

13170

No. _____

Supreme Court of Illinois

8N

Guernsey

vs.

People

301

In the matter of
the sale of the real
estate of Guernsey

387

Guernsey

People

13170

Guernsey
People

In the matter of the Estate of
Edm (M. Guernsey deceased -

State of Illinois }
County of Grundy }

David Scholz being
duly sworn on oath saith that
he is well acquainted with
the lot known as the Guernsey lot
it being lot two in Block two in
Chapin's Addition to the Town of
Morris and that lot at present
maybe worth eight hundred
Dollars but that is the extent
that the whole lot is sixty by
one hundred and twenty feet -
that he is well acquainted
with the circumstances of Mrs
Guernsey the widow of Edm (M.
Guernsey and has been so ac-
quainted for at least seven
years and that during that time
she has been apparently very
poor and in very needy cir-
cumstances and that to his
personal knowledge she has
not been able to pay the taxes
on the above lot for a number

of years it being the one on
which she resides, that the
taxes have been paid by the
voluntary contributions of others

David Le Roy

Subscribed & sworn to

before me this 28th

day of April 1859

Edward Stanford

Notary Public

In the matter of the Estate of
John M. Gurnsey deceased -

State of Illinois }
Gundy County }

By Harland J. Gard
our being duly sworn on oath
saith that he has been a resident
of Morris and acquainted with
the circumstances of the Widow
and Family of John M. Gurnsey
and with the SD known as the
"Gurnsey SD" since 1838 -

Think the value of the property to
be about 6000 should consider that
the full value of it - Mrs Gurn-
sey since I have known her has
been very hard up in very limited
circumstances, has had a good deal
of difficulty to get along - and has
no means to support herself except
her labor -

Subscribed & sworn To J. Gardner
Before me this 30th
day of April 1859
Edward Sanford
Notary Public

Supreme Court
In the Matter of the Estate of
Sam M. Guernsey deceased

State of Illinois
County of

Daniel G. Charney
being duly sworn upon his oath
swears that he is well acquainted
with Lot Two (2) in Block Two (2) in Chapin's
Addition to the Town of Morris and
known as the Guernsey Lot - for
the last five years past have been en-
gaged in the Cabinet and Mercantile
Business in Morris - and have had
good opportunity of knowing what lots
are worth in Town, This lot is worth
about \$600. It is doubtful if it
could be sold for that price - saw
some of the notices of the sale which
were posted up by Daily Guardian
of minor heirs of Sam M. Guernsey -
that notices were written so that
I could read them readily - the
time of sale appeared to be generally
known around the Town, I heard
many speak of it before the time
but cannot tell how many - it has
been very hard work for Mrs

Eversey for the last six years
to get a living. She has been
helped a good deal by the
neighbors around. I have my
self helped her - I have not been
at her house lately but have been
informed she is still very poor
and needy and no longer ago
than last Wednesday I sent her
a Basket of provisions -

Subscribed & sworn

to before me this 29th

day of April A.D. 1859

Edward Sanford

Notary Public

Wm. Freary

W. J. Carey

In The Matter of The Estate of
John M. Guernsey dec'd

State of Illinois)
Grundy County } ss.

Oscar Baugher of
said County, being duly sworn on
oath says, That he wrote, in a
plain and legible hand, the number
of advertisements (which number
he does not now recollect) ordered by
the Probate Court of said County
for the sale of the property in the
above case, & That, he posted the
same, in the most public places
in the City of Morris, in said County.

This affiant further says that
E. P. Seely, Esq. spoke to a number of
persons, in the presence of this
affiant, both, before, and at the
time of the sale, respecting the sale
of the property mentioned in said
advertisements.

This affiant further says
that an Auctioneer, whose name he

does not now remember cried the said sale in a public manner

This affiant further says that it was publicly announced at said sale, that the property was being sold, without the sight of owner on the part of Mrs. Emery, Thinks This announcement was made by E. P. Seely, Esq.

This affiant further says that there were at least ten or fifteen persons present at said sale

This affiant further says, that he, said affiant, about the time the property was being struck off, asked Mr. John Mc Neelis, a large property holder in the City of Morris in said County, whether the price then offered for the property was not less than its value, to which question, the said Mc Neelis replied, "it was as much as it was worth"; and further this affiant says not

Oscar Baughen

Subscribed and sworn

As before me this 19th

day of April 1859

Edward Sanford

Notary Public

Supreme Court
of State of Illinois

In the Matter of Sale of
Real Estate of John M. Emansy deceased

State of Illinois vs
County of Grundy

Hiram C. Gold
being duly sworn on his oath saith
that I was present at the Sale of
the East 1/2 of Lot 1 & 2 (2)
Block Two (2) Chapins addition
to the Town of Morris made by E. P.
Deeley as Guardian of minor Heirs
of said deceased some ^{two} years and
more ago, the Sale was made on the
Street opposite the Public Square
and near to where the old Court
House stood - it is my impres-
sion that there was no Court House
for doing business at the time, that
the old one had just been moved
away and the foundation of the
new one just laid - said Sale
was publicly and loudly cried by
some person, other than I think by
some Sheriff or Civil Officer -

There were as many or more
persons present than usually at
such sales - there was then
by or more present - it appeared to
me that the sale was fairly made
and was offered long enough to
allow all persons present to bid
as they saw proper. I was a bid-
der myself and was encoura-
ged by Mr Seely to bid more -
and had I considered there was
any speculation in it I should
probably have done so - I was
at that time engaged in buying
& selling Real Estate - it was
the business of the firm of C.H. &
A.C. Gould of which I was one -
I was well acquainted with the
property and I think with the
value of Real Estate in the Bronx.
Mr Seely appeared to me to ^{expect himself to} ~~be anxious~~
~~to make the property bring all~~
it could, I saw nothing in any
part of the transaction but what ap-
peared fair and I think that now it
would be difficult to find a purcha-
ser for the property at the price at
which it was then sold with a mod-
erate rate of common rate of interest

2

I bid on the property at that time with the understanding that I was purchasing a clear title - (Mr Seely gave Public Notice to that effect during the time the bidding on the property was progressing - I do not think I was present when the property was first put up. I have known the Guernsey family since 1848 at which time I came here (they were here at that time, I & Mr Seely was here also at that time - it was a matter very universally known that the children boarded at home with their mother, and particularly so, because they have been more or less upon public charity since the death of their father, not as paupers but as such as the voluntary assistance of their neighbors - Mr Seely must have seen the family nearly every day in the natural course of his business and must have known where they boarded and how much ~~much~~ it was worth to board & clothe them - The mother of those children has been (since I knew her) deemed a proper

object of public charity -

Hiram C. Gould

Subscribe and swear

to before me this 12th

day of April 1839

Edward Sanford

Notary Public

State of Illinois
County of Grundy

John Mc Nelis (being
duly sworn on oath saith -

I was present at the Sale of the
Real Estate of the said John M. Guernsey
deceased mentioned in the foregoing
Affidavit of W. C. Gould - it was pub-
licly made on the corner of the
street opposite where the old Court
House stood, the new one was not
yet finished - there were quite a
number of persons present at
said Sale - it was publicly and
openly cried - I bid upon the
property and so did several others -
I supposed I was purchasing a clear
title and I bid with that understand-
ing and I think it was so generally
understood at the Sale - The Sale
appeared to be a fair one, all having
a sufficient opportunity to bid if
they saw proper -

John + Mc Nelis
Subscribed and sworn
before me this 13th
day of April 1859
Edward Stanford
Notary Public

387
Guernsey
Estate -

Application for
hearing &c.

affidavits

Dr. Leroy

F. S. Gardner

D. G. Tracy

O. Baughin. Esq

H. C. Gould

J. McNeill

Filed May 23. 1837

L. Leland
clerk

To The Hon. The Supreme Court of the
State of Illinois

In matter of the sale of }
Real Estate by Guardians of } Petition for
Minor Heirs of Mrs M } Rescinding
Guaranty Decree. }

The Subscriber upon
Petition would respectfully represent
that he is induced to make an application
for a rehearing in this case in consequence
of the peculiar position which he occupies
and to place the matter in its true light
before the Court. It is well known
to your Honors, that little formality is
observed in our Probate Courts and
that was peculiarly so in the inception
of the proceedings in this case. Owing
to the position which the Judge of Probate
occupies, he frequently has knowledge
of the facts, in reference to the accounts
of Minors &c - which are brought before
him. And more frequently ~~so~~ than
otherwise, he acts entirely upon his
own knowledge. In this case the
Judge of the County Court was well
informed of his own knowledge, where &
how the said words had been supported
from their birth. He for the last six
or eight years having lived within some

the knowledge of the Family And to the knowledge of your Petitioner has been intimately acquainted with them for the last Twelve years. It is objected by the Court, that an Affidavit of Merits was made by myself to the account filed by Mrs. Gurney the Mother. That was not made as proof of the account but as an Affidavit of Merits simply. It has been the practice of the Probate Court of this County to require an Affidavit of Merits to every such account and when the account was called up to be disposed of, Mrs. Gurney was not there, and the Judge seeing no Affidavit of Merits appended, suggested that the same might be made by your Petitioner inasmuch as we was as well acquainted as any other with all the facts in the case. Your Petitioner further states that he has been well acquainted with that Family for the last Twelve years, they being one of the oldest families in the Town and your Petitioner having become a Citizen of the place when it was composed of a few ^{little settlements} Irish plantations.

Owing to some error of the Clerk of the County Court. It is stated in Record

That said Petitioner appeared as the Attorney of Mrs Gurney, but which is an error in fact. My Attention was first called to that statement in the Record, by the Opinion the Court in this Case. Had I known the Record contained such statement, I would have had the error corrected before it was sent up.

The Inducement of Petitioner to make the application for the probate was the straitened circumstances in which Mrs Gurney found herself & against which she had been struggling for a number of years. It was well known to your Petitioner, that she had for a considerable time, & more since the death of her Husband, sustained herself & her children with great difficulty, and that she had frequently received donations from the Charitable to assist her in her need, under such circumstances, your Petitioner did not suppose, that he was violating his duty as Guardian or doing any moral wrong, when he was assenting to what a Court of Chancery would decree to be done after the closest

Account - See 4th Johnsons Chancery Reports, page 100. in the Matter of S F Bottwick. Where the English Cases are collected & learnedly commented on by the Chancellor

It appears to your Petitioner that he ought not to be condemned & stigmatised for ~~the~~ doing that which the most learned Tribunals of the world would approve, were the case presented to them. And your Petitioner thinks, that if in this case he has been in error. It has been by following the brightest lights which ever shone upon the Bench

And your Petitioner would further state, that knowing the circumstances of the Mother & Children as he did. he felt it necessary that something should be done to relieve them their present necessities. They were the holy recipients of voluntary Charities. Their House which was a mere shell at best. was in a dilapidated condition. They were thinly clad & poorly fed. And there appeared an absolute necessity that something should be done to assist them so that

They might live comfortably

It is objected by the Court on their opinion that your Petitioner sold only a part of the Lot when he was directed to sell the whole. In this the Court have misapprehended the Record. By the order of the County Court, your Petitioner was directed to sell the Lot, or such parts thereof and in such parcels as he should deem advisable for the interest of his wards. Your Petitioner did not deem it advisable to sell the whole, because there was a small House on one part, which served them for a shelter - Poor & dilapidated though it be. Still it serves them for a House & in some measure shields them from the storm and he sold the whole. That poor shelter would have been swept away. And under the circumstances he believed it best for their interest & their comfort that it should be sold.

The Court again ask with some emphasis. What Authority your Petitioner had to set off the Dower to the widow and who constituted him a Commissioner for that purpose? Your Petitioner

Cannot persuade himself. That that
point was well considered by the
Court. Your Petitioner had supposed
the doctrine on that point to be well
settled to admit of question or dispute.
It is laid down in the Commentaries
on the Laws of England, one of the
first books put in the hands of a
Student, "that it is the duty of the
Court to assign the Dower and if he be
a minor, then the Dower shall be
assigned by the Curator and if too
much or too little is assigned, a
writ of Admeasurament of Dower may
be granted." Since the last term of
this Court, Your Petitioner has in
some measure examined this doctrine
and so far as his researches have gone
he has found the doctrine fully sustain-
ed in this Country. The same doc-
trine too would appear to be recog-
nized by the Laws of this State
See Rev. Statutes. Title Dower sec
17.

2nd Blackstone
Comm. vol
page 136

Your Petitioner labours under
peculiar difficulty in this case
owing to his having been attacked in
the County Court without notice

or opportunity to defend himself &
which seems to have been permitted
to continue in this Court; for The
first intimation your Petitioner had
that any Counsel either desired to be
had appeared adversely in this Court
he found the fact adverted to in the
opinion of the Court, which must have
been at least six months after the hearing
of the Cause. He believes in this
Case he has just ground of Complaint
that he should be held bound by
an Ex parte Affidavit and which in
fact is false in nearly every particular
when he had no chance to cross examine
and no opportunity to introduce testimony
to contradict it. All your Petitioner
asks is just opportunity to bring out
the whole facts. and to that he believes
the Law entitles him.

Your Petitioner has taken the affi-
davits of a number of prominent persons
in the town of Morris, some of whom
he believes are known to your Honors
for the purpose of putting this Court
in possession of the facts in this Case
that it may be disposed of on its merits.
This may appear a novel manner to bring

a case before the Supreme Court, but your Petitioner is not aware of any other means at present, by which the facts can be laid before your Honors, he having been prevented from introducing any testimony in the Court below in reference to the statements made by Skinner. By the Affidavits which have been taken by your Petitioner, your Honors will perceive how little reliance there is to be placed on Skinner's statements. Skinner states in his Affidavit that ^{he believes} your Petitioner, has an interest in said purchase. But a witness who can swear to so many false statements as by the affidavits taken by your Petitioner, he is shown to have done, does not require very strong circumstances on which to found a belief. The fact is your Petitioner has no interest whatever in these purchases & expects to have none. That he has derived no advantage from them & expects to derive none.

In the opinion delivered in this case, it is affirmed by the Court that no public notice was given to bidders

That the widow would sell my work for
 shaver in the lots sold & that they were
 sold free & clear of all incumbrance
 Your Petitioner cannot conceive
 from whence the Court received the
 impression. Even Skinner's affidavit
 is silent on that subject & his is the
 only affidavit made & the Record says
 nothing on the subject. The fact is that
 your Petitioner took great pains to be-
 maunce at the time of the sale and dis-
 cussance loudly & publicly & frequently
 during the progress of said sale, the said
 lots were so sold and made that a
 reason in urging persons to bid more
 for the same, which he did in several
 instances personally & frequently in a
 loud & public manner. That said
 sale was fairly made and your
 Petitioner believes the Terms were
 well understood by every person present
 and that were he to get up said proper-
 ty at the present time it would be with
 great difficulty. He could procure the
 same amount to be bid again for
 said property. Wherefore in consequ-
 ence of the personal character which
 this case has assumed in reference
 to your Petitioner as well as the

importance to the world. Your
Petitioner prays a rehearing in the
above-stated Cause, believing
he would in no wise be justified
without such an Application.

Your Petitioner also prays that your
Honors will carefully examine the
Affidavits taken herein & herewith
presented, and if your Honors
should see fit to direct any other
Course for the purpose of a full
investigation of the matters pertaining
to this case, such direction will
be cheerfully complied with by
your Petitioner.

E. B. Tully

State of Kansas, Quindcy County ss:

E. B. Tully, being ^{duly} sworn on his
oath, deposes that he has read the fore-
going Petition, read & knows the
contents thereof, and that the
matters & things therein stated and
set forth, so far as they relate to his own
acts and deeds are true, and so
far as they relate to the acts and
deeds of others, he believes them to
be true.

E. B. Tully

Subscribed this
11th day of May A.D. 1839
before me

Edward J. [unclear]
Notary Public

³⁸⁷
Guernsey Estate

Petition of
E. P. Seely for
Rehearing

Filed May 25th 1839
L. Leland
Clerk

B. C. Cook
for petitioner

State of Illinois. Grundy County ss:

George W. Armstrong of the County of Laclede being duly sworn on his oath saith, That he is well acquainted with Real Estate in the Town of Morris in the County of Grundy aforesaid. Having owned & being still the owner of considerable Real Estate in said Town composed of Town Lots. That ^{he} is & has been for the last fifteen years well acquainted with the Lot No 2 in Block No 2 in Chopin's Addition to Morris being the Real Estate of which John M. Gurney late of said Town of Morris died seized. That Deponent is of the opinion that the sum of ^{a few} six hundred Dollars would have been a fair price for said Lot in the fall of the year Eighteen Hundred & Fifty six, with good clear title. That Deponent is acquainted by reputation with the Circumstances of the widow & Family of said Deceased, and that they were reputed to be very destitute and Deponent has been several times applied to for Contributions for their

existence, & thinks he has heard of
money being contributed by the
Citizens for the payment of her
taxes. to save the property from
being sold

Sworn & Subscribed this
12th day of May A.D.
1839 before me
Perry A. Armstrong

Geo. W. Armstrong

clerk of the County Court

Supreme Court of the State of
Illinois

In matter of the sale
of Real Estate of John
M Gurnsey decd.

Please take Notice, that
I shall move said Court at Ottawa
on Thursday the Nineteenth day of May
instant at ten o'clock A.M. or as soon
thereafter as Counsel can be heard, for
a Rehearing in the above-stated Cause

Morris May 7th 1839

To S. W. Harris Esq.

Atty in behalf of Hen's exec decd.

Yours &c

J P Seely

Supreme Court of the State
of Illinois

In matter of the sale
of Real Estate of John M
Gurnsey decd.

Please take Notice that we
shall move said Court at Ottawa on
Thursday the Nineteenth day of May in-
stant at ten o'clock A.M. or as soon thereafter
as Counsel can be heard for a Rehearing
in the above-stated Cause

Morris May 7th 1839

To S. W. Harris Esq.

Atty in behalf of minor

Hen's exec decd.

Yours &c

Reading & Hopkins

I hereby acknowledge the Receipt of
Copy of the within Notice May 7th 1839

J. W. Harris
in behalf of minor
Children

I hereby acknowledge the
Receipt of a Copy of the within Notice
May 7th 1839

J. W. Harris
in behalf of minor
Children

State of Illinois

County of Grundy ss: Oscar Beyer of full
age & being duly sworn deith. I reside
in Morris in the County of Grundy. I
am a Lawyer by Profession & practice
in said County. Some time after the
sale of the Real Estate of the Heirs of
John M. Gurnsey late of said County
deceased made by S. J. Pealy Esq. Guar-
dian of said Heirs, after said sale
had been set aside by the Probate
Court of said County, I had a conver-
sation with J. A. Reading one of the
purchasers of said Estate, at said sale
in which I expressed to him my regret
that he had been a purchaser at said
sale & advised him to abandon the
matter & ^{decline to} have any thing further to do
with the same. Said Reading refused
to follow my suggestion & stated Skinner's
affidavit was in such shape as to leave
him obnoxious to the charge of having attempt-
ed to do a wrong & upon being discovered
had acknowledged it by receding from the
position first taken. That he had made up
his mind, to bring a writ of Error & Amend-
ment to himself & establish his title, as he had
no doubt he should be able to do, & then
to set up the property at a second sale
proclaiming it to be for the benefit of the
Gurnsey & her Children & call upon those
finding fault to come forward & bill for
the benefit of said Widow & Children and
obligating himself to give them the balance if any
could be obtained. That said Reading

also requested I should keep this determination of his secret, until after the decision, fearing it might be charged as having an influence on the Grand Jury Probate Court when the Cause should be presented to them for a hearing on counter affidavits to that of John Skinner

Oscar Baughman

Subscribed & sworn
Before me this
18th day of May 1859
Edward Sanford
Notary Public

387
Epworth's Estate

Affidavits &

Notices

Affidavits of
eg - W Amstrong
& O. Baughman

Eng

Filed May 23. 1859
Leland
clerk

To the Hon The Supreme Court of the State
of Illinois

In the matter of the sale of
Real Estate by Guardians
of minor heirs of John
McGurnsey deceased

In the opinion delivered
by the court in this cause at the last Term your
Petitioners find themselves seriously arraigned and
condemned for the part they are supposed to have
acted in the sale and purchase of the above men-
tioned Real Estate That the court may be advised
of the facts they would respectfully beg leave to
represent That of the ^{incipient} ~~insufficient~~ proceedings for
the purpose of procuring said sale they had no
knowledge whatever and that they had never heard
as they are fully persuaded that such sale was
contemplated until after the same was advertised
That very shortly before said sale, and your Petitioner
the said Reading thinks not more than two or three
days said Guardians first mentioned the fact that
said property was about to be sold & recommended
your said Petitioner to purchase That this was the first
knowledge he had on the subject and being then in the
business of buying & selling real estate concluded to attend

said sale, and on the day thereof for the first time as he believes mentioned the subject to his said partner the said W. J. Hopkins when they for the first time concluded to bid for the same

That said sale was made by public auction by a public officer Henry Beebe who was the Deputy Sheriff, who proclaimed aloud the terms or conditions of the same in the presence of some 20 or 30 persons as your ^{petitioners} ~~orators~~ believe quite as large a number as usually attend sales of real estate here and on the most public corner in the town & so near the door of the Court House that all that took place at said sale must have been not only visible but entirely audible to them had any been standing at said Court House.

That said Guardians went among the bystanders recommending said property & soliciting bids & proclaiming aloud that said property was being sold clear of all incumbrance & that said Widow would release her dower in said lot which was also proclaimed by said officer and your petitioners believe that every person present at said sale heard and fully understood that said property was being sold clear of all incumbrance and that every one present believed said sale to be fairly made. That the same was entirely fair so far as your petitioners or either of them know or believe and that said property was then sold for the best price that could be obtained for it. That your petitioners attended said sale under the

some circumstances with all others who were present so
 far as they know & as they believe without any arrange-
 -ment or intimation by said Guardian or by any other
 person that they should have any privileges thereat
 or receive any favors above any other individual or
 individuals there present That they finally purchased
 said property there at a price at which they are
 not anxious now to hold it and would prefer to receive
 back the payments of purchase money then made with
 the Taxes & City assessments for sidewalk improvements
 with interest by them made rather than make the balance
 of said payments

That your petitioners feeling that they had purchased
 said property as any other persons would purchase at
 a public sale paid no attention whatever to the
 confirmation thereof expecting the same to be done
 as a matter of course and had no ^{intimation} ~~intention~~ or
 suspicion to the contrary until after the same had
 been set aside by the court & the court adjourned for
 the term so that it will be seen your petitioners had
 no opportunity to present counter affidavits to the County Court
 That feeling indignant at the interference of Skinner
 & the action of the Grundy County Court in setting aside
 the sale without notice or even an intimation that
 any complaint was made or objection existed ~~it~~
 they ^{in reply} ~~regarded~~ to the matter & prompted by no other feeling
 they united with said Guardian in the writ of error.

to reverse the judgment of that court with a view (that the judgment being thus opened) to obtain leave there to file counter affidavits to that of Skinner or at least such as would explain it. That upon becoming acquainted with the contents of Skinner's affidavits one of your petitioners (said Reading) determined not to own said property and so confidentially informed some friends but intended to proceed to set aside the action of said County Court, ^{& procure} said sale ~~was~~ to be confirmed & then to offer said property for the benefit of the said Widow & Children believing that the Supreme Court would remand the case there with the proper instructions to admit counter affidavits to that of Skinner, and believing that a fair hearing of the cause there would result in a confirmation. With these views the writ of error was prosecuted but instead of the relief which they supposed themselves reasonably entitled to have they find their motives severely censured & they respectfully submit without evidence against them to be found either in the record or the ex parte affidavit of Skinner. The names of your petitioners are not mentioned in the record except as the parties who purchased & paid according to the terms of the sale nor are they mentioned by Skinner at all. It is true Skinner swears to his belief that Seely was interested in the sale and this remark induced your petitioners to join

in the writ of error ^{merely} with a view of ^{getting an opportunity of wiping} wiping out from the Record this insinuation that collusion existed between them & said Guardian and not for the purpose of obtaining a title to said property for the purpose of speculation or self aggrandizement.

The Court will observe that in this respect Skinner has expressed but a naked belief. No fact is given upon which it is based and why or wherefore he arrived at such conclusion cannot be surmised from anything which appears either in the Record or the affidavit. But even this "belief" unfounded as it is, was exceedingly offensive to your petitioners and to clear the Record of any seeming suspicion, even by implication they determined to seek relief before your Honor, believing the proceedings of the Probate Court was irregular in not allowing them so much as to know that objections were made to the confirmation of said sale and so allowing them the opportunity to ask for leave to present counter affidavits to the interested ex parte statement made by Skinner, who was disappointed at not having been himself the purchaser of one of the 20 feet portions of said Lot & whom your petitioners are persuaded would have been quite as willing as they to have taken said property at the same price although he swears he "believes that said real estate was sold for much less than its then value". What his opinion on this point

~~...the Court do not seem to have been in mind that in the County Court they had no opportunity to ask for time to file Counter affidavits - for they knew nothing of Skinner's affidavit~~

is worth may be seen by the affidavits of George W Armstrong Miriam C Gould O Baugher D.S. Mary H. S. Gardner & L D LeRoy accompanying this application But again he says "if the requisite number of notices were posted this affiant believes they were defaced or torn down" on what is this belief founded, why does he intimate a doubt, that the requisite number were posted? who defaced or tore them down?

There is certainly no charge that it was done either by the mother the guardian or your petitioners are your petitioners there to be held responsible for it without either the proof or the charge

But it is insinuated & that is more crushing than the boldest charge. But your Petitioners have no idea that they were ever torn down or defaced, unless done by the affiant himself. nor if he had any knowledge upon the subject can they conceive any other reason for his withholding the name of the guilty party

We swear "that from the vagueness & uncertainty in the notices posted" "he was utterly unable to ascertain what portion of said Real estate would be sold or when it would be sold or what kind of title would be given." We then saw the "Notices"! or he could not speak of their "vagueness & uncertainty" and yet if the Court will refer to the copy of the Notice which will be found in the report of the sale

"the sale was to be made" would be less difficult to understand by those who knew him at that ~~time~~ period, than to the members of this Honorable Court with them his expressions of "opinion" & statements of "belief" might have some weight; but with those acquainted with his habits they would be esteemed but lightly, and while he forgot the day of sale of the property in question he ^{rarely} ~~really~~ if ever forgot when he was thirsty. But he swears the Guardian misled him in regard to the time of sale by stating it was to take place in the fore-part of October, he believed the 14th Nov would this misled him when he saw the notice & they distinctly state it is to be on the 6th

To have the opportunity then to correct this rambling affidavit was the object of your petitioners in prosecuting this writ of error

The Probate Court had adjourned before they were aware of its proceedings and supposing their only redress, was by writ of error to open the proceedings of the Probate Court & ^{allow} ~~then~~ them an opportunity for counter affidavits & a hearing before that court, which had been virtually denied them, they sought relief at the hands of this court. They feel however that they have again been most-unfortunate in being misunderstood, their motives misapprehended & they severely censured and all without the opportunity of yet meeting or knowing

any accuser for the names of any who have employed counsel before this court in this cause are as yet unknown to your Petitioners

Your Petitioners would further state that Henry Bebe who cried said sale has left this state something like a year since & is as they have been informed & believe some where in Kansas or in Missouri near the line dividing those states but they have ^{not} as yet been able to ascertain

Your Petitioners are not ignorant of the fact that infants have been imposed upon & defrauded of their just rights and can appreciate the proper jealousy with which this court will always watch over & protect their rights

They can also appreciate the great labor which has fallen & which is continually increasing upon the hands of this Honorable Court and which must of necessity compel an adjudication of matters of minor amounts without that ~~thorough~~ thorough investigation & ~~the~~ comparison of the Record papers & testimony, which with less labour upon their hands they have been accustomed to bestow on all questions brought under their notice and it is with great reluctance your petitioners find themselves called upon again to ask your consideration of this matter And were it only dollars & cents that were concerned they would neither

~~... that in the County Court they had no opportunity to ask for time to file Counter affidavits - for they knew nothing of Skinner's affidavit~~

neither trouble the Court nor themselves with a second thought in regard to it

But being members of a profession for the honor of which as well as for their own they are justly jealous and finding themselves not only misunderstood & by insinuation misrepresented and finding this Honorable Court too falling into the same misapprehension of their motives & conduct and placing upon ~~the~~ its Records & among its published opinions there to remain for all future time strictures which they know & deeply feel to be unwarranted they cannot refrain from asking that the opinions be reviewed by the light shed upon the case by the accompanying affidavits and without desiring the confirmation of the sale or the interference of this Court for any other purpose than as a vindication of their integrity in this transaction, they respectfully ask a rehearing in said cause & that the proceedings of the County Court - setting said sale aside be set aside & the cause remanded for a hearing on Counter affidavits or that in case this Honorable Court thinks proper to set aside the whole proceedings of said County Court, they will strike such portions from their opinion in the case as reflect on the conduct or motives of these petitioners or said Guardians and make some provision for the repayment

to these petitioners of the first payments with
interest - taxes & assessments by them heretofore
made & your petitioners as in duty bound &c

J. N. Reading

W. J. Hopkins

State of Illinois,
Annidy County

James N. Reading one of the above
named petitioners being duly sworn on his oath
saith that the matters & things stated & set forth in the
 foregoing petition so far as they relate to his own acts
& deed are true, & so far as they relate to the acts &
deeds of others he believes them to be true

Subscribed & sworn to J. N. Reading
before me this 19th
day of May 1859
Edward Sanford
Notary Public

In the Matter of
The Guesnary Estate

Petition by Realling
& Hopkins for a
rehearing

J. L. Drilling
for petitioner

J. Lyle Dickey of Counsel for
Reading & Hopkins in this petition
for a rehearing - begs leave to say
to the Court - that I have known
Mr Reading - ~~the party~~ for many
years and have ever regarded him as
a man honest & honorable & ~~to be~~
in the highest degree - In fact
I know no man - who would shun
a known wrong with more prompti-
tude

Counsel also desire to suggest
that when the Court say "had the
"parties in this case asked time to
"file counter affidavits it should
"have been granted" but they did
not ask time to file such affidavits
~~that~~ they only denied the right of the Court
considering Skinner's affidavit & claimed
no right to file other affidavits - it is
evident the Court do not bear in mind
that in the County Court they had no
opportunity to ask for time to file
counter affidavits - for they knew
nothing of Skinner's affidavit

Counsel ask the Court to consider that Reading & Hopkins had no knowledge of the existence of Skinner's affidavit - until after the decision of the County Court was made & that Court had adjourned & therefore could not possibly ask that Court for time to file counter affidavits - & that when they have in this Court denied that Skinner's affidavit should be considered this was done as a means of opening the Case below - so that they might ask leave to file such affidavits. They have claimed as yet no right to file other affidavits because they have had no opportunity regularly to do so.

This Court conceding that the affidavit of Skinner is not enough of itself to set aside the sale - still ~~it~~ seems to ^{have} ~~be~~ held sufficient to charge Reading & Hopkins of being favored bidders & having secret knowledge which other bidders did not have - ~~while~~ ~~Skinner's affidavit~~ The affidavits filed here with effectually repel this presumption - & show that the bidders stood all on equal grounds with

equal knowledge - The fact that the widow would release her dower was made known to all the bidders - & Reading & Hopkins had no other means of knowledge

The court say that the circumstances of the case strongly fortify the supposition of Skinner - "the guardian" "was to share the spoils & the lawyers" "to receive the portions they had arranged" "with the guardian they should receive"

The plain inference is that the parties who bring this writ of error arranged the whole matter & "the mother" was misled by the more astute"

The affidavits filed herewith show how widely this inference departs from the ~~facts~~ real facts as they were & when it is remembered that there is not one fact in the record connecting Reading or Hopkins with this transaction (let it be good or bad) except the fact that they bid & bought at the sale - it does seem that the rule that fraud must be proved - & will not be presumed - & that men are to be regarded as acting

honestly unless the contrary is shown
has not been kept in mind by the
Court - And the character of a respecta-
ble man ought not to be blasted upon
the mere surmise of a stranger
who states no fact as a basis of
his faith - that too without having
a chance in any way to disprove
the charge thus vaguely made -

The sanction of this Court to such
a presumption - printed in the reports
would put a stigma on the name of
innocent men - for which their
children & childrens children might
be made to blush after we are
all in our graves -

The Court say if the guardian & parties
concerned" (Reading & Hopkins) intended
"to act honestly" - "Why was not the
public notified that the willow had
released her dower" - For Reading
& Hopkins I answer that the fact was
proclaimed at the sale - that they had
nothing to do with the formal notices
- that they stood as other purchasers

and had no other Connection with these proceedings save as purchasers - & the question as against them can in no way have a bearing -

The Character of a respectable man ought to be blasted - upon the mere surmise of any one - much less by that of a stranger who states no fact as a basis of his faith & especially where the accused have had no possible opportunity to disprove the charge thus vaguely made

The sanction of this Court to such ~~a~~ presumption ^{against their names} - printed in the reports - would put a stigma on the name of innocent men - for which their children & Childrens children might be made to blush after we are all in our graves -

May we not ask therefore in this matter that these reflections may atleast be stricken out of the opinion of the Court - & may we not suggest that this case be opened & sent back where counter affidavits may reach the files of the Court in vindication or

that some course may be adopted
securing the rights ^{Justice to} of all parties
after full investigation

I. Lyle Dickey
of Counsel for
Reedling & Hopkins

³⁸⁷
Supreme Court -
In the Matter of
Sale of real Estate
of the Guernsey Estate

Petition for re-
-hearing - by
Reedling & Hopkins

Filed May 23, 1859
L. Leland
Clerk

L. Lyle Drake
for petitioners