th</sup> day of  
October AD 1859.

R. H. Pordelford Clerk

S. B. Ellithorpe

And afterwards to wit on the 31<sup>st</sup> day of  
October AD 1859, there was filed in the Office  
of the Clerk of the Kane County Circuit Court a  
transcript from the Records of the Court of Common  
Pleas of the City of Elgin, which transcript is in  
the words and figures following to wit:

United States of America  
State of Illinois. County of Kane } p.

Pleas before the Honorable.

Benedict J. Parks Judge of the Court of Comm-  
on Pleas of the City of Elgin in the County of Kane  
and State of Illinois, and presiding Judge of said  
Court of Common Pleas of the City of Elgin; at a  
Special Term thereof began and held at the  
Court Room in the City of Elgin in said County  
on the second Monday (being the 27<sup>th</sup> day of  
October in the Year of our Lord one Thousand  
Eight hundred and Fifty Nine in pursuance  
of an Order made and entered of Record at a



former <sup>term</sup> of said Court which said order is in the  
Words and figures following to wit:

It is ordered that a special Term of the  
Court of Common Pleas of the City of Elgin be  
holden on the second Monday of October AD  
1859, for the dispatch of Civil Criminal and  
Chancery business at the Court Room in the City  
of Elgin. To which special Term the Clerk  
is hereby ordered to issue a venire directed to the  
Sheriff to summon a Grand and Petit Jury  
pursuant to the Statute in such case made  
and provided

Elgin September 12<sup>th</sup>, 1859

B. J. Parks Judge of the Court  
of Common Pleas of the City  
of Elgin.

Respect Honorable Benjamin J. Parks Judge  
E. S. Serlyn State Attorney  
Ethel M. Allen Sheriff of Hamilton County  
Attent R. W. Paddford Clerk,

As it is remembered that  
Afterwards to wit on the 15<sup>th</sup> day of October AD  
1859, it being one of the days of the said special  
October Term of said Court the following among  
other proceedings were had in said Court and entered  
of Record to wit:

George P. Harvey

Stephen R. Ellithorpe  
Stella B. Ferguson  
Emma Ferguson

Petition for the Appointment  
of Justice

This day comes the plain-  
-tiff by Serlyn & Piddell  
his Solicitors and moves to strike the plea from  
the files as the same is not sworn to, which



Motion is sustained by the Court, then comes the defendant by their Attorney Gifford and moves for leave to plead Answer or demurrer by Monday Morning next, which Motion is allowed by the Court.

And whereas Afterward, to wit on the 14<sup>th</sup> day of October A.D. 1859. it being one of the days of the aforesaid Term Court of Common Pleas of the City of Elgin, at the October Special term thereof of our said Court, the following among other proceedings took place in said Court, and entered of Record to wit:

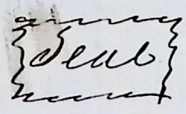
|                      |                                               |
|----------------------|-----------------------------------------------|
| George A Harvey      | } Petition for the Appointment<br>of Justice. |
| Stephen R Ellithorpe |                                               |
| Stella B Ferguson    |                                               |
| Emma Ferguson        |                                               |

This day comes the defendant by Gifford their Attorney files their Affidavit, and moves for a Change of venue. The Court being fully advised allows the Motion and it is ordered that the venue in this suit be changed from the Court of Common Pleas of the City of Elgin to the Kane County Circuit Court.

State of Illinois }  
 Kane County ss } I Rodolphus W Padelford Clerk  
 of the Court of Common Pleas of the City of Elgin  
 in the County of Kane and State aforesaid, do  
 hereby Certify, that the above and foregoing is a  
 true and Correct Copy of all the proceedings  
 had and entered of Record in our said Court  
 of Common Pleas of the City of Elgin in a  
 certain <sup>cause</sup> lately pending in said Court  
 on the Chancy side thereof wherein George



Harvey was Plaintiff and Stephen R Ellithorpe  
and Stella B Ferguson & Emma Ferguson  
defendants, and I do further Certify that the  
accompanying papers marked with letters from  
A to F inclusive are all the papers now  
on file in said Cause in my office.

 Witness my hand and the Seal of  
said Court this 27<sup>th</sup> day of October  
AD 1859  
R W Padelford Clerk

And afterwards, to wit on the 14<sup>th</sup> day of December  
AD 1859, it being one of the days of the Nov-  
ember Term AD 1859, of the Ham County  
Circuit Court, among other proceedings the  
following was entered of Record to wit

George P Harvey

vs  
Stephen R Ellithorpe

Stella B Ferguson

Emma Ferguson

Petition for appointment of  
Shruto

This day comes the Petitioner  
by Plato P Harvey his Solicitors and the defendants  
Stephen R Ellithorpe by Wells his Solicitor Abs: Come,  
and the demurrer of said defendant Stephen R  
Ellithorpe to the petition herein coming on to be  
heard. After argument of Counsel, the Court being  
fully advised, overrules said demurrer, and  
thereupon on motion of the petitioner it is ordered  
by the Court that the defendant file his  
answer to said Petition by to morrow morning.



And afterward, to wit on the 14<sup>th</sup> day  
of December AD 1859. there was filed in said  
Cause an answer to the Petition which was  
in the words and figures following to wit.

Stephen R Ellisthorpe } Hume County Circuit Court  
at it at } November Term. AD. 1859,  
George P Harvey }

The several answer of Stephen  
R Ellisthorpe one of the ~~above~~ defendants, to the  
Petition of George P Harvey Complainant.

The said defendant now answers and  
thinks hereafter saving and reserving to himself  
all and all manner of benefit and advantage  
of Exception which can or may be had or taken  
to the said Complainant's Petition for answer  
thereto or so much thereof as this defendant  
is advised is in any wise material or necessary  
for him to make answer unto answering says

that he admits, that he did give  
to <sup>Sir</sup> John Le Stiles on about the time mentioned  
in said Petition his Note for Seven Thousand  
Dollars, and that this defendant this day  
executed a Trust Deed to one John H Ferguson  
an Trustee of that said Ferguson has since



child; but this respondent has paid up  
said Note since it came to the hands of  
said Petitioner the sum of Two Thousand  
Dollars. And that this respondent at the  
time he executed said Note of Two Thousand  
and Dollars, also gave to said John C  
Wilson Two other Notes of One Hundred  
and Eighty Dollars each, one due in one  
Year, and the other in Two Years from  
the 7<sup>th</sup> day of April 1857, one of which  
said Notes this respondent has paid to  
said John C Wilson while he was the owner  
of said Note & Trust Bond of which said Petitioner  
had Notice, and both of which said Notes  
were in whole given for money usuary  
and above the rate of Ten per Cent per annum  
upon the said Two Thousand and Dollars for  
Two Years to wit: it was completely agreed  
between this respondent and said Wilson  
that for the loan and forbearance of pay-  
ment of said sum of Two Thousand and Dollars  
for Two Years, that this respondent should  
give his two Notes as above set forth which was  
wholly for usuary, the said Note of \$3,000  
drawing interest at 10 per Cent from date  
& this respondent is informed and believes  
to be true, that said Petitioner before he  
purchased the said \$3,000 Note, one of the  
\$180. Notes was informed and had Notice  
that the said two \$180. Notes was for usuary  
and therefore void and without any consideration  
and this respondent prays that he may be  
allowed the said sum of \$180, with interest  
from time of payment upon such sum as

Superseded

Superseded



\* And said respondent further answering  
saith, that he is informed & believes true that  
said petitioner is not the legal holder & owner  
of said note or trust deed & submits that  
question to the Court for proof.



May be due upon said \$3,000 Note in Addition  
 - what he has already paid.)

\* And Your Respondant, <sup>in reply</sup> further ~~answering~~ says that he has never been called  
 upon by said petitioner or any person for  
 him to have a trustee appointed in the  
 place of said Ferguson, and that Your  
 petitioner has always been ready & willing  
 to agree upon the appointment of a trustee  
 if he had been applied to for that purpose,  
 upon being satisfied that said petitioner  
 was the legal holder and owner of said  
 Trust Debt and Note, and submit, <sup>said</sup> ~~that~~  
 question to this honorable Court,

~~that said Respondant further <sup>answering</sup> says that he is informed & believes  
 true, that said petitioner is not the legal  
 holder and owner of said Note or Trust Debt  
 and submit that question to the Court for  
 proof.~~

And Your Respondant would further  
 submit to this honorable Court, what the amount  
 due from this Respondant upon said Note and  
 Trust Debt, and if this honorable Court should  
 appoint a trustee, that said trustee should  
 be ordered and directed to, upon the fulfillment  
 of his trust, he the trustee shall if said Note  
 should be fully paid and satisfied to said  
 Petitioner or the legal holder of said Note  
 execute a Release Debt to all the land  
 described in said Trust Debt, because he  
 would show to this Court, that upon the  
 payment of said Two Thousand Dollars  
 aforesaid, the said petitioner agreed

Satisfied



The following are the errors relied  
on by the Defendant.

1 Court of Common Pleas of Elgin has  
no jurisdiction.

2 The Court erred in granting a  
change of Venue upon application  
of defendant Ellithorpe alone.

3 Court erred in granting a  
change of Venue before all the  
defendants had been brought into Court.

4 The Circuit Court of Kane County  
gained no jurisdiction by change of venue.

5 The Circuit Court of Kane Co  
had no jurisdiction.

6 The Court erred in proceeding  
a hearing without disposing of other  
defendants.

7 The Court erred in entering  
a decree without proofs.

8 There were no proofs to  
sustain the decree.

9 The decree is contrary to  
Equity & good conscience.

10 There was no proof before the Court  
that the complainant was entitled  
to the relief sought.

11. The Court erred in suppressing  
each & every portion of the  
answer suppressed.

12 The Court erred in refusing  
to do full justice between the parties.

13 The Bill on its face shows that there  
were other parties who should have



Upon reading the within record it is  
 ordered that the writ of error in this case  
 be made a supersedeas, upon filing with  
 the Clerk a bond in the usual form, with  
 Nathan Smith and S. M. Cook of Kennebunk  
 as sureties in the <sup>penal</sup> sum of two thousand  
 and five hundred dollars.  
 Springfield 6<sup>th</sup> January 1850 -

J. D. Cutler  
 Chief Justice

George S. H. May

Stephen R. Ellsworth  
 it d

Transcript  
 Sargent Emory

Filed January 9, 1850  
 L. Belmont  
 Clerk

E. H. May  
 at the village



Imperial

Release the land in Kane County described in said deed, and did deliver to the respondent a Release executed by Still B Ferguson Hilborn and Administrator of said John H. which said respondent received at that time not knowing but what it was a good and legal release, but he is advised and believes true, that it was not, and that said trustee if one should be appointed, should be directed to sell only the lands in said trust deed that lays in De Kalb County, because said Petitioner has agreed to release said respondent from sale of the lands in Kane County when he paid him the \$10,000 and dollars as aforesaid: and said respondent being advised that this Court has no jurisdiction of this cause now comes and protests against the jurisdiction of this Court in the subject matter of this action, and of the person of this ~~defendant~~ (Respondent.)

And this defendant denies all things charged in said Petition which are not herein confessed, without this that there is any other matter or thing in said Petition contained material or necessary for this defendant to make answer unto nor herein truly well sufficiently answered confessed traversed & avoided or denied is true to the knowledge or belief of this respondent - which matters & things this respondent defendant is ready



and willing to aver maintain & prove  
 as this honorable Court shall direct  
 and humbly pray to be humbly dis-  
 charged with his reasonable costs & charges  
 if the' behalf' must unjustly sustained  
 J R Ellithorpe

And afterward, to wit: on the 14<sup>th</sup>  
 day of December AD 1859, it still being  
 one of the days of the November Term  
 of said Court, the following exception  
 to the answer was filed to wit,

George P Harvey } Kane County Circuit  
 v } Court Nov. Term 1859  
 J R Ellithorpe et al } In Chancery

Exception to the answer  
 of, <sup>the deft</sup> J R Ellithorpe filed herein; To wit, all  
 of said answer after the first page thereof  
<sup>irrelevant</sup> ~~irrelevant~~ impertinent and not responsive  
 to said Bill of Complaint or any allegation  
 therein contained and ought to be stricken  
 &c, and the said Complainant therefore  
 &c, &c, Prayer for Complaint

And afterwards, to wit on the 16<sup>th</sup> day  
 of December AD 1859, it being one of the days  
 of the said November Term of said Court, the  
 following among other proceedings were had  
 to wit,

Stephen R Ellithorpe  
 George P Harvey }  
 v } Petition for An Appointment  
 Stephen R Ellithorpe } of Trustee.  
 Stella B Ferguson  
 Emma Ferguson



This day comes the Petitioner by Blath & Harvey  
his Solicitors and the defendant Stephen R. Ellithorpe  
by Mells his Solicitor also comes and the Petitioner  
excepts heretofore filed herein to the answer  
said defendant Ellithorpe coming on to be heard  
After argument of Counsel the Court being fully  
advised sustains the exceptions to a part of said  
answer viz: said three parts of the same included  
within parentheses thus ( ) and marked on the  
margin thereof "Suppressed" and orders that the same  
be stricken from the answer.

And afterwards to wit on the 16<sup>th</sup> day  
of December AD 1859, it still being one of the  
days of the said ~~Spring~~ term of said Court,  
a Decree ~~was filed~~ which was entered of Record  
which was in the Words & Figures following to  
wit:

|                      |   |                          |
|----------------------|---|--------------------------|
| George R Harvey      | { | Bill for the Appointment |
| Stephen R Ellithorpe |   | of Justice &c            |
| et al.               |   |                          |

This Cause coming on  
to be heard upon the Bill and answer of the  
said respondent Ellithorpe from which it appears  
Satisfactorily to this Court, that each & every  
Material Allegation in said Bill contained  
is true; It is therefore ordered adjudged and  
Decreed that the prayer <sup>in</sup> of said Bill be  
granted, and the said parties to wit, the  
said Harvey and Ellithorpe having agreed



5.

and consented in open Court to the appointment  
of Lawrence P Barker as such trustee. It is  
therefore ordered and adjudged that the said Lawrence  
P Barker be and he truly is appointed Trustee  
with full power and authority to proceed and  
execute and perform all the rights powers  
and duties conferred or imposed upon the said  
J W Ferguson by virtue of the said Deed of trust  
in said Bill and answer mentioned & described  
as fully and completely as if he had been origin-  
ally appointed Trustee in and by virtue of said  
Trust deed, ~~and it is further ordered that the~~  
~~said~~  
~~say the cost of this proceeding to be taxed &c~~

State of Illinois  
Kane County }  
I, Paul R Wright, Clerk of the  
Circuit Court of the said County, do  
hereby certify that the foregoing is a true and complete  
copy of the Record of said Court in the Cause of  
George P. Harney, vs. Stephen R. Ellithorpe et al  
including, "Transcript of Record of the Court of Common  
Pleas of the City of Elgin," "Receipts," "Summons," "Return  
thereon," "Petition," "Demurrer," "Affidavit," & "Answer"  
and all the orders entered of Record in said Court.  
Witness my hand and the seal of said  
Court at Seneca in said County this  
twenty second day of December A.D.  
1859,  
P. R. Wright  
Clerk



The following are the errors relied  
on by the Defendant.

- 1 Court of Common Pleas of Elgin has  
no jurisdiction.
- 2 The Court erred in granting a  
change of Venue upon application  
of defendant Ellithorpe alone.
- 3 Court erred in granting a  
change of Venue before all the  
defendants had been brought into Court.
- 4 The Circuit Court of Kane County  
gained no jurisdiction by change of venue.
- 5 The Circuit Court of Kane Co.  
had no jurisdiction.
- 6 The Court erred in proceeding  
a hearing without disposing of other  
defendants.
- 7 The Court erred in entering  
a decree without proofs.
- 8 There were no proofs to  
sustain the decree.
- 9 The decree is contrary to  
Equity & good conscience.
- 10 There was no proof before the Court  
that the complainant was entitled  
to the relief sought.
11. The Court erred in suppressing  
each & every portion of the  
answer suppressed.
- 12 The Court erred in refusing  
to do full justice between the parties.
- 13 The Bill on its face shows that there  
were other parties who should have



- been made parties to the suit bill,  
14 The Court erred in appointing  
a Trustee -  
15 The Court erred in  
overruling the demurrer.

and the said defendant in Error 'Havy'  
comes and says there is no such  
error as above alleged &c

W B Plato Solicitor  
of Dept in Error



Upon reading the within record it is  
 ordered that the writ of error in this cause  
 be made a supersedeas, upon filing with  
 the Clerk a bond in the usual form, with  
 Nathan Smith and J. M. Cook of Kennebec County  
 as sureties in the <sup>penal</sup> sum of two thousand  
 and five hundred dollars.  
 Springfield 6<sup>th</sup> January 1850

J. D. Cotton  
 Chief Justice

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George L. Kenney

Stephen R. Ellsworth

Francis  
 Sampson Esq.

Filed January 8. 1850  
 L. Belmont  
 Clerk

E. H. May  
 Attest