

14418

No. _____

Supreme Court of Illinois

Boyd

vs.

Cudderback et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

1448

No. 152.

*Boyd
vs
Carpenter
1868*

delivered the opinion of the Court:

Mr. Justice Walker, #. This record presents the question, whether the execution of the mortgage was sufficient to release the ~~same~~ right, to claim the premises, as a homestead. This depends upon whether the acknowledgment on the part of the wife is in accordance with the law. By the original act, adopted in 1854, it was not necessary, that the wife should join in the release, to render it valid. By the amendatory act, adopted in 1857, (Scates Comp. 577,) it is declared that the words, "and his wife if he have one", shall be inserted ~~in the acknowledgment~~, after the words "and subscribed by such householders", in the original act. The law as it now stands, requires that the release shall be "~~subscribed by~~ in writing, subscribed by ~~such~~ the householders and his wife if he have one, and acknowledged in the mode in which deeds to conveyances of real estate are required to be acknowledged. In the case of Patterson vs. King, 29 Ills., 574, it was held, that it is necessary, that the wife shall join in any deed alienating the

homestead, under this amendatory act. That act declares that it is the object of the statute, to require ~~that~~ in all cases, the signature and the acknowledgment of the wife as a condition, to the alienation of the homestead.

Then the question arises as to what the acknowledgment must contain to be operative as a release of the right. In ~~a~~ relinquishing deed or the wife must acknowledge, separate and apart from her husband, and after being fully informed as to the contents and effect of the deed, that she relinquishes her dower freely; voluntarily ^{and} without the compulsion of her husband. So in conveying the wife's estate, she must acknowledge, that she executed the deed freely and voluntarily, and does not wish to retract. And in each of these cases, the officer must certify as to what the wife did acknowledge after he had examined her separate and apart from her husband. It is the conformity of the acknowledgment out of to the statute, which is operative to pass the wife's title to her own

real estate, or to relinquish her dower, in that of the husband.

In conveying her estate, if she acknowledged, that she relinquished her dower, it would hardly be held sufficient. Because that would not be the state, intended to be conveyed, and she must acknowledge, that she intends to and does convey that estate. In the ^{certificates of} acknowledgment to this mortgage, the wife ^{only} relinquishes her ~~dower~~ ^{fee simple estate in the premises.} If the mortgage premises belong to her husband, then she had dower in the premises, and she also had under the statute, a right to claim it as a homestead. The latter right she has not acknowledged that she released, but it is only her ^{neglect} ~~act~~ to the effect. This is not sufficient, as, to be effective to bind her homestead right it should appear from the certificate, that she acknowledged that she released it, freely and voluntarily without compulsion. This was the construction given to the act in the case of Van Sant vs. Van Sant, 23 Ill. 536.

It is, however, held, that the law only relates to forced sales under an

judgment or in order of a court. This is no doubt true of the act as it stood before its amendment, by ~~the act~~ of 1857, which declares, that it is the object of the act, to require in all cases, the signature ^{and acknowledgment} of the wife as condition to the alienation of the homestead. This amendment is broader than the original act, as it embraces all cases of alienation, whilst the former was confined, to forced sales under judicial proceedings. Thus it will be perceived, that in adapting such comprehensive language in the ~~the~~ amendatory act that the design was something more than merely to require the wife to join in the execution of the release. It seems to have been to give her the right to render the provisions of the ^{act} operative not only as to forced judicial sales, but as to all others, involving the right to the homestead.

The legislature no doubt used the term "alienation" in its ordinary and legal sense. The word is defined by lexico-graphers to be, "an act whereby one man transfers, the property and possession of lands, tenements or other things

to another person*. Then the alienation of the homestead, is ~~the~~ transfer of the title & the possession, and can only be made in the mode prescribed by the statute. Any failure to comply with the conditions there imposed fails to affect the right to the homestead, & can't become any more operative as a deed of trust, ~~or~~ a mortgage with a power of sale, or conveyance of the land, to relinquish the right to insist upon the benefits of the statute, than a want of compliance with the act in ~~release~~ simply releasing the right, without attempting to encumber or convey the property.

The amendatory act was manifestly adapted, to protect the wife and family, in the enjoyment of the homestead against both the acts of the husband and his creditors. It was intended that no act of his or thine, until she did what the statute has required, should deprive her and the family of ~~such~~ a retreat from the storms of adversity - a home. Whatever may be our opinion as to the policy of the statute, we must obey and its provisions so as to effectuate the intention

of the law makes. If it is found to operate with incumbrances, so as to produce hardship, it is for the legislature to apply the correctives. We can only give effect to the law as it is adapted.

Whatever rights, if any, ~~which~~ the mortgagee may have acquired by this instrument, it confers no power to sell the homestead, during the lifetime of the wife, if she shall occupy it as a residence. In the event of her death, or ~~the removal~~ if the family shall cease to occupy it as a residence, it will then be time to determine what rights the mortgagee ^{has} acquired. The act only applies to the homestead to the value of one thousand dollars. If this property is of more than that value, the surplus, must be subject to be ~~used~~ applied on the mortgage debt, in the mode prescribed in the statute, on a foreclosure of the mortgage, or on a judgment recovered on the debt, unless other liens had a priority, to this mortgage or such a judgment. As to the surplus, the mortgage, is no doubt, operative and binding. In

* Note. See the case of Young and wife v. Grapp. 28 Ill., 29, where premises were conveyed by deed of trust, and upon foreclosure in equity, a sale of the premises was decreed, subject to the homestead right of the grantors, that right not having been released in the deed.

as much as the mortgage was in
operation to authorize the sale of
the ~~restricted~~ land embraced in
it, being because of its being the
restricted, the decree of the court
below must be affirmed.

~~Decree affirmed.~~

~~And the same is affirmed.~~

Decree affirmed.

J. G. Boyd

152 W

63

N. Luddebacke

Opinion by
Walter J.

Records Book 12
P/2 53, 54, & 57

Compu

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

JOHN G. BOYD, APPELLANT,

vs.

NATHAN CUDDERBACK, AND
CATHERINE CUDDERBACK,
APPELLEES.

1st. This was a proceeding to enforce the rights of appellees under the several homestead acts in our State.

2d. To the bill of complainant the appellant filed a demurrer, thus admitting the following facts:

1st. That the mortgage was not given for the purchase or improvement money.

2d. That the fee in the premises was in Mrs. Cudderback.

3d. That Mrs. Cudderback, her husband, and six children resided upon said premises, both at time of conveyance and filing of the bill of complaint, and have no other real estate.

4th. Claim of homestead and that premises were not worth a thousand dollars.

5th. Assignment of mortgage and notes to Boyd, by Ward.

The first error assigned, "That Ward should have been made a party, is too far fetched. There is no plea in abatement, no leave asked to make other and additional parties, and there having been a demurer filed to bill, and it not appearing upon the record that Ward was interested, the Court will not grope around in search of errors, in a proceeding of this nature.

It is claimed by appellant's counsel that the Court erred in "making the decree perpetual." We insist that the decree is not perpetual. It can only be considered as a decree to continue in force, so long as appellees' homestead rights continue, and the moment such rights determine under the statute, the decree is inoperative.

It is said the appellant may tender in future the \$1,000, and sell the land. We say he is at liberty to make such tender any moment, and have the land sold. The decree only enjoins the appellant until he is willing and ready to comply with the requirements of the statute.

Again, it is said, "the premises were owned by the wife," &c. It is a very strange legal principal to advocate, that when the homestead was passed to protect the wife and children of a man, even when he is the owner of the fee, and that when the fee is in wife, the law is inoperative. In other words, if the wife and children have certain well defined rights under the law, by virtue of a fee in the husband; then if the rights of property became absolute in the wife, her rights, under the law, became worthless, and fail to protect her and her children.

We insist upon the authority of the case of *Vanzant v. Vanzant*, 23 Ill., 536, that there was no relinquishment or waiver of the homestead rights by the wife, in the acknowledgment of the instrument, and there could be none in the *body* of this conveyance, whatever its language. In the case at bar, the acknowledgment is in the usual form, and the Court, (Breese Justice), in the case referred to, say such an acknowledgment does not, in any way or manner convey away the homestead rights.

This Court is called upon to decide that no injury would have been done appellees if the sale had taken place. Yet how apparent is the reverse. The homestead right, under the law, is just as perfect a right to land as long as it endures as a fee simple. It is such a right as is subject to sale or exchange, and is just as sacred to the possessor as any other legal right. If this be so then does not the further right, acknowledged by all Courts, attach that of preventing, by injunction, any cloud from being thrown upon such right or title.

Courts of equity having obtained jurisdiction will always prevent that from being done, which, if done, furnishes the means of extortion or injustice, and will subsequently drive the party injured to his action or defence at law.

It is that the acknowledging officer say that "he had made her (the wife) acquainted with the contents of the deed, and explained to her its contents, and that she acknowledged the same, &c." But the acknowledging officer does not state that he informed the wife of the nature and object of the homestead act, and her rights under and by virtue of such act. This was necessary, and *this* Court has required it.

The principles involved in this case are fully determined in the following cases :

Vanzant v. Vanzant, 23 Ill., 543.

Kitchel v. Burgwyn, et al., 21 Ill., 40.

Smith v. Mare, 29 Ill., 150.

In case of *Kitchel v. Burgwyn*, above cited, the Court say, (page 46 of that decision,) "that the wife must do something more than release her dower." The form of acknowledgment in this case has been followed so long a time, "that the memory of man runneth not to the contrary," and not one word is aid in it, or allusion made to the rights of the wife under the homestead act.

If the position taken by counsel be true, that inasmuch as the fee to the premises was in the wife, and that she was not the head of the family, and, therefore, has no rights under the law, then *poor, indeed*, is the protection given to thousands of women in this State, and they are liable every day to be robbed of their homes by heartless husbands and designing creditors.

But by way of pleasantly answering a groundless argument, let us say, "if the object of the law is to secure a homestead to the wife and children, upon the basis of tenancy, by the dower, the fee being in the husband, that the fee being in the wife, we will give to the husband and children the same protection upon the principal of tenant by the courtesy." Would not this be justice?

GRAY, AVERY & BUSHNELL,
For Appellees.

Jos. G. Boyd
esq

Nathan Wadsworth et al

Brief ^{2d} argument for
appellants.

Filed May 15. 1843
J. Selma
et al

Gray Spring & Bushnell
attys for appellants

GRAY, VEBER & BUSHNELL
Law Attorneys

State of Illinois } La Salle County Court
La Salle County } S.S. September Term 1862
Pleas. Proceedings, Orders.

Judgments and Decrees held and Taken
in and before the County Court of the
County of La Salle and State of Illinois (In
Chancery sitting) at a regular Term of said
Court, commenced and held at the Court
House in Ottawa in said County of the
September Term thereof, to wit: on the
first Monday (being the first day) of Sep-
tember in the year of our Lord One thousand
Eight-hundred and sixty two and of the
Independance of the United States the
seventh

Present the Hon J. Kimball Seland, Judge
Samuel W. Raymond, Clerk
Eric L. Waterman Sheriff

Be it remembered that heretofore to wit:
on the 20th day of August A.D. 1862, a bill
for an Injunction was filed in this Court
in the words and figures following, to wit:

State of Illinois } And County Court thereof to
La Salle County } S.S. September Term A.D. 1862 in
The Chancery side thereof
To the Hon J. K. Seland Judge

County Court in and for said County in
Chancery sitting

Humly complaining your
Orator Nathan Cudderback & Oratrix Catherine
Cudderback respectfully sheweth unto your
Honor that on or about the 9. day of June
A.D. 1857, your Orator and his wife Cath-
erine executed and delivered to one Alson
Ward what purported to be a mortgage
deed upon the following described, viz:
the East half of the East half of the South
West quarter of section twenty seven (27)
in Township thirty five (35) North of range
two East of the 3rd P.M. in the said County
of La Salle for the purpose of better securing
the payment of a certain promissory
Note given by said Nathan Cudderback
to said Alson Ward for the sum of two
hundred & fifty dollars payable on the
1st day of May 1858, with interest at the
rate of 10. per cent. by reference to which
said Mortgage is hereby made a part
of this Bill of Complaint, marked Exhibit
"A."

Your Orator further shews unto your
Honor that the said note and Mortgage
was made by your Orator & his wife
for the purpose of securing said amount

of money as a loan purely and not for the purpose of securing either the payment of the purchase money of said premises or money laid out for making improvements on said premises or for any such purpose

Your Orator & Oratrix further sheweth that the fee simple of said premises in fact existed & now exists in said Catharine Cuderback & that said Nathan has only the rights of a tenant by the curtesy in said premises

Your Orator further sheweth that he together with his wife and children have done at time of said conveyance & now reside upon said premises as a homestead and that your Orator owns no other real estate in this county or elsewhere that in no way or manner did your Orator or his wife release their rights of homestead as they are advised in said premises by said Mortgage or otherwise and now here insist fully upon all such rights and exemptions.

Your Orator further sheweth that at the time of executing said Mortgage his wife was owner in fee of & to said premises and that they are advised by counsel & believe that by said Mortgage

in no way released their rights of home-
stead therein.

Your Orator further shows that the
said Alsen Ward did on or about the
25th day of April A.D. 1860, assign & deliver
the said mortgage & note to one John G.
Boyd and that said Boyd has by publi-
cation in the Ottawa Free Trader adver-
tised the said premises for sale at pub-
lic Auction, which said sale is to take
place on Monday the 18th day of August
1862, and threatens to sell the said
premises on said day & refuses to postpone
or arrange the said claim in any way
or manner deemed by your Orator just
& Equitable

Your Orator further shows unto
your Honor that the said premises are
not worth over the sum of one thou-
sand dollars as he verily believes

Your Orator therefore inasmuch
as he is remediless at common law
prays that a writ of Injunction may
issue out of said Court directed to
said Boyd his agents and attorneys
restraining and enjoining them &
each of them from selling said premises
or in any way or manner from inter-

fering therewith until the further order
of your Honor in the premises - And your
Orator pray that process of Subpoena may
issue against said Boyd, requiring
him to appear at the next term of said
Court & then and there to make full
true & perfect answer to each & all the
said several premises (but not under
oath the same being hereby expressly
waived) and that upon a final hear-
ing of this cause your Honor may
make such other and further decrees
as to your Honor may seem meet &
equitable and thus will your Orator
ever pray

State of Illinois }
La Salle County } S.S.

Nathan Cudderback being
sworn on oath say that the facts set forth
in the above Bill of Complaint are true
& the things stated upon information
& belief he believes to be true

Subscribed & Sworn to } Nathan Cudderback
before me this 16th }
day of Aug 1862 }
P. H. Seland }

County Judge of said County

Nathan Cudderback }
 Mortg }
 Alson Ward }

This Indenture made this month (9th) day of June, in the year of our Lord one thousand eight hundred and fifty seven, Between Nathan Cudderback and Catherine his wife of the County of La Salle, in the State of Illinois parties of the first part, and Alson Ward of the County of Dutchess, in the state of New York party of the second part" Witnesseth: That the said party of the first part, for and in consideration of the sum of Two hundred and fifty dollars, lawful money of the United States of America to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, bargain sell and convey unto the said party of the second part his heirs and assigns forever: all the tract or parcel of land, and real estate, situate, lying and being in the County of La Salle and State of Illinois viz: The East half of the East half of the South west quarter of section No. Twenty seven (27) in Township thirty five (35) North of Range Two (2) east of the third (3) principal meridian

can containing forty acres of land, be the same more or less

The said parties of the first part hereby waive release and transfer all their right to any and every homestead exemption, under the laws of this State to the said party of the second part, his heirs and assigns together with all and singular the hereditaments and appurtenances thereto belonging. This Grant is intended as a security for the payment of a certain note of even date herewith for the sum of Two hundred and fifty dollars payable on the first day of May A.D. 1858, with interest of ten per cent per annum from the date thereof. Which payment if duly made will render this conveyance void. But if default shall be made in the payment of the principal or interest above mentioned or any part or portion of either, at the time or times the same shall become due, then the said party of the second part and his assigns are hereby authorized to sell the real estate above described, at public auction after giving four weeks notice of the time and place of sale in some public newspaper in the County where the said real estate is situated, or in the next nearest County thereto, should none be published in

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said County and convey the same to the highest and best bidder and out of the money arising therefrom, first pay all attorney and counsel fees, cost and expenses and then retain the whole amount of the principal sum secured by this Mortgage with the interest on the same to the day of sale and pay the surplus, if any there shall be to the said parties of the first part

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written

Nathan Cuddelback
Catharine Cuddelback

State of Illinois }
La Salle County } On this 13th day of June
A.D. 1857- personally appeared before me
Notary Public in and for the Town of
Ottawa in said County and State,
Nathan Cuddelback and Catharine his
wife to me personally known to be the
person described in, and who executed
the within Mortgage Deed and acknow-
ledged that they had freely executed the
same for the uses and purposes there
in expressed

And the said Catharine Buddlebach after I had made her acquainted with and explained to her the contents of the said Mortgage deed, on an examination separate and apart from her said husband, acknowledged the said Mortgage deed to be her free act and deed, and that she executed the same freely, voluntarily and without the compulsion of her said husband and she does not wish to retract the same

(Seal) Given under my hand and Notarial seal the day and year last aforesaid

D. F. Carmentel

Filed June 17th 1857, at 3³/₄ o.c. P.M

MORTGAGE SALE.—Whereas, Nathaniel Cuddeback executed and delivered to one Alson Ward, a certain promissory note, dated June 9th, 1857, for the sum of two hundred and fifty dollars, and due on the first day of May after date, with interest at ten per cent per annum, and whereas in order to secure the payment of said note, the said Nathaniel Cuddeback and Catharine Buddlebach, his wife, did execute and deliver a certain mortgage deed to the said Alson Ward, dated on the said 9th day of June, A. D. 1857, in and by which they then and there conveyed to the said Alson Ward, his heirs and assigns, the east half of the east half of the southwest quarter of section twenty-seven (27), in township thirty-five (35) north, of range two (2), east of the third principal meridian, in the county of La Salle and State of Illinois, which said mortgage deed provides and states, among other things, that the said grant is intended as a security for the payment of the promissory note above mentioned, (which is in said mortgage deed particularly described,) the payment of which, if but in default, shall be made in the payment of the principal or interest in said promissory note mentioned at the time or times the same shall become due, by the said Alson Ward, and his assigns, with therefor to be sold at public auction, after giving four weeks notice of the same and place of sale in some public newspaper in the county where the said real estate is situated, and in the case of the highest and best bidder, and out of the proceeds arising therefrom first pay all attorney and counsel fees and expenses, and thereafter in the whole amount of the principal sum secured by said mortgage deed, with interest on the same from the day of sale, and pay the interest if any there shall be, to the said parties of the deed, and said mortgage deed, which said mortgage deed was duly acknowledged by the said Nathaniel Cuddeback and Catharine Buddlebach, his wife, and recorded in Book 53, on pages 535 and 536, of the Records of said La Salle county.

And whereas the said Alson Ward did, on the 25th day of April, A. D. 1857, sell, assign, and deliver the said note above mentioned and in said mortgage deed described, and the said mortgage deed, to the undersigned.

And whereas, default has been made in payment of the said promissory note and interest thereon, and there is now due, according to the tenor of said note, the sum of three hundred and fifty-two dollars and seventy seven cents, all of which is wholly unpaid—

Therefore, in accordance herewith, the said Nathaniel Cuddeback and Catharine Buddlebach, his wife, and in conformity therewith, I, the said John G. Boyd, assignee as aforesaid, shall, on *MONDAY, the 18th day of August, A. D. 1857*, at the hour of 10 o'clock, A. M. of said day, at the south door of the Court House, in Ottawa, in said county of La Salle, sell at public auction, to the highest and best bidder, for cash, the following described real estate which is in said mortgage deed described, viz: The east half of the east half of the southwest quarter of section twenty-seven (27) of the southwest principal meridian, in said county, and the 31 portion thereof, and paying attorney and counsel fees, costs and expenses.

The purchaser at said sale will receive a deed of the said described real estate.

JOHN G. BOYD,
Assignee of said Mortgage.
F. A. FERRIS, Atty.

Upon said ^{Pice} to an endorsement in the words and figures following to wit:

"The Clerk of the County Court of La Salle County in the State of Illinois will issue an injunction"

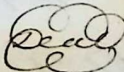
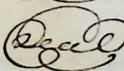
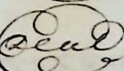
going Bill in conformity with the pro-
thereof upon the execution & filing in
said Court by the complainant Nathan
Ludabach of an injunction bond in
the penal sum of two hundred dollars
with Freeman Austin & Daniel Adair
as security

August 20th A.D. 1862, J. Kimball Seland
County Judge of said
La Salle County

And on the 29th day of August
A.D. 1862, a Bond was filed in said
Court in words & figures following to wit:
" State of Illinois }
" La Salle County } Know all men to these
presents that we Nathan
Freeman Austin & Daniel Adair of
said County & State are held & firmly
bound unto John G. Boyd in the penal
sum of two hundred dollars good
& lawful money of the United States
which payment well & truly to be made
we bind ourselves our heirs executors &
administrators firmly by these presents
dated August 18, 1862.

The condition of the above obligation is such
that whereas the above bounden Nathan

Cudverbach did on the - day of August pro-
cure a writ of Injunction to be sued of the
County Court of said County restraining
& enjoining the said Boyd from selling
certain lands in said County by virtue
of a Mortgage deed executed by said Cud-
erback to one Alsen Ward & by him assigned
to said Boyd which sale was to take
place on the 18th of August 1862. Now if
said Cudverbach shall well & faithfully
prosecute said writ of Injunction &
shall pay all such costs & damages
may be awarded against him by the
Court & shall in every respect obey the
orders of the Court in the premises then
this obligation to be null & void otherwise
to be & remain in full force & effect

Nathan Cudverbach 
Freeman Austin 
Daniel Adair 

Be it further remembered that on the
5th day of September A.D. 1862. the same
being one of the days of the September
term of said Court. a demand was
filed in said Court in the words &
figures. following to wit:

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Nathan Cuderbach } In the County Court
& Katherine Cuderbach } of La Salle County
vs } No. September Term
John G. Boya } A.D. 1862

This defendant by protestation not confessing or acknowledging all, or any of the matters & things in the said Complainants Bill to be true, in such manner and form as the same are therein set forth and alleged doth demur thereto and for cause of demurrer sheweth that the said complainants have not in & by their said Bill made or stated such a case as will entitle them to any such relief as is thereby sought and prayed for from or against this defendant. Therefore the defendant demands the judgment of this Honorable Court whether he shall be compelled to make any further or other answer to the said Bill, or any of the matters and things therein contained, and pray to be dismissed with his reasonable costs in this behalf sustained

John G. Boya
by Glover Cook & Campbell
his attys

And on said 5th day of September
A.D. 1862. ^{an order & decree} a ~~Decree~~ was entered of
record in said court, in the words &
figures following to wit:

Nathan Buderbach &
Catherine Buderbach }
vs } Injunction
John G. Boyd }

} This day comes the
Complainants by Gray Avery & Bushnell
their solicitors and the defendant by
Glover, Cook and Campbell his solicitors
who file their demurrer to the bill of
said complainants, and the court after
hearing the arguments of course, over-
ruled said demurrer to which ruling
of the court the defendant by his said
solicitors abides.

And it appearing to the
court that said defendant has filed
his demurrer to said complainants
bill of complaint, and it also appear-
ing to the court that defendant only
questioned the sufficiency of the bill
of complaint herein filed and refused
to adduce proofs out side of the facts
set forth in said bill of complaint and
the issue having been argued full

before the Court, and that the Court has determined that said bill was sufficient upon its face to maintain the said action and it appearing also that said demurrer had been overruled and judgment duly rendered thereon. It is therefore ordered adjudged & decreed by the Court that the injunction hereinbefore issued against said defendant John S. Boyd his agents and servants be and the same is hereby made and declared to be perpetual and in no way to be violated by said Boyd or his agents and servants at their peril.

Whereupon said defendant by his solicitors prays an appeal hereunto the Supreme Court, which is allowed upon said defendants filing a bond in the sum of Two hundred dollars with Frederick A. Sherwood as security. Bond to be filed within thirty days after the expiration of this term.

And on the 24th day of September A.D. 1862, a Bond was filed in said Court in the words & figures following to wit:

Know all men by these Presents
That we John G. Boyd as principal, and
Frederick A. Sherwood as security, are
held and firmly bound unto Nathan
Cudeback and Catherine Cudeback in
the penal sum of Two hundred Dollars
good and lawful money of the United
States, for the payment of which, well
and truly to be made, the said John
G. Boyd and Frederick A. Sherwood
hereby bind themselves & their heirs, executors
and administrators, jointly, severally and
firmly by these Presents.

Witness our hands and seals
of September A.D. 1862.

The condition of the above obligation
is that whereas the above named Nathan
Cudeback and Catherine Cudeback did
at the September Term of the County Court
held in and for the County of La Salle in
the State of Illinois A.D. 1862, obtain a
Decree against the above bounden John
G. Boyd in and by which the said Boyd
was enjoined from selling the East half
of the East half of the South west quarter
of Section 27, in Township 35, North of Range
2, East of the 3^d P.M. in said La Salle County
under and by virtue of a certain Mortgage
given by the said Nathan Cudeback

Catherine Cudeback to one Alsen Wada
which mortgage was duly assigned to the
said John G. Boyd by the said Wada, to
reverse which said Decree the said John
G. Boyd has prayed for & obtained an
appeal to the Supreme Court of the State
of Illinois. Now if the said John G. Boyd
shall ^{duly} prosecute said appeal 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 adjudge against him, and
abide the order and judgment of said
Supreme Court in this behalf, then this
obligation is to be void, otherwise
in full force and effect

John G. Boyd
Frederick A. Shenwood

State of Illinois }
La Salle County } S. J. Samuel H. Raymond Clerk of the
County Court in and for said County do hereby certify the
above to be a correct transcript of the Record and papers
on file in my office, in the matter of an application
for an injunction by Nathan Cudeback & Catherine Cude-
back vs. John G. Boyd

Witness my hand and the seal of said
Court this 20th day of February A.D. 1863

S. H. Raymond Clerk
W. S. Easton Deputy



Now Comes the Said John's Deyd
Appellane by Glover Cook and
Campbell his Atty and says that
in the record and proceedings
aforesaid and in the rendering
of the Decree aforesaid there
is Manifest Error in this to wit

- 1st The Court erred in overruling
the said answer of said defen-
dant to said Bill of Complaint
- 2^d The Court erred in rendering
said Decree in manner of form
aforesaid
- 3^d And for other errors and in-
sufficiencies

Glover Cook & Campbell
Attys for Appt

152 ^v Boyd
Cuddi back

~~Boyd~~

Round & Enos

Filed April 15, 1863.
L. S. Enos
Ch.